



CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

FRIDAY: 25 April 2025. Morning Paper.

Time Allowed: 3 hours.

This paper consists of seven (7) questions. Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) Your friend intends to start running a medium sized enterprise as a sole proprietor in his local town. He has come to you for advise on the possible challenges he might encounter as a result of operating his business.

Required:

Advise your friend on **FOUR** possible challenges about the form of business he intends to operate. (4 marks)

- (b) John Martin wishes to register a company that will offer cleaning services. He is not sure on how to select a name for the company as he is afraid that the name he wishes to use might be rejected. He has come to you for advice.

Required:

With reference to the above statement, describe **SIX** circumstances when the registrar of companies might reject a proposed name. (6 marks)

- (c) Kitabu Ltd., a private company incorporated in Kenya, is contemplating extending a loan to one of its directors, James Mutiso. The loan is intended to assist James Mutiso in purchasing a residential property in Runda.

Required:

Advise the board of directors on **FIVE** legal requirements of providing such a loan to James Mutiso. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) (i) Explain the meaning of a Central Depository. (2 marks)

(ii) Highlight **SIX** duties of a Central Depository. (6 marks)

- (b) Discuss **SIX** rights of members of a registered company in your country. (12 marks)

(Total: 20 marks)

QUESTION THREE

- (a) ABC Corporation, a publicly traded company in Kenya, intends to consolidate its share capital and simplify its capital structure by varying the rights attached to its multiple classes of preference shares. However, some preference shareholders are opposed to the proposed variation, arguing that it would unfairly prejudice their interests.

Required:

Discuss the legal principles and considerations involved in determining the permissibility of the variation of class rights in this scenario, taking into account the rights of dissenting shareholders and the company's objectives. (8 marks)

- (b) Describe **SIX** classes of debentures. (12 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) During a board meeting of Pofu Limited, the directors approved a resolution authorising the company to secure a loan of Sh.10,000,000 to expand its operations. However, debate arose thereafter on whether the resolution required unanimous approval or a simple majority under the company's Articles of Association. One of the directors claimed that the resolution did not follow the requisite steps of drafting resolution.

Required:

- (i) Explain **TWO** ways in which the type of resolution affects its approval requirements. (4 marks)
- (ii) Advise the Board of Pofu limited on the requisite steps of drafting a company resolution to avoid future problems. (6 marks)
- (b) Summarise the process of the removal of a company secretary from the office in your country. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Outline **FIVE** contents of an auditor's annual report. (5 marks)
- (b) Highlight **SEVEN** responsibilities of an auditor in your country during the audit process. (7 marks)
- (c) Financial statements of a company typically include some key components as required by the International Financial Reporting Standards (IFRS).

Required:

- Describe **FOUR** of these key components. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Identify **FOUR** types of liquidation of a company. (4 marks)
- (b) In law, a liquidator is the officer appointed when a company goes into winding-up or liquidation to perform certain duties.
- With reference to this statement, outline **SIX** duties of a liquidator. (6 marks)
- (c) In relation to corporate structuring, explain the following concepts:
- (i) Mergers. (2 marks)
- (ii) Compromises. (2 marks)
- (iii) Arrangements. (2 marks)
- (iv) Reconstructions. (2 marks)
- (v) Amalgamations. (2 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to the Companies Act CAP 486, describe **FIVE** circumstances in which the name of a registered foreign company can be struck off from the register of foreign companies. (10 marks)
- (b) In 2024, Zim Limited faced a decline in stock value amid allegations of financial misreporting. The company appointed an independent inspector with the power to examine company records, interview staff and audit financial statements. The investigations revealed fraudulent reporting by senior finance employees, leading to immediate dismissal of some employees and reforms in the company's internal controls.

Required:

- Explain **FIVE** reasons why the appointment of the independent inspector would prevent the issue from escalating. (10 marks)
- (Total: 20 marks)**
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CPA INTERMEDIATE LEVEL

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COMPANY LAW

THURSDAY: 5 December 2024. Morning Paper.

Time Allowed: 3 hours.

This paper has seven (7) questions. Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) Outline **FOUR** characteristics that define the legal framework within which companies operate in Kenya. (4 marks)
- (b) Explain **TWO** differences between a “holding company” and a “subsidiary company”. (4 marks)
- (c) A Memorandum of Association was judicially defined by Lord Cairns in Ashbury Railway Carriage Co Ltd vs. Riche as “the charter” which defines the limitation of the powers of a company to be established under the Act.

With reference to the above statement, analyse **FOUR** rules concerning the legal effect of the memorandum of association of a company. (4 marks)

- (d) Describe the process of converting a private company to a public company. (8 marks)

(Total: 20 marks)

QUESTION TWO

- (a) It is a requirement by law that every company should keep a register of its members. Identify **FIVE** content of this register. (5 marks)
- (b) Explain **FIVE** ways that a person can cease to be a member of a company in your country. (5 marks)
- (c) Your friend Wilfred Mbecheh wishes to buy shares in an investment company. He has no idea what shares are and he has come to you for advice.

Advise him on the following:

- (i) **TWO** classes of shares. (2 marks)
- (ii) **THREE** rights attached to shares. (3 marks)
- (iii) **FIVE** characteristics of shares. (5 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Identify **FIVE** company assets that can be used to secure a company’s borrowings. (5 marks)
- (b)
 - (i) Explain the meaning of the term “ultra vires borrowing”. (1 mark)
 - (ii) Discuss **THREE** equitable remedies available to a lender of money “ultra vires” to the company. (6 marks)
- (c) Describe **FOUR** types of share capital. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) In relation to company meetings:
- (i) Outline **FOUR** specific essentials and considerations for conducting a hybrid company meeting. (4 marks)
 - (ii) Describe **THREE** types of company meetings. (6 marks)
- (b) Examine **FIVE** exceptions to the doctrine of indoor management. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) In relation to company accounts:
- (i) Identify **FOUR** exemptions provided for small companies regarding the form and preparation of accounts. (4 marks)
 - (ii) Describe **FOUR** disclosures that are necessary in group accounts. (4 marks)
- (b) Discuss **FOUR** defenses that a company secretary can rely on to avoid liability. (4 marks)
- (c) Auditors may face civil liability when their clients or third parties suffer financial losses.
- With reference to the above statement, examine **FOUR** circumstances where civil liability can arise. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In relation to corporate restructuring, explain the following concepts:
- (i) Legal restructuring. (2 marks)
 - (ii) Organisational restructuring. (2 marks)
 - (iii) Operational restructuring. (2 marks)
 - (iv) Financial restructuring. (2 marks)
- (b) In relation to financial audit of company accounts, explain **THREE** types of auditor's opinion. (6 marks)
- (c) Discuss **SIX** powers of an inspector appointed to investigate affairs of a company. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) In relation to company liquidation:
- (i) Explain the term "compulsory liquidation". (2 marks)
 - (ii) List **FIVE** parties who can petition for a compulsory liquidation. (5 marks)
- (b) It is provided by law that companies incorporated outside Kenya should provide certain documents and information within 30 days of establishment of the business.
- Explain **FIVE** documents and relevant information required by the registrar of companies to register such companies. (5 marks)
- (c) Explain **FOUR** objectives of placing a company under administration. (8 marks)
- (Total: 20 marks)**
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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

THURSDAY: 22 August 2024. Morning Paper.

Time Allowed: 3 hours.

This paper has seven (7) questions. Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) With reference to companies, explain the term “body corporate”. (2 marks)
- (b) Pizza World Enterprises Ltd., is a small family-owned company operating a chain of restaurants. The company has of late been facing financial difficulties. One reason being that the company’s directors have been using the company’s funds for personal expenses. As a result, the company has not been honouring its obligations to its creditors. The creditors are now contemplating suing the company directors.

Required:

Discuss **THREE** possibilities of the court lifting the veil of incorporation when the case is brought in a court of competent jurisdiction. (6 marks)

- (c) Analyse **SIX** circumstances under which a company could repudiate pre-incorporation contracts. (12 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight **THREE** characteristics of a company limited by guarantee. (3 marks)
- (b) State **FIVE** legal implications of issuing shares at a discount. (5 marks)
- (c) Discuss **SIX** ways in which a person might acquire membership in a company. (12 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Define the term “debentures”. (2 marks)
- (b) Distinguish between “convertible debentures” and “non-convertible debentures”. (4 marks)
- (c) Amani Limited was scheduled to hold its Annual General Meeting (AGM) on 30 June 2024. The company secretary sent out notice for the meeting on 10 June 2024. On the day of the meeting, only 13 shareholders out of the total 209 shareholders attended the meeting, either in person or by proxy. The company's articles of association specified that the quorum for an AGM was 20 shareholders. During the meeting, the shareholders present approved the annual financial statements and declared a final dividend.

Required:

Discuss the legal implications of:

- (i) The notice period. (2 marks)
- (ii) The quorum. (2 marks)
- (iii) Resolutions made during the AGM. (2 marks)
- (d) Outline **EIGHT** general meeting agenda items that require a special resolution under the Companies Act. (8 marks)

(Total: 20 marks)

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[Download Answers in pdf form at www.kasnebnote.co.ke](http://www.kasnebnote.co.ke)

QUESTION FOUR

- (a) Explain **FIVE** ways in which directors may handle conflict of interest in a company. (5 marks)
- (b) Outline **FIVE** powers of directors under the Companies Act. (5 marks)
- (c) With regard to Companies Act, describe **FIVE** roles of a company secretary in ensuring good corporate governance within a company. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Ben Apollo borrowed Sh.500,000 from Bank of Pesadi and deposited his Simba Supermarket Ltd.'s share certificate with a blank transfer as security. Subsequently, he bought goods from the supermarket on credit. The goods were worth Sh.150,000. The articles of association of Simba Supermarket Ltd., conferred a first and paramount lien on its members' share for debts due to the supermarket. Before the supermarket's lien arose, the bank gave the supermarket notice of Ben Apollo's share certificate having been lodged with the bank as security for the loan. Ben Apollo is unable to pay for the goods he obtained from Simba Supermarket Ltd. and has also defaulted on the loan. Both Simba Supermarket Ltd. and the Bank of Pesadi now want to exercise their respective liens on the shares.

Required:

- Discuss the legal position and advise Simba Supermarket Ltd. as appropriate. (4 marks)
- (b) With regard to formation of a company, highlight **THREE** fiduciary duties of a promoter. (6 marks)
- (c) Examine **FIVE** consequences of non-compliance with audit requirements under company law. (10 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Outline **FIVE** circumstances under which the Registrar of Companies may order an investigation into the affairs of a company. (5 marks)
- (b) Summarise **SEVEN** roles of an administrator in a company that is under administration. (7 marks)
- (c) Analyse **FOUR** reasons for undertaking corporate restructuring. (8 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) In *Re Yorkshire Wool Combers Association Ltd.*, a floating charge is described as one that hovers over the assets of the company.

