

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER DECEMBER, 2012**

**TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS**

**COURSE CODE : L 303**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN  
GRANTED BY THE INVIGILATOR**

### **QUESTION 1**

- (a) Siza and Vezi had operated a small manufacturing partnership in Manzini for the past 3 years. Owing to their incredible success, they have established two other plants at Siteki and Mhlume respectively. The net worth of all three plants is now E950,000.00.

On account of the potential of their business, the two partners are now desirous of incorporating a public company to take over their business. They also intend to buy a farm for the rearing of livestock with the ultimate aim of diversifying into the meat industry.

Advise the partners on the steps they must take to incorporate their company. You are also expected to explain to them the rationale behind the specification of certain statutory requirements which must be met before a newly incorporated company may commence business. (15 marks)

- (b) Discuss the nature of the liability of a promoter for misstatements in a prospectus.

(10 marks)

[25 MARKS]

### **QUESTION 2**

- (a) Discuss the types of meetings a company may have and the proceedings to be adopted prior to the meetings. (10 marks)
- (b) Since holding companies and their subsidiaries enjoy a separate legal existence, briefly outline the duty owed by a nominee director who sits on the board of directors of a subsidiary company. (15 marks)

[TOTAL: 25 MARKS]

### **QUESTION 3**

- (a) Discuss the appointment and duties of the Company Secretary. What is his relationship towards the company.

(10 Marks)

- (b) Explain and illustrate the legal remedies available against the promoter who has breached his fiduciary duties. (15 marks)

[TOTAL:25 MARKS]

### **QUESTION 4**

Discuss the concept of “lifting the Corporate veil”. With the use of decided cases, define the circumstances under which the courts will lift the corporate veil.

[25 MARKS]

### **QUESTION 5**

Koko Trust Mining Co. (Pty) Ltd, was incorporated by two different companies. Muntu's Electronics Co. Ltd., and Tito Property Development Ltd. The objects clause of the company contained the following:

- i) To run mining operations
- ii) To obtain prospecting and other mining licences on contractual basis.
- iii) To do any other act necessary for the attaining of the above objects.

In the very first year of its existence, the company obtained its first prospecting licence from the Ministry of Natural Resources. 14 months later, it announced the discovery of large deposits of gold in the Mbuluzi area. Mining and Processing Plants were soon set up in Mbuluzi. The company enjoyed success for the first 8 years. Suddenly, there was an unexpected fall in gold prices and the company soon lost some of its international markets to other competing companies. Within a year, things were so bad that the management informed the Board of Directors that an alternative would have to be found in order to save the company from folding up. The Board took a resolution to diversify its business activities. Accordingly, the director appointed by Muntu's Electronics Co. (Pty) Ltd, put forward a proposal to involve the company in the buying and selling of television sets and other video equipment.

Since the company was already in financial difficulties, it approached the Swazi Bank for a loan facility. The Bank granted the company a loan of E500,000.00. One shareholder who owns his own electronics company is clearly displeased with this development. His main argument is that the diversification undertaken by the company on the recommendation of the Board is beyond the capacity of the company. He has now approached you for legal assistance.

Discuss and advise.

(25 MARKS)

### **QUESTION 6**

Define the term "share", and explain what share Capital is. Discuss further what requirements must be in place when a company acquires its own shares, detailing how the interests of creditors and shareholders are protected when a company acquires its own shares? In your response specify what the position of the law is regarding financial assistance for the acquisition of a company's own shares.

(25 MARKS)