



LAW OF BUSINESS ASSOCIATIONS – PAPER 7

OVERALL AIM

To broaden the learner's knowledge by introducing them to the laws governing partnerships, companies and negotiable instruments

LEARNING OUTCOMES

On completion of this course, the learner should be able to:

1. Demonstrate an understanding of the laws governing partnerships, companies and negotiable instruments
2. Describe how companies are formed
3. Explain the financing and membership of a company
4. Discuss the roles and responsibilities of the officers of a company
5. Explain the various legal forms of insolvency

LEVEL OF ASSESSMENT

The examination will test knowledge, comprehension and application of law to different business associations and use of negotiable instruments.

EXAMINATIONS STRUCTURE

There will be a three hour examination made up sections A and B. Section A will comprise of 20 compulsory multiple-choice questions of 20 marks. Section B will comprise of five questions of 20 marks each, of which the candidate will be required to attempt any four

DETAILED SYLLABUS

A. THE LAW OF PARTNERSHIPS

1. Meaning of partnerships
2. Formation of partnership; contents of partnership deed
3. Types of partnerships
4. Membership of a partnership; illegal partnerships
5. Relationship of partners
6. Rights and duties and of partners

7. Duties of partners to third parties
 - (a) Power to bind the firm
 - (b) Implied authority of partners
 - (c) Liability of partners
 - (d) Liability for breach of contract
 - (e) Liability of the firm for torts
8. Liabilities of incoming and outgoing partners
9. Dissolution of partnership

B. NEGOTIABLE INSTRUMENTS

1. Meaning and characteristics of negotiable instruments
2. Types of negotiable instruments
 - (a) Cheques:
 - (i) Meaning
 - (ii) Nature
 - (iii) Types
 - (iv) Parties to a cheque; their rights and obligations
 - (v) Cheque crossings and endorsements
 - (vi) Dishonour and discharge
 - (vii) Forgeries
 - (b) Bills of exchange:
 - (i) Meaning
 - (ii) Nature
 - (iii) Types
 - (iv) Parties to a bill of exchange; their rights and obligations
 - (v) Acceptance
 - (vi) Negotiation
 - (vii) Endorsement
 - (viii) Dishonour
 - (ix) Discharge
 - (x) Forgeries

C. INCORPORATION AND CLASSIFICATION OF COMPANIES

1. Meaning of a company
2. Classification and distinction of companies
 - (a) Incorporated company versus unincorporated associations
 - (b) Discriminate between chartered companies, statutory companies, registered companies, company limited by guarantee, unlimited company, company limited by shares, private and public company

3. Incorporation
 - (a) The concept of separate legal entity
 - (b) Nature and consequences of incorporation; lifting the veil of incorporation

D. PROMOTION AND FORMATION OF COMPANIES

1. Promoters:
 - (a) Meaning
 - (b) Duties
 - (c) Remuneration
 - (d) Pre-incorporation contracts
2. Formation of a company:
 - (a) Types of companies
 - (b) Procedure of registration of a company
 - (i) Certificate of incorporation
 - (ii) Filing of memorandum of association, articles of association, statement of the company's nominal capital, statutory declaration, list of persons who have consented to become directors, written undertaking to take and pay for qualification shares
 - (c) Effect of registration
 - (d) Commencement of business; restrictions to commencement of business

E. MEMBERSHIP

1. What constitutes membership: subscription to the memorandum; agreement and registration
2. Eligibility for membership; termination of membership; register of members
3. Annual return: contents; documents to be annexed; annual return of company with no share capital; annual return of private company
4. Rights of members

F. THE MEMORANDUM OF ASSOCIATION

1. Meaning
2. Contents
 - (a) Name
 - (b) Registered office

- (c) Object(s): the doctrine of ultra vires and application of the doctrine; extension of the doctrine and who may invoke the doctrine; exceptions to the doctrine; substratum of a company; powers of the company under the memorandum of association in addition to the object(s); alteration of the object(s)
- (d) Limitation of liability
- (e) Capital clause
- (f) Association clause and subscription

G. THE ARTICLES OF ASSOCIATION

1. Meaning
2. Contents
3. Conflict between the memorandum and articles of association
4. The contractual effect of the memorandum and articles of association
5. Alteration of the articles of association and restriction to alteration

H. PROSPECTUS

1. Meaning
2. Form and contents
3. Reports to be set out in prospectus; reports of experts in prospectus
4. Prospectus and duty of disclosure; effect of non-disclosure
5. Civil and criminal liabilities under the prospectus and remedies
6. Issue of shares to the public: public issue by prospectus; offer for sale; placings
7. Statements in lieu of prospectus
8. Stock exchange requirements
9. Underwriting; brokerage and provision of financial assistance

