

**THE OPEN UNIVERSITY OF TANZANIA  
FACULTY OF LAW**

**OLW 313**

**COURSE OUTLINE FOR THE LAW OF COMPANIES AND PUBLIC  
CORPORATION**

**SECTION A**

**COMPANY LAW**

- (1) The Law applicable: The Companies Ordinance Cap 212  
  
The Historical Background and Development since 1932.  
  
Major amendments and why they have been passed.
- (2) The subject matter of Company Law - aims objectives and functions S. 2 D S. 3 (1) pp.
- (3) **Promotion of Companies:**
  - (a) Meaning of the term promoter statutory provisions Cap. 212 S. 38.
    - (i) **Judicial Definitions:**  
  
**Whaley Bridge Calico Printing Co. V. Green** [1880] 5 QBD 109 at p. 111. Promotion not a term of Law. Law but a business summing up operations by which a co. is created.
    - (ii) **Tycross V. Grant** (1977) C.P.D. 469 at P. 541.
    - (iii) **Capel v. Sinis Ships Compositions Co.** (1888) 57 L.J Ch 713.
    - (iv) **Cackett v. Keswick** [1902] 2 Ch. 456.
    - (v) **Marshall v. Morrison** [1907] W.N. 29.
    - (vi) **Jubilee Cotton Mills Ltd. v. Lewis** [1924] A.C. 958.
  - (b) Commencement of promotion and its termination - **Foss v. Harbottle** (1843) 67 E.R. 189.

(c) The Relationship between Promoter and Company.

(i) Although neither agent nor trustee general principles of agency apply.

Re: **LYDNEY & WIGPOOL IRON ORE CO. v. BIRD** (1886) 33 Ch. D. 85.

- **Re Faure Electric Accumulator Co.** (1888) 40 Ch. D. 141.

- **Mestropolitan Coal Consumers Association v. Scrimgeous** (1895) 2. Q.B. 604.

(ii) Distinction from ordinary trustees **Canian Electric Palaces Ltd. v. Baine** [1914] Ch. 332 109 L.T. 964.

(d) Termination of Promotion - Not when the company is registered **but** when the company expects no obligations from promoter qua-promoter - Ref. **Ema Silver Mining Co. Lewis** (1879) 4 CPD 396, **Ladywell Mining Co. v. Brooker, Ladtwell Mining Co. v. Huggons** 35 Ch. 400: 56 L.T. 677; **Bacobus Marley Estates Ltd. v. Marler** (1913) 114 L.T. 640.

(e) **Duties of Promoter to the Company.**

(i) The Duty to disclose interests on sale to company: **Lindsay Petroleum Co. v. Hurd** (1874) 22 W. R. 492.

(ii) Adequacy of disclosure cludestein; v. Barnes (1900) Ac 240; **Earlanger, v. New Sombrero Phosphates** (10.39 L. T. 269 or 27 WR 65.

(iii) Duty to disclose in prospectus; **Lagunace Elitrate Co. v. Lagunace Syndicate** (1899) 2 Ch. 392.

(iv) Duty to account for secret profit on purchase of property: **Boss. V. Harbottle** (1843) ER 189; **Jubilee Cotton Mills Ltd. v. lews/1924/C\_958, Re Burion/132.**

(f) **Rights of Promoters**

(i) The Rights to Recover Promotion expenses.

- What amount to "formation expenses" **Arkwright v. Newbold** (1881) 17 ch. D. 301. 44 L.T. 393 **Nash v. Wooderson** (1884) 52 L. T. 49 **Lydney Migrool Iron Ore Co. v. Bird** (1885) 31 Ch. D. 328.

- (ii) Conditions for entitlement to recovery
    - (a) Must be authorised by articles **Merhedo v. Perto Alegre Railway Co.** (1874) 32 L. T. 57; 23 W. R. 57.
    - (b) Authorisation by articles does not give automatic right of suit: **Spiller v. Paris Skating Rink Co.** (1878) 7 Ch. D. 368. **D. Hickman v. Kent or Rombey Marsh Sheep-Breeders Association** (1915) 1 Ch. 881.
  - (iii) Non-compliance with the statute - **Cotman v. Broughman** [1918] AC 514; **Re Anglo-Cuban Oil; Bitumen and Asphalt Co. Clt.** [1917] 1 Ch. 477.
- (j) **Effect of Registration:**
- (i) Acquisition of legal personality - S. 15 Cap. 212.
  - (ii) The effect of the document of registration as conclusive evidence of - compliance with statutory conditions S. 16 Cap. 212.

#### (4) CORPORATE PERSONALITY

- (i) The separate legal personality of a company on incorporation - **Salomon v. Salomon: Co: Ltd.** [1897] AC 22 reversing judgment in **Broderip. V. Salomon.** [1895] 2 Chi. 323 the historical significance of **Salomon v. Salomon: Co.**
- (ii) **The content of legal personality:**
  - (a) Acquisition of rights and liabilities.
  - (b) Holding property in its name and not as a trustee for its members: **Macaure v. Northern Assurance Co.** [1925] AC 619 at 626; **Short v Treasury Commissioners** [1948] 2 ALL ER 509 at 775.
- (iii) (It gets a right to sue in its own name-Nobody can sue in his own name to enforce its rights-**Macaure v. Northern Assurance Co.** [1952] (above): **Foss v. Harbottle** (1843) 67 ER 67 ER 189.
- (iv) It can only be sued in its own name. None can be sued in his own name for its wrongs or liabilities: **Dainler Co. Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.** [1916] 2 AC 307 at p. 338.

- (v) It can own, hold, occupy and acquire or dispose of property in its own rights and name: **Roberts V. Coventry Corporation**\_ [1947] I ALL ER 308.

**Pegler v. Graven** [1952] I ALL ER 665 or [1952] QB **Torbert v. Faulkner**\_[1952] 2 T. L. L. R. 569; **Wilson v. Jones** (1866) L. R. I exch. 193; **Investment Society** (1888) B. App. Cas. 699.