Required:

Examine **THREE** characteristics of a floating charge. (6 marks)

- (ii) Dee Ltd., registered a charge on its fleet of motor vehicles in favour of Pepeta Bank to secure a loan of Sh.2,000,000. Dee Ltd., has not honoured its loan repayment obligation for the past 14 months and Pepeta Bank considers the loan as defaulted.

Required:

State **FOUR** options available to Pepeta Bank to recover their money. (4 marks)

- (b) With reference to companies, discuss **FIVE** benefits which could accrue to a company from filing annual returns. (10 marks)
- (Total: 20 marks)**
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THURSDAY: 25 April 2024. Morning Paper.

Time Allowed: 3 hours.

This paper has seven (7) questions. Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) (i) Explain the meaning of “consolidation of a company’s share capital”. (2 marks)
 - (ii) Outline **SIX** reasons why a company might opt to consolidate its share capital. (6 marks)
 - (b) Summarise **FIVE** similarities between “debentures” and “shares”. (5 marks)
 - (c) Examine **SEVEN** rules governing the alteration of company status in your country. (7 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight **SIX** legal effects of the articles of association of a company. (6 marks)
 - (b) Identify **SEVEN** reasons why a company will effect a corporate restructuring. (7 marks)
 - (c) Outline the procedure for removal of a company director from office. (7 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Outline the priority of distribution of assets of a company after dissolution. (3 marks)
 - (b) Distinguish between “Private Limited Company” and “Public Limited Company”. (4 marks)
 - (c) With reference to incorporation of companies:
 - (i) Explain the doctrine of adoption. (2 marks)
 - (ii) Describe how the doctrine of adoption relates to pre-incorporation contracts. (5 marks)
 - (d) Explain the following terms:
 - (i) Receivership. (2 marks)
 - (ii) Administration. (2 marks)
 - (iii) Liquidation. (2 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Explain the legal position of a company secretary. (3 marks)
 - (b) Analyse **SEVEN** rules governing beneficial owners of companies in your country. (7 marks)
 - (c) With reference to shareholding, examine **FIVE** roles of derivative action. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Outline **FIVE** legal requirements for a company to issue bonds or debentures as a form of debt capital. (5 marks)
- (b) With regard to financial reporting and disclosures, summarise **FIVE** legal obligations of foreign companies in your country. (5 marks)
- (c) Patapata Company Ltd. is a company with both ordinary shares and preference shares issued to its shareholders. The ordinary shares carry voting rights whereas the preference shares do not. The company has been performing well and the board of directors proposes a variation of class rights, intending to grant voting rights to the preference shareholders. However, this proposed variation is met with resistance from some of the ordinary shareholders who fear dilution of their voting power.

Required:

Analyse the situation and advise the board of Patapata Company Ltd., on the legal framework regarding the variation of class rights. (10 marks)

(Total: 20 marks)

QUESTION SIX

- (a) Highlight **FIVE** roles of the board of directors in the oversight of company accounts under company law in your country. (5 marks)
- (b) Outline **FIVE** powers of a company's external auditor. (5 marks)
- (c) XYZ Ltd., a publicly listed company, is scheduled to hold its annual general meeting (AGM) next month. You have been requested to draft an agenda for the AGM and provide guidance on the legal requirements and procedures that must be followed.

Required:

Outline **FIVE** items that should be included in the agenda for XYZ Ltd.'s AGM, and explain the legal requirements and procedures associated with each item. (10 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) In relation to company accounts, outline **SEVEN** consequences of non-compliance with accounting standards and disclosure requirements. (7 marks)
- (b) Examine **SIX** circumstances under which an inspector may be appointed by a regulatory authority to investigate the affairs of a company. (6 marks)
- (c) Identify **SEVEN** mechanisms that could be put in place to protect shareholders' rights and interests during corporate restructuring. (7 marks)

(Total: 20 marks)

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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

THURSDAY: 7 December 2023. Morning Paper.

Time Allowed: 3 hours.

This paper has seven (7) questions. Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) Explain the concept of legal personality in the context of corporate entities. (4 marks)
- (b) Examine **THREE** classifications of companies on the basis of liability. (6 marks)
- (c) Discuss the legal responsibilities and potential liabilities that promoters may incur during the pre-incorporation stage of a company. (6 marks)
- (d) Tom Bwire is acting as a promoter of Tomtom Company Ltd. and is negotiating a lease agreement for office space at Upper Hill in Nairobi.

Describe what Tom should do to ensure that once the company is formed, the lease agreement does not bind him personally. (4 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Explain the term “membership” in a company. (2 marks)
- (b) Describe **TWO** different types of membership that may exist in a company. (4 marks)
- (c) Alan Simba purchased shares in NZE Company Ltd. hence became a shareholder. He is unaware of his rights as a shareholder and has approached you to advise him on his rights as a shareholder.

Advise Alan Simba on **SIX** rights conferred upon him for being a shareholder of the company. (6 marks)

- (d) (i) Explain the term “bonus shares”. (2 marks)
- (ii) Explain **THREE** reasons why a company may issue bonus shares to its shareholders. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) (i) Differentiate between “secured” and “unsecured” debt in a company. (4 marks)
- (ii) Discuss **THREE** characteristics of a debenture. (6 marks)
- (b) (i) Explain the meaning of the term “proxy” in relation to company meetings. (2 marks)
- (ii) Analyse **FOUR** differences between a “board meeting” and a “general meeting”. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Highlight **FIVE** main responsibilities of a board of directors in a company. (5 marks)
- (b) Explain **FIVE** key components that must be included in the financial reports of a company in your country. (5 marks)
- (c) In relation to company investigations:
- (i) Examine **FIVE** circumstances under which an investigation may be initiated. (5 marks)
- (ii) Summarise **FIVE** potential outcomes or recommendations from an investigation into a company's affairs. (5 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Highlight **FOUR** powers of an administrator in corporate administration. (4 marks)
- (b) Describe the process of appointing a receiver during the winding up of a company. (10 marks)
- (c) Examine **THREE** legal consequences that may befall a foreign company operating in your country, if it fails to comply with the legal requirements as provided for in the Companies Act. (6 marks)

(Total: 20 marks)

QUESTION SIX

- (a) The role of auditing is undertaken by a person with the relevant competencies and independence to make appropriate judgment.

With reference to the above statement, identify **SIX** persons who are disqualified from appointment as auditors. (6 marks)

- (b) Describe **THREE** rights of auditors of a company as provided for in the Companies Act in your country. (6 marks)
- (c) Explain **FOUR** ways through which a company limited by shares or guarantee may if authorised by its articles, alter its share capital. (8 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) Enumerate **TWO** documents that are required to accompany annual returns of company limited by guarantee. (2 marks)
- (b) Discuss **TWO** consequences that could arise when a company fails to lodge proper annual returns on time. (4 marks)
- (c) (i) Identify **TWO** persons who are disqualified from acting as a company secretary. (2 marks)
- (ii) Explain **FOUR** breaches and omissions of duty that might be committed by a company secretary. (4 marks)
- (d) Patricia Wahito wishes to form a company and has approached you seeking guidance on the choice of a name. She has read from the Companies Act that the name chosen must not be undesirable in the opinion of the Registrar.

Required:

- (i) With reference to the above statement, advise Patricia Wahito on **FOUR** matters to consider in choosing a name for her company. (4 marks)
- (ii) Identify **FOUR** places and documents upon which the company's name must be displayed. (4 marks)

(Total: 20 marks)

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COMPANY LAW

THURSDAY: 24 August 2023. Morning Paper.

Time Allowed: 3 hours.

Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) Explain **THREE** ways in which persons intending to form a company may avoid personal liability on contracts they make on behalf of the proposed company. (6 marks)
- (b) Summarise any **FOUR** legal duties of a company's external auditor. (4 marks)
- (c) The general rule is that companies must not give loans to directors. However, there are certain circumstances under which a company can give loans to a director.

In relation to the above statement, examine **THREE** such circumstances. (6 marks)
- (d) Outline **FOUR** contents of a certificate of incorporation of a company. (4 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Distinguish between "participative preference shares" and "non-participative preference shares". (4 marks)
- (b) Highlight **FOUR** statutory registers that must be maintained and kept at the registered office of a company. (4 marks)
- (c) A company can be wound up for failure to pay its debts. Explain to Edna Makena, one of the creditors of Ushindi Co. Ltd, **THREE** circumstances under which a company may be deemed unable to pay its debts. (6 marks)
- (d) Describe **THREE** types of company prospectuses. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Explain **THREE** pieces of information that a Director's report must contain once a company has issued debentures in any financial year. (6 marks)
- (b) Summarise **SIX** contents of a notice of a general meeting. (6 marks)
- (c) List **FOUR** fiduciary duties of company directors. (4 marks)
- (d) A private company need not have a company secretary.

Explain **TWO** ways in which service and actions are carried out when a private company elects not to have a company secretary. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) State **SIX** elements of proper accounting records under company law. (6 marks)
 - (b) Highlight **SIX** offences relating to liquidation of companies. (6 marks)
 - (c) Evaluate **FOUR** ways in which a company can reorganise its share capital. (8 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) In relation to investigation of company affairs:
 - (i) Explain the purpose of an investigation into a company's affairs under company law. (4 marks)
 - (ii) Identify **FOUR** parties that have the authority to initiate an investigation of a company's affairs under company law. (4 marks)
 - (iii) Highlight **SIX** consequences of an adverse finding from investigation of a company's affairs. (6 marks)
 - (b) Describe **THREE** reporting requirements for foreign companies operating in Kenya. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In relation to corporate restructuring, explain the following terms:
 - (i) Compromises. (2 marks)
 - (ii) Arrangements. (2 marks)
 - (iii) Reconstructions. (2 marks)
 - (iv) Takeovers. (2 marks)
 - (b) Discuss **THREE** advantages and **THREE** disadvantages of the principle of legal personality. (12 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Describe **FOUR** types of opinions that can be issued in an Auditor's report. (8 marks)
 - (b) With specific reference to beneficial ownership:
 - (i) Explain **THREE** criteria that a beneficial owner must satisfy. (6 marks)
 - (ii) State **SIX** particulars to be entered in the register of beneficial owners as prescribed by the regulations on beneficial ownership. (6 marks)
- (Total: 20 marks)**
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CPA INTERMEDIATE LEVEL

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COMPANY LAW

THURSDAY: 27 April 2023. Morning Paper.

Time Allowed: 3 hours.

Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) A group of four graduates have decided to form a small business firm to deal in import and export trade. You have been appointed as a member of the technical committee to help in registering the firm as a limited liability company. Explain to the committee the matters below:
- (i) The **FIVE** legal characteristics of the entity that will be registered. (5 marks)
 - (ii) **FIVE** particulars to be included in the company's Memorandum of Association. (5 marks)
- (b) With respect to the nature and classification of companies, distinguish between a registered company and a:
- (i) Statutory corporation. (1 mark)
 - (ii) Partnership. (4 marks)
- (c) Outline **FIVE** instances under common law where the veil of incorporation may be lifted. (5 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) With respect to company meetings, answer the following questions:
- (i) Define a "special notice". (2 marks)
 - (ii) Highlight **TWO** circumstances under which a special notice would be required. (4 marks)
 - (iii) Describe **FOUR** matters that require to be determined by members through a special resolution. (4 marks)
- (b) In the context of Company Directors:
- (i) Explain the indoor management rule. (4 marks)
 - (ii) Identify what constitutes Directors' remuneration. (6 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) In relation to company membership:
- (i) Describe **TWO** rules which a company might use to remove from its register of members details of a former member. (4 marks)
 - (ii) Explain the circumstances under which a court might order rectification of the register of members of a company. (2 marks)
 - (iii) Explain **FOUR** disadvantages that a minority shareholder may face in bringing a derivative action. (4 marks)
- (b) Describe **FIVE** responsibilities of a company secretary. (10 marks)

(Total: 20 marks)

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QUESTION FOUR

- (a) The general rule is that an auditor is only liable to the company for professional negligence. Discuss **THREE** circumstances under which the auditor of a company might be liable to third parties for professional negligence. (6 marks)
- (b) Outline **THREE** items contained in a company's auditor report. (3 marks)
- (c) Directors are required to prepare a director's report to accompany the financial statement presented to members. Highlight **FOUR** matters captured in a director's report. (8 marks)
- (d) Identify **THREE** ways in which the appointment of a Court appointed inspector may be terminated. (3 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Describe **THREE** circumstances under which a company is allowed to pay commission on shares. (6 marks)
- (b) Highlight the circumstances under which a company might decline to register a transfer of shares. (6 marks)
- (c) Highlight the particulars contained in a company prospectus. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Highlight **FOUR** grounds upon which the commissioner of insurance might petition for the winding up of a company (4 marks)
- (b) Highlight **SIX** powers that a liquidator can exercise without the sanction of the court. (6 marks)
- (c) In the context of foreign companies:
- (i) Highlight **FOUR** particulars contained in a certificate of registration of a foreign company. (4 marks)
- (ii) Discuss the options available to a foreign company to establish presence in Kenya. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Highlight **FIVE** forms of corporate restructuring. (5 marks)
- (b) In the context of debt capital, state **FIVE** advantages of a trust deed. (5 marks)
- (c) Highlight the documents that a liquidator must lodge with the registrar of companies when making an application for voluntary winding up of a company. (5 marks)
- (d) With respect to company administration, highlight **FIVE** powers exercised by an administrator appointed by the court. (5 marks)
- (Total: 20 marks)**
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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

THURSDAY: 8 December 2022. Morning Paper.

Time Allowed: 3 hours.

Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) Highlight **FIVE** rules relating to the naming of companies. (5 marks)
 - (b) Describe the effect of the principle elucidated by Lord MacNaghten in the case of Salomon-V-Salomon. (7 marks)
 - (c) Explain the difference between a “company limited by shares” and a “company limited by guarantee.” (4 marks)
 - (d) Identify **FOUR** features of an unlimited company. (4 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) The articles of association form the framework within which the company and its members relate. Highlight **FIVE** limitations that must be observed when altering the articles of a company. (5 marks)
 - (b) In relation to corporate restructuring:
 - (i) Define amalgamation as a corporate restructuring strategy. (2 marks)
 - (ii) Highlight **THREE** elements of corporate restructuring. (6 marks)
 - (c) With specific reference to company secretaries:
 - (i) Identify the circumstance under which a private company is required to have a company secretary. (1 mark)
 - (ii) Describe the ways in which a private company that does not have a company secretary undertakes service of documents and authorises matters that require a company secretary. (6 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Describe **SEVEN** reasons why a shareholder’s membership in a company might be terminated. (7 marks)
 - (b) Highlight **THREE** items that form the content of a members’ register in a company. (3 marks)
 - (c) Brian is a preference shareholder in Duniani Company limited. He is entitled to a dividend of 11%. The company has however been suffering losses and has passed a resolution in a general meeting to reduce the dividends on preference shares to 7%.

Advise Brian on:
 - (i) His rights as a preference shareholder. (6 marks)
 - (ii) Whether the company can vary the dividends he may be given. (4 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Describe the general contents of a company's annual return. (6 marks)
- (b) Explain the following types of share capital:
- (i) Paid-Up Capital. (2 marks)
 - (ii) Issued Share Capital. (2 marks)
- (c) Summarise the following in relation to company administration:
- (i) **THREE** objectives of administration. (3 marks)
 - (ii) **THREE** persons who are entitled to make an application to the Court for an administration order. (3 marks)
 - (iii) Highlight **FOUR** powers exercised by an administrator appointed by the Court. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) In Re Yorkshire Wool Combers Association Limited, a floating charge is described as one that hovers over the assets of the company as compared to a fixed charge. With reference to the above statement:
- (i) Describe **THREE** circumstances that will cause the crystallisation of a floating charge. (4 marks)
 - (ii) Outline **TWO** characteristics of a fixed charge. (2 marks)
- (b) Madax Transporters Limited registered a charge on its fleet of motor vehicles in favour of Kopesha Bank to secure a borrowing of Kenya Shillings Fifty Million (Sh. 50,000,000). Madax Transporters Limited has defaulted on the loan repayment.
- Outline **FOUR** options available to Kopesha Bank as the chargee. (4 marks)
- (c) Highlight **SIX** instances when one person can form quorum in a company meeting. (6 marks)
- (d) Makato Limited will be holding its Annual General Meeting (AGM) in thirty (30) days' time. The meeting is set to be held at the Kasarani Gymnasium from 10.00 a.m.
- Outline **FOUR** items to be indicated in the notice to be shared with the members of the company. (4 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) You have been invited to speak at the board induction meeting of Ciffina Limited where three new directors have been appointed.
- In relation to the above statement, outline **FIVE** statutory duties of a director. (5 marks)
- (b) Discuss **THREE** remedies available to a lender who has acted in good faith and without knowledge that the company has borrowed money beyond its powers. (6 marks)
- (c) The role of a financial auditor is played by a person with the relevant competencies and independence to make appropriate judgement.
- Identify **FOUR** persons who are disqualified from appointment as financial auditors. (4 marks)
- (d) Highlight **FIVE** types of returns that must be delivered to the Registrar of Companies by a foreign company. (5 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Directors are required to prepare a directors' report to accompany the annual financial statements presented to members at an Annual General Meeting (AGM).

Describe **FIVE** matters that must be captured in a directors' report. (10 marks)

- (b) Identify **FIVE** instances when a court may appoint one or more competent inspectors to investigate the affairs of a company. (5 marks)

- (c) Highlight **FIVE** documents that a liquidator must lodge with the Registrar of Companies when making an application for voluntary winding up of a company. (5 marks)

(Total: 20 marks)

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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

TUESDAY: 2 August 2022. Morning paper

Time Allowed: 3 hours.

Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) (i) Explain three advantages of a public company over a private company. (6 marks)
- (ii) Distinguish between “corporation sole” and “corporation aggregate”. (4 marks)
- (b) In relation to Company Directors:
 - (i) Describe four items that constitute directors’ remuneration. (4 marks)
 - (ii) Summarise the information on loans, quasi-loans or credit transactions in favour of directors, their controlled bodies corporate and their connected entities that is required to be included in the notes to the financial statements of a company. (6 marks)

(Total: 20 marks)

QUESTION TWO

- (a) In relation to company accounts:
 - (i) Define the term “annual financial statements”. (2 marks)
 - (ii) Outline four financial statements prepared by a company annually. (4 marks)
- (b) The company Secretary is a senior position in a public or private company. With reference to this statement:
 - (i) Explain the status of a Company Secretary. (3 marks)
 - (ii) Discuss three duties of a company secretary in a quoted company. (3 marks)
- (c) All limited liability companies need to appoint an auditor whose task is to express an independent opinion on whether financial statements show a true and fair view of the financial performance and position of the company.

Required:

Discuss four instances when it could be deemed that the financial statements present a true and fair view of the company. (8 marks)

(Total: 20 marks)

QUESTION THREE

- (a) With reference to formation of companies:
 - (i) Outline six statutory documents required to form a private company. (6 marks)
 - (ii) Highlight four common law duties of a promoter. (4 marks)
- (b) In the context of share capital:
 - (i) Explain three ways in which a company might raise share capital. (6 marks)
 - (ii) Outline four circumstances when shares might be issued at a discount. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Highlight eight rights of a member of a company. (8 marks)
- (b) Explain six rules governing shares and share capital of a company. (6 marks)
- (c) Describe the following types of share capital:
- (i) Authorised share capital. (2 marks)
 - (ii) Called-up share capital. (2 marks)
 - (iii) Fixed and circulating share capital. (2 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Outline six charges that must be submitted to the registrar of companies for registration. (6 marks)
- (b) Highlight three particulars of an existing charge acquired by a company that requires to be submitted to the registrar of companies. (6 marks)
- (c) Describe eight preliminary guidelines to be effected before a company conducts a virtual meeting. (8 marks)
- (Total: 20 marks)**

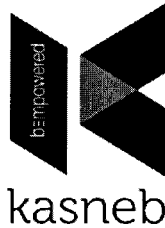
QUESTION SIX

- (a) In relation to company investigations:
- (i) Explain the legal effect of an inspector's report. (2 marks)
 - (ii) Explain two duties of the management of a company during company investigations. (2 marks)
 - (iii) Summarise three types of proceedings which might result from the inspector's report of a company's investigation. (6 marks)
- (b) Explain three circumstances under which the official receiver might apply to the registrar for the early dissolution of a company. (6 marks)
- (c) Highlight four grounds for which a company might be liquidated voluntarily. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Discuss three ways through which a casual vacancy in the office of a company auditor might be filled. (6 marks)
- (b) In the context of mergers and acquisitions:
- (i) Explain three types of takeovers. (6 marks)
 - (ii) Highlight eight motives behind mergers. (8 marks)
- (Total: 20 marks)**

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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

MONDAY: 4 April 2022. Morning paper

Time Allowed: 3 hours.

Answer any FIVE questions. ALL questions carry equal marks. Do NOT write anything on this paper.

