# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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**MAIN EXAMINATION**

**JANUARY – APRIL 2015 TRIMESTER**

**FACULTY OF LAW**

**REGULAR PROGRAMME**

**CLS 302: COMPANY LAW**

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| **Date: April 2015** | **Duration: 2 Hours** |
| **INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions** | |

Q1. a) Peponi Company Limited is a private company incorporated under the companies Act (cap 486). The company would like to make alterations in the objects clause of its Memorandum of Association. However the shareholders of the company have been told that such alterations must be made to achieve certain specific purposes only.

Explain **FIVE** specific purposes for which alteration of the objects of Peponi Company Limited may be made. **(10 marks)**

b) The Salomon decision was a scandalous one which unleashed a tidal wave of irresponsibility into the business community. Discuss the statement above. **(10 marks)**

c) In the relation to the formation of a company explain:

i) the role and duties of promoters and how they are regulated. **(5 marks)**

ii) a pre-incorporation contract and its legal consequences **(5 marks)**

Q2. (a) Jumanji Ltd was in financial difficulties. In January in order to raise capital it issued 10,000 Kshs.100 shares to Boni, but only asked him to pay Kshs.75 per share at the time of issue. The directors of Jumanji Ltd intended asking Boni for the other Kshs.25 per share at a later date. However, in June it realized that it needed even more than the Kshs. 25,000, it could raise from Boni's existing shareholding. So inorder to persuade Boni to provide the needed money Jumanji Ltd told him that if he bought a further 10,000 shares he would only have to pay a total of Kshs.50 for each Kshs. 100 share and it would write off the money owed on the original share purchase. Boni agreed to this, but the injection of cash did not save Jumanji Ltd and in December it went into insolvent liquidation, owing a considerable amount of money. Explain any potential liability Boni might have on the shares he holds in Jumanji Ltd.

**(10 marks)**

b) In the context of corporate governance explicit the role of the external company creditors, paying particular regard to the following issues

i) their qualifications **(3 marks)**

ii) their powers **(3 marks)**

iii) their duties **(4 marks)**

Q3. (a) In relation to the rules governing payment of company dividends, explain

i) how dividends may be properly funded; **(4 marks)**

ii) the rules which apply to public limited companies **(3 marks)**

iii) the consequences of any dividend being paid in breach of the rules. **(3 marks)**

(b) In 2010, Domi, Fiona Genny and Kaya formed a private limited company to pursue chemical research. They each took 100 shares in the company and each of them became a director in the company. The articles of association of the company were drawn up to state that Domi, a qualified accountant, was to act as the company secretary for a period of five years, at a yearly salary of Ksh.200,000. In May 2014, Fiona Genny and Kaya discovered that Domi had passed on some research results to a rival company. As a consequence Fiona, Genny and Kaya proposed the following measures:

i) to remove Domi from the board of directors; **(2 marks)**

ii) to dismiss Domi from his post as company secretary without any payment for the work he has already done, in spite of Domi's claim that he has a contract of employment by virtue of the articles of association and that he cannot be removed before the five-year period is completed; **(4 marks)**

iii) to alter the articles of association to require Domi to sell his shares to them. **(4 marks)**

Advise Fiona, Genny and Kay as to the legality of the above proposals and how they may be achieved. **(10 marks)**

Q4. a) In the context of company law, explain the meaning the following duties owed by directors to their companies:

i) the duty to promote the success of the company **(3 marks)**

ii) the duty to exercise reasonable skill, care and diligence; **(4 marks)**

iii) the duty to avoid conflict of interest **(3 marks)**

b) At the start of 2010, Hot Ltd entered into the following transactions in an endeavor to sustain its operations;

(i) it borrowed Ksh.500, 000 from Ina, secured by a floating charge. The floating charge was created on 1 April and it was registered on 15 April;

ii) It borrowed a further Kshs.500,000 from Jo. This loan was secured by a floating charge created on 3 April and registered on 12 April;

iii) It borrowed Kshs.1,000,000 from Ko-Bank. This loan was served by a fixed charge. It was created on 5 April and was registered on 16 April.

Unfortunately, the money borrowed was not sufficient to sustain Hot Ltd and, in August 2014, compulsory questions proceedings were begin. It is extremely unlikely that there will be sufficient assets to pay the debts owed to all of the secured creditors.

Advise Hot Ltd as to the order of security and payment of the above debts and explain why they are placed in that order. **(10 marks)**

Q5. a) In relation to company law:

i) explain the meaning of and procedures involved in voluntary liquidations; and **(6 marks)**

ii) Explain and distinguish between;
- A members' voluntary liquidation **(2 marks)**

- A creditors' voluntary liquidation **(2 marks)**

(b) In the context of payment for shares issued by a company. Explain the meaning and legal effect of the following:

(i) capital maintenance **(2 marks)**

(ii) issuing shares at a premium **(4 marks)**

(iii) issuing shares at a discount **(4 marks)**

***END***