

KABARAK



UNIVERSITY

UNIVERSITY EXAMINATIONS

MAIN CAMPUS/NTC

FIRST SEMESTER, 2016/2017 ACADEMIC YEAR

EXAMINATION FOR THE DEGREE OF BACHELOR OF COMMERCE

BMGT 323: COMPANY LAW

STREAM: Y3S2

TIME: 2.30-4.30 PM

EXAMINATION SESSION : DECEMBER

DATE: 6/12/2016

INSTRUCTIONS

ANSWER QUESTION ONE AND ANY OTHER TWO QUESTION

QUESTION ONE

Case-1

By inadvertence, the secretary of a company failed to send notice to 9 members of the company of a special resolution to be proposed at an annual general meeting. The addressograph plates containing the names and addresses of these 9 members had been removed from the file because the dividend warrants sent to those addresses had been returned or retained uncashed with the result that the company wished to verify their addresses. When the notices were sent out, these plates had not been replaced. The special **resolution was passed at the meeting. Is the resolution valid? (10 Marks)**

Case-3

Mr Sinha, as the secretary of the XYZ Co., signed a letter to its bank, forwarding a 'resolution' of the board of directors. The resolution named three directors and instructed the bank to pay cheques signed by any two of them and countersigned by the secretary. Specimen signatures were attached. The instruction was entirely in accordance with the company's memorandum and articles. However, there had never been any proper appointment of directors or a secretary by the

company. Those who had formed the company had assumed their roles. Following the letter, the bank had honoured cheques in accordance with the instructions contained in the letter. The question was, whether, the company was bound by the cheques. Comment. (10 Marks)

Case-2

The usual powers of the management of a company are vested in the Board of Director's of the companies Act, which also include a provision that the powers shall be “subject to such regulations not consistent with the Articles, as may be prescribed by the company in general meeting”. In exercise of their powers the directors filed a suit against an employee of the company for recovery of a loan advanced to him. The general body of shareholders thereupon passed an ordinary resolution to the effect that the loan should be written off in consideration of the employee's meritorious services to the company. Are the directors bound to withdraw the suit or are they at liberty to proceed with the suit? Give reasons for your answer.(10 Marks)

QUESTION TWO

- a) ‘Incorporation is the bedrock upon which Company law is built.’ Critically examine this statement.(10 Marks)
- b) I detail explain corporate personality and limited liability. (10 Marks)

QUESTION THREE

- a) 'In practice, in no circumstances is it possible to pierce the corporate veil between a parent and a subsidiary company.' Critically assess this claim. (10 Marks)
- b) To what extent do you share the late Professor Kahn-Freund’s view of Salomon v Salomon & Co Ltd [1897] AC 22 (HL) as a “calamitous decision”? (10 Marks)

QUESTION FOUR

- a) In details explain the liability of company directors with regard to the Company’s Act. (10 marks)
- b) Describe a company prospectus and explain the contents therein. (10 marks)

QUESTION FIVE

- a) In detail explain the possible consequences of the Companies Act 2015 to businesses in Kenya (10 marks)
- b) In detail explain the winding up methods with regard to the Companies Act 2015. (10 marks)