

COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

KENYA SCHOOL OF LAW
LIBRARY

COMPANY LAW

WEDNESDAY 2ND FEBRUARY, 2011

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

QUESTION ONE

- (a) "The word company has no strict legal meaning' *Anonymous*.

Attempt a definition of a company. {3 marks}

- (b) Highlight the functions which a modern day company seeks to achieve. {6 marks}

- (c) Draw a distinction between the various forms of limited companies that may be registered under the Companies Act (Cap 486, Laws of Kenya). {6 marks}

- (d) 'In carrying out their businesses, it is preferable that such business be carried out by way of a legal outfit christened company. This is fundamentally so, because of the numerous advantages that may be derived from such an outfit' *Anonymous*

Discuss briefly FIVE advantages derived from incorporation of a company. {10 marks}

QUESTION TWO

The procedure for incorporation of a company is embodied in Part II of the Companies Act (Cap 486, Laws of Kenya).

You are a senior clerk in the firm of Ngawa & Co. Advocates. A client walks into your offices and wishes to instruct the firm to incorporate a company for him. However, Ngawa the proprietor of the firm is away attending to court matters. The client wants to be briefed on the procedure for incorporating a Company. Brief the client on the procedure. {15 marks}

QUESTION THREE

- (a) The doctrine of *ultra vires* is important in company law. With the aid of decided case(s) elaborate the meaning and import of the said doctrine. {9 marks}

- (b) Highlight the meaning of the following as understood in company law:

- (i) Disclosure
- (ii) Constructive Notice
- (iii) Rule in *Turquand's case*

{6 marks}

QUESTION FOUR

- (a) Explain the main sources of funds for a company for carrying out its undertaking. {3 marks}
- (b) In company law, the word 'capital' is used in a very restricted sense. Explain this meaning. {4 marks}
- (c) 'Common law jurisdictions have generally adopted the approach that, because separate legal personality and limited liability are privileges conferred by the State, all companies must be regulated by the State in the interests of creditors and the investing public' – Cassim, FHI 'The Reform of Company Law and Capital Maintenance Concept' 2005 (122) SALJ at 284.

With the aid of case law explain the mechanisms available in company law for the protection of creditors against depletion of capital. {8 marks}

QUESTION FIVE

- (a) Explain the major classes of shares available in company law. {8 marks}
- (b) Discuss a distinction between debentures and shares. {7 marks}

QUESTION SIX

- (a) Highlight the various types of general meetings of companies. {5 marks}
- (b) Explain the various ways in which a general meeting may be convened. {10 marks}

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COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

COMPANY LAW

WEDNESDAY 14TH NOVEMBER, 2012

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER

QUESTION ONE

- a) From a functional perspective, discuss the various types of companies that one may form. (6 marks)
- b) Explain the legal distinction between a public company and a private company as envisaged under Section 30 of the Companies Act (Cap.486 Laws of Kenya). (6 marks)
- c) Explain the difference between the following types of companies:
- i) Company limited by shares
 - ii) Company limited by guarantee
- (3 marks)
- d) Highlight any **FIVE** advantages of incorporation as was established in the case of Salomon vs Salomon & Co. Ltd (1897) AC 22 (10 marks)

QUESTION TWO

Describe the procedure for incorporation of a company under the Companies Act.

(15 marks)

QUESTION THREE

Explain the meaning of the following concepts under Company Law

- i) *Ultra Vires*
- ii) Doctrine of disclosure
- iii) Doctrine of constructive notice
- iv) Rule in Turquand's case
- v) Estoppel

(15 marks)

QUESTION FOUR

Discuss the meaning of the following types of shares that may be available in a company

- i) Preference shares
- ii) Redeemable preference shares
- iii) Ordinary shares
- iv) Deferred shares

(15 marks)

QUESTION FIVE

- a) Explain the various types of meetings that may be convened in a company

- b) Highlight the categories of persons who may convene meetings in a company noting to explain the circumstances under which they may convene such meetings. (5 marks)

(10 marks)

QUESTION SIX

Describe how the meetings of the Board of Directors of a company ought to be conducted.

(15 marks)



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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

COMPANY LAW

TUESDAY 3RD DECEMBER, 2013

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

SECTION A

QUESTION ONE: COMPULSORY QUESTION

- a) Explain the difference between a corporation created under the Companies Act and a corporation created under an Act of Parliament. (6 marks)
- b) A person dealing with a company is entitled to assume in the absence of the facts putting him on doubt, that there has been due compliance with all the matters of internal management and procedures required by the articles. With reference to the Rule in Royal British Bank vs. Turquand (1856) discuss the above statement. (6 marks)
- c) What are the remedies available to a debenture holder who wishes to reclaim his investment when the company is in default? (6 marks)
- d) Mr. X is acting as a promoter of a private limited company which wishes to register the name 'Kenya Manufacturing Company International'. Advise him on the proposed name and the general restrictions on choice of a company's name. (7 marks)

