



UNIVERSITY OF EMBU

2017/2018 ACADEMIC YEAR

TRIMESTER EXAMINATIONS

FOURTH YEAR EXAMINATION FOR THE DEGREE OF BACHELOR OF COMMERCE

DBA 414: COMPANY LAW

DATE: AUGUST 1, 2018

TIME: 11:00AM-1:00PM

INSTRUCTIONS:

Answer Question ONE and ANY Other TWO Questions.

QUESTION ONE (30 MARKS)

- a) Identify and explain the components of a company constitution. (5 marks)
- b) Explain the rules governing maintenance of company capital. (5 marks)
- c) Briefly explain the rules that govern pre-incorporation contracts citing relevant case law to support your answer. (5 marks)
- d) Briefly explain the duties of an auditor (5 marks)
- e) Discuss the circumstances under which a floating charge will crystallize. (5 marks)
- f) Analyze the legal consequences of incorporation of a company. (5 marks)

QUESTION TWO (20 MARKS)

- a) Janet and Jackson are forming a Limited Liability Company. They are seeking your legal advice on the issues of the company constitution. Explain to Janet and Jackson the details you would expect to find in the components of a constitution. (10 marks)
- b) Kioko, an Under Secretary in the Ministry of Viwandani was entrusted with the responsibility of selling the Ministry's boarded motor vehicles. He invited bids from members of the public to buy two Lorries. He also bid, through a nominee, Mwangangi, his own brother. Subsequently, he sold the lorries to Mwangangi, at Ksh.800, 000 each. Kioko then formed Kima Company Ltd and

instructed Mwangangi to sell the lorries to the company at Ksh.2, 350, 000 each. A prospectus was issued to the public to subscribe for shares to Kima Company Ltd. The prospectus gave Mwangangi as the vendor of the lorries and did not disclose the profit Kioko was making. Musembi, a shareholder of the company, has learnt of the sale of the lorries to the company and the profit Kioko made and seeks your advice on the company's rights in respect of the same. Prepare a presentation to Musembi advising him on the available remedies citing appropriate case laws. (10 marks)

QUESTION THREE (20 MARKS)

- a) Examine the conditions that have to be satisfied before an applicant can bring an action successfully under the exception to the rule in *Foss v Harbottle*. (10 marks)
- b) Naliaka owns 10% of the issued shares in Pendo Limited. There are two directors Wanyonyi and Wafula who have an eccentric style of management. They own 45% of the issued shares. Naliaka understands that Wanyonyi and Wafula want to merge Pendo Ltd. with another more profitable company that the two directors wholly own. If this plan goes ahead, Naliaka's shareholding will be reduced to 3% of the merged business. Naliaka is financially dependent on the dividends she gets from Pendo Limited and that future dividends may be much less. Advise Naliaka of her legal position and protection under the law if any. (10 marks)

QUESTION FOUR (20 MARKS)

- a) Explain five circumstances under which the veil of incorporation may be lifted by the court. (10 marks)
- b) The rule restricting a Company from buying its own shares or financing the acquisition of its own shares was laid down in *Trevor v. Whitworth* (1887) case. Discuss the exceptional cases of this rule where a company may purchase or acquire its own shares. (10 marks)

QUESTION FIVE (20 MARKS)

- a) Discuss the position of a company auditor with regard to the company wishing to remove him from office before the next annual general meeting. (8 marks)
- b) "A promoter is described as an illegitimate child of the law; actively known but formally ignored." Bowen L.J. in *Whaley Bridge Calico Printing Co Ltd V Green and Smith* (1850). In the light of this case;
 - i) Explain the legal position of a promoter. (2 marks)
 - ii) Discuss the Common law duties and obligations of promoters. (10 marks)

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