

**COLLEGE OF LAW**

**BACHELOR OF LAWS (LL.B) EXAMINATIONS**

**FIRST SEMESTER EXAMINATION, 2021/2022 ACADEMIC SESSION**

**PCL 503 – LAW OF BUSINESS ASSOCIATIONS I**

**INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS**

**EACH QUESTION CARRIES 17<sup>1/2</sup> MARKS. TIME ALLOWED: 3 HOURS**

**LOGICAL AND GRAMMATICALLY CORRECT PRESENTATION OF ANSWERS ARE IMPORTANT**

1. Nnamdi and his four friends incorporated Double N Limited (“the company”) ten years ago. Over the past five years the company has accumulated much trade debts. Its creditors complain that the corporate governance practices and procedures of the company are not transparent. They add that the company has no system of internal control. One of the creditors says that he has ample evidence that the directors of the company have been fraudulent in managing its affairs. Another creditor alleges that the company has a subsidiary to which it transferred portions of its earnings regularly while declaring losses as grounds for not paying its creditors. The creditors have approached your firm for legal advice on the ways and means of subjecting the directors of the company to liability for the company’s debts and other obligations generally.

**With the aid of decided cases, advise the creditors of Double N Limited.**

2. Bassman, Chukwuma and Cosmas have been friends for a long time. Recently, they submitted a business proposal to a funding agency whose aims include promotion of entrepreneurship and reduction of graduate unemployment. That agency granted them a loan of N5, 000,000 at 2% interest to establish a business venture for the production of plastic products. The three friends have different ideas on the choice of the business organization form that would promote their ideas, secure their investment, and ensure profitability. From their narratives, they all favour a partnership but could not reach an agreement on the suitable type because of their lack of knowledge on the applicable law. Not being able to arrive at a decision, they have approached you for counsel.

**Advise Bassman, Chukwuma and Cosmas on the nature and implication of each type of the business organization they are considering**

3. Bob Hamilton, in his book *Corporation*, defines a company as “a type of legal institution or process that defines relationships among people.” In explaining corporate relationships, scholars have developed a number of theories, all of which have said something that is true of a company. Axiomatically, none of the theories has exhaustively explained the nature and purpose of corporate relationship.

**In the light of the above, explain critically five theories of corporate relationship.**

- 4(a) “Promoters have in their hands the creation and molding of the company, they have the power of defining how, and when, and in what shape, and under what supervision it

shall start into existence and begin to act as a trading corporation.” – *Lord Cairns, in Erlanger v New Sombrero Phosphate Company Ltd.* (1878) A.C. 1218 at 1230.

**In view of the importance of the role of a promoter, appraise his duties with the aid of statutory provisions and decided cases.**

- (b) Kigali, Adoke and Ahmadu agreed to form and finance an estate developing company to be named KAA Estate Developers Limited. The company may admit other members after incorporation. Kigali, who was to buy a mini-estate for the proposed company, sold his estate in Asokoro to it at profit of N10 million. Adoke bought a resort in Lagos for the proposed company and received a discount of N2 million on the transaction due to his exceedingly great negotiation skills. Ahmadu has learnt of the outcome of the two transactions and approached you for an advice.

**Advise Ahmadu with the aid of statutory provisions and decided cases.**

5. The Companies and Allied Matters Act, 2020 has provisions that seek to ensure that the doctrine of *ultra vires* is neither “an illusory protection for the shareholders” nor “a pitfall for third parties dealing with the company.”

**Evaluate the preceding opinion with the aid of judicial decisions and the relevant provisions of the Act.**

6. As one of its documents of incorporation, Chamdar Winery Limited (“the company”) filed articles of association instead of electing to be bound by the model articles in the Companies and Allied Matters Act, 2020. Ospina, the foundation legal adviser and company secretary of the company, has presented a claim for unpaid allowances under a clause in the company’s articles of association that authorizes payment of allowances to officers of the company. The Managing Director of the company responded that by virtue of *Eley v Positive Government Security Life Assurance Co Ltd (1876) 1 Ex D 88* and similar cases, Ospina is not entitled to the allowances except as provided for in his letter of appointment. Consequently, Ospina has approached you for advice.

At this point in time, the board of directors of the company intends to alter its articles of association “so as to make it more comprehensive”. The board seeks your advice on the procedure and effect of the alteration.

**Leveraging on decided cases and statutory provisions, advise Ospina and the board of directors of Chamdar Winery Limited respectively.**

7. Through a review of key pre-1990 cases on pre-incorporation contracts and the relevant provisions of the Companies and Allied Matters Act as well as post-1990 judicial authorities, explain critically how the law on pre-incorporation contracts has changed.