

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2018

TITLE OF PAPER : COMPANY LAW II

COURSE CODE : LAW 312

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR TO DO SO.

QUESTION 1

Sipho Tsela has been a member of the Board of Directors of Mila Investments Ltd for the last twelve years. During this period, Sipho has only attended three meetings out of forty ordinary and emergency meetings called by the Board. At the most recent meeting, Mr. Mihla Mbuli, one of the Directors disclosed that Muhle Investment Co. Ltd., a rival company, was planning to purchase more shares in their company. He explained that with this development, there was a very strong possibility that the present board would lose control of the company, and eventually be voted out. He therefore moved a resolution doubling the share capital of the company, which was unanimously adopted by the Board. All freshly issued shares were taken up by the members of the Board and their nominees.

At the same meeting, it was also disclosed that Mr. Naidoo, an expatriate farmer had decided to relocate to Nigeria, and was therefore selling his fifty hectare farm and two hundred head of cattle at a bargain price. The company had been made an offer. The next day Sipho Tsela held private negotiations with Mr. Naidoo, who agreed to sell him the farm and the cattle for a mere E200,000.00. Sipho resold the cattle to a nearby butchery for the price of E250,000.00.

Mr. Themba Xulu, an investigative Journalist has published an article in the business section of the Swazi Observer, disclosing all the facts surrounding the fresh issue of shares, and the farm deal.

Discuss all the legal issues, including what the law provides in relation to attendance of company meetings on the part of Directors. Advise both the companies involved on the legal remedies, if any, that are available to them. (25 marks)

QUESTION 2

- a) Discuss the legal requirements pertaining to the holding of an Annual General Meeting (AGM), as well as the proceedings to be undertaken prior to the holding of such a meeting. (10 marks)
- b) Explain the provisions of S167 of the Companies Act, 2009 relating to “Quorum for Meetings”. (10 marks)
- c) Explain, with examples the meaning of the expression; “voting by poll”. (5 marks)
(25 marks)

QUESTION 3

Define the term “share” and explain what “share capital” is. Make use of decided case law in this regard. Discuss further what legal requirements must be in place when a company acquires its own shares, detailing how the interests of creditors and

shareholders are protected when a company acquires its own shares? In your response state why a company would be desirous to do this, and what the legal position is regarding financial assistance for the acquisition of a company's own shares.

(25 marks)

QUESTION 4

What do you understand to be the gist of the concept of "Corporate Governance"? How do you reckon this concept is important to you as a legal scholar in your understanding of directors duties? What does the King Report III recommend with regard to the manner in which a company ought to be managed, and the composition of the Board of Directors?

(25 marks)

QUESTION 5

- a) Explain the legal ground of winding up a company on the ground that it is unable to pay its debts. Cite relevant case law in this regard. (10 marks)
- b) Discuss the appointment and duties of the Company Secretary, making reference to the Secretary's relationship to the company, and his/her dealings with outsiders. (15 marks)

(25 marks)