

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2018

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS
COURSE CODE : L303
TIME ALLOWED : THREE HOURS
INSTRUCTIONS : 1. QUESTION 1 IS COMPULSORY
2. ANSWER ANY 3 QUESTIONS

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

QUESTION 1 - COMPULSORY

Sakhile is a member of Liveletfu [Pty] Ltd. Formed in July 2014, and Sakhile acquired forty per cent of its shareholding at its inception. Ten other people held the balance of the shares.

At the end of the company's first quarter, some of the members together with the Board of Directors, expressed displeasure at the extent of Sakhile's shareholding in the company, especially because of her conservative approach to business. Owing to her voting power, she managed to veto several proposals that were presented to the shareholders for consideration. Consequently, the Board of Directors in concert with two members of the company initiated a fresh issue of shares in terms of which Sakhile's majority position was diluted when the matter was tabled at a general meeting. Sakhile was not afforded an opportunity to vote on it by the Chairman of the Board.

Further, Sakhile received information that the Simunye Country Club has offered a two years contract to the company to provide for its clients. The contract was rejected by Liveletfu [Pty] Ltd, without good reasons being advanced. Sakhile also learnt that a partnership was formed by two members of Liveletfu [Pty] Ltd's Board of Directors which took advantage of this contract. The Board of Directors took a complacent view to this, and no one seemed interested in having the decision challenged.

Sakhile has brought these problems to you for assistance. Give an opinion, highlighting the key areas where she should seek redress and the type of action she may institute in order to obtain the redress suggested. Make reference to decided cases.

[25 marks]

QUESTION 2

Sharon has no previous business experience; she is keen on forming business concern which will not put her personal estate in jeopardy. She is also wary of getting into business with other people, and engaging in a venture that would bestow power on other people to enter into business contracts that have not received prior consideration of the stakeholders. In light of Sharon's personal circumstances, advise her on the suitable business concern which she should form. Indicate the advantages and disadvantages of the enterprise that you have selected. You may also need to provide guidance as to which other business enterprises are not suitable. Support your choice by referring to decided cases.

[25 marks]

QUESTION 3

- a) List the essentials of a partnership.
[5 marks]
- b) Define the concept of a share.
[5 marks]
- c) Write on the allotment of shares.
[5 marks]
- d) Who must sign the memorandum of association, and what information should be included in the memorandum.
[10 marks]

QUESTION 4

The separate legal personality adopted by a company upon incorporation is said to be one of the hallmarks of incorporation. What are the advantages of incorporation? Substantiate your response by referring to decided cases.

[25 marks]

QUESTION 5

Mr Shongwe a prominent businessman and his five associates decide to float a company in order to manufacture clothing. Four months before the company is registered, Mr Shongwe comes into the position to buy machinery for this venture at a huge discount. However, he is told that the price will be raised substantially if he does not purchase the machinery within two days. Neither Mr Shongwe, nor any of his associates can afford the purchase price. They wish to know whether one or more of them can immediately buy the machinery on behalf of the company not yet incorporated, in such a way that the company would later become liable to pay the purchase price after its incorporation.

- (a) Advise the parties.
[25 marks]

QUESTION 6

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

- b) Discuss the nature and liability of a promoter for misstatements in a prospectus.
[10 marks]