

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2016

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L 303

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

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

QUESTION 1 (Compulsory)

Ruth, Sibahle, Philile and Ann run a gymnasium as partners. Persons must pay a deposit of E500.00 and thereafter, a monthly subscription of E200.00 to be able to obtain membership at the gym. Lulu, Philile's friend, spends most of her time at the gymnasium, and one of the partners is usually in her company. Lulu often answers the phone, and assists prospective clients in the gym. One day Mbuso goes to the gym, sees Lulu, and asks her about the terms and conditions of membership. Lulu explains everything and thereafter concludes an agreement with Mbuso.

Mbuso is under the impression that Lulu is one of the partners. Lulu takes Mbuso's deposit, and a one month subscription, but keeps it for herself. A week later, Mbuso comes to the gym, all geared to exercise, and is surprised to hear that he is not a member. Mbuso explains that he entered into a contract with one Lulu, who is well known to all the partners, and that he paid a total of E700.00 to her.

Ruth, Sibahle and Ann argue that Lulu is not a partner and that there is no way that the partnership can be bound to the contract, as Lulu is an outsider. Philile on the other hand opines that for appearances sake, the partner should honour the agreement as Lulu is a personal friend.

On the otherhand, Sibahle and Ruth have a serious falling out at as a result of Ruth's suspicion that Sibahle has had an adulterous relationship with her husband. Anne feels that their personal squabbles cannot affect the partnership.

Write a detailed legal opinion, and in so doing, advise Mbuso in the legal position regarding all of the legal issues that arise herein. In the opinion indicate whether or not you agree with Ann, bearing in mind that Sibahle feels that she can no longer tolerate the situation, and has decided to leave the partnership. Just before she is able to convey her decision to leave, to her co-partners however, she contracts pneumonia and dies. Cite legal authority as you give an indepth legal opinion on these facts. (25 marks)

QUESTION 2

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 3

- a) Discuss the types of meetings a company may have, and the proceedings to be adopted prior to the meetings. (10 marks)
 - b) Discuss the appointment and duties of the Company Secretary. What is his relationship towards the company, as well as with outsiders. (15 marks)
- (Total: 25 marks)

QUESTION 4

- a) Explain and illustrate the legal remedies available against a promoter who has breached his fiduciary duties. (10 marks)
- b) Discuss the nature of the liability of a promoter for misstatements in a prospectus. (15 marks)

QUESTION 5

Koko Trust Mining Company (Pty) Ltd, was incorporated by two different companies. Muntu Electronics Co. Ltd., and Tito Property Developments L.D. 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 existence, the company obtained its first prospecting licence from the Ministry of Natural Resources and Energy. 14 months later, it announced the discovery of large gold deposits in the Malkerns area. Mining and Processing plants were soon set up in Malkerns. The company also announced that it would be offering deep sea diving lessons, as well as surfing lessons in the Hawane area. The company, after 8 years in operations has experienced a serious slump in its revenue due to an unexpected fall in gold prices. The company has lost all of its international markets to other competitors. The Board of Directors took a resolution that it would now concentrate on the deep-sea diving and surfing activities in order to sustain and possibly save the company from folding up.

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 E1 million. One shareholder is seriously concerned about all of this, and argues that the diversification undertaken by the company 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 the share capital of a company is. Discuss further what requirements must be in place when a company acquires its own shares, explaining how the interests of creditors and shareholders are protected when a company does this. In your response specify what the legal position is regarding financial assistance for the acquisition of a company's own shares. (25 marks)