

COUNCIL OF LEGAL EDUCATION



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

KENYA SCHOOL OF LAW  
LIBRARY

COMPANY LAW

WEDNESDAY 2<sup>ND</sup> 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 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 14<sup>TH</sup> 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

(5 marks)

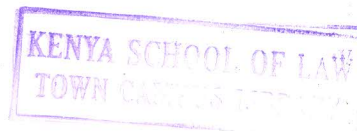
- b) Highlight the categories of persons who may convene meetings in a company noting to explain the circumstances under which they may convene such meetings.

(10 marks)

### QUESTION SIX

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

(15 marks)



KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

**COMPANY LAW**

TUESDAY 3<sup>RD</sup> 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

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## 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

18<sup>TH</sup> 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

(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)

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARALEGAL STUDIES)

COMPANY LAW

2<sup>ND</sup> DECEMBER, 2015

DURATION: 2 HOURS

**Instructions to Candidates**

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

PLEASE TURN OVER

**QUESTION ONE**

- a) Discuss any four (4) ways in which the rule in the Salomon v Salomon case has been ignored or varied by courts of Law. (8 marks)
- b) Outline the contents of a Memorandum of Association as prescribed by the Kenya Company Law. (5 marks)
- c) Discuss what is understood in law by the terms: "Lifting the Veil of Incorporation". (4 marks)
- d) Discuss the Legal principle in the Turquand's case. (4 marks)

**QUESTION TWO**

- (a) What do you understand by the term pre-incorporation contract? (3 marks)
- (b) Discuss the rules that govern pre-incorporation contracts. (12 marks)

**QUESTION THREE**

- (a) Outline the five (5) forms / classes of a company's capital. (5 marks)
- (b) Outline any ten(10) provisions relating to payment of a dividend (10 marks)

**QUESTION FOUR**

- (a) Explain any five (5) ways in which one can become a member of a company. (10 marks)
- (b) Highlight the requirements to be met before a notice of an AGM served on members can be considered valid under the company law of Kenya. (5 marks)

**QUESTION FIVE**

- (a) Outline the restrictions imposed by the Kenyan law on appointment of directors. (6 marks)
- (b) What is the legal effect of a certificate of registration of a company? (4 marks)
- (c) Outline the Key components of an agenda of a company's Annual General meeting. (5 marks)

**QUESTION SIX**

- (a) Outline the formal steps for incorporation of a company. (15 marks)



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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2<sup>ND</sup> YEAR TERM II EXAMINATION

COMPANY LAW – DPS 207

1<sup>ST</sup> DECEMBER, 2016

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) Your client Abel would like you to assist him form a private company limited by shares. The following are part of his instructions:
- (i) Nominal share capital shall be Kshs. 100,000 and par value per share shall be Kshs.. 1,000;
  - (ii) He will start up the company with his two brothers, Ben and Charles and each one of them shall have 10 shares each;
  - (iii) Abel will buy 60 shares in the company;
  - (iv) Each one of them shall nominate a successor in the event of death;
  - (v) Abel would like to dispose 40 shares at a future date to a strategic partner.

Abel is totally unsure about the process of membership of private limited liability company and needs advise.

Using the above information and your knowledge of company law, describe to Abel by use of a simple diagram, how one can become a member of a company.

**Note:** You are free to choose any name of your choice in addition to the above to illustrate your answer.

(15 Marks)

- (b) Explain to Abel the main difference between a private company limited by shares and a private company limited by guarantee as understood under the Kenyan law of companies. (4 Marks)
- (c) Explain any three ways in which an existing member/shareholder of a company can increase his shareholding in the company. (6 Marks)

### Question Two

- (a) Explain briefly any four forms of business associations under the Common Law practice. (8 Marks)
- (b) Does the owner of a private company limited by shares have any advantage over a hair dresser who runs a successful hairdressing business in his own name? Explain your answer. (7 Marks)

### Question Three

Explain briefly the steps that a promoter of a company must follow to incorporate a company limited by shares.

