

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

RE-SIT/SUPPLEMENTARY EXAMINATION, JANUARY 2019

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)

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

Consider with reference to case law, what legal recourse is available against him 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 a contract on behalf of the partnership for more than E100,000.00 without the prior written consent of the other partners. Vika purchases ipads for the shop worth E200,000.00 without the necessary approval, or even knowledge of Vusi and Sindi. Vusi and Sindi do not want these ipads, and deny liability under this agreement 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) Which one of the following statements are/is correct. Provide a justification for your response.

- 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) The contribution made by partners to the partnership must be conditionally made. (2 marks)
- iv) A company limited by guarantee is one where 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 2

Lulu and Lenhle have operated a small manufacturing partnership for the past 6 years. Owing to the success of their business, they have since established two other plants in Siteki and Mhlume respectively. The net worth of all three plants is now two million Emalangenzi.

On account of the potential of their business, the partners are now desirous of incorporating a public company to take over their business. They also intend to buy a farm for the rearing of livestock with the ultimate aim of diversifying into the meat industry.

Advise the partners on the steps they must take to incorporate their company. You are also expected to explain to them the rationale behind the specification of certain requirements which must be met before a newly incorporated company may commence business. (25 marks)

QUESTION 3

- a) Discuss the requirements of a pre-incorporation contract in terms of the Companies Act 2009 of the Kingdom of Eswatini. Juxtapose these with the provisions of the South African Statute. (15 marks)
- b) Critically analyse the requirements of the Law in relation to the company Register. Justify the need for this document. (10 marks)
(Total: 25 marks)

QUESTION 4

- a) Explain the statutory provisions, and the special conditions and stipulations made therein for the valid alteration of a company's memorandum of association. (15 marks)
- b) Discuss the legal relationship between the articles of association and the memorandum of association. (10 marks)
(Total: 25 marks)

QUESTION 5

Critically analyse the concept of lifting the corporate veil. (25 marks)