

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2017

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS
COURSE CODE : L303
TIME ALLOWED : THREE HOURS
INSTRUCTIONS : 1. QUESTION 1 IS COMPULSORY
2. ANSWER ANY 3 QUESTIONS

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QUESTION 1 – COMPULSORY

- a) Outline the main reason why a company would want to alter its objects clause, describing how the objects of a company may be altered in terms of the companies Act, 2009 and make reference to case law.

[15 marks]

- b) Explain and illustrate the legal remedies available against the promoter who has breached his fiduciary duties.

[10 marks]

QUESTION 2

- a) Lihle, Simile and Khaya 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 E10, 000 without the prior written consent and approval of the other partners. Simile purchases computers for the shop for E12, 000 without the necessary consent, or even knowledge of Lihle and Khaya. Lihle and Khaya do not even want the computers and deny any liability under this agreement based on the lack of authority of Simile. The seller wishes to know whether the partnership can be held to the contract.

Advise him fully, giving reasons for your response.

[20 marks]

- b) List the essential of a partnership agreement.

[5 marks]

QUESTION 3

- a) Vika is the Managing Director of Builders Limited. The memorandum of association of this company clearly stipulates that the main business of Builders Limited Construction is property development. However, the company is now exporting mineral water to Europe. The Board of Directors instructs Vika to approach Sisonkhe Bank for a loan of E500,000.00 in order to purchase stock so as to meet customer demands. The Board of Directors takes the decision to borrow the money knowing full well that Builders Limited will not be able to repay the money, as it is in financial difficulties. This information is not passed on to Sisonkhe Bank and it proceed to loan Builders Limited the E500,000.00. Now Builders Limited has been put under liquidation.

Advise the Bank.

[25 marks]

QUESTION 4

Discuss the concept of 'Lifting the corporate veil'. With the use of decided cases, define the circumstances under which the courts will lift the corporate veil.

[25 marks]

QUESTION 5

Discuss the concept of liquidation of companies giving details regarding the grounds upon which the court may wind up a company. Illustrate your response by making reference to decided cases.

[25 marks]

QUESTION 6

- (a) Mr Dlamini is a director of Earthworks (Pty) Ltd. He has heard that director 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 himself. He is uncertain whether he may make use of the company's client list compiled over a number of years, to inform clients of his new business.

Advise Mr Dlamini on all these issues.

(15 Marks)

(b) Discuss the rules governing the payment of dividends.

(5 Marks)

(c) What are the two principles on which the Foss and Harbottle is based?

(5 Marks)