QUESTION ONE

- (a) Highlight six ways in which a person might become a member of a company. (6 marks)
- (b) Identify four types of particulars to be registered with respect to a company's beneficial owner. (4 marks)
- (c) A person dealing with a company is entitled to assume in the absence of facts putting him in doubt that there has been due compliance with all matters of internal management and procedure required by articles of association.

With reference to the rule in **Royal British Bank v. Turquand**, summarise five exceptions to the above statement. (10 marks)
(Total: 20 marks)

QUESTION TWO

- (a) Summarise five circumstances under which a company might be liquidated under the just and equitable ground. (10 marks)
 - (b) State four particulars found in a certificate of registration of a foreign company. (4 marks)
 - (c) Highlight six rules governing payment of dividends. (6 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Summarise six grounds for disqualification of directors. (6 marks)
 - (b) Explain four grounds for disqualification from being registered as a company secretary. (4 marks)
 - (c) Outline five rights of auditors under the Companies Act, which relate to company meetings. (5 marks)
 - (d) Explain five circumstances under which a company might decide to undergo corporate restructuring. (5 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) (i) In reference to mergers and acquisitions, explain the meaning of the term merger. (2 marks)
 - (ii) In a take-over situation, the acquiring company is called the predator while the company being acquired is called a target.

With reference to the above statement, discuss four methods which the predator might use to pay for the purchase price of the target company. (8 marks)
 - (b) With respect to audit of company accounts, state four grounds which might disqualify a person from being appointed as an auditor of a company. (4 marks)
 - (c) Describe three characteristics of a debenture which creates a floating charge on the assets of the company. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Every public company is required to have at least one corporate secretary.

In view of the above statement:

- (i) Highlight seven particulars that must be stated in the register of secretaries of a public company where the corporate secretary happens to be a company or a firm. (7 marks)
- (ii) Explain three ways through which the Corporate Secretary's function might be discharged in the event that the office falls vacant or the Secretary is unable to act. (3 marks)
- (b) In relation to company meetings, outline six documents which might be annexed to the notice of an annual general meeting. (6 marks)
- (c) Highlight two rules to be complied with when drafting the minutes of company meetings. (4 marks)

(Total: 20 marks)

QUESTION SIX

- (a) David is a director of a registered company that does not have a share capital. The company has proposed to vary the rights of a certain class of members, some of whom have bitterly resisted the proposal prompting David to seek your legal advice.

Advise David on five ways through which the proposed variation of class rights might be effected. (5 marks)

- (b) Summarise five provisions governing amendment of articles of association of a company. (5 marks)

- (c) Members of a company might remove an auditor from office at any time by an ordinary resolution at a meeting.

Discuss three legal requirements for such removal. (6 marks)

- (d) Distinguish between a "private" and a "public" company. (4 marks)

(Total: 20 marks)

QUESTION SEVEN

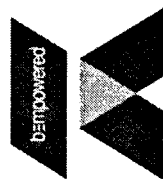
- (a) Explain four circumstances that would give rise to the appointment of an inspector to investigate the affairs of a company. (8 marks)

- (b) Analyse six circumstances under which the accounts of a subsidiary need not be incorporated into the group accounts. (6 marks)

- (c) Describe six grounds under which the veil of incorporation might be lifted. (6 marks)

(Total: 20 marks)

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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

COMPANY LAW

WEDNESDAY: 15 December 2021.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) With reference to formation of companies:
- (i) Summarise four ways through which a company might alter its status. (8 marks)
 - (ii) Outline two ways through which company documents might be validly executed. (2 marks)
- (b)
- (i) Explain the meaning of the term derivative action. (1 mark)
 - (ii) Identify three possible defendants in a derivative claim. (3 marks)
 - (iii) Determine three possible orders that the court might issue upon hearing an application for permission to continue a derivative claim. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) The Board of Directors of Bull's Eye Limited, a private company, has resolved to allocate shares in the company and has sought your legal guidance on the requirements to be satisfied before they can engage in the allotment of shares exercise.
- Advise the directors of Bull's Eye Limited on five circumstances under which they might exercise the powers of the company to allot shares. (10 marks)
- (b) In the context of virtual general meetings, highlight five key considerations that a company should put in place for the virtual conduct of general meetings. (10 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a)
- (i) Define the term "holding company". (2 marks)
 - (ii) Outline four purposes of group accounts. (8 marks)
- (b) Highlight four particulars that must be registered where the Secretary of a public company is a firm. (4 marks)
- (c) Explain three items that the Registrar might include in a direction issued by him against a public company that fails to appoint a Corporation Secretary. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a)
- (i) Describe the term company's return date. (2 marks)
 - (iii) Summarise eight components of a company's annual return. (8 marks)

- (b) Identify two management areas of operation that might be affected by post-merger reorganisation. (2 marks)
- (c) Describe four types of corporate restructuring. (8 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) With reference to registered foreign companies in your country.
- (i) Explain the obligations of a foreign company. (4 marks)
- (ii) Describe the liability of a local representative. (2 marks)
- (iii) Identify four changes in information or documentation that a foreign company must notify the registrar within a period of one-month time of their occurrence. (4 marks)
- (b) Describe five circumstances under which the registrar may order an investigation into the affairs of a company. (5 marks)
- (c) Describe five powers of an inspector appointed to investigate the affairs of a company. (5 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) (i) Identify two circumstances when a debenture is redeemable. (2 marks)
- (ii) Outline four rights of secured debenture holders. (4 marks)
- (b) John and Peter are in partnership business. They have decided to incorporate their business. Please advise them on the following matters:
- (i) Three differences between a private company limited by shares and a public one. (3 marks)
- (ii) Three requirements in order for their articles of association to be registered. (3 marks)
- (c) A company shall not apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person.

With reference to the above statement, explain four circumstances when a company may pay a commission to a person from capital. (8 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) With specific reference to Company Directors:
- (i) Summarise four categories of persons who are deemed by law to be connected with a director. (5 marks)
- (ii) Every company must keep a register of directors. Identify five types of particulars that must be kept with respect to a director who is a natural person. (5 marks)
- (b) On forming the view that the company is or will be unable to pay its debts, the liquidator shall among other things prepare a statement setting out the financial position of the company.
- Describe five categories of information that a company's statement of financial position should contain. (10 marks)
- (Total: 20 marks)**
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CPA INTERMEDIATE LEVEL

CS INTERMEDIATE LEVEL

PILOT PAPER

COMPANY LAW

December 2021.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain four limitations to a director's powers to act that may be contained in a company's constitution. (8 marks)
- (b) Describe six general duties of a director under the Companies Act, 2015 or equivalent legislation. (12 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight four reasons that form a basis for a derivative claim in Kenya. (4 marks)
- (b) Outline the information that should appear in a company's register of members. (6 marks)
- (c) Explain five legal requirements for the beneficial owner's register in Kenya. (10 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Distinguish between an "ordinary resolution" and "special resolution". (4 marks)
- (b) Jane is a director of XYZ Limited, a public limited company and would like to call for a general meeting of the company. Give your professional advice to Jane about the following:
- (i) The four methods through which XYZ Limited can give a notice of the general meeting to its members. (4 marks)
- (ii) The legal requirements in Kenya for the meeting if the notice is issued on the company's website. (12 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Explain three rights of a company's auditor in relation to a company's general meetings. (6 marks)
- (b) Explain three requirements for a notice by a company's members' statement about audit concerns. (6 marks)
- (c) Give four circumstances under which an auditor in office will not be considered as re-appointed if no appointment of an auditor is made at the end of a term of appointment. (8 marks)
- (Total: 20 marks)**

QUESTIONS FIVE

- (a) Give five documents that form a quoted company's annual reports. (10 marks)
- (b) Explain three requirements for a company's proper accounting records. (6 marks)
- (c) Highlight two contents of a company's financial records. (4 marks)
- (Total: 20 marks)**

QUESTION SIX

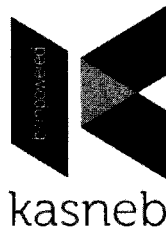
- (a) Explain three items that an auditor would investigate in a company's financial records to enable the auditor form an opinion about a company's financial statements. (6 marks)
- (b) Explain which court appoints an inspector to investigate a company's affairs and what circumstances may lead to such an appointment. (14 marks)
- (Total: 20 marks)**

QUESTION SEVEN

With respect to investigation of a company's affairs and mergers:

- (a) Identify the court that has powers to appoint an inspector. (2 marks)
- (b) Describe six circumstances that might lead to such an appointment in (a) above. (12 marks)
- (c) Discuss the types of information that should be contained in the draft terms of scheme for a proposed merger. (6 marks)
- (Total: 20 marks)**

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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 1 September 2021.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Tom Jerry and Marsha Bear are purposing to form a joint business venture. They are debating whether to form a limited liability company (LLC) or a limited liability partnership (LLP). Their knowledge on these forms of business associations is limited and they have thus approached you for guidance.

Required:

Advise Tom Jerry and Marsha Bear on five differences between a limited liability company (LLC) and limited liability partnership (LLP). (10 marks)

- (b) With reference to debt capital, describe five types of securities that must be registered as registrable charges. (10 marks)
(Total: 20 marks)

QUESTION TWO

In the context of formation of companies:

- (a) Highlight five ways through which a promoter might receive remuneration. (5 marks)
- (b) Explain five legal effects of registration of articles of association of a company. (5 marks)
- (c) John bought shares from Kibao Company Limited. Later on, he discovered that his name was missing from the register of members of the company. The Corporation Secretary has refused to rectify the omission. John is aggrieved and seeks your advice.

Advise John on the following:

- (i) Two persons who could sue for rectification of the register of members. (2 marks)
- (ii) Four orders that the court might issue with respect to an application for rectification of the register. (8 marks)
(Total: 20 marks)

QUESTION THREE

- (a) Describe five circumstances under which the issuer might refuse to register a transfer of a share certificate in the name of a central depository system. (10 marks)
- (b) Summarise ten rules governing declaration and payment of dividends that might be provided for in the company's articles of association. (10 marks)
(Total: 20 marks)

QUESTION FOUR

The rule in **Royal British Bank vs Turquand** is a modification of the normal agency principle of actual, usual and apparent authority.

