

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
BACHELOR OF COMMERCE (HONOURS) DEGREE

COMPANY LAW II – CIN 2206

JUNE 2004 SECOND SEMESTER EXAMINATION

Instructions to Candidates

- 1) Answer a total of any 4 questions**
 - 2) Each question carries 25 marks**
 - 3) Include relevant case law in each of your answers**
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- 1) There are several ways in which a business enterprise can raise funds for development. If the business is incorporated under the Companies Act, these ways include the issue of shares.

Describe the various methods, including the issue of different types of shares, by which a business enterprise can raise funds for its development, setting out in respect of each method the main advantages and disadvantages of its use by the directors or management of the enterprise in the circumstances that currently prevail in this country. **(25 Marks)**

- 2) Mr. Moyo had covented with his employer, Caparo Industries, that on leaving the employers employment, he would not solicit his employers customers. He left Caparo Industries and set up a competing business. In order to avoid the restraint of trade on soliciting his former employer, Caparo Industries', customers, he carried on the business through a company set up by his wife, 'Moyo Ltd' and began soliciting Caparo Industries' customers. Caparo Industries sued Mr. Moyo for breach of contract.

Advise both Mr. Moyo and Caparo Industries on their legal positions, determining whether Caparo Industries will succeed in their claim. **(25 Marks)**

- 3) There are several grounds on which a company can be wound up by the court. The effects of the court's power or discretion in winding up is profoundly reflected in circumstances where it considers it JUST and EQUITABLE to do so.

Explain your answer using relevant case law. **(25 Marks)**

4)

- a) 'The shareholders of a company are free to alter the articles of association of the company as they please.' Discuss this statement. **(10 Marks)**

- b) Compare and contrast shares and debentures. Discuss the economic and commercial considerations which have to be taken into account when choosing between shares and debentures as instruments for raising capital. **(15 Marks)**

5) Both the Common Law and the Companies Act Chapter 24:03 provide for the protection of the investing public whenever a company intends to raise capital through a public issue.

- Discuss the common law principles as well as the statutory provisions regulating the issue of the prospectus highlighting the remedies available to the injured party in each case. **(25 Marks)**

6)

a) What is the object of Judicial Management? **(10 Marks)**

b) The case of Ex Parte Porter [1960] R & N 269 - states, 'initial applications for a Judicial Management Orders, do not expressly require proof of a reasonable probability of success, there can be little doubt that such proof is necessary.'

Critically discuss this statement. **(15 Marks)**

END OF EXAMINATION PAPER!!