

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, DECEMBER 2011

COURSE NAME : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L303

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**
- 2. QUESTION ONE IS COMPULSORY**

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QUESTION 1 (COMPULSORY)

- a) Roy, Pule and Phila form a partnership. It is agreed that Roy will contribute E20,000 for the purchase of linen material, Pule will do the packaging and delivery of the goods and Phila will do the sewing. Roy and Phila will attend to the day-to-day running of the business. It is also agreed that the net profit derived from the sale of linen will be divided equally between Roy and Phila. This arrangement leaves Pule feeling disgruntled, and she thinks that this is not a valid partnership.

On the other hand Phila wants to contribute the use of his sewing machine to the business, but wants to remain the owner of the sewing machine.

Advise Pule on her concerns, and also give an opinion on the issue of the possibility for the partners to agree that Phila will remain the owner of the sewing machine. Cite case-law to substantiate your response. (10 marks)

- b) Sipho, Dan and Mandla formed a partnership to prospect and to acquire rights to diamond mining. They have known each other since childhood, and have always thought of each other as family.

Sipho is a geologist. He was asked to prospect a certain piece of land on the partnership's behalf to see if there were sufficient diamonds to justify the acquisition of the property's mineral rights. He discovered a large deposit of diamonds on the land, and without informing his co-partners, obtained the mineral rights to the property for himself. He told Dan and Mandla that he had accepted full-time employment at an international oil company and that it would no longer be possible for him to continue in the partnership. Meanwhile, he obtained funding from existing mining companies and set up his own business in order to develop the acquired property.

Dan and Mandla later became aware of what Sipho had done and are very upset. They want to know if they can institute legal action against Sipho. Advise them fully on the law surrounding this issue, citing case-law to substantiate your argument. (15 marks)

TOTAL : 25 marks

QUESTION 2

Mr Mkhonta buys all the shares in a company called Mellow Bay Properties (Pty) Ltd from a company called City View (Pty) Ltd. The holder of the shares will have the right to use the sole asset of Mellow Bay Properties (Pty) Ltd, this being a house on the beach front at Mellow Bay. Mr Zwane is the sole share-holder and director of City View (Pty) Ltd. Before the shares are transferred to Mr Mkhonta, Mr Zwane decides that it was a bad idea to let the property go. Instead of transferring the shares to Mr Mkhonta, the shares are transferred to a third company, called Seaside Ventures (Pty) Ltd. Mr Zwane is the sole shareholder and director of this company.

When Mr Mkhonta enquires about his shares, Mr Zwane's response is that they never finalised the sale of the shares and that they now belong to Seaside Ventures (Pty) Ltd. Mr

Mkhonta wants to enforce the original contract and he now argues that Mr Zwane should be personally liable, because he is infact the same person as the companies involved.

Advise Mr Mkhonta on his chances of success. In your response analyse all the legal issues that arise in this case. (25 marks)

QUESTION 3

Sihle was one of the most successful students from Bright Future Business College. He was granted an award to further his studies in Canada. During his studies abroad, he came to the conclusion that the gambling industry offers good business prospects. On his return to Swaziland, he meets Menzi, a local entrepreneur. They plan to incorporate a company to build and run a casino resort. They find a piece of land on the banks of the Makhundu River that is an ideal site for the development. They are anxious to buy it before any competitors do so. They do not want to incorporate the company if they cannot acquire the land.

The two gentlemen do not want to incur personal liability, and yet they wish to acquire the land as soon as possible. They are however, concerned about what will happen if they are unable to incorporate the company, or if the company fails to ratify the contract.

Sihle and Menzi have approached you for advice on these matters. Advise them about the requirements that must be satisfied before a company will be bound by a contract concluded on behalf of a projected company under our Law. Tell your clients about methods of concluding such contracts other than in terms of the Companies Act, 2009. Inform them also about the Law that obtains in South Africa on the same issue. (25 marks)

QUESTION 4

- a) Discuss the types of meetings a company may have and the proceedings to be adopted prior to the meetings. (10 marks)
- b) Discuss the nature and liability of a promoter for misstatements in a prospectus (15 marks)

TOTAL : 25 MARKS

QUESTION 5

- a) i) Distinguish between rules governing the payment of dividends. Express your preference between the rules, and give your reasons for this stance (5 marks)
- ii) The Board of directors of Spring Time (Pty) Ltd recommends, to the general meeting, that a dividend be paid to the members of the company, out of the capital of the company.

You are the Company Secretary of the Company; and you are required to prepare a report for the board of directors in which you explain the legal position on this issue.

(10 marks)

- b) i) Explain when a company will be deemed unable to pay its debts (5 marks)
- ii) What are the two principles on which the rule of Foss v Harbottle is based? (5 marks)
- TOTAL : 25 MARKS**

QUESTION 6

- a) Mr Ndlovu is a director of Earthworks (Pty) Ltd. He has heard that directors owe their company an obligation to act with care, skill and diligence and wants to know more about this duty. The said company manufactures and sells pottery. Mr Ndlovu is thinking of resigning from the company to start a similar business, as he prefers to work for himself. He is uncertain whether he may make use of the company's client list compiled over a number of years, to inform potential clients of his new business.

Advise Mr Ndlovu on all these issues. (15 Marks)

- b) i) Distinguish between par value and no par value shares (5 marks)
- ii) Distinguish between authorised share capital and issued share capital. (5 marks)
- TOTAL : 25 MARKS**