
UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION, JULY 2017

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)

The memorandum of association of Protea (PTY) LTD provides that the main object of the company is the manufacture of a tar mixture for the construction of roads. The articles 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 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 tax mixture. The contract price is E250,000.00. The contract is concluded without the necessary authorisation by the general meeting.

Consider whether Protea (Pty) Ltd will be bound by the contract. Also consider, whether your answer would be different if Sabelo, 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 2

- a) Discuss the requirements of a pre-incorporation contract. (10 marks)
 - b) Discuss the appointment and duties of the Company Secretary, making reference to the Secretary's relationship to the company, and dealings with outsiders. (15 marks)
- (Total: 25 marks)

QUESTION 3

- a) Explain when a Company will be deemed unable to pay its debts. (5 marks)
 - b) Write on the allotment of shares. (10 marks)
 - c) Who must sign the memorandum of association, and what information should be included in the memorandum. (5 marks)
 - d) Who may become a member of Company, and who may not become a member? (5 marks)
- (Total: 25 marks)

QUESTION 4

- a) A partnership consisting of Muhle, Siphon, and Mpilo leases a part of the partnership property to Mpilo. Mpilo does not pay the rentals.

Consider with reference to case law, what legal recourse is available against his and by whom? (5 marks)

- b) Vika, Vusi and Sindi run a Computer Business as partners. One of the stipulations in the partnership agreement is that no partner is entitled to conclude contact on behalf of the partnership for more than E100,000.00 without the prior written approval of the other partners. Vika purchases ipads for the shop worth E250,000.00 without the requisite consent or even knowledge of Vusi and Sindi. Vusi and Sindi refuse to accept liability under this contract based on the lack of authority on the part of Vika. The seller wishes to know from you whether the partnership can be held to the contract. (10 marks)
- c) Indicate whether the following statements are true or false (justify your responses).
- i) The assets of a company are its own exclusive property, members do not have proportionate property rights therein. (2 marks)
 - ii) The liquidation of a company necessarily entails the sequestration of the estates of the members of that company. (2 marks)
 - iii) A contribution made by the partners to a partnership must be conditionally made. (2 marks)
 - iv) A company limited by guarantee is one when the members do not contribute anything to the company. (2 marks)
 - v) Our company law does not provide for non-profit making enterprises. (2 marks)
- (Total: 25 marks)

QUESTION 5

Themba, Mike and Vusi are directors of Wakha (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 that they can operate 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 (300, 000.00), and the amount which the company eventually paid for the land E300,000.00).

Discuss the rights and duties of the company, as well as the enforcement of the rights and powers of representation that the director, Mike has in terms of the law in the facts given above. (15 marks)

QUESTION 6

- a) Discuss the liquidation of a company on the just and equitable ground.
(15 marks)
- b) Discuss the legal relationship that is created between a member and the company
by virtue of the Constitution of a Company.
(10 marks)
- (Total: 25 marks)