- (vi) It can enter contracts in its own name, commit wrongs and torts and contract debts.

**v. Lever Brother Ltd.** [1931] ALL. E. R. I. Or [1952] A.C. 161 at 228; **Harburg Indiaa Rubber Comb. Co. v. Martin**\_[1902] I KB 778; **Fitzgerald Bell v. Dressler** (1859) 7 C. B. (N. S.) 374; **Farrar v. farrans Ltd. (1888)** 40\_Ch. D. 395; **British Thomson Houston Co. v. Sterling Accessories Ltd.** [1924] 2 Ch. 33 **Kajubi v. Kayanja**\_[1967] E.A. 301.

**(vii) Lifting the veil of Corporate Fiction.**

**(a) Statutory provisions**

- (i) Reduction of members below statutory minimum  
Consequences S. 29.
- (ii) Liability for statements in the prospectus - S. 38.
- (iii) Liability of directors for allotment of shares without receiving minimum subscription - S- 40(5).
- (iv) Liability for allotment without issuing prospectus or statement in lieu of the prospectus - S. 41.
- (v) Liability of directors for irregular allotment S. 42.
- (vi) Liability of company and its officers severally for provision of company's finances to the company to purchase its own shares S. 46(3).
- (vii) Liability of the company and its officials severally for irregular issue of shares at a discount - S. 48(3).
- (viii) Liability for failure to notify the registrar of the consolidation of shares capital and or its conversion into stock - S. 52(2).

- (ix) Liability for failure to notify Registrar of increase of share capital - S. 53(3).
- (x) Liability of directors, managers and the secretary for concealment of names of creditors in the case of reduction of capital - S. 61.
- (xi) Liability for failure by the company to send notice of refusal to a member who wants to transfer his shares or debentures - S. 67(2).
- (xii) Failure or issue share or debture certificates - liability of officers of the company - S- 68(3).
- (xiii) Liability of directors, managers and secretary for company's failure to register charge.- SS. 80(3), 81(2), 86(3), 88(2) and 89(1).
- (xiv) Liability of directors and other officers for the company's failure to make an-annual return SS. 109, 110 and 111.

**(b) Judicial Grounds**

**(i) Public Interest:**

- **Dailler Co. Ltd v. Continental Tyre and Rubber Co. Great Britain Ltd.** [1916] 2 AC 307 esp pp. 339 - 340.
- **R. v. London County Council** [1915] 2 KB 466
- **T. v. Arnand** (1846) p. op 806.
- **The Tommi** [1914] p. 251.
- **The Polzeath** [1916] p. 241.
- **Re F. G. (Films Ltd).** [953] I All E.R. 615

**(ii) Implied Agency and Trusteeship**

- **Smith, Stone and Knight Lt Birmangham Corporation** [1939] 3 All E. R. 116
- **Apthorpe v. Peter Schoonhofen Bwewing Co. Ltd.** (1899) 4 T. C. 47.

- **Kodan Ltd v. Clark** [1902] 2 K. B. 450.
- **Firestone Tyre and Rubber Co. Ltd v. Lewellin** [1956] 1 All E. R. 693, [1957] All E. R. 561.
- **Trebang Working Meris Club and Institute Ltd. v. Mecdeanald** (1940) 1 All E. R. 454.
- **Taddy E. Co. v. Sterious & Co.** [1904] Ch. 354.
- **McGruther v. Pitcher** [1904] 2 Ch. 306.
- **Berkey v. Third Avenue Railway Co.** 244 N. Y. 84
- **Weisser v. Mursam Shoe Corporation** 127, F. 2<sup>nd</sup> 344 (US).
- **Bartle v. Home Owners Colperatie Inc.** 309 N. Y. 103.

(c) **Readings:**

- (1) **Pennington Principles of Company Law.** Cha. pp. 22-35.
- (2) **Stevens Corporations** (1949) p. 95.
- (3) Gower, **Modern Company Law** (1954) Ch. 10.
- (4) Wormser, **The Disregard of the Corporate Fiction and Allied Ciroirate Orivkens.**
- (5) Latty, "The Corporate Entity as a Solvent of Legal Problems" in 34. **Michingan Law Review** 597.
- (6) Horowitz, "Disregarding the Entity of Private Corporations" in 14 **Washington Law Review** 285.
- (7) Latty, "The Close Corporation etc...." 34 **North Carolina Law Review**" 432.
- (8) Murphy, "Corporate Divisions v. Subsidiaries" 34 **Harvard Business Review** 83.
- (9) Murphy, The Theory of Enterprise Entity, in 47 **Columbia Law Review** 342.

- (10) Ballantive, Corporations: "Disregarding the Corporate Entity" s a Regulatory 31 **California Law Review**, 426.
- (11) Wormser, "Peiercing the veil of Corporate entity", 12 Columbia Law Review, 496.
- (12) Machen, Corporate Personality" 12 253.

**(5) The Memorandum of Association**

- (a) The statutory requirements about a memorandum of association, - SS (1), 4 and 5.
- (b) The Significance of the memorandum
  - (i) It is the charter of the company - Ashbury **Railway Carriage & Iron Co. v. Riche** 33 L.T. 450. 24 W. R. 79.
  - (ii) It has substituted the deed of settlement:- **Sherborne Gas and Cake Co. Ltd.** (1935) 80 Sel. Jo. 33; **Re Agle Greek Steam Co.** (1866) 35 Bear. 399 14 et 120; 14 W. R. 624, 55 E. R. 950.
- (c) **What it has to contain:**
  - (i) According to statute - S. 13. Cap. 212.
  - (iii) According to case Law:-
    - (a) The name clause - if not conflicting with S. 18 of cap 212 and not confusing: Ref. **Ewing. V. Buttercup Margarine Co. Ltd.** [1917] 2 Ch. 1
    - (b) The word limited in the company is limited to be used on name, documents, bills of exchange and all publications. Ref. **Atkins & Co. Ltd. v. Mardle.** (1889) 58 L. J. Q. B.
    - (c) **The Registered Office Clause**  
Ref: Tables A, B, C, D & E cap 212
- (d) **The Objectives Clause C.**
  - (i) See Table B, C, C & E cap 212  
**Re Fortune Copper Mining Co. Ltd.** (1970) JR 10
  - (ii) Limitations under the Doctrine of ultra vires 10 Eq. 390.

