

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2012

COURSE NAME : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L303

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER FOUR QUESTIONS INCLUDING QUESTION ONE.**
- 2. QUESTION ONE IS COMPULSORY**

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QUESTION 1 (COMPULSORY)

Martin, Kholiwe and Lethu run a Catering business as partners. One of the stipulations in the partnership agreement is that no partner is entitled to conclude a contract on behalf of the partnership for more than E5,000.00 without the prior written approval of the other partners. Kholiwe purchases an electric stove from Gadgets Galore (Pty) Ltd for the amount of E8,000 without the necessary consent of Martin and Lethu who do not want to even use the stove and, on the basis of Kholiwe's lack of authority, and deny any liability under this agreement.

Wakhile, one of the members of Gadgets Galore (Pty) Ltd, wishes to know whether the partnership can be held liable in terms of the contract. (15 marks)

Suppose that Martin had undertaken to contribute a motor vehicle to the partnership, but never delivered it. Advise Kholiwe and Lethu on their legal position, and if any action may be instituted against Martin. (10 marks)

TOTAL : 25 MARKS

QUESTION 2

The memorandum of association of Pine Properties Ltd provides that the main object of the company is the manufacture of a tar mixture for the construction of roads. The articles of association of the Company provide that only the board of directors or any person appointed by the board is entitled to conclude contracts on behalf of the company. The articles further provide that any contract which involves the expenditure of more than E100,000 must first be authorised by the company in a general meeting. The Board of Directors of the company, concludes a contract for the purchase of equipment that will be used in the process of manufacturing the tar mixture. The contract was concluded without the necessary authorisation by the general meeting.

Consider whether Pine Properties Ltd will be held liable under the said contract. Consider also, whether your response would be different if Mongi, an ordinary director of the company, had concluded the contract without being appointed by the board, and without the necessary authorisation of the company in a general meeting. (25 marks)

QUESTION 3

- a) Draw a comparison between a company as a firm of business and a sole proprietorship. In your response give the advantages and disadvantages attendant to either these enterprises, stating which one you would recommend to an aspiring business person. (10 marks)
- b) Mr Mhlanga incorporated Rainbow Creations (Pty) Ltd when he knew that the business was facing serious financial challenges. The company is presently on the brink of insolvency. The company does not have enough assets to pay its creditors, while Mr Mhlanga is still a very wealthy man in his own right.

Imagine that you are the judge hearing the matter on whether or not to lift the corporate veil in this case. Write down your judgement, and refer to case law in motivation of your findings. (15 marks)

TOTAL : 25 MARKS

QUESTION 4

Three friends who grew up in Ngwane Park (one of the townships on the outskirts of Manzini) have always had a dream of running their own company. Nomsa, Phetsile and Futhi, are now adults with degrees in Law and Commerce. Phetsile read in the business section of the local newspaper that buying and leasing of property is a very good option if you want to start up a business.

As a result, the three friends decided to incorporate Moonlight (Pty) Ltd, the main business of which was to buy and lease apartments in Madonsa Township, Manzini, because it is close to the city centre. They believe that it would be easy to find tenants for their apartments because of this.

In the first month of business, they decided to buy two blocks of flats on Phakama Street, Madonsa Township. All the apartments were fully occupied within that month. Business was booming and everything was going according to plan. The three friends had realised their dream. Nomsa and Phetsile each held 40% of the shares, and Futhi held only 20% of the shares in the company.

Two years later, the business had grown from strength to strength. In the third year of business, however, only half of the flats in each block of apartments were occupied. It became clear that people were moving out of Madonsa Township, also town houses were becoming the 'in thing' as opposed to flats, and this contributed to the decrease in the number of people staying in flats.

Moonlight (Pty) Ltd was suffering badly as a result of all these changes. As the business was not doing well, the members of the company decided that Futhi should go to the United Kingdom, and do research on other possible opportunities. While Futhi was in the United Kingdom, Nomsa and Phetsile, as the majority shareholders in the company, decided that they were going to sell the two blocks of flats, and then perhaps start another business. They proceeded to notify their tenants of the impending sale of the flats. This was done without informing Futhi who is the minority shareholder in the company.

When Futhi returned from the trip abroad, she was informed that the company had sold the blocks of flats. Futhi feels that she has been unfairly prejudiced by Nomsa and Phetsile's actions, and has approached you to find out what legal recourse she has? (25 marks)

QUESTION 5

- a) Mncedisi wants to enter into a partnership agreement for a joint venture to develop property on behalf of a company that he intends to incorporate in the near future. He does not want his potential competitors to know the terms of the contract.

Advise Mncedisi on how he should go about concluding this transaction. (10 marks)

- (b) Discuss the just and equitable ground for winding up a company (15 marks)
TOTAL : 25 MARKS

QUESTION 6

- a) The articles of association of Victory (Pty) Ltd appoint Mr Gama as the company's auditor, and provide that he should act in this capacity at the usual recommended tariff. Two years later, the company stops making use of Mr Gama's auditing services. He now wishes to sue Victory (Pty) Ltd for breach of contract.

Advise him on his chances of success in an action against the company. (15 marks)

- b) Discuss the three legal relationships that arise from the constitution of a company. (10 marks)
TOTAL : 25 MARKS