SECTION B: ANSWER ANY THREE QUESTIONS

QUESTION TWO

The main object of Treina Co. is to provide training courses for office administrators and secretaries. The directors have recently decided that it would be best to diversify the company's activities and start supplying computers, office equipment and stationery, using the contacts they have made in the course of their training. It appears that approximately 75% of the company's shareholders support the change, although a minority will undoubtedly strongly oppose the diversification. Advise the directors;

- a) On the statutory provisions on how the company's memorandum may be altered to enable the diversification to occur. (5 marks)
- b) Describe the steps to be followed in alteration of the memorandum. (5 marks)
- c) Explain the rights of the minority shareholders who oppose the diversification. (5 marks)

QUESTION THREE

In 2008, Juma, Bella and Jerry formed a Private Limited Company to pursue the business of computer software design. They each took 100 shares in the company and each of them became a director in the new company. The articles of association of the company were drawn to state that Bella, a qualified lawyer was to act as the company's lawyer for a period of five years at a salary of Kshs.50,000/= per year.

In 2009, Juma and Jerry found out that Bella had been working with a rival software company and had passed some of the secret research results to that rival. They have also found out that he received Kshs.100,000/= as commission monthly from the rival company. Advise Juma and Jerry on the following:

- a) They wish to remove Bella from the board of directors (4 marks)
- b) They have told Bella that they no longer wish her to be the company's lawyer and have refused to pay her for the work she has previously done. Bella however claims that based on her contract as provided in the articles, she cannot be removed before lapse of the five years period. (4 marks)
- c) They would like to alter the articles to force Bella to sell her shares to them. (4 marks)
- d) They would also like to take legal action against Bella for breach of fiduciary duty.

QUESTION FOUR

- a) Describe the categories of persons not qualified to be appointed as auditors of a company. (5 marks)
- b) With help of case law, explain the duties and liabilities of a promoter during the incorporation of a company. (5 marks)
- c) Outline the similarities and differences between shares and debentures (5 marks)

QUESTION FIVE

Discuss the following:

- a) The rule in Sharp vs. Dawes (5 marks)
- b) The circumstances under which a company can be wound up by the court (5 marks)
- c) The effects of a winding up order (5 marks)

QUESTION SIX

In Re Bugle Press Limited [1961] ch.270 Lord Justice Cohen in his holding highlighted this peculiar fact of the company that had been incorporated: "the company was nothing but a legal hut. Built round the majority shareholders and the whole scheme was nothing but a hollow shallow." Discuss this holding enumerating the circumstances under which the corporate veil can be lifted.

(15 marks)

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARALEGAL STUDIES)

COMPANY LAW

18TH NOVEMBER, 2014

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions.
- (b) Question ONE carries 25 Marks.
- (c) All other questions carry 15 Marks each.

PLEASE TURN OVER

1. Discuss the following as understood in company law:
 - a) The rule in *Turguand* case and exceptions to the rule. (5 Marks)
 - b) Sharing Limited Liability (5 Marks)
 - c) Five (5) advantages of incorporation of a company. (5 Marks)
 - d) The doctrine of *Ultra Vires*, and remedies thereof. (10 Marks)

2. a) The term "Company" is a very ambiguous term. According to Judge Buckely in *Re Stanley* (1906), CAP. 131 at 134, "the word company has no set legal meaning". Based on the above notion, attempt a definition of the term "Company". (2 Marks)

- b) Promoters of a company must make decision on various matters before formal process of incorporation or registration of a company. Discuss any four (4) such preliminary consideration. (8 Marks)

- c) Discuss what you understand by "Insider Trading". Support your answer with recent case law. (5 Marks)

3. *Salomon vs Salomon & Co. Ltd* established that a registered company is a legal person distinct and separate from its members and management; it is a body corporate in its own right. This is referred to as the veil of incorporation. However, in certain circumstances, the law disregards the separate legal personality of the company in favour of economic realities. This is referred to as "lifting of the veil of incorporation" or "piercing the corporate shell".

Discuss how the rule in the *Salomon* case has been ignored or varied by:

 - (i) Statute (8 Marks)
 - (ii) Courts of Law (7 Marks)

4. a) Mr. Mazumbuko would like to incorporate a limited liability company that will carry out the business of entertainment among other businesses. He would like a name that is not only unique but striking and easy to brand. Mr. Mazumbuko approaches you to assist him with choice of name.

From your understanding of legal requirements as to choice of Company name, advise Mr. Mazumbuko.

(10 Marks)

b) Explain the legal distinction between public company and a private company as provided under section 30 of the Companies Act (Cap 486 of the Laws of Kenya.)

(5 Marks)

5. a) You are a corporate lawyer in the firm of Maxy Advocates Ltd. A client walks in and requires advice on the procedural steps for incorporation of a company. Brief the client on the procedure. (10 Marks)

b) Discuss the provision of the Companies Act (Cap 486 of Laws of Kenya) as relates to declaration of a dividend.

(5 Marks)

6. a) Discuss the modes of alteration of share capital as provided in the Companies Act (Cap 486 of Laws of Kenya)

(5 Marks)

b) (i) What do you understand by crystallization of floating charge?

(5 Marks)

(ii) What are the advantages of a floating charge?

c) Discuss the circumstances under which a company may be wound up by court.

(5 Marks)