(a) **Ashbury Rly. Carriage and Iron Co. v. Riche**, 33 E. T. 450.

**AG. V. Gt. E. Rly Co.** (1880) 5 AG 473.

(b) **Re Duomatic Ltd.** (1969) 1 All E. R. 161

(c) **National Telephone Co. v. St. Peter Port Constable** (1900) AC.

**(iii) The Construction of the object**

(a) **Foster v. London, Chatham and Dover Ball Co. (1895) 1 Q. B. 711.**

(b) **London County Council v. A. G.** [1902] A. C. 165.

(c) **Re W. and M. Roith Ltd.** [1967] All E.R. 427.

(d) **Parker v. Daily News Ltd.** [1962] 2 All E. R. 929

(e) **Chaterbriage Corporation Ltd.. v. Llyods Bank Ltd.** [1969] 2 All E. R. 1185.

(f) **Stophens v. Mysore Reefs (Kandundu) Maning Co. Ltd.** [19020 1 Ch. 745.

(g) **Cotman v. Broughan** [1918] A. C. 514

(h) **Anglo-Overseas agencies Ltd. v. Green** [1960] 3 All E. R. 244; **Re German date Caffé Co. Ltd.** [1882] 20 Ch. D. 169.

(i) **Re Introductions Ltd. v. National Provincial Bank Ltd.** [1969] 1 All E. R. 8887.

(j) **Re Amalgamated Syndicate** (1897) Ch. 600.

(k) **York corp. v. Henry Leethan & Sons Ltd.** [1924] 1Ch. 9.

**(iv) The Declining Role of the Ultra - Vires Doctrine, Read:**

(1) Gower, **Modern Company Law, Chapter 5**

(2) Morris, **Extra Ordinary Legal Remedies**, (1926) p. 143.

- (3) Stevens, **Corporations** (1949) p. 315.
- (4) Latty, **Introduction to Business Associations**.
- (5) Ballantine, "Proposed Revision of the Ultra Vires Doctrine, 12 **Cornell Law Quarterly Review**, 453.
- (6) Pound, "Visitatorial Jurisdiction Over Corporations in Equity", in 49 **Harvard Law Review**, 369.
- (7) Gower, "Some Contracts between British and American Corporation Law" in 69 **Harvard Law Review**, p. 1369.
- (8) Dodd, "Statutory Developments in Business Corporation Law, 1886 - 1936" in 56 **Harvard Law Review** 27.
- (9) Ruteledge, "Significant Trends in Modern Incorporation Statutes, "(1937) in 22 **Washington University Law Quarterly**.
- (10) Luce, "Trends in Modern Corporation Legislation" Interstate compacts and Federal Legislation", 34. **Mich. L. R.** 1063.

## (6) THE ARTICLES OF ASSOCIATION

- (a) Statutory provisions on the articles of association SS. 8-14 of Cap. 212, s. 9 (1) (2) and (3).
- (b) The form of the articles s. 10 and Tables a, B, C, D and E.
- (c) The Memorandum and articles need for consonance see:-
  - (i) **Ashbury Rly Carriage Co. v. Riche** (above).
  - (ii) **Guines v. Bank Corporation off Ireland Ltd.** (1882) 22 Gh. D. 349; 47 L. T. 517.
  - (iii) **Angostura Bitters v. Kerr** [1933] A. C. 550.
  - (iv) **Ashbury v. Watson** (1885) 30 Ch. D. 376.
- (d) Articles at Variance with statutes or any Law - void ab initio. Ref: (I) **Hopkins v. Mortimer, Harley & Co. Ltd.** [1917] 1 Ch.
- (e) The Interpretation of Articles - need to construe them in order to give them their intended efficacy Ref: (i) **Re Hatley Baird Ltd.** (1955) Ch. 143.

- (ii) **Holmes v. Keyes** (1958) 2 WLPT 772
- (iv) **Rayfield v. Hands** (1958) 2 ELT 851.

**(f) Effect of the Articles**

- (i) They bind as if signed and sealed by each member - S. 21 cap. 212.
- (ii) The meaning of "as if signed and sealed".

(a) Do they constitute a contract between members and the company?

- (i) S. 21 cap 212, S. 20 English companies act 1948.
- (ii) **Bradford Barking Co. v. Bright** [1886] 12 app. Cas. 29.
- (iii) **Borlands Trustee v. Steel Bros. & Co.** [1903] Ch. 279.

(b) The nature of this contract.

- (i) **Beattie v. Beattie Ltd. and Beattie** [1936] Ch. 708.
- (ii) **Re Newritish Iron Co. Expert Beck** - [1898] Ch. 824.
- (iii) **Bisgood v. Henderson's Transvaal Estates** [1908] 1 Ch. 743.
- (iv) **Re Alexander's Timber Co.** [1901] Ch.
- (v) **Greene v. Greene** [1949] Ch. 333.
- (vi) **Hichman v. Kent or Romey Marchs Sheept Breeders' Association** [1915] 1 Ch. 881.

(c) Do they constitute a contract between members inter se?

- (i) **Welten v. Saffery** [1897] AC 315.
- (ii) **Johnson v. Lytle Iron Agency** (1877)
- (iii) **Mocdoughal v. Garder** (1875) 1 Ch.D. 13; 33 L.T. 52.
- (iv) **Burland v. Earle** [1902] AC 83.

