

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 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 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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