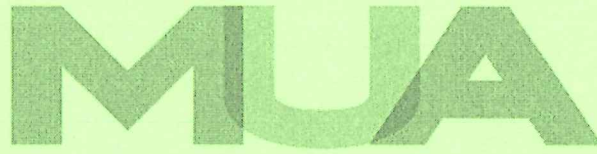


The  
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**UNDERGRADUATE UNIVERSITY EXAMINATIONS**  
**SCHOOL OF MANAGEMENT AND LEADERSHIP**  
**DEGREE OF BACHELOR OF MANAGEMENT AND LEADERSHIP/**  
**BACHELOR OF COMMERCE**

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

**DATE:                                31<sup>ST</sup> JULY 2018**

**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:**

Entrepreneurs should have the opportunity to turn their ideas into a business. Often a first step is to formally register a company. Yet in many countries the bureaucratic obstacles and high costs imposed by inefficient company registries deter people with good business ideas from embarking on the path of formal entrepreneurship.

Formal registration has substantial benefits for businesses and for the economy as a whole. Registered companies can benefit from legal and financial services provided by courts and commercial banks, services not available to unregistered businesses. Their employees benefit from social security protections. And the economy benefits from positive spillovers: where formal entrepreneurship is higher, job creation and economic growth also tend to be higher.

Moreover, as more businesses formalize, the tax base expands, enabling the government to spend on productivity-enhancing areas and pursue other social and economic policy objectives. As the first interface between the regulator and a potential new entrepreneur, company registries hold the key to the formal economy, providing businesses with a legal identity and empowering them to participate fully and within the framework of the law. Thus the relative ease or difficulty of start-up can have important economic consequences.

Evidence suggests that regulatory reforms making it easier to start a formal business are associated with increases in the number of newly registered firms and with higher levels of employment and productivity. Conversely, excessively cumbersome regulation of startup is associated with higher levels of corruption and informality.

**Required:**

- (a) State and explain the main pre-requisites that would be required in forming the company in Kenya. **(15 marks)**

- (b) Briefly explain the advantages of company incorporation vis a vis partnership as forms of business associations. (10 marks)

### QUESTION TWO

- (a) The celebrated case of *Salomon versus Salomon* has always been cited as the basis of a company's existence as independent entity or person. What does this case portend for the corporate world and what are the main features it sets out? Please discuss in detail the principles and features behind the above case. (10 marks)
- (b) Are there instances where the features in this case could be lifted and liability apportioned to another person other than the company? Please discuss such instances (5 marks)

### QUESTION THREE

In the last couple of years, Kenya has witnessed a depressed economy stemming from emerging environmental global challenges such as climate change that poses a risk to food security of the country. Additionally, the country is shouldering a huge wage bill coupled by huge debt to spur development over and above being a net importer which further weakens our local currency. This has resulted to high unemployment levels as well as low productivity in key private sector corporates and has occasioned some of these institutions to face imminent collapse or collapse ab initio. From your understanding of company law, please set out an advisory to such institutions on how they can remain resilient in such difficult times and more importantly the process on how effectively they can wind up as a company if circumstances so warrant. (15 marks)

### QUESTION FOUR

Company Directors are the core of any institution since they hold an agency position to the company shareholders. They are therefore bestowed with powers and duties

to effectively manage and run the company. Discuss the powers and duties of directors. (15 marks)

### QUESTION FIVE

Write brief notes on the following:

- a) The importance of meetings. (5 marks)
- b) Classification of meetings. (3 marks)
- c) Categories of share capital. (2 marks)
- d) Legal personality principle. (5 marks)

### QUESTION SIX

- a) Describe the Company's constitutive documents that are required prior to registering a company and what they entail. (10 marks)
- b) Explain the rule in *Foss vs Harbottle* (5 marks)