**Exceptions: In baillie v. Oriental Telephone and Electric Co.**

[1915] 1 Ch. 503.

**Other Instances: See,**

- (i) **Pull brook v. Richmond Consolidated Mines** 9 Ch. D. 610.
  - (ii) **Hayes v. Bristol Plant Hire Ltd.** [1957] 1 WLR 499.
- (d) Do they constitute a contract between the company and outsiders?
- Ref: **Elley v. Positive Life Assurance Co.** (1876) 1 Exch. D. 88
- (ii) **Swabey v. Port Darwin Gold Mining Co.** [1889] 1 Meg. 385.
  - (iii) **Re New British Iron Co.** [1893] Ch. 324
- (e) Are the members bound by the articles?
- Ref:
- (i) S. 21
  - (ii) **Hickman v. Kant** [1915] 1 Ch. 881
  - (iii) **Pritchards Case** L. R. 8 Ch. 956.
  - (iv) **Melhado v. Porto Alegre Ry Co.** LRT 9 Ch. D. 503.
  - (v) **Pender v. Lushington** [1877] 6 Ch. D. 70
  - (vi) **Pull Brock. V. Richmond Consolidate Mining Co.** (1878) Ch. D. 610.

**7. The alteration of the Articles**

- (i) The power to alter the articles S. 12 Cap. 212
  - (ii) The Limitations under cap. 212 - ss. 12, 23, 110, 130 and 167.
  - (iii) Judicial limitations
- (a) That the alterations should not oppress minority Ref:
- (i) **Brown v. British Abrasive Wheel Co.** [1919] 1 Ch. 290
  - (ii) **Allien v. Gold Reefs of W. African Ltd.** [1900] 1 Ch. 656.  
Note Vaughan Williams Dissenting opinion
- (b) That the alterations should be made bona fide for the benefit of the company.

- Ref: (i) *Shirlaw v. Southern Foundrise Ltd.* [1940] A. C. 701.
- (ii) *Greenhalgh v. Ardena Cinemas Ltd* [1950] 2 All E.R. esp. at 1126.
- (c) Alterations should not lead to deliberate breach of contract;

- Ref: (i) ***Shirlaw v. Southern Foundries Ltd.*** [1940] A. C. 701.
- (iii) ***Shindler v. Northern Raincoat Co. Ltd.*** [1960] 2 All E. R. 239.

- (iv) Can the Company limit its powers to alter its articles?

- Ref: (a) S. 12
- (b) ***Walker v. London Tramways Co.*** 12 Ch. D.
- (c) ***Allen v. Gold Reefs of W. A.*** [1900] 1 Ch. 656.
- (d) ***Puntl v. Symons & Co.*** [19...] 2 Ch. 506.
- (e) ***Bushell v. Faith*** [1969] 1 All E. R. 1002.
- (f) ***Scott v. Frank F. Scott (London) Ltd.*** [1940] Ch. 794.

## 8. The Capital of the Company.

- (a) The definition of the capital and its place and essence in the company.
- (b) Types of capital and what amounts to capital nominal issued, subscribed, unissued, paid up, unpaid up, called and uncalled capital, capital assets, fixed capital, reserve capital and stock.
- (c) What does not amount to capital
- (i) **Borrowed money - *Lee v. Neuchatte co.*** [1889] 41 Ch. D. 1
- (ii) Capital and credit - Distinction
- (iii) Distinction between capital assets and property
- (iv) Distinction between capital, stock and share ownership.

**(d) Details about various types of capital**

- (i) Issued and unissued capital.
- (ii) Paid-up capital and its form of payment

Ref: (a) **Coregum Gold Mining C. of India George Paper** [1892] A. C. 125.

(b) On adequacy of consideration paid to the Company: **Re Theatrical Trust Ltd. Dr. Chapman's Case** [1895] 1 Ch. 771.

(iii) Reserve Capital

- (a) S. 50 Cap. 212
- (b) **Re Pyle Works** 44 Ch. D. 534
- (c) **Barlett v. Mayfair Prosperity Co.** [1898] 2 Ch. 28.
- (d) **Re Irish Club Co. Ltd.** (1906) W. N. 127.

**(e) Preference Share**

(i) Statutory provisions about varying values and rights of shares.

- (a) **Birch v. Cropper** (1889) 14 App . Cap. 525-549.
- (b) **Re Driffield Gas Light Co.** [1898] 1 Ch. 451.
- (c) **Re National Telephone Co.** [1914] 1 Ch. 755.
- (d) **Will v. United Lankat Plantation Co.** [1914] A. C. 11.

(ii) Where the articles are silent about nature of preference shares - the assumption that they are cumulative.

Ref: (a) **Foster v. Coles** (1906) W. N. 107.

(b) **Re De Jong (F) Co.** [1949] Ch. 211.

(iii) The Presumption is rebuttable:

- Ref: (a) **Foster v. Coles** (above)
- (b) **Staples v. Tastman Photographic Materials Co.**

[1896] 2 Ch. 303.

(c) **Thorny Graft & Co. v. Thornycroft**

(f) Redeemable Preference Shares:

- (1) Statutory provisions, Procedure of issue and limitations - S. 47 (1) - (5).
- (2) Shares already issued can't be converted into redeemable preference shares S. 47.... **Re St. James Court Estate Ltd.** [1944] Ch. 6.

(g) **Issues of Shares at a Discount:**

- (i) Procedure to be followed - S. 48 Cap. 212.
- (ii) Illegal issues of shares at a discount - S. 49
- (iii) Effect of illegally issued shares at discount on winding up - it is treated as unpaid capital.
  - (a) **Re Weymouth & Channel Islands Steam Packet Co.** [1891] 1 Ch. 66
  - (b) **Welton v. Saffery** [1897] A.C. 299.
- (iv) Effect of such shares being transferred for value when share certificate states them to be fully paid up. Ref. Frederick **Bloomenthal v. James Ford** [1897] A. C.
- (v) The Remedies of the Company against directors in this case: **Hirsche v. Sims** [1894] A. C. 654.

