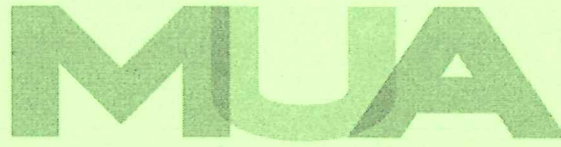


The
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UNDERGRADUATE UNIVERSITY EXAMINATIONS

SCHOOL OF MANAGEMENT AND LEADERSHIP

**DEGREE OF BACHELOR OF MANAGEMENT AND
LEADERSHIP/BACHELOR OF COMMERCE**

BML 210/BCM 223: COMPANY LAW

DATE: 7TH AUGUST 2024

DURATION: 2 HOURS

MAXIMUM MARKS: 70

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **SIX (6)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **THREE** questions.
6. Question **ONE** carries **25 MARKS** and the rest carry **15 MARKS** each.
7. Write all your answers in the Examination answer booklet provided.

QUESTION ONE

Read the Case Study below carefully and answer the questions that follow:

REAL PROPERTY ESTATE LIMITED

In 2015 Christopher, Najem and Mildred registered a private company limited called Real Property Estate Ltd. The company was incorporated for the purposes of developing and selling housing units in Kenya. The Memorandum of Association of the Company stated that they were Directors and Shareholders of the Company with each holding three hundred (300) ordinary shares. On incorporation, the Directors opened a current account with a prestigious bank in Nairobi and deposited Kshs 800 million.

In 2020, the company purchased two parcels of land in Nairobi and constructed residential houses for sale. The Directors in a meeting resolved to sale each house at a cost of Kshs 35 million. The Directors agreed that monies collected from the sale transactions would be deposited in a second current account which will be specifically designated for transactions made in the housing project. The Directors tasked Christopher and Najem with the responsibility of opening the account. Unknown to Mildred, Christopher and Najem mischievously excluded her name from the list of signatories of the said account.

In January 2022, the Company Directors declared payment of dividends. However, Mildred was not paid her share of the dividends. On inquiry, she realized that she was no longer a director or shareholder of the said Company. According to the records at the Registrar of Companies, Mildred had transferred her shares to one Wambua on 18th February 2022. Her signature of the transfer form used was forged. She was certain that it was not her signature. Wambua was also not known to her.

On further perusal of the record, she realized that her co-Directors had also transferred their shares to one Mr. Warsame. Mr. Warsame was a foreigner working for an international oil and gas company in Kenya. Christopher and Najem had clearly contravened the Company's Articles of Association of the Company, and the relevant laws in Kenya.

Mildred also learnt that Christopher, Najem and Warsame had been involved in the following malpractices: They had approved credit extension to house buyer beyond the limit set by the three Directors on 19th June 2016, they had overcharged the company's vehicle imports, received monies from suppliers and signed sham financial statement. Furthermore, Christopher and Najem had established a subsidiary company in Uganda where the funds from the fraudulent activities were channeled to. In view of the above excerpt:

Required:

- a) Briefly explain the legal implication of Mildred holding shares in a private company limited by shares. (5 marks)
- b) Elaborate on the rules that govern any changes made in the shareholding of a private company. (5 marks)
- c) Discuss any three rules governing meetings of Company Directors. (6 marks)
- d) Describe any three duties contravened by Christopher and Najem as Directors of the Company. (9 marks)

QUESTION TWO

Watamu Resort has filed a petition to wind up a company on the ground that is insolvent and unable to pay its debt owed to it. In view of this excerpt,

- a) Discuss the process of liquidation that is initiated by a creditor. (9 marks)
- b) Elaborate on any three provisions that govern the liability of members to contribute to payment of debts and liabilities of an insolvent company. (6 marks)

QUESTION THREE

- a) Enumerate any five breaches of duty by a Company Secretary of a public company which may lead to civil and criminal liability. (10 marks)

- b) Alexander and Benard jointly participated in an online gambling contest. They won a sum of 2 million which was deposited in Alexander's savings account. Advise Alexander on whether their joint venture can be regarded as a partnership under the law. (5 marks)

QUESTION FOUR

- a) Mwate Limited intends to expand its operation by opening three new branches in the next one year. The Board of Directors is contemplating on whether to issue debentures or shares. Advise the Board of Directors on five disadvantages of debentures over shares as a method of raising capital. (10 marks)
- b) Briefly explain on any five categories of resolutions made by limited companies in Kenya. (5 marks)

QUESTION FIVE

- a) A prospectus of a company said that the company had paid dividend every year between 2020 and 2023, years when many businesses were affected by the Covid 19 pandemic, thus giving the impression of a financially stable company. The company had, however, made major losses, and was only to pay a dividend out of reserves accumulated in previous years. Advise the persons who bought the shares on the faith of the prospectus. (5 marks)
- b) Briefly explain any five promotional acts carried out by promoters. (10 marks)

QUESTION SIX

- a) In 2020, the Directors of XYZ Ltd took 1000 shares in a registered company. The shareholders are opposed to this decision. Advise the Directors (5 marks)
- b) Margaret is a shareholder in Magnet Ltd. A resolution was passed at a general meeting directing the Directors to pay interim dividends. Assess its legal implication. (10 marks)