

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER JULY, 2013

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L 303

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS.

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR**

QUESTION 1

Sipho, Peter and David concluded a partnership contract in terms of which they will plant, process and sell cotton. After a year trading very successfully they decide to expand their business by purchasing more land to be able to plant more cotton. They eventually buy a farm from Mr. Mthembu in the Lubombo Region. Two months later, Sipho and Peter learn that David made a secret profit of E50,000.00 because David made a deal with Mr. Mthembu that he will convince his two partners to buy the farm at an inflated price, if Mr. Mthembu will pay him half the difference between the price he originally wanted (E350,000.00) and the sum (E450,000.00) for which the partners bought the farm.

Discuss.

[25 MARKS]

QUESTION 2

- (a) The articles of association of Vivi (Pty) Ltd appoint Mr. Gama as the company's conveyancer, and provide that he is to act in this capacity at the usual recommended tariff. Two years later, the company ceases to make use of Mr. Gama's services. He now wishes to sue Vivi (Pty) Ltd for breach of contract.

Advise him on his chances of success in an action against the company.

(15 marks)

- (b) Discuss the three legal relationships arising from the constitution of a company.

(10 marks)

TOTAL: 25 MARKS

QUESTION 3

What are pre-incorporation contracts? Critically examine the law relating to these contracts in Swaziland, comparing it to that which obtains in the Republic of South Africa. Express your views on whether the Companies Act, 2009 has brought about the desired change in the law governing these contracts in Swaziland.

[25 MARKS]

QUESTION 4

Discuss the legal grounds upon which the court may wind up a company. Illustrate your response by referring to decided cases.

[25 MARKS]

QUESTION 5

Menzi has been involved in the real estate business for a number of years. Recently, he purchased a shopping complex in Manzini, which he intended to develop into an ultra-modern banking facility. Two months after this purchase, the entire complex was gutted down by fire, but since it was insured, Menzi received adequate compensation for it from his insurance company.

Two weeks later, his own residence was also burnt down in very mysterious circumstances. It too, was insured and thus Menzi collected another payment from the insurance company. With the proceeds from the five policies for his two properties, Menzi bought a new shopping complex in Mbabane, for which he sought a new fire policy from his insurance company. However, the insurance company turned him down.

Soon after that, Menzi incorporated a company, Menzi and Sons (Pty) Ltd, to which he sold his shopping complex for a reasonable price. He then proceeded to secure fire policy for the shopping complex on behalf of the company. When he negotiated the policy with the insurance company, he failed to disclose that he held ninety-nine percent (99%) of the shares in this company, and that a previous attempt to obtain a fire policy in his own name for the very same shopping complex had been turned down.

A month later, a fire burnt shopping complex to the ground. When Menzi, on behalf of the company, claimed compensation for this loss, the insurance company declined to pay, arguing that had it known that Menzi was a majority shareholder in the company, it would not have issued the fire policy. Menzi now argues that the policy was issued to the company, and not to him. What is more, the assets of the company, he contends, were not necessarily his, despite the fact that he was a majority shareholder.

Identify the issues involved in this case, and give a legal opinion on the rights of the insurance company, Menzi, and Menzi and Sons (Pty) Ltd. [25 MARKS]

QUESTION 6

- 1) Critically discuss the rule in *Foss v Harbottle* (1843) 2 Hare 461. (12 ½ Marks)
 - 2) Write short notes on Sole Proprietorships. (12 ½ Marks)
- [25 MARKS]