



**MASINDE MULIRO UNIVERSITY OF SCIENCE AND
TECHNOLOGY (MMUST)**

**UNIVERSITY MAIN EXAMINATIONS
2018/2019 ACADEMIC YEAR
FOURTH YEAR FIRST SEMESTER EXAMINATIONS
FOR THE DEGREE
OF
BACHELOR OF COMMERCE**

COURSE CODE: BCB 403

COURSE TITLE: COMPANY LAW

DATE: WEDNESDAY, 30/1/2019

TIME: 12:00 - 2:00PM

INSTRUCTIONS TO CANDIDATES

- 1. ANSWER QUESTION ONE AND ANY OTHER TWO QUESTIONS**
- 2. DO NOT WRITE ANYTHING ON THE QUESTION PAPER**

TIME: 2 HOURS

MMUST observes ZERO tolerance to examination cheating

This Paper Consists of 3 Printed Pages. Please Turn Over.

QUESTION ONE

“The company is at law a different person altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act”. Per Lord MacNaughten in *Salomon v. Salomon & Co, Ltd* (1897) A.C.22 at pg 51.

- a. Discuss the main attributes of a company as a legal persona. (10 marks)
- b. Explain the reasons why a company may want to alter the objects clause. (5 marks)
- c. Differentiate between the memorandum and articles of association (5 marks)
- d. Describe the categories of persons who do not qualify to be appointed auditors of a company. (4 marks)
- e. In relation to investigation of companies describe the consequences of the inspectors report. (6 marks)

QUESTION TWO

a. “The capital of may no doubt be diminished by the expenditure upon and reasonably incidental to all the objects specified. A part of it may be lost in carrying on the business operations authorized. Of this, all persons trusting the company are aware and take the risk. But creditors have the right to rely and were intended by the legislature to have the right to rely on the capital remaining undistributed by any expenditure outside these limits or by the return of nay of it to the shareholders”.

Per Lord Herchell L.J. in *Trevor v Whitworth* (1837) 12 App. Cap 409 at 415.

Discuss this statement outlining the circumstances and conditions under which companies may reduce their capital. (10 marks)

b. State and explain five duties of an auditor. (10 marks)

QUESTION THREE

a. “When there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the Articles of Association, then those dealing with them externally are not to be affected by any irregularities which may take place in the internal management of the company.”

As per Lord Hatherby in *Mahony v. East Holyford Mining Company* (1875) L.R. 7 H.L. 869

You have been invited to give a short but elaborate, lecture on the exceptions above matter at the Windsor Gold Club.

We are listening. (10 marks)

b. Bonventure was appointed as a director of Pinel Ltd in the last annual general meeting of the company. Bonventure intended to invest a piece of land and therefore applied for a loan for the purpose. His loan application was not approved. Bonventure feels aggrieved after learning that a junior employee who applied for a loan at about the same time was granted the loan.

Advise Bonventure on the circumstances under which a company could grant a loan to the director of the company. (4 marks)

c. Distinguish between a public company and a private company (6 marks)

QUESTION FOUR

a. "The chorus of the advantages of incorporation of a company should not make us unaware of the disadvantages of this device". With reference to the above statement, discuss the disadvantages of incorporation (12 marks)

b. Describe five ways through which the promoter may receive his remuneration (4 marks)

c. According to the decision of Romer I.J. in Re: Yorkshire Woolcombers Association Limited, one of the characteristics of a floating charge is "it hovers over all the assets of a company until some event occurs which causes the charge to crystallize".

In reference to the above statement, explain the events that cause the crystallisation of a floating charge. (4 marks)

QUESTION FIVE

a. The principle of legal personality was first formulated by the House of Lords in its famous decision in Salomon V. Salomon (1897) where Lord MacNaughten was emphatic that the company is at law a different person altogether from the subscribers to the memorandum.

However, in exceptional circumstances, the law ignores the separate legal personality of the company in favour of the realities behind the legal façade.

Discuss the exceptional circumstances when the law could ignore the principle of legal personality. (12 marks)

b. A company may be dissolved on the ground that it is unable to pay its debts. How does a creditor demonstrate that the company is unable to pay its debts? (3 marks)

c. Explain five duties of a liquidator. (5 marks)