
Answer any FIVE questions.

**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)

(Time Allowed: 3 hours. ALL questions carry equal 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)

(Time 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)

(Time 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)

(Time 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)
KASNEB
CPA PART II SECTION 3
CS PART II SECTION 3
CCP PART II SECTION 3
COMPANY LAW

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. (4 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.
(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)
KASNEB
CPA PART II SECTION 3
CS PART II SECTION 3
CCP PART II SECTION 3
COMPANY LAW

WEDNESDAY: 25 May 2016.

Answer any FIVE questions.

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.

Djones 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.

CA31, CS31 & CP31 Page 1
Out of 2
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)
KASNEB
CPA PART II SECTION 3
CS PART II SECTION 3
CCP PART II SECTION 3
COMPANY LAW


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. Habakuk 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 Habakuk 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 Omusa 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)
KASNEB
CPA PART II SECTION 3
CS PART II SECTION 3
CCP PART II SECTION 3
COMPANY LAW
PILOT PAPER

September 2015. 

Answer any FIVE questions. 

Time Allowed: 3 hours. 

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)
QUESTION ONE

a) Discuss five exceptions to the rule in Sharpe V. Dawes (1876) 2 QBD 26. (10 marks)

b) Angela Wanjiku and Christabel Ochieng' had been carrying a business as a partnership, sharing profits and losses equally. Christabel Ochieng' wished to introduce her son Abel Ochieng' into the business and Angela Wanjiku consented. They converted the partnership into a limited liability company now known as ACA Company Ltd. Angela Wanjiku and Christabel Ochieng' each hold 40% of the total shares issued and the balance is held by Abel Ochieng. They are also directors of the company. Soon after the company was formed, misunderstanding arose between Angela Wanjiku and Christabel Ochieng' regarding the day to day management of the business. Christabel Ochieng' and her son Abel Ochieng' decided to expel Angela Wanjiku from the board of directors. They have now resolved to remove her from the board of the company.

Advise Christabel Ochieng' and Abel Ochieng' on the steps they should take in order to remove Angela Wanjiku from being a director of the company. (10 marks)

(Total: 20 marks)

QUESTION TWO

a) With reference to debt capital, explain the priorities between fixed and floating charges created over company property (10 marks)

b) A member of a co-operative has been aggrieved by a decision of the co-operative Tribunal. The member has appealed against the decision to the high court.

Outline the powers of the High Court in respect of the appeal (10 marks)

(Total: 20 marks)

QUESTION THREE

a) Sidebottom Ltd. is a private limited company that intends to alter its articles of association.

Explain to the directors if the company, five conditions which the company must comply with when exercising its powers to alter the articles of association. (10 marks)

b) Discuss the various types of the alternatives to corporate insolvency as provided for under the companies Act. (10 marks)

(Total: 20 marks)

QUESTION FOUR

a) Highlight four rights of an auditor of a company (8 marks)

b) Group accounts need not deal with a subsidiary of the company.

Describe four factors which might influence the directors to form the above opinion (8 marks)

c) Outline the provision governing the following matters as related to the company secretary:

i. Appointment of the company secretary (1 mark)

ii. Persons not qualified to hold office as a company secretary (3 marks)
QUESTION FIVE

a) Discuss five statutory restrictions that allotment of shares and debentures of companies are subject to. (8 marks)
b) Distinguish between "issuing shares at discount" and "issuing shares at premium" (2 marks)
c) Jeremy Kimalat bought shares from Kikwao Company Ltd. Later on, he discovered that his name was missing in the register of members of the company. The company has neglected, delayed and refused to rectify the omission. Advise Jeremy Kimalat on the following;
   i. Persons who can sue for rectification of the register of members (6 marks)
   ii. The orders that the court might issue with respect to an application for rectification of the register of members (4 marks)

(Total: 20 marks)

QUESTION SIX

a) Laurin BVR Ltd. is a foreign company operating in Kenya. Advise the directors of Laurin BVR Ltd on the following:
   i. Types of accounts to be registered with the registrar of companies (2 marks)
   ii. The exceptions to the requirements in (a) (i) above (6 marks)
b) Explain three rules and regulations regarding the contents of a prospectus. (6 marks)
c) Distinguish between a "public company" and a "private company" (6 mark)

(Total: 20 marks)

QUESTION SEVEN

a) Ben Nyotu and Mla Chake are directors of Benki Yetu Ltd. Each of them holds forty percent of the ordinary shares and the reminder is held by Mla Yote. In addition to the shares, Ben Nyotu holds debentures issued by Banki Yetu, redeemable on 9 September 2015. Ben Nyotu wishes to dispose of his shares and debentures to Mla Chake and Mla Yote on priority basis. Banki Yetu Ltd, intends to raise funds and lend the same to Mla Yote to enable him purchase Ben Nyotu's debentures. Mla Yote will also arrange for a private loan guaranteed by Banki Yetu Ltd, to enable him purchase Ben Nyotu's shares. Advise Banki Yet Ltd, on the legality of its arrangement with Mla Yote regarding the purchase of Ben Nyotu's shares and debentures. (12 marks)

b) Distinguish between a "creditors voluntary winding-up" and a "members voluntary winding-up" of a company. (8 marks)

(Total: 20 marks)