

NATIONAL OPEN UNIVERSITY OF NIGERIA
PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE EXPRESS WAY, JABI – ABUJA
FACULTY OF LAW
JANUARY 2018 EXAMINATION

COURSE CODE: CLL 533

COURSE TITLE: COMPANY LAW I

CREDIT UNIT: 4

TIME ALLOWED: 2 ½ hrs

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.

1. Denloye is a successful sole proprietor offering interior decorations business consultancy services to a number of local companies. His chief competitor is Chuka, who offers similar services. Chuka and Denloye decide that they wish to work together, but are unsure as to which business structure would be most appropriate. They seek your advice regarding which business structure would be most suitable, bearing in mind the following instructions:

- They wish to avoid significant levels of formality and regulation
- They want to have flexibility in establishing the procedures by which the business is to be run and be able to run their affairs in private.
- They want to avoid personal liability for the debts and liabilities of the business and would not want to invest significant amount of their capital in setting up the business and they also wish to take on employees.

Discuss with the aid of legal authorities to what extent the various business structures fulfil all, or some, of the above aims and advise Denloye and Chuka which business structure would be most suitable for their business.

2. The judgment in *Salomon v Salomon* [1897] should have been decided differently. It established that a correctly registered company possesses a legal identity separate from its shareholders. The result is a situation where unscrupulous traders may exploit a position of trust, and it has left unsecured creditors in a precarious position. By the use of appropriate case law and practical examples, critically assess this statement.
3. Ade and Tunde are partners in a business that sells video games hardware and software. The business proves to be extremely successful, and they open up a

their solicitor to incorporate the business, calling the new company 'Adetuns Gaming Ltd.'. Around the same time, Soony are about to release a new games console – the GameStation 6. Ade and Tunde are eager to acquire as many of these consoles as possible as they are likely to prove highly profitable. Ade hears of a potential source (Soony Console Suppliers Ltd), and is offered 50 consoles. Eager to purchase the consoles, Ade does not wait until the company is incorporated and enters into a contract 'for and on behalf of Adetuns Gaming Ltd' with Soony Console Suppliers Ltd. Tunde also is offered a number of consoles and, prior to incorporation, enters into an agreement with another company, Sliver Hardware Ltd to purchase 40 consoles. Tunde signs the agreement 'Adetuns e Gaming Ltd pp. Tunde Roberts (a director)'. The certificate of incorporation is issued and, at the first board meeting of the new company, Ade and Tunde ratify both agreements. Shortly after, Soony Console Suppliers Ltd refuse to deliver the consoles. Tunde is concerned that Silver Hardware Ltd will also refuse to deliver the goods.

Advise Ade and Tunde. Discuss the position under both the common law and statute.

4. Afam and Adamu are two of the 20 members of f Glorious Ltd. Ade is both a member and a director of the company. The Articles of Glorious Ltd. include the following:
 - a. Adamu shall be employed as the company solicitor.
 - b. If any member wishes to transfer his/her shares, he or she must first inform the existing members, who may acquire the shares at a fair price.
 - c. On any resolution to remove Ade as a director of the company, he shall be entitled to 50 votes per share.
 - d. All disputes between the company and its shareholders shall be referred to arbitration.

The following events have occurred:

- a) The company is unhappy with Adamu's inefficiency and has decided to remove him from his position as company solicitor. The company intends to replace Adamu with Akpan who has 15 years experience working as a company solicitor with Important Ltd.

Advise Adamu whether or not he can prevent his removal by the company.

- b) Afam wishes to sell his shares to someone who is not currently a member of the

Advise Afam whether the members of the company can prevent him from doing so.

c) Ade has been told by the company's chairman, Alex that he is to be removed as a director, and that the company 'has no intention whatsoever of respecting his right to 50 votes per share'.

Advise Ade whether he can enforce this provision in the articles.

d) Alex has decided to amend the articles to include 5 votes per share in event of a resolution to remove a director of Glorious Ltd. Alex is to present the amended copy of the Articles at the next General meeting. Advice.

5. Tony has been into importation of fruit drinks for the past ten years. He carried out the operations through his company – Tennyson Ltd. As a result of the issue of increase importation in Nigeria being of national concern, Tony in anticipation of a future ban on the importation of fruit drinks in Nigeria, decided to start a business of importation of phones. He decides to establish a company for that purpose. He gives instructions to Chris, his personal solicitor and solicitor to Tennyson Ltd on setting up the new company. Chris registered the new company, Tee-Mobile Phones Ltd. Chris also uses his professional expertise to get a suitable office location at a reasonable price, secured bank loan, an experienced managing director for the company and suitable foreign business partners. Tony's first son, Abel has just been called to the Nigerian Bar, and Tony wants him to assume duty as the solicitor to Tennyson replacing Chris. Chris is unhappy with this arrangement and insists Tony should pay him off including payments for transactions in relation to Tee-Mobile Phones Ltd. Tony has refused to pay. Chris instituted an action against Tennyson for unpaid fees.

Is Chris a trustee to Tee-Mobile Phones Ltd? Discuss the legal issues and advice Chris on how he can remedy the situation.

6. The concepts, doctrines and developments of the Company Law in Nigeria has its root entrenched deeply established in a pool of historical development that have spanned over decades of years. Discuss