# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

## A. M. E. C. E. A

**P.O. Box 62157**
**00200 Nairobi - KENYA**
**Telephone: 891601-6**
**Fax: 254-20-891084**
**E-mail:academics@cuea.edu**

**MAIN EXAMINATION**

**MAY – JULY 2016 TRIMESTER**

**FACULTY OF COMMERCE**

**DEPARTMENT OF MARKETING AND MANAGEMENT**

**EVENING PROGRAMME**

**CMM 411: COMPANY LAW**

| **Date: JULY 2016** | **Duration: 2 Hours** |
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| **INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions** | |

Q1. a) Getenga, Joan and Mutiso forma syndicate. They put together their savings and purchase catering equipment. They run a business from an old school kitchen which Joan bought for Ksh.50,000/-. They supply pies and sandwiches to schools in their neighbourhood. The business is hugely successful and they decide to incorporate a company. Joan sells the kitchen to the newly incorporated company for Khs.100,000/-. Getenga buys three delivery vans for Ksh. 50,000/- each and resells them to the company for Ksh.60,000/- each. Mutiso instructs Telkom (K) Ltd to install a telephone. He tells them that the company, when informed, will take over the liabilities in respect of telephone bills. Mutiso pays ksh 1000/- deposit for the installation. The company is incorporated and Joan, Getenga and Mutiso are named as the only Directors. Mutiso calls Telkom (K) Ltd and instructs to bill the company in future. They do but Ksh.5000/- worth of bills still remains unpaid. The company has now failed and a liquidator has been appointed.

Advice all parties as to their rights and liabilities. **(12 marks)**

b) Amolo, Bina and Chief are the Directors of Bima Development Plc, a company whose main objectives are to engage in the business of computer software ‘and any other business which, in the opinion of the Directors is in the interest of the company’.

In November 2014, the Company was applauded by Salim, a computer games software designer, who wished to sell one half of his interest in certain products which he has designed but has not yet launched on the market. At a meeting attended by all the Directors and Salim, the possibility of such a joint venture was discussed but rejected by the company on the grounds that, given the volatile nature of consumer demand and the fast changing nature of the computer games market, the venture was too risky. In January 2015 Salim approached Amolo, Bina and Chief with a view to obtaining their personal involvement in the venture. Amolo declined but Bina and Chief accepted Salim's invitation. They incorporated a new company Zenco Ltd, with Bina and Chief each holding one half of the issued share capital in the company; they were also its two Directors. This arrangement was not disclosed to Bima Development Plc.

In April 2015 Bima Development Ltd was taken over by Pro-Computers Plc and Amolo, Bina and Chief were replaced by nominees of Pro-Computers. The new Board has now learned of the Zenco Ltd project and that the initial investment made by Bina and Chief has now tripled to Ksh.250,000,000/=.

Advice Bima Development Plc. **(12 marks)**

c) Discuss the role and powers of liquidators. **(6 marks)**

Q2. Explain what is meant by a class right. What restrictions govern the alteration of class rights? **(20 marks)**

Q3. "The Salomon decision was a scandalous one which unleashed a tidal wave of irresponsibility into the business community." Discuss. **(20 marks)**

Q4. Mary and Joan are the Directors of Bank Finances Plc (the company) which is a long established Merchant Bank trading globally. In order to finance margin calls required by their Sri Lankan office, they agreed on 1$^{st}$ January 2013 to create a floating change on the company's entire undertaking (in Kenya) in favour of Biashara Bank Ltd in return for a loan of Ksh.1,000,000,000/- (1Billion).

The floating charge contained a clause providing that it would crystallize in the event of any default or enforcement proceedings being taken against the company. This charge was registered on 21$^{st}$ January 2013.

On 14$^{th}$ January 2013 the company refurbished its head office in Nairobi. In order to finance the interior design project Mary and Joan withheld money due to the Government of Kenya in the form of VAT and PAYE and also obtained a loan from Fina Bank for Kes.1,000,000/-. This loan was secured over the book debts of the company. The charge was registered on 17$^{th}$ January 2013.

On 1st February, James demanded payment for the office furniture that his firm had supplied to the company. Following advice from the company's Finance Director, the Board secured the amount outstanding to James by a fixed charge over the company's factory. The Finance Director also advised the Board that the company is in a position whereby it is unlikely to pay all its creditors and this financial situation is unlikely to be resolved. The company continued to trade until November 2013 when it went into liquidation.

Advice the liquidation. **(20 marks)**

Q5. "The exception to the rule in Foss vs Harbottle serves no useful purpose in protecting minority shareholders." Anonymous.

Discuss. **(20 marks)**

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