



MACHAKOS UNIVERSITY

University Examinations for 2019/2020 Academic Year

SCHOOL OF BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS ADMINISTRATION

FOURTH YEAR FIRST SEMESTER EXAMINATION FOR

BACHELOR OF COMMERCE

BBA 401 COMPANY LAW

DATE: 29/11/2019

TIME: 8.30-10.30 AM

INSTRUCTIONS:

Answer Question ONE and any other TWO Questions.

QUESTION ONE (30 MARKS)

In the case of Salomon v. Salomon & Co (1897)

Salomon was leather Merchant. In 1892, he formed a company Salomon and Co. Ltd. Salomon's wife and five children held one share each in the company. The newly incorporated company purchased the sole trading leather business. Salomon valued the leather business at \$39,000 price paid in \$10,000 worth of debentures giving a charge over all the companies' assets, plus \$20,000 in \$1 shares \$9,000 cash. Salomon held 20,001 shares in the company with his family holding six remaining shares. Because of the debentures, he was a secured creditor.

Within one year of incorporation, the company ran into financial problems and consequently placed in insolvent liquidation. The liquidator appointed alleged that the company was a sham a mere agent for Salomon and that Salomon was therefore personally liable for the debts of company.

The House of Lords in mitigation found that:

A company formed in compliance with the regulations of companies act is a separate person and not agent or trustee of its controller. As a result, the debts of a company were its own and not those of the members. The member liability was limited to the amount prescribed in the Companies Act. The significance of the decision was the establishment of the legality of one-man company, the incorporation of small private partnership to a company and possibility of a trader to limit liability by subscribing for debentures rather than shares.

The law treats companies in company law distinctively from partnership. Company law consists partly of ordinary rules, common law, and equity. Therefore, fundamental rules and principles are contained in the memorandum of association and numerous decided cases.

In view of the Salomon's case:

- a) Explain the consequences of incorporation as demonstrated in Salomon case. (5 marks)
- b) Identify the characteristics of a company. (10 marks)
- c) Discuss the types of companies Salomon would have formed if he was in Kenya today (5 marks)
- d) Explain the clauses in a memorandum of association that Salomon would have made for his company. (4 marks)
- e) Differentiate a partnership from a company (6 marks)

QUESTION TWO (20 MARKS)

During the A.G.M Members voted you as a director in a Kenyan, company

- a) analyze five powers and five duties of a director of a company (10 marks)
- b) Rivals have accused your boss of not running a company properly and are threatening to oust him. He is preparing to defend himself. Assist him, Identify the statutory offences in conducting a company affairs (10 marks)

QUESTION THREE (20 MARKS)

- a) Discuss Five advantages and Five disadvantages of incorporation. (10 marks)
- b) Explain the procedures involved in winding up of a company. (10 marks)

QUESTION FOUR (20 MARKS)

- a) Identify five cases where the court may lift the company veil of incorporation (10 marks)
- b) Explain five rights and five duties of an auditor (10 marks)

QUESTION FIVE (20 MARKS)

- a) Former classmates who have just completed a degree course wish to start a company. However, their finances are limiting. Advice on the methods of raising share and loan capital (10 marks)
- b) John has recently bought shares in a blue chip media company. However, he fears for the liabilities. He consults you for advice.
Discuss with him the liabilities of a member (10 marks)