

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
BACHELOR OF COMMERCE HONOURS DEGREE

COMPANY LAW I – CIN 2106

NOVEMBER/DECEMBER 2005 FIRST SEMESTER EXAMINATION

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES.

Answer all the questions.

Refer to appropriate authority and decided cases where applicable.

QUESTION ONE.

a) Describe the main **types** of companies that can be formed in terms of the Companies Act [*Chapter 24:03*].

[8 marks]

b) Richard, Sam and Margaret are contemplating forming an appropriate form of business enterprise. Richard is of the opinion that a private company would be the best form of enterprise whilst Sam and Margaret are of the view that a partnership would be the most appropriate. Fully explain to Richard, Sam and Margaret, the disadvantages and advantages of a partnership and that of a private company.

[12 marks]

c) Explain the ways in which legal personality is acquired.

[5 marks]

TOTAL: 25 Marks

QUESTION TWO

a) X and Y enter into a deed of suretyship in respect of a loan taken up by Z Company. In his capacity as director of Z Company, Y signs an amending agreement, in which the date for repayment of the loan was extended by one year. Subsequently, Z Company was placed in final liquidation. Based on the deed of suretyship, Y is now sued. Y says that he had only signed the amending agreement in his representative capacity as director of Z Company and that he had not, in his personal capacity as a surety, consented to the amendment of the principal debt, and in consequence, was not personally liable. Is Y likely to succeed with this argument? Fully explain the position.

[15 marks]

b) With reference to case law, explain the concept of 'Legal Personality'.

[10 marks]

TOTAL: 25 Marks

QUESTION THREE

a) X enters into a contract of agency with PQR Company (Pvt) Ltd, an existing company, which was to come into effect with ABC Company (Pvt) Ltd, a company that had not been registered at the time of the contract. After, ABC Company (Pvt) Ltd is registered, ABC Company (Pvt) Ltd enforces the contract with X, who refuses to perform. Discuss whether a valid contract came into existence between X and ABC Company (Pvt) Ltd.

[10 marks]

b) Elite Enterprises (Pvt) Ltd is a duly incorporated company. Elite Enterprises (Pvt) Ltd delegates its authority to Pamela to represent it in commercial transactions with third parties, provided the value of the transaction does not exceed Z\$500 million dollars. In terms of the articles of association of Elite Enterprises (Pvt) Ltd, commercial Transactions exceeding Z\$500 million require the prior approval of the shareholders in a general meeting. According to the objects clause of Elite Enterprises, as stated in Its memorandum, the object of Elite Enterprises (Pvt) Ltd is to manufacture and market School furniture. Pamela concludes a contract with ABC Company (Pvt) Ltd, on behalf Of Elite Enterprises (Pvt) Ltd, for the purchase of Computer equipment totaling Z\$800 Million without first having obtained the prior approval of the shareholders in a Meeting. Consider whether, Elite Enterprises (Pvt) Ltd is bound by the contract. Would Elite Enterprises (Pvt) Ltd be bound to this contract if Amanda, an ordinary Member of this company, who did not have any authority to represent it, concluded This contract? Fully substantiate your answers.

[15 marks]

TOTAL: 25 Marks

QUESTION FOUR

a) Briefly explain how the share capital of a company is maintained. **[6 marks]**

b) What rules did the court formulate in *Foss v Harbottle*? Briefly explain. **[6 marks]**

c) Explain what Statutory and Common Law remedies are available to a minority member of a company who feels that s/he is being unfairly prejudiced. **[13 marks]**

TOTAL: 25 Marks

END OF EXAM PAPER