(h) Raising the Company's Capital

- (i) Statutory conditions - S. 51 and Article 37 of Table A.
- (ii) This power can only be exercised at a general meeting s. 51, and in **White v. Bristol Aeroplane Co. Ltd.** [1953] 1 Ch. 65 also in **Re Smith's (John) Tadcaster Brewery Co. Ltd** [1953] Ch. 308.
- (iii) The issue of new shares must comply with the articles - S. 51(1) and in **Gas Mater Co. Ltd v. Diaphragm and General Leather Co.** 41 1 L. R. 324.

- (iv) Where articles require that shares be offered to existing members first e.g. Article 35 Table A and **Gas Meter v. Diapharam** etc. (above).
- (v) Duty to send the Registrar notice of increase of capital.
- (vi) Consolidation sub-division of shares as a way of increasing capital.
- (vii) Conversion of paid-up shares into stock - S. 717; Article 37(a).
- (viii) What does not amount to raising the capital of the company:
  - (a) Payment of Loans into capital account of the Company.

Ref: (i) **Re Dale and Plant Ltd.** [1890] 43 Ch. D.  
 (ii) **Re Lloyd's Furniture Balance Ltd.** [1925] Ch. 853.

**(i) Reduction of Capital**

- (a) Statutory reasons for which capital can be reduced and the permitted procedure. Ss. 56, 57, 58.
- (b) In reduction capital includes fully paid and unpaid-up capital, issued or unissued:

Ref: **Re Anglo-French exploration Co.** [1902] 2 Ch. 345.

- (c) How reduction is effected - S. 56 - only by special resolution and if allowed by articles.
  - If authorized by memorandum and not authorized by articles no power to reduce. **RE Dexie Patent Lacking and Rubber Co.** [1903] 88 L. T. 791.

The articles must be amended first-by special resolution: **Re Patnet Invert Sugar Co.** [1865] 31 Ch. D. 166.

- (d) Conciliation of unissued shares - S. 56.
- (e) Protection of Creditors - S. 57 and 58.

**(8) Directors**

- (a) Why Directors are appointed - **Lennard's carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.** (1915) A. C. 705.

- (b) Statutory meaning of 'Director' - S. 2 (1).
- (c) Statutory duty to appoint directors - S. 140.
- (d) Who may become a Director. Statutory provisions against management by undesirable persons. Ss. 141, 142, 143 and article 64 of Table A.
- (e) The minimum number of directors - S. 140; article 64 Table A.
- (f) The appointment of additional Directors:
  - (1) The power of directors to appoint additional directors - **Blair open Hearth Furnace v. Reigart** [1913] 108 L. T. 665 Note: only if given by articles.
  - (2) Limitations to this power.
    - (i) Where it is limited - **Worcester Cersetry v. Witting** [1936] Ch. 640.
    - (ii) Where directors are unable to agree - **Barron v. Petter** [1914] 1 Ch. 895.
- (g) The appointment of Directors.
  - (1) By the articles - article 64 of Table A
  - (2) By company - articles 3 Table A. Need for notice about dection Re **Great Northern Salt and Clerical works, ex parte Kennedy** [1890] 44 Ch. D. 472.
- (h) Power and duties of Directors.
  - (a) Generally - **Re faure Electric Accumulator Co.** 40. Ch. D. 141 est Kay. J. At pp. 150-152.
  - (b) **Albion Steel and Wire Co. v. Martin** [1875] 1 Ch. 1. 580.
  - (c) **Hurne v. English** (1874) L. R. 10 Eq. 524.
- (vii) On Bribes and Secret Profits - Duty to Surrender.
  - (a) **Grant v. Gold Exploration and Development Syndicate** [1900] 1 Q. B. 233.

(b) Harrington v. Victorial Graving Dode Co. [1878] 3 QBD 549.

(9) Company Meetings

(a) General Types of Meetings and their significance

(b) Statutory Meetings - Meaning - S. 113 Cap 212.

(i) Limitation period - S. 113.

(ii) Commencement of business SS. 36, 37 and 97.

(iii) Report - S. 113 (2).

**Directors**

(a) Limitation period for sending report S; 113 (2) and  
**Re Railway Sleepers Supply Co.** (1885) 29 Ch. D. 204.

(b) The Nature of the report - S. 113 (3)

(c) Certification of the report - S. 113 (4)

(iv) Notice of Statutory meeting.

(v) Failure to hold statutory meeting S. 113(a) and **Gardner v. Iredale** [1912] 1 Ch. 700, 106 L. R. 680.

(vi) Procedure at statutory meeting.

(a) Display of list of members - S. 113(6)

(b) Adjournment - S. 3 ( ); **Seadding v. Lorant** (1851) 1 H. L. Cas 418; **Salisbury Sold Mining Co. v. Harithon** [1897] A. C. 268.

(c) Annual General Meetings.

(i) Statutory provisions about annual general meetings - Cap 212.

- S. 112; articles 52, 72 and 73 of Table 4.

Cases:-(a) **Gibson v. Barton** [1875] 32 397.

(b) **Swedley v. Registrar of Companies** [1919] 1 K. B. 97; 120 L. T. 277.

- (ii) Business to be transaction in general meeting:
  - (a) **Statutory Provisions - lower Reserved by Cap. 2.**

- (i) Alteration objects S. 7(I)

- (iii) Alteration of articles - SS. 12, 23

Murae Syndicate v.  
**Alperon Rubber Co.** [1915] 2 Ch. 186.

**Allen v. Gold Beefs of W. A** [1900]

- (iv) Alteration of Nones S.

- (v) Issues of shares at a discount S. 48(1) (a).