- (a) With reference to the above statement, discuss five circumstances under which a company might not be held liable to an outsider for the actions of its officer. (10 marks)
 - (b) Explain seven requirements necessary for the passing of a special resolution in company meetings. (7 marks)
 - (c) Highlight three conditions which a company that is giving notice of a general meeting through the company's website is required to comply with. (3 marks)
- (Total: 20 marks)**

QUESTION FIVE

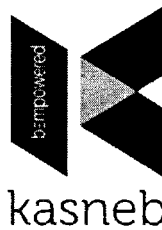
- (a) Outline four reasons why a company might undertake corporate restructuring. (4 marks)
 - (b) Distinguish between "external reconstruction" and "internal reconstruction". (4 marks)
 - (c) In relation to share capital:
 - (i) Explain three exceptions to the rule that a company might not purchase its own shares. (6 marks)
 - (ii) Highlight three circumstances under which a company might give financial assistance for purchase of, or subscription for, its shares. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) With regard to companies incorporated outside the country:
 - (i) Outline three offences which might be committed by a foreign company. (3 marks)
 - (ii) State three provisions that might be contained in the foreign companies regulations governing the registration of specified charges over a property in your country which belongs to a foreign registered company. (3 marks)
 - (b) With reference to liquidation of companies:
 - (i) Enumerate four grounds for liquidation under the just and equitable ground. (8 marks)
 - (ii) Summarise three consequences of a winding up order. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a)
 - (i) Indicate four instances when a public company's register of secretaries might not contain particulars of a person's former name. (4 marks)
 - (ii) Outline five contents of the register of company secretaries of public companies. (5 marks)
 - (b) Summarise the procedure of filling a casual vacancy in the office of a company auditor. (6 marks)
 - (c) With reference to a quoted company, identify five contents of its annual financial statements and reports for a financial year. (5 marks)
- (Total: 20 marks)**
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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 19 May 2021.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) XYZ Ltd. is a newly formed company which deals in manufacture and supply of stationery.

The board of directors of XYZ Ltd. is composed of first time directors who are not conversant with company operations.

Advise the board of directors of XYZ Ltd. with regards to auditors and specifically on the following:

- (i) Eligibility for appointment as a statutory auditor of a company. (3 marks)
 - (ii) Auditor's rights to information from foreign subsidiaries. (3 marks)
 - (iii) Person mandated by law to provide an auditor with information or explanations as the auditor thinks necessary for carrying out their responsibilities. (4 marks)
- (b) State six particulars that a company's register of directors is required to contain:

Note: Register of directors who are natural persons. (6 marks)

- (c) As a company law expert, you have been approached by three friends who intend to form a private company to give guidelines on matters regarding directors.

Explain to the three friends, the relevant governing legal provisions on each of the items below:

- (i) Minimum number of directors for a private company. (1 mark)
- (ii) Minimum age for a director. (1 mark)
- (iii) Two requirements that a loan to directors must meet. (2 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Explain three characteristics of a company. (6 marks)
- (b) Highlight four differences between a "private company" and a "public company". (4 marks)
- (c) With reference to both case law and common law, discuss five rules governing pre-incorporation contracts. (10 marks)

(Total: 20 marks)

QUESTION THREE

- (a) With specific reference to derivative actions:

- (i) Define the term "derivative claim". (2 marks)
- (ii) Identify two causes of action with respect to which a derivative claim might arise. (2 marks)
- (iii) Highlight three outcomes that might arise upon the court hearing the application of a derivative claim. (3 marks)

- (b) Outline three rights that a member of a company has with regards to a general meeting. (3 marks)
- (c) With respect to companies incorporated outside Kenya or your country, explain five documents which are necessary to accompany the application for registration in Kenya or your country. (10 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) In the context of debt capital:
- (i) Outline six terms contained in a debenture trust deed. (6 marks)
- (ii) Highlight four advantages of a floating charge. (4 marks)
- (b) Identify four uses of a statement of profit or loss. (4 marks)
- (c) Highlight three conditions for a company to be deemed a "small company". (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) In relation to the company secretary:
- (i) Highlight three qualifications required for one to be registered as a company secretary. (6 marks)
- (ii) Discuss the status of the company secretary in relation to the company. (6 marks)
- (b) Mutiso, a member of Tusonge Company Ltd., inspected the register of members of the company and noted that his name had been omitted.
- Advise Mutiso on how he should proceed to have his name entered in the register. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Enumerate six most common reasons why companies might want to reduce their capital. (6 marks)
- (b) In the context of company dividends:
- (i) Explain the meaning of the phrase "cutting a melon". (2 marks)
- (ii) State three reasons why a limited company might suspend issuing dividends. (6 marks)
- (c) Explain six advantages of preference shares to both the shareholder and the company. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to corporate restructuring:
- (i) Describe four types of company mergers. (4 marks)
- (ii) State three causes of internal reconstruction of a company. (3 marks)
- (b) Outline five circumstances under which an unregistered company can be liquidated. (5 marks)
- (c) The case of Sharp V. Dawes indicates that one person cannot constitute a meeting.
- Explain four exceptions to this rule. (8 marks)
- (Total: 20 marks)**
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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

THURSDAY: 26 November 2020.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

(a) In relation to formation of companies:

- (i) Explain four common law duties of a promoter. (4 marks)
- (ii) Discuss three rules that govern pre-incorporation contracts. (6 marks)

(b) Summarise five ways in which a company might alter its share capital. (10 marks)
(Total: 20 marks)

QUESTION TWO

(a) Kamau borrowed Sh.50,000 from Hope Bank and deposited his XYZ Ltd's share certificate with a blank transfer as a security. Subsequently, he bought goods from the supermarket on credit worth Sh.15,000. The articles of association of XYZ Ltd. claimed a first and paramount lien on its members' shares on debts due to the supermarket.

However, before the supermarket's lien arose the bank gave the supermarket notice of Kamau's share certificate having been lodged with the bank as a security for the loan. Kamau is unable to pay for the goods he obtained from the supermarket and has also defaulted on the loan. XYZ Supermarket wants to exercise its lien and the bank wants to exercise its equitable right to have the shares transferred into its name.

Analyse the rights of:

- (i) The Bank. (6 marks)
- (ii) XYZ Supermarket Ltd. (6 marks)

(b) Highlight four items of agenda that might be discussed at the Annual General Meeting (AGM) of a company. (4 marks)

(c) Describe four classes of persons who might effectively demand for a poll during a general meeting. (4 marks)
(Total: 20 marks)

QUESTION THREE

(a) In relation to corporate restructuring:

- (i) Outline four merger documents which members of each of the merging companies are entitled to inspect. (4 marks)
- (ii) Explain three disadvantages of mergers of companies. (6 marks)

(b) Discuss the powers of the Office of the Attorney-General (OAG) in the appointment of an investigator of company affairs and ownership. (10 marks)
(Total: 20 marks)

QUESTION FOUR

- (a) Describe five pieces of information to be provided to a company by a person who intends to inspect the company's register of members. (10 marks)
- (b) XYM Ltd. is a company registered in South Africa. The company intends to register a branch in your country as a foreign company.

With reference to the above statement:

- (i) Summarise the procedure for registration of foreign companies in your country. (7 marks)
- (ii) Explain the manner in which a foreign company might own land in your country. (3 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) (i) Describe the powers and duties of the Official Receiver in his capacity as a corporation sole. (3 marks)
- (ii) Highlight seven ways through which the office of the Deputy Official Receiver might become vacant. (7 marks)
- (b) Discuss five rights of a financial auditor who is resigning from a company. (10 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) (i) Discuss three ways through which a private company without a company secretary operates. (6 marks)
- (ii) Describe three types of persons who are disqualified from acting as a Company Secretary. (6 marks)
- (b) (i) Explain two ways through which alternate directorship might be terminated. (2 marks)
- (ii) Describe three circumstances when a court might make a disqualification order against a director. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Baridi Ltd. intends to expand its business by diversifying into other forms of business. The management of the company has resolved to start production of instant coffee.

The management is contemplating on whether to issue shares or debentures.

Required:

Advise the management of Baridi Ltd. the disadvantages of debentures over shares as a method of raising capital.

(10 marks)

- (b) Explain the distinguishing features of the following types of companies:
- (i) Companies limited by guarantee. (3 marks)
- (ii) Private companies. (4 marks)
- (iii) Public companies. (3 marks)
- (Total: 20 marks)**
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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

TUESDAY: 26 November 2019.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

(a) In relation to the membership of a company:

- (i) Highlight six ways through which a person might cease to become a member of a company. (6 marks)
- (ii) Outline four rights of a member in relation to meetings of a company. (4 marks)

(b) With specific reference to Directors, summarise five provisions of the Companies Act in your country which govern the removal of a director from office before the expiry of his term. (10 marks)

(Total: 20 marks)

QUESTION TWO

(a) With reference to formation of companies:

- (i) Explain the meaning of the term "promoter". (2 marks)
- (ii) Highlight three fiduciary duties of a promoter of a company. (6 marks)
- (iii) Outline two remedies to the company for breach of fiduciary duty by promoters. (2 marks)

(b) With reference to external auditors:

- (i) Highlight four ways in which the remuneration of the Company Auditor might be fixed. (4 marks)
- (ii) Discuss three remedies available to a company whose auditor has been negligent. (6 marks)

(Total: 20 marks)

QUESTION THREE

(a) A company is a legal person and is distinct from its members. This principle is regarded as a curtain, a veil or shield between the company and its members. This veil can be lifted by the Courts and statutes.

Describe the circumstances for lifting of the veil by:

- (i) The Courts. (6 marks)
- (ii) The Statutes. (6 marks)

(b) (i) In relation to company investigations, outline four powers of an inspector appointed to investigate the affairs of a company. (4 marks)

- (ii) Describe four types of content to be stated in an annual return of a company. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) With reference to company meetings:
- (i) Outline four purposes of holding company general meetings. (4 marks)
 - (ii) Distinguish between “voting by a show of hands” and “voting by poll”. (4 marks)
- (b) In relation to transfer and transmission of shares:
- (i) Describe four effects of a share transfer. (8 marks)
 - (ii) Explain two consequences of a forged transfer. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

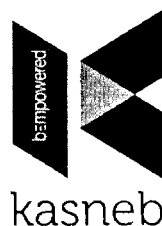
- (a) Highlight three ways in which a company might raise share capital. (6 marks)
- (b) Summarise four types of share capital. (8 marks)
- (c) Standard Limited issued a debenture to Finance Bank years ago. The debenture was described as a fixed and floating charge over all the assets of the company. However, due to inadvertence, the charge was not dated or registered within time. The company is now in liquidation and the loan is in arrears. Finance Bank seeks your legal advice on whether it can rely on the charge to prove its claim in liquidation proceedings of the company.
- Advise Finance Bank. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) (i) Describe six powers and duties of the Company Secretary of a company. (6 marks)
- (ii) Summarise four breaches and omissions of duty by a Company Secretary which might lead to being penalised. (4 marks)
- (b) With specific reference to foreign companies:
- (i) Outline four changes that a foreign company must give notice of. (4 marks)
 - (ii) The foreign companies’ regulations may provide for the registration of specified charges over property. Summarise three provisions that might be contained in the above regulations. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to liquidation of companies:
- (i) Outline two powers of the Liquidator exercisable with the sanction of the court. (2 marks)
 - (ii) Highlight five grounds for compulsory liquidation by the Court. (10 marks)
- (b) Summarise four strategies that a company might employ against hostile take-overs. (8 marks)
- (Total: 20 marks)**
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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 22 May 2019.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) The shares of United Limited, a private company are held by Jane, John and Alex. Jane and John hold 90% of the company's shares. However, they feel that the company is in need of further capital but due to squabbles, they are not willing to inject additional funds as long as Alex still holds some shares in the company. Further, Jane and John believe that Alex has another business which is competing with that of United Limited. To resolve the problems, Jane and John propose to alter the company's articles of association by adding two new articles.

