



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER  
2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW 311

TITLE OF PAPER: COMPANY LAW 1 (FULL-TIME)

TIME ALLOWED: 3 HOURS

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## Instructions

1. Answer four (4) Questions including Question 1.
2. Question One (1) is compulsory.

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT** turn examination paper over until instructed to do so.

### **QUESTION 1** (Compulsory)

- (a) Who may become a member of a Company, and who is not eligible to be a member? In light of the Findings of the court in the case of Hil-Seq Distributors (Pty) Ltd & 6 others (1031/2015) (2016) SZHC, explain the significance of the company register, and the circumstances in which it may be altered.

(15 marks)

- (b) Discuss the three (3) legal relationships which arise from the constitution of a Company. In your discussion, explain the rule in Foss v Harbottle (1843) 2 Hare 461, 67 E.R. 189.

(10 marks)

(Total: 25 marks)

### **QUESTION 2**

Sihle and Zuzu have operated a manufacturing partnership for the past twelve years. Due to its success, they have opted to establish more plants in Nhlangano as well as Manzini. The net worth of the business is now E2 million. The partners are now desirous of incorporating a public company to take over their business. Advise the partners on the steps that 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**

In view of the findings of the court in kenhym Estates (Pty) Ltd & 2 Others v SIDC & 2 Others (1217/14) (2019) SZHC, write a detailed legal opinion on the Concepts of Lifting the corporate veil. (25 marks)

### **QUESTION 4**

- a) A partnership of Muhle, Siphon and Mpilo leases a part of the partnership property to Mpilo. Mpilo defaults on the rentals.

Consider with reference to case law, what legal recourse is available to his co-partners against him.

- b) Vika, Vusi and Suku run a Computer business as partners. One of the terms of the partnership agreement is that one of the partners is not 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 purchase ipads for the shop worth E200,000.00 without the necessary consent and/or approval by Vusi and Suku. Vusi and Suku 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 the 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)

Total: 25 marks)

#### **QUESTION FIVE**

- a) Explain what the requirements are for obtaining a trading licence in the urban area, as well as in the farm area. (10 marks)
- b) What are Section 17 Companies? Give a detailed explanation on the legal requirements pertaining to such companies. (10 marks)
- c) Explain the import of Section 37 of the Companies Act of 2009 in relation to names of Companies. (5 marks)

(Total: 25 marks)