## **SECTION 1**

### **PUBLIC ENTERPRISE LAW**

#### **Objectives**

The public enterprise form of business organization is as old as many forms of business organizations. It is however the most confusing form because it has appeared in all the major social formations in human society feudalism, capitalism and socialism. The objectives of this short course are therefore:- (a) To explore the historical role of public enterprises in various social economic formations in the light of their changing corporate forms, and their social, economic and ideological functions; (b) To analyze the legal forms and structures of public enterprises in modern society drawing examples from the US, UK, India, Pakistan, Tanzania, Ghana, Nigeria and the Soviet Union and possibly elsewhere; (c) To identify the major characteristics of various corporate forms of public enterprises and discuss their suitability for the attainment of the social economic goals of these enterprises; (d) To analyze the behaviour of public enterprise in the international markets for goods, services and skills and when cooperating with transnational private enterprises; (e) To attempt a framework for evaluation of public enterprise performance and ways of overcoming any constraints thereon and finally (f) To examine the relationship or owner, the public and the public as sources of finance for these enterprises and consumers of their goods and services. The course outline given below tries to cover in detail the most interesting readings that can lead to the understanding of public enterprises and their legal framework. The readings are divided into compulsory and recommended materials.

# COURSE OUTLINE

## 1. Statutes

Statutes will be used at all time in the course to illustrate certain legal and non-legal issues. The candidates are encouraged to **enforce** to as many relevant statutes as possible for purposes of country and country comparison.

### (a) Required Statutes

1. Public Corporations act 1969 (Tanzania)
2. Companies (Regulation of Dividends and Surpluses) Miscellaneous Provisions Act, 1972 (Tanzania)
3. The Corporations Sole (Establishment) Act 1974 (Tanzania)
4. Parastatal Organisations (Financial supervision and Control) Act 1975 (Tanzania)
5. Tanzania Legal Corporation (Est.) Order 1971 (Tanzania)
6. The State Enterprises Commission Act 1981 (Ghana)
7. Zimbabwe Mining Development Corporation act 1972
8. Minerals Marketing Corporation of Zimbabwe Act 1982.

### (b) Recommended Statutes

#### (i) **Ghana**

- The Ghana Fishing Corporation Act 1961
- The Ghana Cocoa Marketing Board act 1981
- The Sugar Industry Board Act 1981
- The National Board for Small-Scale Industries Act 1981.

#### (ii) **Kenya**

- The Industrial Development Ordinance 1955
- The Kenya Railways Corporation act 1978

**(iii) Nigeria**

National Electric Power Authority Decree 1972

Nigerian National Petroleum Corporation Decree 1977

**(iv) Tanzania**

The Sisal Industry Act 1973

The Cotton Industry Act 1973

The National Milling Corporation Act 1975

The Coffee Marketing Board Act 1984

The Cotton Marketing Board Act 1984

The Tobacco Processing and Marketing Board Act 1984.

The Cashewnut Marketing Board Act 1984.

The Institute of Education Act 1975

The National Board for Materials Management Act 1981.

**(v) United Kingdom**

The Law Reform Limitation of actions/Act 1954

The Anglo-Persian Oil Co. [Acquisition of Capital] Act 1914.

The Suez Canal [Shares] act 1876

The Cable and Wireless Act 1946

British Overseas Airways act 1939

The Sugar Industry Reorganization Act 1936

The Gas act 1948

The Electricity act 1947

The Coal Industry Nationalization act 1946

The Transport Act 1947

The Post Office Act 1946The Industrial Expansion Act 1968

Note: (1) Some of the laws cited above are only useful for historical Purposes.

(3) Not all recommended statutes have to be read. A few would be enough.

## 2. The Objectives of Public Enterprises

An attempt will be made here to demystify the historical and objective functions of public enterprises in colonial, neocolonial and capitalist social-economic system. Public enterprises have always been linked with socialism but modern analytical thought has expressed misgivings about the claim.

### (a) Required Readings

- \*1. Y. P. Ghai, **Law in the Political Economy of Public Enterprises**, pp. 161-323
- \*2. Worksheet II.
- \*3. Issa G. Shivji, **Class Struggles in Tanzania**, 1975 (extracts).
- \*4. R. Kelf Cohen, **Twenty Years of Nationalization The British experience**, Macmillan 1969.
5. Richard Pryke, **The Nationalized Industries**, Martin Roverson, Oxford 1981.
6. Philip Pillai, **State Enterprises in Singapore**, Singapore University Press, 1983.
- \*7. A. H. Hanson, **Public Enterprise and Economic Development**, Part I pp. 1-204
- \*8. L. Tivey, **The Nationalized Industries Since 1960** (Parts).

### (b) Recommended Readings

1. A. W. J. Thomson and L. C. Hunter, **The Nationalised Transport Industries**, (Heinemann 1973).
2. Gabriel Ganz, **Government and Industry Professional Books** 1977.
3. Z. Khan and R. K. Arora, **Public Enterprises in India** Associated Publishing House 1975.

### 3. Formation and Incorporation of Public Enterprises

The purpose here will be to study how the public enterprise corporate form emerges. The roles of the government holding corporations, parliament and public is important to study because, as we shall discover, those who establish these enterprises in most cases are immediately alienated from their management and control. Also important to find out here will be the estrangement of the public enterprise from its creators, operators and controllers by the fiction of corporate personality. But most important will be the context within which theory of corporate personality operates, the objectives it enhances and the circumstances under which judicial opinion accepts its limitations, we shall cover therefore:

- (a) Modes of formation - Parliamentary of statutory corporations, executive corporations (so-called public corporations), corporations sole associated companies and subsidiary companies.

**References:** (i) Various statutes  
(ii) V. P. Ghai, **Law in the Political Economy of Public Enterprises**, pp. 49-91.

