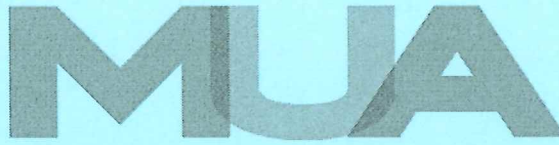


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UNDERGRADUATE UNIVERSITY EXAMINATIONS

SCHOOL OF MANAGEMENT AND LEADERSHIP

DEGREE OF BACHELOR OF MANAGEMENT AND LEADERSHIP/BACHELOR  
OF COMMERCE

**BML 210/BCM 223: COMPANY LAW**

**DATE: 6<sup>TH</sup> April 2023**

**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:

### BUCKHURST PROPERTIES LIMITED

Jamal, a property developer, identified a development property for sale known as Buckhurst Estate. He entered into a contract to purchase the property for a sum of Kshs 250,000,000/=. Unfortunately for him, he did not have sufficient cash resources to enable him complete the purchase. In the circumstances, he sought and obtained assistance from Smith, who was willing to advance him Kshs 85,000,000/=.

Jamal and Smith entered into an agreement whereby they agreed to form a private limited company with a nominal capital of Kshs 100,000/= which they were to subscribe to in equal shares. Jamal and Smith formed a company, Buckhurst Properties Limited in order to buy and resell an estate. Jamal and Smith were the first Directors of the Company, as were two of their nominees.

The articles of association of the Company provided that subsequent Directors may be appointed by an ordinary resolution of the members. In addition, the Company's articles allowed for the creation of different types of shares, with each class enjoying different rights.

Following the purchase of the property, initial attempts to resell the property at a profit were unfruitful. Consequently, Jamal commenced plans to have the property developed.

At the time, Jamal was acting in the role of the Managing Director of the Company. In his role, Jamal appointed XYZ Architects to prepare the plans for the development of the property and to submit the architectural plans to the relevant authority for approvals. The other directors knew this but did nothing about it.

After the Architect had done their job, they requested payment from the Board. The Board refused to pay, and the architect sued. Their arguments was that the Company had represented that Jamal was the Managing Director with authority to bind the Company.

In response, the Board claimed that there was no ordinary resolution of a Board of Directors' meeting authorizing Jamal to enter into contract on behalf of the Company as its Managing Director. They argued that the Company therefore was not obliged to pay.

**Required:**

- a) In view of the excerpt above, advise the Architects on whether the Company is liable to pay their fees for holding out Jamal as its Managing Director. (5 marks)
- b) Briefly explain any **three** grounds that may lead to an objection to the registration of the Company's name in a court of law. (6 marks)
- c) Elaborate any **four** legal restrictions placed on private company limited by shares by the Companies Act. (8 marks)
- d) In relation to share capital, identify any **three** types of shares that may be issued to members by Buckhurst Properties Limited. (6 marks)

**QUESTION TWO**

On 5<sup>th</sup> April 2022, the Court allowed a petition filed against Twins Limited, and issued a liquidation order.

- a) Discuss any **three** consequences of the order by the Court. (6 marks)
- b) Describe the order of distribution of assets in the liquidation (9 marks)

**QUESTION THREE**

- a) 'At every annual general meeting (AGM) a retiring auditor is always deemed to have been re-appointed without any resolution to that effect' Discuss any **four** exceptions to that rule. (9 marks)

- b) Briefly explain any **three** circumstances under which a company may be deemed to be a subsidiary under the Companies Act. (6 marks)

#### QUESTION FOUR

- a) Malindi Limited requires funds for its major infrastructure projects in Kwale County. The Board of Directors has decided to allot further shares to their existing shareholders and the Public. Advise the Board on any **three** modes of allotment of shares. (6 marks)
- b) Elaborate on any **three** ways an extra ordinary general meeting can be convened in Kenya. (9 marks)

#### QUESTION FIVE

- a) Waridi and Watamu have entered into a shareholders' agreement with minority shareholders of Mambo Company Limited. Outline any **five** detail provisions that are included in this agreement (5 marks)
- b) Peterson purchased 1000 shares in a company on the faith of statement in the prospectus which she has just discovered to be untrue and misleading. Discuss any **five** remedies in civil law available to Peterson. (10 marks)

#### QUESTION SIX

Define the following terms as used in Companies Act

- a) Debenture (4 marks)
- b) Derivative claim (7 marks)
- c) Administration (4 marks)