The first article will enable the shareholders of 90% of the company's shares to compulsorily acquire the shares of the minority shareholder. The second article will require any shareholder who carries on competing business with the company's business to transfer his shares to the nominee of the directors.

Alex is aggrieved by the proposed alterations and comes to you for advice.

Required:

Advise Alex on the validity of the proposed alterations to the articles. (10 marks)

- (b) In relation to share capital:

- (i) State four exceptions to the rule that a company should not issue shares at a discount. (4 marks)
- (ii) Explain three roles of the court in the reduction of a company's capital. (6 marks)

(Total: 20 marks)

QUESTION TWO

- (a) (i) Joanne wishes to register a business enterprise but she knows very little about business associations. She mulls over various choices including partnerships, sole proprietorships and limited companies. Joanne is unable to make up her mind on the type of business to establish and seeks your advice.

Required:

Advise Joanne on eight advantages of sole proprietorships over the other forms of business structures. (8 marks)

- (ii) Distinguish between a "corporation sole" and "corporation aggregate." (2 marks)

- (b) In the context of debt capital:

- (i) Outline four remedies of debenture holders if the company defaults. (4 marks)
- (ii) Summarise three differences between "debentures" and "shares". (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) (i) Highlight four documents which are required to accompany the application for registration of a foreign company. (4 marks)
- (ii) With reference to foreign companies, explain three changes that require a 30 days notice before effecting. (6 marks)
- (b) In the context of formation of companies in your country:
- (i) Outline five particulars that might be stated in an application for registration of a company. (5 marks)
- (ii) Describe the prescribed format of the articles of association. (5 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) In the context of company auditors:
- (i) Summarise the criteria used for the appointment of an eligible natural person or firm as a statutory auditor. (2 marks)
- (ii) Describe four individuals who may not act as statutory auditors of an auditee company. (4 marks)
- (iii) Outline four rights of an auditor of a company in relation to meetings. (4 marks)
- (b) Gipange Limited has a share capital of Sh.50,000. The membership of the company has reduced from forty five members to one member and the register of members was not properly kept. The directors of Gipange Limited have sought your advice regarding the maintenance of a company's register of members.
- In relation to the above facts:
- (i) Outline four particulars which might have been contained in Gipange Limited's former register of members. (8 marks)
- (ii) Indicate two contents of Gipange Limited's current register of members. (2 marks)
- (Total: 20 marks)**

QUESTION FIVE

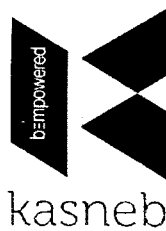
- (a) (i) Define the term "post merger re-organisation". (2 marks)
- (ii) Discuss four types of post merger re-organisation. (8 marks)
- (b) In the context of company meetings:
- (i) Outline four circumstances in which a valid meeting might be constituted by one person. (4 marks)
- (ii) Describe three means through which written resolutions might be circulated to eligible members. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In relation to the duties of directors:
- (i) Discuss three propositions of care, skill and diligence as enumerated in Re City Equitable Fire Insurance Company Ltd. (6 marks)
- (ii) Highlight four statutory duties of a director according to the Companies Act. (4 marks)
- (b) With regard to company accounts, audit and investigation:
- (i) Specify three categories of members who might apply to the court for appointment of company inspectors to investigate the affairs of the company. (3 marks)
- (ii) Enumerate seven requirements for group financial statements. (7 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) Describe eight particulars of secretaries that are required to be contained in the company's register of secretaries. (8 marks)
- (ii) State two grounds for disqualification from being registered as a company secretary. (2 marks)
- (b) (i) With reference to liquidation of a company, describe what a liquidator might do in case there is surplus after payment of company's debts provided in the winding up. (4 marks)
- (ii) Explain three circumstances when a company will be deemed unable to pay its debts. (6 marks)
- (Total: 20 marks)**
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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 28 November 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) On 1 September 2018, Peter Kioko decided to form a company under the name PK Ltd. Before the company was duly formed, Peter Kioko made a contract for the company in which PK Ltd. received a down payment of Sh.500,000 for the supply of household items to Fanika Ltd. PK Ltd. has since been incorporated but remains in breach of the said contract. Fanika Ltd. feels aggrieved and has approached you for legal advice.

Required:

Analyse the legal principles applicable in the above case and advise Fanika Ltd. (10 marks)

- (b) Discuss the doctrine of ultra vires in relation to the memorandum of association of a limited company. (4 marks)
- (c) Explain to a new shareholder of a central depository account three circumstances in which a central depository securities account might be suspended. (6 marks)

(Total: 20 marks)

QUESTION TWO

- (a) It is unlawful for a company to issue a loan to any person who is its director or a director of its holding company or extend a guarantee or provide security in connection with a loan.

Required:

Summarise the exceptions to the above rule. (10 marks)

- (b) Summarise six circumstances under which a company might pay interest out of capital. (6 marks)
- (c) (i) Explain the meaning of the term “insider dealing”. (2 marks)
- (ii) State two persons who might engage in insider dealings. (2 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Explain the distinction between “statutory companies” and “non-statutory companies”. (4 marks)
- (b) Describe four reasons why a court in exercising its inherent jurisdiction for the sake of justice might disregard the principle of legal personality. (8 marks)
- (c) (i) Outline four undertakings that would amount to promotional acts of a company during its formation. (4 marks)
- (ii) Explain four consequential attributes that flow from incorporation of unincorporated associations. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Explain four rights of creditors in winding up proceedings. (8 marks)
- (b) Describe the manner of service of summons and notices upon foreign companies. (6 marks)
- (c) Outline six benefits of corporate restructuring to a company. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) With reference to the types of companies, summarise three provisions relating to the liabilities of the members of a company. (6 marks)
- (b) Mbegu Nzuri Ltd. is in the business of importing seeds. The company is about to make a new issue of 800,000 shares of Sh.20 each. The prospectus has stated that the seeds produced by the company yield 20 bags per acre "even on arid land" and that the company was the only one with such kind of seeds. There was also a publication in the local newspaper about the shares.

Additional information:

1. Saulo Mpoa did not read the prospectus but applied for the company's shares and was allocated 4,000 shares at Sh.40 per share.
2. Baraka Mwanzi read the prospectus and was not allocated the company's shares. She bought 6,000 of the company's shares at the securities exchange at Sh.50 per share.
3. Sadiki Mulwa read the publication in the local newspaper about the company's shares and bought 10,000 shares at the securities exchange at Sh.55 per share.
4. An actual analysis of the seeds was done and it was discovered that the seeds were not as productive, only yielding 5 bags per acre and could only thrive in wet land. The shares of Mbegu Nzuri Ltd. thereafter dropped in value to Sh.5 per share.

With reference to the above scenario:

- (i) Explain three types of misrepresentation. (3 marks)
 - (ii) Explain five elements of misrepresentation. (5 marks)
 - (iii) Advise Saulo, Baraka and Sadiki on possible action against the company. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In the context of company accounts, audit and inspection, highlight six individuals to whom the court might provide a copy of the inspector's report. (6 marks)
- (b) In relation to debt capital:
- (i) Highlight six types of company charges which require registration as outlined in the Companies Act. (6 marks)
 - (ii) Explain four disadvantages of a floating charge to a debenture holder. (8 marks)
- (Total: 20 marks)**

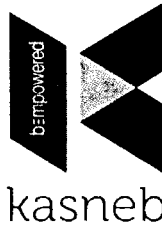
QUESTION SEVEN

- (a) With reference to the case of National Dwelling Society Vs Sykes, enumerate five duties and five powers of the Chairman of a general meeting of a company. (10 marks)
- (b) Shauri Moyo Ltd. is a non-listed public company. The company has three directors; Bidii, Mapesa and Shinda who are also the only shareholders. The company requires additional finance and is proposing to issue a block of ordinary shares to Zindua. The shares have a nominal value of Sh.200 each and Zindua has agreed to pay Sh.220 per share. However, it is agreed that Zindua will only partly pay for the shares at the rate of Sh.20 per share.

Required:

Advise Bidii, Mapesa and Shinda on the legal issue relating to the proposed issue of shares to Zindua and payments thereon. (6 marks)

- (c) Explain the benefits of including a negative pledge clause in a floating charge to the holder. (4 marks)
- (Total: 20 marks)**



CPA PART II SECTION 3
CS PART II SECTION 3
CCP PART II SECTION 3
COMPANY LAW

WEDNESDAY: 23 May 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) With reference to formation of companies:
- (i) Explain the meaning of the term “articles of association”. (2 marks)
 - (ii) Describe four effects of registration of the articles of association of a company. (4 marks)
 - (iii) Outline the provisions of the Companies Act which govern the alteration of the articles of association of a company. (4 marks)
- (b) Ben Sikujua, a sole trader carrying on a business in the printing industry has asked Milele Bank Limited to advance him Sh.500,000 as additional working capital. The bank is prepared to advance the money on condition that Ben Sikujua offers a security. Ben Sikujua has a share certificate for 5,000 shares issued by Jewel Company Limited. Ben Sikujua wants to know whether he can use the shares whose value is Sh.650,000 as a security for the loan. He further seeks to know whether he would still receive dividends even after he has charged the shares to the Bank.
- Advise Ben Sikujua. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) With reference to debt capital:
- (i) Outline four circumstances under which a floating charge will crystallise. (4 marks)
 - (ii) Explain four contents of a trust deed. (8 marks)
- (b) John Mbao is a non-executive director of Kuzi Limited, a listed company. Shortly after attending a board meeting where arrangements were finalised for an agreed takeover bid of the company by Sahara Limited, John Mbao bought shares in Kuzi Limited from the listing in the securities exchange. He thereafter bought shares of the same company from Jane Uza, a shareholder. Immediately the takeover bid was made public, John Mbao sold all the shares he had bought at a profit.
- Discuss whether Kuzi Limited, Jane Uza and Sahara Limited are entitled to any legal action against John Mbao for recovery of profit. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a)
 - (i) Highlight four books of account that a company is required to maintain. (4 marks)
 - (ii) Outline four purposes of a profit and loss account of a company. (4 marks)
 - (b) Summarise eight offences that could be committed by foreign companies and their officers. (8 marks)
 - (c) Highlight two types of foreign companies that might be required to deliver the profit and loss account and balance sheet to the registrar of companies in your country. (4 marks)
- (Total: 20 marks)**

QUESTION FOUR

(a) Define the following terms:

- (i) Reverse merger. (2 marks)
- (ii) Amalgamation. (2 marks)

(b) Discuss four advantages of a reverse merger over the initial public offer (IPO). (8 marks)

(c) Explain the duties of company auditors under the following sub-headings:

- (i) Duties towards the company. (5 marks)
- (ii) Duties towards the general public. (3 marks)

(Total: 20 marks)

QUESTION FIVE

(a) BigShow Ltd. is proposing to offer shares to its shareholders instead of giving them dividends. Philip Shaka, a shareholder has opposed the proposal on the grounds that it offends all the rules governing the maintenance of capital but BigShow Ltd. is adamant. Philip Shaka feels aggrieved and has approached you for your advice.

