

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2018

- TITLE OF PAPER : COMPANY LAW AND PARTNERSHIP (I)**
- COURSE CODE : LAW 311**
- TIME ALLOWED : THREE (3) HOURS**
- INSTRUCTIONS :**
- 1. ANSWER A TOTAL OF FOUR (4) QUESTIONS INCLUDING QUESTION 1.**
 - 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)

Sindi and Phesheya are friends, and they conclude a partnership which is geared at packaging and distributing cigarettes. Sindi contributes E50.000.00, whilst Phesheya agrees to manage the business. The partners agree that the profits be shared as follows:

Sindi will be entitled to the first E10,000.00, whereafter she and Phesheya will share the balance equally.

- a) Consider whether a valid partnership agreement has been concluded with reference only the requirement that the partners must intend to make a profit in which each partner may expect to share. (5 marks)
- b) Because of the increasing health consciousness of the public, the net losses of the partnership agreement at the end of the financial year of the business amount to E20.000.00. Assuming that a valid partnership agreement exists, in what proportions will net losses be shared?

Would your response be different if the partners had not agreed on the way in which the profits would be shared? (10 marks)

- c) Is a partnership a separate legal personality?

Using case law exhibit the factors that assist in identifying a separate legal entity. (10 marks)

QUESTION 2

Critically analyse the statutory and common law requirements for use and publication of a company name. With the use of case law explain the circumstances under which a company may be ordered to change its name. In your response give a detailed exposition on Section 38 of the Companies Act, 2009 which relates to the voluntary change of a company's name. (25 marks)

QUESTION 3

Deli has no previous business experience, she is keen on forming a 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 Deli's personal circumstances, advise her on the suitable business concern which she should form. Indicate the advantage 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,

explaining to her what advantages may be open to her if her business enterprise is formed in South Africa as opposed to the Kingdom Eswatini. (Total: 25 marks)

QUESTION 4

- a) The articles of association of Khulani (Pty) Ltd appointed Philani as the company's auditor that she would act in this position at the usual recommended tariff. Ten years down the line, the company ceased to make use of Philani's auditing services. A disgruntled Philani has now approached you to advise, as she wishes to institute proceedings against Khulani (Pty) Ltd for breach of contract.

Advise her on her prospects of success in the action against the company. (15 marks)

- b) Discuss the three legal relationship which arise from the Constitution of a company. (10 marks)
- (Total: 25 marks)

QUESTION 5

- a) Critically analyse, and make the distinction between the "Certificate of Incorporation", as well as the "Certificate to Commence business". Explain the statutory, as well as common law requirements for a successful application for both these documents. Explain also why it is important for companies to obtain these. (15 marks)
 - b) Critically analyse the concept of Stipulatio Alteri. (10 marks)
- (Total: 25 marks)