



(University of Choice)

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

MAIN, WEBUYE, BUNGOMA CAMPUS

UNIVERSITY EXAMINATIONS

2022/2023 ACADEMIC YEAR

MAIN EXAMINATIONS

FOR BACHELOR OF COMMERCE

COURSE CODE: BCB 403

COURSE TITLE; COMPANY LAW

DATE: WEDNESDAY, 14TH/12/2022 TIME: 8:00 – 10:00AM

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 2 Printed Pages. Please Turn Over.

QUESTION ONE

The articles of Shemon Company Ltd. provided that the directors had power to determine who should be entitled to sign contracts and documents of behalf of the company.

One director Chapulan, describing himself as the Chairman and without having been so authorized, executed and gave guarantee to Chylon in the name of the company. Shemon Company have found out about the guarantee executed and have refused to honour it as demanded by Chylon.

Explain whether Shemon Company Ltd. is liable with regard to the demands by Chylon.(5marks)

b. Identify and explain five clauses in a memorandum of association. (10 marks)

c. Outline circumstances under which a court would confirm reduction of capital of a company. (4 marks)

d. Write a brief note on forfeiture of shares. (5 marks)

e. Distinguish between a company and a partnership. (6 marks)

QUESTION TWO

a. X and Co., Ltd., intended to buy a rubber estate in Peru. Its prospectus contained extracts from an expert's report giving the number of rubber trees in the estate. The report was inaccurate and omitted critical matters. State and explain five remedies available to the shareholders who have bought the company's shares on the basis of the above representation. (10 marks)

b. Describe five requisites of a valid meeting. (5 marks)

c. Examine the rules governing payment of dividend by companies in Kenya. (5 marks)

QUESTION THREE

a. Benj company was registered five years ago as an unlimited company. Its main object was to offer humanitarian services to the less privileged members of the society. The company has since grown into a large undertaking. The members wish to convert the company into a limited company and seek your legal advice.

Advise members on the following issues:

i.the procedure to be followed in converting the company from an unlimited to a limited company. (4 marks)

ii.the legal effect of such conversion on the rights and liabilities of the members. (4 marks)

b.A promoter is not entitled to remuneration for incorporating a company. This is because there is no contractual relationship between him and the company. However, promoters may be rewarded in other ways.

Describe the ways in which a promoter may be rewarded. (5marks)

c.An auditor is entitled to certain rights. Explain. (7 marks)

QUESTION FOUR

a.Explain the different ways in which a person may stop being a member of a company. (12 marks)

b. "The exact position of a director is difficult to pinpoint as he can be viewed from different perspectives." Make an analysis of the statement.

(4 marks)

c.Differentiate between members and creditors voluntary winding up. (4 marks)

QUESTION FIVE

a.The duties of a liquidator are equitable in character and he may be regarded as a fiduciary of the company. Describe the duties. (5 marks)

b.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. (10 marks)

c. Once an inspector is appointed by the court, he must enter upon his obligations/duties without undue delay. Examine the powers of an inspector on appointment. (5 marks)