Advise Philip Shaka on the legality of the proposed offer by BigShow Ltd. (10 marks)

(b) In relation to membership of a company:

- (i) Describe three ways through which a person might become a member of a company. (6 marks)
- (ii) Elaborate the process of effecting changes to the register of members. (4 marks)

(Total: 20 marks)

QUESTION SIX

(a) Suggest four possible reasons why directors might want to remove a company secretary. (8 marks)

(b) In the context of company meetings:

- (i) Outline six contents to be recorded in the minutes of a director's meeting. (6 marks)
- (ii) Every company must hold an annual general meeting in each year. Explain three purposes of the annual general meeting (AGM). (6 marks)

(Total: 20 marks)

QUESTION SEVEN

(a) In the context of corporate insolvency:

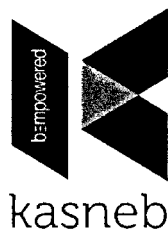
- (i) Discuss five offences that might be committed by the liquidator before and during liquidation. (10 marks)
- (ii) Describe three circumstances under which a person who has ceased to be a liquidator is released from their obligations with respect to a voluntarily liquidated company. (6 marks)

(b) Cliff, Mohammed and Mwikali have been running the business of supplying stationary to various customers including some government ministries as a partnership trading under the name "Relax Enterprise". They are desirous of converting their business into a limited liability company.

Explain to them two differences between companies and partnerships. (4 marks)

(Total: 20 marks)

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CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 29 November 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Jones Tiida is a director of Tenti Ltd., a manufacturing company which was established recently. He has approached you for advice on whether or not the company should appoint auditors in view of the need to save on costs.

In relation to the above statement, advise Jones Tiida on six purposes of auditing company accounts. (6 marks)

- (b) Outline four circumstances when group accounts of a holding company need not include the accounts of its subsidiary. (4 marks)

- (c) (i) Summarise four rules governing the appointment of the first auditors of a company. (8 marks)

(ii) Outline two ways in which a company auditor might receive his remuneration. (2 marks)

(Total: 20 marks)

QUESTION TWO

- (a) With reference to corporate restructuring, suggest five defence techniques that a targeted company might use to avoid a hostile takeover bid. (10 marks)

- (b) Company secretaries perform different types of duties in a company.

With reference to the above statement, explain five duties of a company secretary under each of the two categories below:

(i) Statutory duties. (5 marks)

(ii) Administrative duties. (5 marks)

(Total: 20 marks)

QUESTION THREE

- (a) It is generally unlawful for a company to offer financial assistance to any person for the purpose of purchasing its own shares.

Required:

(i) Highlight three legal consequences of contravening this provision. (6 marks)

(ii) Summarise two exceptions to the above statement. (2 marks)

- (b) Birds Limited has three directors; Peacock, Sparrow and Vulture.

Advise on the legal implication of each of the following situations:

(i) Vulture's son has recently turned eighteen and Vulture wishes to appoint him a director of the company. (4 marks)

- (ii) The company is considering the purchase of a substantial quantity of goods from Fly Limited in which Sparrow has a large shareholding though he is not a director. Peacock and Vulture are unaware of Sparrow's interest in Fly Limited. (4 marks)
- (iii) In view of adverse publicity, Vulture and Sparrow decide to exclude Peacock from participating in the company's affairs. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Summarise six regulations governing payment and financing of redeemable preference shares. (6 marks)
- (b) Distinguish between "participating" and "non-participating" preference shares. (4 marks)
- (c) Explain three matters that a foreign company's certificate of registration must comply with. (6 marks)
- (d) Outline two liabilities of a local representative appointed by a foreign company. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Explain five circumstances under which a member of a company might be held liable beyond his limited liability. (10 marks)
- (b) (i) Explain three categories of public companies. (3 marks)
- (ii) Jairo Chai would like to start a company. He has approached you as a student of company law to guide him through the process.

With reference to the above statement, describe the procedure of registering a limited liability company.

(7 marks)

(Total: 20 marks)

QUESTION SIX

- (a) (i) Describe three ways in which a liquidator might be appointed. (6 marks)
- (ii) Explain six powers of a liquidator exercisable without sanction of the court. (6 marks)
- (b) Wheels Limited issued a debenture to East Bank Ltd. four years ago. The debenture was in the bank's standard form described as a fixed and floating charge over all the assets of the company. However, due to inadvertence, the charge was neither dated nor registered within time. The company is now in liquidation and the loan is in arrears. The bank seeks your legal advice as to whether it can rely on the charge to prove its claim in the winding up proceedings of the company.

Advise East Bank Ltd. on the implications of non registration of the charge.

(8 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) As you are leaving a meeting of the board of directors, you meet Mose Shida, a shareholder, who is aggrieved that since the company was incorporated three years ago, no annual general meeting (AGM) has ever been held by the company. Advise Mose Shida on his rights to request for an AGM. (10 marks)
- (b) State four documents required when casting votes by poll in company meetings. (4 marks)
- (c) Identify six forms of corporate restructuring. (6 marks)

(Total: 20 marks)

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KASNEB

CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 24 May 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain four distinctions between “co-operative societies” and “limited companies”. (4 marks)
 - (b) Describe three circumstances under which the veil of incorporation of a company might be lifted under case law. (6 marks)
 - (c)
 - (i) Identify two instances when the High Court might rectify the register of members of a company. (2 marks)
 - (ii) Discuss four ways through which a person’s membership of a company might cease. (8 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Ronald Dola is a director at Valleys Limited. He recently made a procurement decision that resulted in heavy losses for the company. He has also missed all the board and committee meetings that he was expected to attend. He further delegated work to his junior, Mark, who ended up making grave financial mistakes despite being the Finance Manager of the company, resulting in losses to the company.

In light of the above, analyse the duties of a director in a company and advise Valleys Limited on its legal rights, if any, against Ronald Dola. (10 marks)

- (b) In Sharp V. Dawes, the word “meeting” means a coming together of more than one person.

With reference to public companies, summarise five exceptions to this rule. (10 marks)

(Total: 20 marks)

QUESTION THREE

- (a) In the context of corporate insolvency:
 - (i) Outline four grounds upon which the liquidator might resign in a members’ voluntary liquidation. (4 marks)
 - (ii) Explain four instances when the release of a liquidator becomes effective. (8 marks)
 - (b) With reference to floatation of shares, state two persons who might be held responsible for all or some part of the listing particulars in a prospectus. (2 marks)
 - (c) Summarise three rights of the legal mortgagee of shares. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Describe three instances when an auditor of a company might not be held liable to a third party for alleged professional negligence. (6 marks)
 - (b) Highlight four rights of an auditor in relation to resolutions and meetings. (4 marks)
 - (c) In the context of debt capital:
 - (i) State four advantages of a trust deed. (4 marks)
 - (ii) Explain three instances when a floating charge is deemed to crystallise. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Discuss five powers of an inspector in the investigation of a company's affairs. (10 marks)
- (b) (i) Identify four documents required to accompany the application for registration of a foreign company in your country. (4 marks)
- (ii) Explain three requirements governing the name of a foreign company. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In the context of post-merger reorganisation:
- (i) Define the term "post-merger integration". (2 marks)
- (ii) Describe four types of post-merger integration. (8 marks)
- (b) Assume that you are the Management Accountant reporting to the Finance Director of a public limited company. The Finance Director recently undertook a financial review as part of the company's strategic review process. In his report, he observed that the company has more funds than are necessary to support its planned growth and that the company's capital should be reduced.
- You are required to write a report outlining four methods which might be adopted to reduce the capital of the company. (10 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Summarise the procedure for removal of a company secretary from office. (6 marks)
- (b) (i) Outline six contents of a debenture certificate. (6 marks)
- (ii) Explain four rights that accrue to debenture holders. (8 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 23 November 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) With reference to classification of companies, explain the meaning of a “holding company” in relation to another company. (4 marks)

- (b) A company cannot on its own execute contracts.

Describe three mechanisms provided by the Companies Act by which a company can sign documents. (6 marks)

- (c) Greenpark Limited issued a prospectus inviting members of the public to subscribe for its shares. It was stated in the prospectus that the money was required for the purchase of modern equipment to be used for expansion of the company’s business. On the strength of this statement, Rose Sagina purchased shares of the company but she has since learnt that all the money received was used to repay the debts of the company which were long overdue. Rose Sagina feels shortchanged and seeks your legal advice.

Analyse the legal principles applicable in the above case and advise Rose Sagina appropriately. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Explain the general effect of pre-incorporation contracts. (2 marks)

- (b) Discuss how a promoter might overcome the liability of pre-incorporation contracts. (8 marks)

- (c) In relation to the directors’ duty of disclosure of interest, outline five matters which the directors are required to disclose in order to avoid being penalised under the Companies Act. (10 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Every public limited company must have a company secretary who is one of the officers of a company.