I. SHARES AND SHARE CAPITAL

1. Meaning
2. Numbering of shares
3. Allotment of shares: requirements of allotment, withdrawal of application, irregular allotment, return of allotment
4. Share certificate and estoppel:
 - (a) Loss of share certificate
 - (b) Forged transfer
 - (c) Impersonation of shareholders
 - (d) Share warrants and option to surrender share warrant

5. Transfer of shares:
 - (a) Procedure of transfer
 - (b) Certification of transfer
 - (c) Terms implied between seller and purchaser
 - (d) Transfer prior to registration
 - (e) Notice of transfer
 - (f) Blank transfers
 - (g) Restrictions on transfer
6. Transmission of shares
7. Mortgage of shares
8. Calls on shares
9. Lien on shares
10. Forfeiture and surrender of shares
11. Conversion of shares into stock
12. The register of members
13. Annual return
14. Share capital:
 - (a) Meaning
 - (b) Types
 - (i) Nominal capital
 - (ii) Issued capital
 - (iii) Paid up capital
 - (iv) Reserve capital
 - (c) Classes:
 - (i) Ordinary
 - (ii) Founders' or deferred shares
 - (iii) Preference; redeemable preference shares
15. Issue of shares
 - (a) At a premium
 - (b) At a discount
16. Prohibition of financial assistance
17. Shares of no par value
18. Alteration of capital
19. Reduction of capital: requirements; liabilities and limitations
20. Variation of shareholders' rights
21. Acquisition by company of its own shares

J. DEBENTURES AND BORROWING

1. Authority to borrow; ultra vires borrowing
2. Meaning of debenture

3. Debentures and debenture stock
4. Shares versus debentures
5. Types of debentures
6. Charges; priority of charges; registration of charges
7. Trust deed; liability of trustees
8. Issues and reissues of debentures; remedies of debenture holders
9. Appointment of receiver; notice of appointment; position and remuneration of receiver

K. MEETINGS AND RESOLUTIONS

1. Statutory meeting
2. Annual general meeting:
 - (a) Default in holding the meeting
 - (b) Ordinary business at meeting
3. Extra-ordinary general meeting
4. Notices of meetings:
 - (a) Length of notice
 - (b) Service of notice
 - (c) Nature of notice
5. Circulation of members' resolutions
6. Proceedings at meetings:
 - (a) Quorum
 - (b) Chairman
 - (c) Resolutions and amendments to resolutions
 - (d) Voting and proxies
 - (e) Company representative
 - (f) Adjournment
 - (g) Minutes
7. Class meetings; rights of minority

L. DIRECTORS AND SECRETARY

1. Directors:
 - (a) Directors as agents and trustees
 - (b) Appointment
 - (c) Publicity requirements
 - (d) Termination of directorship
 - (i) By resignation
 - (ii) By retirement
 - (iii) By removal

- (e) Remuneration
 - (f) Powers; delegation of powers;
 - (g) Managing director and remuneration
 - (h) Loans and disclosure of loans and other interests
2. Secretary:
 - (a) Appointment
 - (b) Change of secretary
 - (c) Removal by company
 - (d) Position and duties
 - (e) Company's liability for secretary's acts
 - (f) Negligence
 - (g) Loans to secretary
 3. Register of directors and secretaries
 4. Register of directors' shareholdings

M. ACCOUNTS AND COMPANY AUDITORS

1. Accounts:
 - (a) Types, contents and particulars
 - (b) Group accounts
 - (c) Directors' responsibilities and report
2. Auditors:
 - (a) Appointment
 - (b) Qualification and position of the auditor
 - (c) Rights and duties
 - (d) Removal from office
 - (e) Contents of auditors' report
 - (f) Resignation
 - (g) Remuneration
 - (h) Liability (negligence under the common law; civil and criminal liability)

N. DIVIDENDS

1. Declaration and payment
2. Unlawful distributions
3. Capitalisation of profits

O. MAJORITY RULE, MINORITY PROTECTION AND INVESTIGATIONS

1. The rule in Foss v Harbottle

2. Action by shareholders
3. Statutory protection of the minority
4. Company investigations and inspections

P. CORPORATE INSOLVENCY

1. Winding up/ liquidation
 - (a) Types
 - (b) Grounds
 - (c) Petitioners
 - (d) Procedure
 - (e) Commencement and consequences
 - (f) Distribution of property
 - (g) Completion
2. The Liquidator
 - (a) Appointment and removal
 - (b) Remuneration
 - (c) Control over liquidator
 - (d) Powers and duties
 - (e) Liability
 - (f) Release

REFERENCES

1. Bakibinga D.J (2001), Company Law in Uganda, Fountain Publishers, Kampala, Uganda.
2. Bakibinga D.J (2007), Partnership Law in Uganda, Professional Books Publishers, Kampala, Uganda.2nd Edition.
3. Hussain Ashiq (2010), General Principles and Commercial Law of Kenya East African Educational Publishers Ltd, Nairobi, Kenya.
4. Ogola John Joseph (2011), Business Law, Focus Publications Ltd, Nairobi, Kenya.