(15 Marks)

#### Question Four

- (a) Discuss briefly what you understand by the following terms commonly used in the practice of company law in Kenya:
- (i) Nominal share capital (2 Marks)
  - (ii) Dividend (2 Marks)
  - (iii) Subsidiary Company (2 Marks)
  - (iv) Minority Shareholder (2 Marks)
- (b) Outline any seven rules that a company should observe in relation to payment of dividend to shareholders. (7 Marks)

#### Question Five

- (a) What do you understand by the term alteration of capital of a company? (3 Marks)
- (b) Discuss any four types of shareholders meeting. (8 Marks)
- (c) Outline any four classes of shares that a company can issue. (4 Marks)

#### Question Six

- (a) Explain circumstances under which the Registrar of Companies can reject a name proposed for registration by a Promoter of a company as provided in the Companies' Regulations of the laws of Kenya. (10 Marks)
- (b) Discuss the following as understood in common law practice:
- (i) Indoor management
  - (ii) *Turquand's Rule* (5 Marks)

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END



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**DIPLOMA IN LAW (PARA-LEGAL STUDIES)**

**2<sup>ND</sup> YEAR TERM II EXAMINATION**

**COMPANY LAW**

**23<sup>rd</sup> November, 2017**

**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) Write short notes on the following aspects of companies law in Kenya;
- i) Rights issue (3 marks)
  - ii) Alternate director (3 marks)
  - iii) Fractional Share (3 marks)
- b) Comment on the following statements from your understanding of the Kenya companies law and common law;
- i) The Memorandum of Association is the main constitution document of a company that binds the shareholders. (2 marks)
  - ii) A majority shareholder has a right to change the company's Articles of Association and the new articles shall be binding to all the shareholders. (2 marks)
  - iii) It is illegal for a person of over 70 years to be appointed as a director of the company. (2 marks)
  - iv) Directors are prohibited by law to recommend declaration of a dividend and issue bonus shares at the same time. (2 marks)
  - v) A person shall not qualify to be a director of a company unless he is a shareholder of that company. (2 marks)
  - vi) Once a public company is issued with a Certificate of Incorporation, the company shall commence business immediately. (2 marks)
  - vii) Dividend and bonus issue are synonymous. (2 marks)
  - viii) One can run a partnership and private company limited by guarantee under the same name, provided that he files returns every year. (2 marks)

**Question Two:**

- a) Discuss any four (4) remedies available to the company and a 3<sup>rd</sup> party in case of breach of fiduciary duties by a promoter of a company. (8 marks)
- b) What do you understand by the term "conflict of interest" and what is the rule of the thumb in relation to dealing with conflict of interest? (7 marks)

**Question Three:**

The Kenya's Companies Act, 2015 has given a clear distinction between private and public companies. Explain the distinctions. (15 marks)

**Question Four:**

Discuss the main legal principles laid out in the *Salmon vs Salmon* case.

**(15 marks)**

**Question Five:**

Fred Otieno and Grace Ngure are both medical practitioners. They would like to set up a business that will not deviate from their professional line. They have come to you for advice on what form of business association they should form.

- a) Advise Fred and Grace the best form of business association to form. **(5 marks)**
- b) What are the advantages and disadvantages of the form of business association you have recommended? **(10 marks)**

**Question Six:**

Mr. Kim Kimberly is a re-known Kenyan banker who has been running his tier 2 bank known as Kimberly Commercial Bank Limited for over 20 years. After recession experienced in the country a few years ago, the bank started struggling financially and was unable to meet its obligations.

The regulator, Central Bank of Kenya carried out an audit on the bank and recommended that the bank be placed under statutory management. Following the Central Bank of Kenya's decision, depositors' money was locked in Kimberly Commercial Bank Limited. The depositors felt that the bank is cash rich, but the only problem lies with the owner and the directors who have diverted their deposits to personal business for personal gain. The depositors have therefore turned to court to seek orders that the bank owner and the directors' accounts be frozen and they be investigated. The owner and directors now claim that the bank is a body cooperate and that the liabilities of the company cannot be visited on the owner or directors.

Do you think the depositors have a good case?

