

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER NOVEMBER, 2013

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L 303

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

1. ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION ONE
2. QUESTION ONE IS COMPULSORY.

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QUESTION ONE

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Sabelo has been a member of the Board of Directors of Melt Down Investments (Pty) Ltd, for the past ten years. During this period Sabelo has only attended three meetings out of forty ordinary and emergency meeting that have been called by the Board. At the most recent meeting, Mike, one of the Directors disclosed that a rival company, Divine Co. Ltd was planning to purchase more shares in their company. He explained that with this development, there was a strong possibility that the present board would lose control of the company and eventually be voted out. He therefore, moved a resolution doubling the share capital of the company, and the board unanimously adopted it. All fresh issues were taken up by members of the board and their nominees.

At the same meeting, it was disclosed that Mr. Patel, an Expatriate farmer had decided to leave the country, and that he was selling his fifty hectare farm and two hundred head of cattle at a bargain price. The company had been made an offer. The next day, Sabelo held private negotiations with Mr. Patel, who agreed to sell him the farm and the cattle at a bargain price of E20,000.00. Sabelo has now resold the cattle to a nearby butchery for the sum of E25,000.00.

Ms. Fine, a journalist, has published an article in the business section of the Swazi Observer disclosing all the facts surrounding the fresh issue of shares and the farm deal.

Discuss all the legal issues and advise both companies on legal remedies, if any, available to them. (25 MARKS)

QUESTION TWO

- a) You are the attorney acting on behalf of a company called Quicksilver (Pty) Ltd. Your client wishes to apply to the court for an order directing that another company change its name. The latter company has recently been registered with the name Quicksilver Electronics (Pty) Ltd. Your client manufactures processed meats, whilst the other company sells audio and video equipment.

Advise your client on its chances of success, taking into account the considerations used by the courts in the decided cases. (25 MARKS)

- b) The articles of association of Sunshine Ltd appoints Ms. Fruhwirth as an attorney of the company for a period of five years. Ms. Fruhwirth is also a shareholder of this company. After she had only acted in the capacity of the attorney of the company for a two years, the company ceased to use her legal services before the expiry of the stipulated period.

Advise Ms. Fruhwirth on whether there are any remedies available to her based on breaching of contract against the company. (10 marks)

(TOTAL: 25 MARKS)

QUESTION THREE

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Explain the philosophy behind the common law capital maintenance rule, giving your understanding of the present position regarding this rule. (10 marks)

Discuss the legal rule surrounding the prohibition against financial assistance for the acquisition of a company's own shares. How has the law evolved in as far as this rule is concerned? State also how creditors and shareholders are protected when a company acquires its own shares. (15 marks)

(TOTAL: 25 MARKS)

QUESTION FOUR

Nathi, Vusi and Vika conclude a partnership agreement in terms of which they will plant, process and sell tobacco. After a year of trading, they realise a profit, and decide to expand their business by purchasing more land to be able to plant even more tobacco. They eventually buy a farm from Mr. Big Liar, in the Piggs Peak area. Four months after the purchase of the farm, Nathi and Vusi learn that Vika made a secret profit of E50,000.00 because Vika made a deal with Mr. Big Liar that he will convince his partners to buy the farm at an inflated price, if Mr. Big Liar will pay him half the difference between the price which he originally wanted (350,000.00) and the inflated price (450,000.00) for which the partnership bought the farm.

Discuss the rights and duties of the partnership, as well as the enforcement of their rights, and their powers of representatives in terms of the above facts.

QUESTION FIVE

The memorandum of association of Protea (Pty) Ltd, provides that the main object of 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 E100,000.00 (One Hundred Thousand Emalangeni) must first be authorised by the company in a general meeting.

The Board of Directors proceeds to conclude a contract for the purchase of equipment that will be used in the process of manufacturing the tar mixture. The contract price is E200,000.00. (Two Hundred Thousand Emalangeni). The contract was concluded without the necessary authorisation by the general meeting.

Consider whether Protea (Pty) Ltd will be bound by the contract. Consider also whether your answer would be different if Michael, 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.

QUESTION SIX

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- a) Write on the allotment of shares. (10 marks)
- b) Discuss the appointment and duties of the company Secretary, making reference to the Secretary's relationship to the company, and to dealings with outsiders. (15 marks)

[TOTAL: 25 MARKS]