

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2019

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

- a) Discuss the nature of the liability, as well as the defences available to an expert in terms of the Companies Act, 2009 for untrue statements in a prospectus. (10 marks)
- b) Explain the common law contractual remedy available to a subscriber who has relied in a false statement in a company prospectus. What should the aggrieved subscriber allege and prove to the court in order to succeed. Cite case law to support your response. (15 marks)
(25 marks)

QUESTION TWO

Stan, Vusi and Mlamuli are directors of M.V. & S. Construction Boys Ltd. The company is involved in the construction of buildings and/or roads. For the past twenty-two months the company has not held an Annual General Meeting. The company was incorporated three years ago. Stan has tried to get his co-directors to convene such meeting, but his endeavours have borne no fruit. He is also aware that Vusi is involved in clandestine dealings with a rival construction company which is planning to purchase more shares in their company. He has learnt that Vusi is desirous of weakening Stan and Mlamuli's control in the company by proposing that a fresh issue of shares be effected at the next ordinary general meeting. This might result in Stan and Mlamuli being voted out. All the freshly issued shares will be taken up by Vusi and his cohorts in the proposed hostile takeover.

A much perturbed Stan approaches you for legal advice. Apprise him of all the legal issues raised herein, including the law relating to the remedial powers of the Registrar of Companies and/or the High Court where a company is failing to hold an Annual General Meeting. Explain to Stan what the law provides regarding the proposed hostile take over by the rival company, and Vusi's conniving schemes. Cite relevant case law.

(25 marks)

QUESTION THREE

- a) Discuss the role and functions of the Company Secretary. Explain how this company official is appointed, making reference also to the official's relations to the company, as well as dealing with outsiders. (15 marks)
- b) Write on the allotment of shares. (10 marks)
(25 marks)

QUESTION FOUR

Define the term "share", and explain what "share capital" is. Discuss further what safeguards must be in place when a company acquires its own shares. Provide details on how the interests of creditors and shareholders are protected when a company acquires its own shares. In your response specify what the position of the law is regarding financial assistance for the acquisition of a company's own shares. (25 marks)

QUESTION FIVE

- a) Explain when a company will be deemed to be unable to pay its debts. (10 marks)
- b) Discuss the various rules that may be employed in the determination of profits available for the declaration of dividends. (15 marks)
(25 marks)