**(15 marks)**

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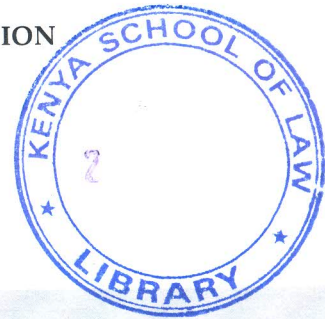
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THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2<sup>ND</sup> YEAR TERM II EXAMINATION



COMPANY LAW

20<sup>th</sup> November, 2018

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) Taking a functional perspective, discuss the various types of companies that can be formed. (6 marks)
- b) Explain the legal distinction between a public company and a private company as envisaged under section 300 of the Companies Act, 2015 Chapter. 486 of the Laws of Kenya. (6 marks)
- c) Outline the similarities and differences between shares and debentures. (3 marks)
- d) State and explain any FIVE advantages of incorporation of a Company as was demonstrated in the case of Salomon vs. Salomon & Company Limited (1897) AC 22. (10 marks)

**Question Two:**

- a) Discuss the modes of alteration of share capital as provided in the Companies Act 2015, (Chapter 486 of the Laws of Kenya) (5 marks)
- b) (i) What do you understand by the term "crystallization of a floating charge"? (5 marks)  
(ii) What are the advantages of a floating charge?
- c) Discuss the circumstances under which a company limited by shares may be wound up by court. (5 marks)

**Question Three:**

- a) Outline and explain any ten (10) legal provisions relating to payment of a dividend. (15 marks)
- b) Outline any five (5) forms/classes of a company's capital. (5 marks)

**Question Four:**

- a) Briefly explain the restrictions imposed on the appointment of company Directors by the Companies Act. 2015 (Chapter 486 of the Laws of Kenya) (6 marks)
- b) What is the legal effect of a certificate of registration of a company? (4 marks)
- c) Outline the key components of an agenda of a company's Annual General Meeting (AGM). (5 marks)

**Question Five:**

- a) Describe in detail the categories of persons not qualified to be appointed as auditors of a company. (5 marks)
- b) Using case Law, explain the duties and liabilities of a promoter during the incorporation of a Company. (5 marks)

c) Explain the difference between the following types of companies:

- i. Company limited by shares;
- ii. Company limited by guarantee.

(5 marks)

**Question Six:**

Discuss the main legal principles as laid out in the landmark case of Salomon vs. Salomon & Company Limited (1897) AC 22

(15 marks)

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END

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2<sup>ND</sup> YEAR TERM II EXAMINATION



COMPANY LAW-DPS 207

25<sup>TH</sup> November 2019

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:**

Julius has been running a company called Maribe Limited for the past 30 years. He recently passed away. Maribe Limited has become unable to pay its debts as they become due and the value of its assets is far less than the amount of its liabilities. Juliana, the daughter of Julius is your friend. She has come to you seeking for advise. Advise her on the following: -

- a) In relation to the administration of insolvent companies under the Insolvency Act, 2015, the powers of an Administrator. (5 Marks)
- b) In relation to the Companies Act, 2015, the different registers that the late Julius ought to have maintained as a Director of Maribe Limited. (5 Marks)
- c) The various benefits of a limited liability company as compared to other forms of business association. (Discuss) (7 Marks)
- d) Other forms of business associations/entities that Juliana can form either alone or in association with the other members of her family. (Discuss the key features of each) (8 Marks)

**Question Two:**

Explain with the use of decided cases and/or sections of the Companies Act 2015: the concepts of derivative claims, the rule in the case of Foss –vs- Harbottle and note to also discuss the exceptions to the rule in Foss vs. Harbottle. (15 Marks)

**Question Three:**

With the help of decided court cases where applicable, explain **any three** of the following concepts in Company Law.

- a) Lifting the Corporate Veil; (5 Marks)
- b) The indoor management rule also known as the rule in Turquand's case; (5 Marks)
- c) The sources of Law in Company Law; (5 Marks)
- d) Various reasons that can make a proposed name of a company to be undesirable for registration purposes. (5 Marks)

**Question Four:**

With the help of decided cases and/or with the use of sections of the Companies Act, 2015, discuss the duties of Directors of a Limited Liability Company. (15 Marks)





**Question Five:**

Distinguish between **any three** of the following concepts in Company Law:

- a) A public company and a private company; (5 Marks)
- b) A fixed charge and a floating charge; (5 Marks)
- c) Debenture holders and shareholders; (5 Marks)
- d) Preference shares and ordinary shares. (5 Marks)

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END

