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# KIBABII UNIVERSITY



## UNIVERSITY EXAMINATIONS

**2021 /2022 ACADEMIC YEAR  
FOURTH YEAR FIRST SEMESTER  
SPECIAL/SUPPLEMENTARY EXAMINATION**

**FOR THE DEGREE OF BACHELOR OF COMMERCE  
COURSE CODE: BCO 413**

**COURSE TITLE: COMPANY LAW**

**DATE: 15/11/2022**

**TIME: 2.00 – 4.00PM**

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### 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) Hopeful, a private limited company has adopted Table A as its Articles of Association. The company now, wishes to alter the Articles of Association. Outline the procedure to be followed to effect the change (6 marks)

b) Tim and Tom wish to establish a business jointly. However, they are not sure whether to establish a limited liability company or an unlimited liability company; as they know little about these types of companies.

i) Explain to them the differences between a limited company and an unlimited company. (4 marks)

ii) Explain to them the procedure of registering a private company. (8 marks)

c) Name and briefly explain four classes of persons who may incur civil liability in respect of a false statement in a prospectus. (4 marks)

d) State four rights of a member. (4marks)

e) Highlight four contents of register of members (4marks)

### QUESTION TWO

a) Kioko, an Under Secretary in the Ministry of Viwandani was entrusted with the responsibility of selling the Ministry's boarded motor vehicles. He invited bids from members of the public to buy two lorries. He also bid, through a nominee, Mwangangi, his own brother. Subsequently, he sold the lorries to Mwangangi, at Sh.80,000 each. Kioko then formed Kima Company Ltd and instructed Mwangangi to sell the lorries to the company at Sh.350,000 each. A prospectus as issued to the public to subscribe for shares to Kima Company Ltd. The prospectus gave Mwangangi as the vendor of the lorries and did not disclose the profit Kioko was making. Musembi, a shareholder of the company has learnt of the sale of the lorries to the company and the profit Kioko made and seeks your advice on the company's rights in respect of the same.

Advise Musembi. (8 marks)

b) Distinguish a Fixed Charge from a Floating Charge. (5 marks)

### QUESTION THREE

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". (5 marks)

b) Describe the conditions that must be satisfied before a derivative suit can be instituted (10 marks)

c) Describe the duties of an Auditor as set out under the Companies Act. (10 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. (4 marks)

c) Explain who is responsible for the expenses incurred while carrying out investigations into the company's affairs. (4 marks)

#### QUESTION FIVE

a) Describe the circumstance under which a company may be wound up on the ground that it is 'just and equitable' to do so. (12 marks)

b) State the legal consequences of a winding up order made against a company. (8 marks)

c) Outline 5 ways in which a person may become a member in a company.