With reference to the above statement:

- (i) State two qualifications for one to be appointed as a company secretary of a public limited company in your country. (4 marks)

- (ii) Summarise the particulars a company shall ensure are in the register of secretaries if the secretary of a public company is a company or firm. (6 marks)

- (b) Identify two persons who can act as insolvency practitioners in relation to a company. (2 marks)

- (c) With specific reference to offences relating to liquidation, explain four circumstances under which the directors of a limited company might be charged with fraudulent or wrongful trading. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) With reference to membership of a company:
- (i) Summarise eight rights of members to communication on company information. (8 marks)
 - (ii) Highlight two particulars to be entered in a company's register of members. (2 marks)
- (b) In the context of company charges, describe five principles governing the priority of the charges. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) With reference to corporate restructuring, discuss five causes of failure of mergers and acquisitions. (10 marks)
- (b) Explain three rules to be observed when drafting the minutes of public company meetings. (6 marks)
- (c) State four items of agenda at an annual general meeting of a company. (4 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) The Companies Act provides that if no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is taken to be re-appointed at that time.
- With reference to public companies, summarise five exceptions to the above provision. (10 marks)
- (b) With reference to the procedure for registration of companies:
- (i) Describe the requirements that an application for registration must meet before the registrar can approve it. (6 marks)
 - (ii) Highlight the requirements that a certificate of registration must comply with. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Discuss five circumstances under which a court might appoint one or more competent inspectors to investigate the affairs of a company. (10 marks)
- (b) With reference to shares:
- (i) Define the term "Pre-emption rights". (2 marks)
 - (ii) Identify four instances when pre-emption rights do not apply. (4 marks)
 - (iii) Describe two rules on allotment of shares by public companies. (4 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 25 May 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Describe five grounds upon which a person might be disqualified from acting as a company's director. (10 marks)
- (b) Sea Bubble Limited was amalgamated with Telta Limited to form Seashore Limited. Some employees of Sea Bubble Limited refused to be transferred to Seashore Limited alleging that Seashore Limited was an unstable company. Sea Bubble Limited insisted that the employees must join the service of Seashore Limited or be retrenched.

Analyse the legal principles applicable in the above case and advise the employees of Sea Bubble Limited. (10 marks)
(Total: 20 marks)

QUESTION TWO

- (a) Discuss five ways through which a company might raise share capital from the public. (10 marks)
- (b) Describe five classifications of companies under the Companies Act. (10 marks)
(Total: 20 marks)

QUESTION THREE

- (a) (i) Explain the legal position of a company secretary. (6 marks)
- (ii) As the company secretary of Jombo Limited, you have been instructed to prepare an annual return for the company for purposes of filing.
- Highlight four contents that you would include in the above annual return. (4 marks)
- (b) (i) Define the term "promoter". (2 marks)
- (ii) Describe four legal rights of an incorporated company against promoters who sold their property to the company at a profit while it was in the process of formation. (8 marks)
(Total: 20 marks)

QUESTION FOUR

- (a) Indicate five liabilities as contributories of present and past members of a company. (10 marks)
- (b) Flo Limited was incorporated in 2013 with a share capital of Sh.3 million divided into 30,000 shares of Sh.100 each. The main object of the company was to acquire and carry on the business of computer software and associated business which the company might consider conducive or auxiliary thereto. The company has gone into liquidation. Dijonese Majani, a former shareholder has made a claim against the company for the balance of the price of shares which he had sold to the company but which he was never fully paid for.

With reference to the above facts, explain the following:

- (i) The rule as laid down in Trevor Vs Whitworth. (4 marks)
- (ii) The exception to the rule in (b)(i) above. (6 marks)
(Total: 20 marks)

QUESTION FIVE

- (a) Basil Peters, a Canadian National intends to register a branch office in Nairobi. The head office will be based in Canada. The company once established will carry out Biometric research and does not intend to declare profits. All proceeds of trading will be used for further research. The company is proposed to be a small scale company with about ten specialist researchers. The company once registered, hopes to raise shillings sixty million over a two year period from a selected group of investors to meet the company's research needs.

Advise Basil Peters on the following:

- (i) The type of company that would be suitable to set up and why. (4 marks)
 - (ii) The documents required to accompany the application for registering the foreign company. (8 marks)
 - (b) Enumerate the rights granted to a company auditor to enable him perform his duties as an auditor. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Discuss five legal consequences of incorporation. (10 marks)
 - (b) Describe the charges that could be created by a company registered under the Companies Act. (10 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Identify five persons who might apply to the court for the liquidation of a company. (5 marks)
 - (b) Describe five ways in which a liquidator could distribute the assets of a company in a compulsory winding up. (5 marks)
 - (c) With respect to company meetings:
 - (i) Outline six persons who are eligible to attend meetings. (6 marks)
 - (ii) Summarise four strict statutory requirements governing notices. (4 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

WEDNESDAY: 25 November 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

(a) With respect to corporate insolvency:

(i) Highlight three ways in which a liquidator's powers might be terminated. (6 marks)

(ii) Explain four contents of the official receiver's report. (4 marks)

(b) Sometimes a corporate entity works like a boomerang and hits the man who was trying to use it.

With reference to the above statement, describe five exceptional circumstances under which when a shareholder could institute proceedings as the plaintiff instead of those proceedings being instituted in the name of the company. (10 marks)

(Total: 20 marks)

QUESTION TWO

(a) Sweetwaters Ltd. is a private limited company which was incorporated in 1992. The last annual general meeting (AGM) was held in 2005 and the directors of the company have refused to convene one. The company is uncontrollable as the directors have become sworn enemies. Habbakuk Kiprotich, Micah Kimanzi and Obed Kamau have filed a compulsory winding up petition which has been objected to by John Wanjunji, Luke Manamba and Peter Nyakach.

Micah Kimanzi and Obed Kamau are children of deceased shareholders while Habbakuk Kiprotich and Peter Nyakach are the only surviving shareholders. Luke Manamba and John Wanjunji are the legal representatives of their deceased parents.

Advise on the following matters:

(i) The validity of the mode of winding up adopted by the petitioners. (4 marks)

(ii) The persons entitled to petition for compulsory winding up. (4 marks)

(iii) Whether or not Sweetwaters Ltd. will be wound up. (2 marks)

(b) Describe five persons who are responsible for meeting the expenses of an investigation by an inspector appointed by the court. (10 marks)

(Total: 20 marks)

QUESTION THREE

(a) Describe six matters which might be included in the code of best practices of a company to ensure equitable treatment of shareholders of the company. (6 marks)

(b) Bob Kuto and Ben Zawadi wish to jointly acquire shares in Miereka Company Ltd.

Advise them on the legal status regarding joint ownership of shares. (8 marks)

(c) Explain six effects of a forged transfer of shares. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Outline the rules governing the following:
- (i) Entitlement to notice of a meeting. (2 marks)
 - (ii) Four contents of a notice of a meeting. (4 marks)
- (b) Discuss four regulations governing redeemable preference shares under the Companies Act. (8 marks)
- (c) Discuss three effects of the ultra vires doctrine. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Outline four matters that are required to be expressed in an auditors' report. (4 marks)
- (b) In relation to a debenture trust deed:
- (i) Explain five advantages of a trust deed. (10 marks)
 - (ii) Outline six particulars of the register of debenture holders. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Describe the procedure for removal of a company director from office. (10 marks)
- (b) Whereas some powers are only exercisable by the board, others can only be exercised by the general meeting.
- With reference to the above statement, highlight:
- (i) Five powers of the general meeting. (5 marks)
 - (ii) Five powers of the board. (5 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Discuss five advantages of a private company over a public company. (10 marks)
- (b) Wanyoro Ltd. is a public company. Its directors have decided to venture into transport business by acquiring a fleet of public service vehicles. They did not notice that this activity is outside its objects clause. The company's chairman, Ann Omesa who owns 10% of the voting shares negotiated a loan which was in excess of the company's issued capital from Joan Mekonge, a financier.
- Joan Mekonge did not refer to any of the company's registered documents nor did she inquire into the purpose to which the money would be put. The money is used by the directors to pay part of the purchase price of the vehicles. The rest of the purchase price remains unpaid. Some members who hold a substantial amount of shares in Wanyoro Ltd. intend to move a resolution to insert into the memorandum, an object permitting the acquisition and use of the vehicles. One of the directors of Wanyoro Ltd. announces that if this is done, he will apply to court to have the new object clause quashed.
- Advise the directors of the company. (10 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART II SECTION 3

CS PART II SECTION 3

CCP PART II SECTION 3

COMPANY LAW

PILOT PAPER

September 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) (i) Explain the meaning of the term "promoter" in the context of company law. (2 marks)
- (ii) Discuss three duties of a promoter of a company. (6 marks)
- (b) Outline the contents of a prospectus issued in Kenya by a foreign company. (6 marks)
- (c) Explain the restrictions imposed on promoters of a company in relation to choice of name. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Discuss five ways in which the veil of incorporation might be lifted under statutory provisions. (10 marks)
- (b) Tom and Harry were in the process of incorporating a company called Foot Shoes Ltd. The objects of the company were to make and sell shoes. Before the process of incorporation was complete, Tom entered into a contract with Clean Leather Ltd. under which Clean Leather Ltd. agreed to supply Foot Shoes Ltd. with leather worth one million shillings.

The price was to be paid in four installments of two hundred and fifty thousand shillings each, over a period of one year.

Tom signed the contract as follows: "Signed by Tom, on behalf of Foot Shoes Ltd.". By the time the leather was delivered, Foot Shoes Ltd. had been incorporated.

However, after the second installment had been paid, Foot Shoes Ltd. was unable to pay the balance.

Advise Clean Leather Ltd. on how to recover the outstanding amount of five hundred thousand shillings. (10 marks)

(Total: 20 marks)

QUESTION THREE

- (a) State five ways in which a person's membership in a company might cease. (5 marks)
- (b) Every public company must, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a statutory meeting. The statutory meeting enables members of the company to consider the statutory report.
- Outline five contents of the statutory report. (5 marks)
- (c) Explain four duties of a company secretary. (4 marks)
- (d) (i) Define the term "derivative action". (2 marks)
- (ii) Explain four characteristics of a derivative action. (4 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) When debentures are offered for public subscription, the company usually enters into a trust deed with trustees.

List six contents of a trust deed. (6 marks)

- (b) Explain four acts or omissions which might give rise to criminal liability in respect of a prospectus. (8 marks)

- (c) Outline three conditions to be fulfilled before the court can approve a reduction of capital of a company. (6 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Explain three grounds for removal of an auditor of a company. (6 marks)

- (b) State four special rights conferred to holders of preference shares of a company. (4 marks)

- (c) Discuss three events when a floating charge might crystallise. (6 marks)

- (d) Explain four grounds under which a court might deem it just and equitable to wind up a company. (4 marks)

(Total: 20 marks)

QUESTION SIX

- (a) In the context of companies in financial difficulty, distinguish between “winding up” and “receivership”. (6 marks)

- (b) List five registers that must be maintained by a company. (5 marks)

- (c) Explain the meaning of ‘connected persons’ in relation to insider dealing. (6 marks)

- (d) Outline three powers of an inspector appointed to investigate the affairs of a company. (3 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) In relation to corporate restructuring, explain the statutory provisions relating to schemes of arrangement and compromises. (10 marks)

- (b) Explain four circumstances under which the office of a director might be vacated. (4 marks)

- (c) Distinguish between companies and partnerships as forms of business associations. (6 marks)

(Total: 20 marks)

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