

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

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIP (I)

COURSE CODE : LAW 311

TIME ALLOWED : THREE (3) HOURS

- INSTRUCTIONS :**
- 1. ANSWER FOUR (4) QUESTIONS.**
 - 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) 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 in what circumstances may it 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)
(25 marks)

QUESTION 2

- a) Discuss the requirements of a pre-incorporation contract. (10 marks)
- b) Explain and illustrate the legal remedies available against a Promoter who has breached his fiduciary duties. (15 marks)
(25 marks)

QUESTION 3

Khwezi and Simo have operated a small manufacturing partnership in Manzini for the past 10 years. Owing to their incredible success, they have established two other plants in Siteki and Mhlume respectively. The net worth of all three plants is now E1 million.

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 required to explain to them the rationale behind the specifications of certain statutory requirements which must be met before a newly incorporated company is permitted to commence business. (25 marks)

QUESTION 4

- a) A partnership consisting of Mihla, Sifiso and Vuka leases a part of the partnership property to Mihla. Mihla does not pay the rentals.

Consider, with reference to case law, what legal recourse is available against him and by whom? (5 marks)

- b) Vika, Vusi and Sihle run an electronics 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 approval of the other partners. Vika purchases ipads for the shop worth E150,000.00 without the necessary consent, or even knowledge of Vusi and Sindi. Vusi and Sindi do not even even want the ipads, and they 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 these statements are/is correct (justify your response):

- i) The assets of a company are its own 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)
- (25 marks)

QUESTION 5

The main objects clause of the memorandum of association of Minerals Galore (PTY)LTD provides that the company is to be active in all facets of the mining industry. The articles of association of the company provide that the management and control of the company are vested in the board of directors. The articles further provide that any contract concluded by one of the directors which exceeds the value of E100,000.00 requires the prior approval of the company in a general meeting by means of an ordinary resolution.

The Board of Directors Minerals Galore (PTY) LTD delegates its authority to Edward, an ordinary director of the company. Edward concludes a contract to the value of E150,000.00 for the purchase of mining equipment on behalf of the company without obtaining the prior approval of the members of the company in a general meeting.

- i) Leo, one of the shareholders of the company wants to know from you whether the contract is binding on the company? Consider whether your answer would be different had the same contract been concluded by Sipho, an ordinary director of the company, who had no authority delegated to him by board of directors. (10 marks)

- ii) The Board of Directors of Minerals Galore (PTY) LTD wants to conclude a contract to purchase a race horse from Mr. Zwane for E500,000.00. Mr. Zwane has dealt with the company previously, and is aware that its main business is in the mining industry.

Advise Fikile, one of the shareholders of the company whether the company would be bound to the contract. Advise her also on whether she can prevent the transaction. (10 marks)

- iii) Write down the requirements of estoppel. (5 marks)

Total: 25 Marks