#### (b) Consequences of Incorporation of Formation

##### (i) General liability in torts and contracts

References: **BBC v. Johns** [1965] Ch. 32; **Tamlin v. Hannaford** [1949] 2 All E. R. 327; **Nottingham No. 1 area Hospital Management v. Own** [1958] 1 QB 50; **South of Scotland Electricity Board v. British Oxygen Co. Ltd.** [1956] 1 WLR 1069; **Booth and Co. v. National enterprise Board** [1978] 3 all ER 624, and **Garden Cartage Foods Ltd. v. Milk marketing Board** [1982] 3 All ER.

##### (ii) Independent Legal Personality

It is advisable to read as many cases in this section as possible so as to identify the problems that have surrounded the theory of independent

corporate personality for public enterprises. Cases before 1920 are mainly given for historical purposes.

**Reference:** **R.V. McCann** (1869) LR e QB 147; **Dixon v. Farrer** (1886) 17 QBD 658; **Thompson v. Friedlander** (1886) 4 NZIL 168; **Bainbridge v. Postmas Postmaster-General** [1906] 1 KB 178; **Coomber v. Barks** (1883) App. Cas 61 **County of Middlesex Assessment Committee of St. George's Union** 138 1 QB 64; **Heresy - Urban District Council v. Henne** [1902] 2 KB 73; **Sydney Harbour Trust Commissioner v. Wailes** [1908] 5 Ch. 879; **Secretary of state for War v. Wyne** [1905] 2 KB 845; **Sydney Harbour Trust Commissioners v. Ryan** [1911] 12 CLR 3.... **Federated engine Drivers and Firemen's association Australia v. Broken Hill Proprietary Co.** [1911] 12 CLR 398; **AG. For Commonwealth v. Balding** [1920] 27 CLR 395; **Roper v. Public Works Commissioner** [1915] 1 KB 45; **In Re Sykes** [1919] 18 SR 118; **Dew** [1919] 41 ALT 65; **Public Works Commissioners v. Pontypridd Masonic Hall Co.** [1920] 2 KB AG for New South Wales v. **peters** [1924] 34 CLR 146; **Marine B Boards of Launceston and Brunei v. The King** [1924] 33 CLR 142; **Real Sporting Club v. Ghana Amat Football Association** [1970] 2 ALR (Comm) 115 **Herrington v. BRB** [1972] AC 877; **Culford Metal Industries Ltd. v. Export Credit Guarantee Bank** 1981. See Time March 25<sup>th</sup> 1981.

(iii) **Alienation from the Investor: Loss of State Privilege**

(a) Corporate personality entails loss of state privilege. This has been established and restated in many of the cases cited above For more emphasis read:

1. **Eastern asia Navigation Co. Ltd. v. Freemantle Harbour Trust Commissioners and Another** [1951] 83 CLR 353.

2      **Grain Elevators Board v. The Shire of Dunnunkle**  
[1946] CLR.

3.      **Trendtex v. Central Bank of Nigeria** [1977] Q.B. 529.

(b)      There are however, exceptions which have been developed by judicial opinion to take care of the special characteristics of public enterprises and under which state privileges can still be availed to public enterprises. Example include:

(i)      Enterprises operating as government departments ()  
(especially corporations sole).

Ref: **Pfizer Corporation v. Ministry of Health** [1965]  
CAC 512.

(ii)      Public enterprises operating as public bodies e.g. capital  
development authorities - Tanzania, Malawi, Australia and  
Nigeria. Ref. **R. v. Miners** [...] 2 WLR 178

(iii)      Public enterprises performing functions of the state under its  
direct supervision e.g rehabilitation and famine or war  
relief enterprises. Ref: **The Repatriation Commissioners  
v. Kirkland** [1923] 32 CLR 1.

(iv)      State privilege can be pleaded in cases where an enterprise  
is custodian of state related documents to which public  
access is contrary to public interest. Ref. **Burmah Oil  
Company v. Bank of England** [1980] AC 1090.

- (vi) Statutory privilege is traceable in most public enterprise legislation especially postal, railway and aviation legislation.

Ref: (a) Telecommunication and Railway acts in Kenya, Australia and The United Kingdom.

(b) **Treifus and Co. Ltd. v. Post Office** [1957]  
Q. B. 353.

(c) **Harold Stephen and Co. Ltd. v. Post Office**  
[1977] 1 WLR.

(iv) **The Doctrine of Ultra Vires**

- (a) This doctrine is introduced here as a consequence of incorporation or formation. The legal and socio-economic foundations of this doctrine as an instrument for judicial control of business organizations should be thoroughly explored. It is always thought in radical circles that this doctrine bestows upon courts unjustifiable powers of control in the interests of financiers and creditors, sometimes against the interests of the owners of the enterprise. It is true in the case of public enterprise it creates another area for research and inquiry and may lead to the understanding of how creditors (mainly) finance capital) control public enterprise activities. On the enforcement of statutory duties upon public enterprises by:

(1) **The Government see, Secretary for State for Education and Science v. Metropolitan Borough of Tameside** [1976]  
3 All ER 665.

(2) Private Persons see **Smith v. London Transport Executive** [1949] 2 All ER 295; **Robert (Charles) and Co. v. British Railways Board** [1965] 1 WLR 396;

**Prescott v. Birmingham Corporation** [1955] Ch. 210; **R. v. G. L. C.** [1982] 2 WLR 62; **Atkinson v. Newcastle Waterworks** (1877) 2 ex D. 41 **Reed v. Crayoned Corporation** [1939] 4 All ER 63; **Woodcock v. S. W. Electricity Board** [1975] WLR 583; **Booth and Co. (International) Ltd. v. National Enterprise Board** [1978] 3 All ER624; **South of Scotland Electricity Board v. British Oxygen Co. Ltd.** [1956] 1 WLR 1069; **National Trading Corporation V; Kityo** [1972] 3 All; (Comm.) 1; **Zambia, Tanzania Road Services Ltd. v. Mutua** [1972] 3 All (Comm.) 6; **Mayanja Nkangi v. National Housing Corporation** [1972] ALR 9 0 360; **Howard Lusaka City Council** [1972] 3 ALR; **Chairman L.E.D.B v. Soleve** [1950] 19 NLR 82; **Ajayi v. Electricity Board of Nigeria** [1961] WNLR 107; **Nigeria Railway Corporation and the Board of Trustee of the Nigerian Railway Corporation v. M. D. Holloway** [1965] MNLR 237.

