

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION - DECEMBER 2018

TITLE OF PAPER: **COMPANY LAW AND PARTNERSHIPS**

COURSE CODE: **L303**

TIME ALLOWED: **3 HOURS**

EXAMINER: **MS. BAWINILE SHONGWE**

INSTRUCTIONS:-

1. Answer any Four (4) Questions.
2. In answering any question, note that the quality of the content, use of case law, clarity of expression and legibility of handwriting are absolutely essential.
3. Begin each question on a new page.

THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).

QUESTION 1

Common law provides the following:-

"a director may not use the position of director or any information obtained while acting in the capacity of director to gain an advantage"

Discuss the way in which the courts are likely to interpret principle in the light of the similar common law principles, and include in your answer a discussion of the decision in *Regal Hastings Ltd v Gulliver* [1942] 1 All ER 378 (HL) and any other relevant decisions of the courts.

[25 marks]

QUESTION 2

Discuss the concept of the gross or unconscionable abuse of juristic personality as a ground for piercing the corporate veil and the principles that were laid down in *Airport Cold Storage (Pty) Ltd v Ebrahim* 2008 (2) SA 303 (C) and in *Ex parte Gore NO* [2013] ZAWCHC 9.

[25 marks]

QUESTION 3

Critically discuss the meaning of the phrase 'reasonable prospect of rescuing a company' as envisaged in section 365 of the Companies Act 8 of 2009 which deals with judicial management. Make reference to case law.

[25 marks]

QUESTION 4

At common law, a company had limited legal capacity, and the common law ultra vires doctrine decreed that, where a company entered into a transaction that was outside the scope of the objects clause in its memorandum of association, the act was void and unratifiable.

In the light of – and in comparison with – that historical concept of a company's legal capacity, you are required to: –

- (a) Explain what the legal capacity of a company is in terms of the Companies Act 8 of 2009; and

- (b) Explain the legal consequences where a company enters into a transaction that infringes a limitation on its capacity set out in its memorandum of incorporation, for example, where it enters into a contract of a kind that the company's memorandum of incorporation forbids it from entering into; and

(No specific marks are allocated to parts (a) and (b) of the question and your answer will be marked as a whole.)

[25 marks]

QUESTION 5

- 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)

QUESTION 6

- 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.

(15 marks)

- b) The separate legal personality of a company is said to be one of the hallmarks of incorporation of a company. What are the advantages of incorporation? Substantiate your answer with decided case law.

(10 MARKS)

.....**THE END**.....