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KIBABII UNIVERSITY



UNIVERSITY EXAMINATIONS

2021/2022 ACADEMIC YEAR FOURTH YEAR FIRST SEMESTER MAIN EXAMINATION

FOR THE DEGREE OF BACHELOR OF COMMERCE

COURSE CODE: BCO 413

COURSE TITLE: COMPANY LAW

DATE: 18/05/2022 TIME: 2.00PM – 4.00PM

INSTRUCTION TO CANDIDATES

- 1) The paper contains **FIVE** questions
- 2) Attempt **THREE** questions
- 3) Question **ONE** is Compulsory

TIME: 2 Hours

KIBU observes **ZERO** tolerance to examination cheating

QUESTION ONE

a. Angela is employed as a managing director of Eclipse Ltd. The main object of Eclipse Ltd. is to retail hair products. Angela's contract of employment contains a clause which states that in the event of her leaving the employment of Eclipse Ltd, she would not solicit Eclipse Ltd's customers for a period of three years.

Angela has resigned from her employment and together with Ellina formed another company Angellina Ltd. whose main objective is to sell hair products.

Angela has given Marie, a salesperson in Angellina Company a list of customers of Eclipse Ltd. to immediately start soliciting the customers for Angellina Company Ltd.

Eclipse Ltd. has learnt of these facts and intends to sue Angela, Ellina and Angellina Company Ltd.

- a) Advise Eclipse Ltd (5 marks)

- b) Discuss the circumstances under which a corporate veil or incorporation may be lifted. (14 marks)

- c) Highlight the contents of the articles of association (6 marks)

- d) Outline five rights of a member (5 marks)

QUESTION TWO

- a) Differentiate between limited and unlimited company (4 Marks)

- b) A company is classified on different basis. Discuss. (10 marks)

- c) Explain the characteristics of a company (6 marks)

QUESTION THREE

- a) A court of law has a right to compulsorily wind up a company. Explain the grounds for a compulsory winding up of a company by the court. (9 marks)

- b) Discuss the procedure of forming a public company and highlight the documents that must be delivered to the registrar of companies . (11 marks)

QUESTION FOUR

- a) Detail the statutory provisions governing the investigation into the affairs of a company by the registrar. (12 marks)
- b) State the powers of the inspection appointed to investigate the affairs of the company. (5 marks)
- c) Explain who is responsible for the expenses incurred while carrying out investigations into the company's affairs. (3 marks)

QUESTION FIVE

The rule in *Foss v Harbottle* establishes the principle that where a wrong is done to the company, the proper plaintiff is the company itself. However, where the wrong is done by the company directors, it may be impossible for the company to sue. In such a case, a derivative action may be the only option.

- a) Explain what is meant by "derivative action". (2 marks)
- b) Describe the Exceptions to the rule in Foss v. Harbottle. (10 marks)
- b. The exact position of a director is difficult to pinpoint as he can be viewed from different perspectives. Make an analysis (8 marks)