(*University of Choice*)

MASINDE MULIRO UNIVERSITY OF SCIENCE AND TECHNOLOGY (MMUST)

UNIVERSITY MAIN EXAMINATIONS

2023/2024 ACADEMIC YEAR

MAIN EXAMINATIONS

FOR THE DEGREE OF BACHELOR OF COMMERCE

COURSE CODE: BCB 403

COURSE TITLE; COMPANY LAW

DATE: WEDNESDAY, 20TH /12/2023 **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

Monty and Hick were in the process of incorporating a private company called Rex shoes ltd. The objects of the company were to make and sell shoes. Before the process of incorporation was incomplete Kemp leather ltd entered into a contract to supply leather for making shoes worth 1 million shillings. The price was to be paid in four instalments of two hundred and fifty thousand shillings each over a period of one year.

Monty signed the contract as follows; signed on behalf of Rex shoes ltd. By the time the leather was delivered, Rex shoes ltd had been incorporated.

However, after the second instalment had been paid Rex shoes ltd was unable to pay the balance.

a.Advise Kemp leather ltd on how to recover the outstanding amount of five hundred thousand shillings and explain the consequences of such agreements. (6 marks)

b.Describe the procedure for registering the company. (8 marks)

c.Assuming Monty and Hick want to alter the objects clause of Rex shoes Ltd what are the permitted statutory reasons for altering the objects clause of the Memorandum of Association? (4 marks)

d.Examine the position of Monty and Hick's being the directors of Rex shoes Ltd. (8 marks)

e. Distinguish between the following terms;

i. subscribed capital and uncalled capital. (2 marks)

ii.authorised capital and reserve capital (2 marks)

QUESTION TWO

a.''The company is at law a different person altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act''.Per Lord MacNaughten in Salomon v. Salomon & Co, Ltd(1897)A.C.22 at pg 51. State and explain the main attributes of a company. (10 marks)

b.write a note on forfeiture of shares. (5 marks)

c.Differentiate between the memorandum and articles of association. (5 marks)

QUESTION THREE

a."A company is a democratic institution in which the majority have a right to control the company." Comment on the reasons that support this statement as per the rule laid down in *Foss* v. *Harbottle.* (4 marks)

b."The rule in *Foss* v. *Harbottle* presently has lost its importance because of adequate statutory provisions made in the Companies Act, 1956". Discuss the exceptions in the light of statutory law and case laws. (10 marks)

c.Examine six grounds for cessation of company membership. (6 marks)

QUESTION FOUR

a."A promoter is not a trustee or agent for the company but he stands in a fiduciary position towards it." Discuss. (8 marks)

b. Explain the remedies available to an allottee who has subscribed for the shares on the faith of a false and misleading prospectus. (12 marks)

QUESTION FIVE

a.A person dealing with a company is entitled to assume, in the absence of facts putting him on doubt, that there has been due compliance with all matters of internal management and procedure required by the articles. With the reference to the rule in Royal British Bank v. Turquand (1856) identify and explain the exceptions to the above statement. (10 marks)

b.Elaborate in five circumstances under which the court can order compulsory winding up of a company. (10 marks)