

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER JULY 2016

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

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

QUESTION 1 (COMPULSORY)

Busa is the Managing Director of Phuthumani (Pty) Ltd. The memorandum of association of the company states that the main business of the company is construction. However, the company is now exporting mineral water to Asia.

The Board of Directors instructed Busa to approach Standard Bank for a loan of E500,000.,00 in order to purchase stock to meet customer demand. The Board of Directors has taken the decision knowing full well that Phuthumani (Pty) Ltd will not be able to pay the money back, as the company is on the brink of insolvency. This information is withheld from Standard Bank.

Now Phuthumani (Pty) Ltd has been placed under liquidation. Advise the bank.

(25 Marks)

QUESTION 2

a) Outline the main reasons why a company would want to alter its objects clause, describing how the objects of a company may be altered in terms of the Companies Act, 1912. Has the Act of 2009 made any remarkable changes in this regard?

(15 Marks)

b) What information will you as a lawyer require from promoters of a company prior to preparing the memorandum and articles of association for purposes of registration?

(10 Marks)

TOTAL: 25 MARKS

QUESTION 3

a) Discuss fully the contractual effect the constitution has on the members and directors of the company

(10 Marks)

b) Describe the nature of the duties owed by promoters to the company. What remedies are available to the company should promoters breach their duties.

(15 Marks)

TOTAL: 25 MARKS

QUESTION 4

Thulani, Mike and Vusi are Directors of Wakhile (Pty) Ltd, a company which is involved in the construction industry. The Company's Board of Directors has moved that a piece of land be purchased so as to expand their business premises, so as to include a block yard. Six months later, it comes to the Board's attention that Mike made a secret profit of E30,000.00 because he made a deal with the seller of the land which they bought, that he will convince the other members of the Board to buy the land at an inflated price, if the

seller will pay him half the difference between the price that the land actually cost (E30,000.00) and the amount which the company eventually paid for the land (E360,000.00).

Advise the aggrieved partners Thulani and Mike on the legal remedies they may employ to get redress.

(25 Marks)

QUESTION 5

Discuss the concept "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 6

Write notes on the following:-

- 1) Partnership (12½ Marks)
- 2) Sole Proprietorship (12½ Marks)

TOTAL : 25 MARKS