

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY**

**BACHELOR OF COMMERCE (HONOURS) DEGREE**

**COMPANY LAW I - CIN 2106)  
SUPPLEMENTARY EXAMINATION**

**JULY 2005**

**DURATION: 3 HOURS**

**INSTRUCTIONS TO CANDIDATES**

1. ANSWER ALL THE QUESTIONS.
  2. SUBSTANTIATE YOUR ANSWERS WITH REFERENCE TO AUTHORITY WHEREVER POSSIBLE.
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**QUESTION ONE.**

a) Peter, Farai and Cynthia wish to start a business together. They decide that they would like to form a private company as this will be the most convenient form of business enterprise. Explain to them, the consequences of forming such a company.

**[10 marks]**

b) A contract for the sale of a house was concluded on 25 January 2005. The purchaser is described as as “Jones or his nominee”. Jones was the sole director and shareholder of a company “XYZ”, which was incorporated on 18 February 2005, with an authorized share capital of \$100 000-00 of which one \$1000-00 share had been issued. A guarantee for payment of the balance price had to be furnished by 23 March 2005. By 24 March 2005, the guarantee had still to be given, and on that date, the seller addressed a demand to the purchaser, which entitled the seller to cancel or enforce the contract if the guarantee was not furnished within seven days, in terms of the contract. Only on the 29 March 2005 did the purchaser react by adopting the attitude that a nomination in terms of the contract had taken place and that XYZ Company had now replaced him as the contract.

What argument/s would you advance on behalf of the seller in an effort to enforce the contract of sale?

**[15 marks]**

**TOTAL: 25 Marks**

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## **QUESTION TWO**

a) What is the '*Ultra-Vires*' doctrine and does it still apply in present-day Zimbabwean Company Law?

[7 marks]

**OR**

b) Explain the operation of the "Turquand Rule".

[7 marks]

c) Exciting Enterprises (Pvt) Ltd is a duly incorporated company whose primary object of business is the production and marketing of toddlers and infant clothing. The articles of association of Exciting Enterprises (Pvt) Ltd empower Thomas with Authority to enter into contracts on its behalf if the value of the contract does not Exceed Z\$50 million. Contracts exceeding this amount require the prior approval Of the shareholders in a general meeting. Thomas contracts with Speed Services (Pvt) Ltd for the purchase of a racing car Totaling Z\$80 million on behalf of Exciting Enterprises (Pvt) Ltd.

- i) Is Exciting Enterprises (Pvt) Ltd liable under this contract?
- ii) Suppose, Martha, a director of Exciting Enterprises (Pvt) Ltd, who had no Authority to contract on its behalf, entered into the same contract, would Exciting Enterprises be liable?

[18 marks]

**TOTAL: 25 Marks**

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## **QUESTION THREE**

a) Distinguish between public and private companies.

[8 marks]

b) The promoter of ABC Company (Pvt) Ltd, a company yet to be incorporated wishes to enter into a lucrative contract with Quality Services (Pvt) Ltd as he is of the view that such a contract will be beneficial to the company once it is incorporated. Explain how the promoter can enter into this contract on behalf of ABC Company (Pvt) Ltd despite the fact that at the time of contracting ABC Company (Pvt) Ltd will still not yet be incorporated.

[12 marks]

c) Briefly explain the rules of Capital Maintenance.

[5 Marks]

**TOTAL: 25 Marks**

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**QUESTION FOUR**

a) Set out the principles formulated in the case of *Foss v Harbottle*.

**[6 marks]**

**OR**

b) What are the remedies available to a minority shareholder of a company who feels that he is being unfairly prejudiced by the majority shareholders of a company.

**[6 marks]**

c) Busy Bees Company Ltd had four directors, B, J, L and O. In 1995 J, L and O sold their shares to B. In order to assist B in acquiring their shares the company agreed to lend and advance to J, L and O \$500 000-00 each less the amount standing to their respective credits in the loan account of the company. Their shares were then transferred to B who took over their indebtedness to the company. In 1998, the company was placed under liquidation. The liquidator sued B, J, O and L for payment of the outstanding balance.

Comment on whether B, J, O and L have contravened any sections of the Companies Act. Substantiate your answers fully.

**[15 marks]**

d) In the event of a conflict arising between the Articles of Association and the Memorandum of Association, how is the dispute to be tackled and resolved?

**[4 marks]**

**TOTAL: 25 Marks**

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**END OF EXAM PAPER**

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