(b) **Limitations of the Doctrine**

There are however, fire exits which a public corporation can use to escape the doctrine. The normal escapes in the case of companies include;

(a) **Estoppel**

This is very common in the US and is already a popular plea elsewhere. It succeeds most where there are no statutory duties. It would easily succeed in associated companies (parastatals) or subsidiary companies which use the company's form and are remote from statute. Otherwise the rule provides an escape route for many statutory Corporations.

- Ref: (i) **Mayanja Nkangi v. National Housing Corporation** (above)
- (ii) **Shodimu v. Nigerian Ports Authority**  
[1974] ALR (Comm.) 25.

(b) Constructive Notice

Turquands' rule has been a fire exit for many Companies when acting without authority. The principle finds difficulty in penetrating statutory provisions in the case of public enterprises.

Ref: **Shonibare v. Western Nigerian Finance Corporation** [1970] 1 ALR (Comm.) 98.

(c) The Doctrine of Indoor Management.

This doctrine has developed to limit the misuse of Turquands rule. If Turquands rule applied corporations, this doctrine also applies only where Turquands' rules apply albeit to limit it.

Ref: **Shodimu v. Nigerian Ports authority (above; AG for Ceylon v. Silva** [19510 AC 461.

### **Recommend General Readings**

1. Ballintine, "Proposed Revision of the Ultra vires Doctrine" 12 **Cornell Law Quarterly**.
2. R. Pound "Visitatorial Jurisdiction Over Corporations in Equity" 49 **Harvard Law Review**.
3. Board, "Statutory Developments in Business Corporation Law 1886-1936" 50 **Harvard Law Review**.

4. Rutledge, "Significant Trends in Modern Incorporation statutes" 22 **Washington University Law Quarterly**.
5. Luce, "Trends in Modern Corporation Legislation" 50 **Michigan Law Review** 129.

#### 4. **Corporate Forms of Public Enterprises**

This is one of the most confusing areas in the study of public enterprises. They tend to take various forms which are seemingly interchangeable or even similar but functionally quite different. The commonest is the statutory corporation (parliamentary form) by which parliament creates structure and gives away its right to run the enterprises most often reserving itself very few occasional powers. The other is the presidential form or executive form under which invoking powers bestowed by statute either the President (in most cases) or operational and other structures. Then we have state executive but by holding corporations. As we shall see public enterprises. It is governed by private company law, it is usually a private (not public) company because the shareholders are usually not more than 3 and most important it is usually outside parliamentary government and public control. Last but not least is a form through which NMCS operate with public enterprises. For these reasons it merits closer attention. Also intriguing is the corporation sole as a corporate form. It is usually for government departments given semblances of autonomy. Tantalizingly it has involved prison services and youth drafting organisations. Its use cannot be accidental. We should inquire into the historical functions of each of those forms and the legal provisions governing them.

#### **Required Reading**

1. Chai, Y. P., **Law in the Political Economy of Public Enterprise** Part 1 again.
2. A. H. Hason, **Public Enterprise and economic Development**, Chapters VI to XI.
3. R. C. Pozed, **Legal Choices for State Enterprises** N. Y. University Press, 1976.
4. W. Friedman and J. F. Garner, **Government Enterprises**, Stevens 1970. Chapters 1 and 2.

5. W. Friedman, **Public and Private Enterprise and Mixed Economics** Stevens 1974, Chapters 1, 2 and 3.
6. **Friedman, L., "Legal Choice and Social Development" 4 Law and Society Review 767 (1972).**
7. Franck, T., "The New development: Can American Law and Legal Institutions Help Developing Countries?" 1972 **Wisconsin Law Review 767 (1972).**

### **Recommended Readings**

1. Laxmi Narayan, **Organization Structure in Large Public Enterprises**, Ajanta Publications, 1981.
2. Mr. Galanter, "The Aborted Restoration of Indigenous Law in India" in 14 **Comparative Studies in Sociology and History 53 (1972).**
3. J. Hazard, "Mali Socialism and the Soviet Legal Model", **78 Yale Law Journal 1 (1967).**
4. R. Seidman. Law and economic Development in Independent English-speaking Sub-Saharan African" 1966 **Wisconsin Law Review 999 (1966).**
5. R. H. Coase, "The Nature of the Firm" in **Economics**, 4<sup>th</sup> November 1937.
6. K. J. Arrow, "Venture Integration and Communications" **Bell Journal of Economics (1975)**, pp. 173-183.
7. K. J. Blois, "Venture Quasi-Integration" in **Journal of Industrial Economics (1972)** pp. 253-272.
8. K. Mcmillan and D. Farmer, "Redefining the Boundaries of the Firm" in **Journal of Economics**, 1979 pp. 277-285.
9. University of Dar es Salaam, "Public Enterprise and Law in Tanzania" special issue of the **Eastern Africa Law Review**, Vol. 5 Nos. 1-2 1972.
10. P. B. Mihyo "The Legal Environment of Public Enterprises in Tanzania" 1982 **Journal of African Administration**, p. 1
11. R. Mukandala, "Organizational Form and Control of Parastatals in Tanzania" **African Developments**, Vol. III No. 1 1983.

## 5. Financial Structures of Public Enterprises

In the conventional forms of business organization capital becomes a legal institution in corporate operations. It becomes capable of division and sub-division without physically, doing so, it becomes capable of consolidation etc. The Company's reserve capital for example becomes an untouchable species of capital only callable when the company is on fire. All these practices have a socio-economic role. The company form of public enterprises uses these institutions and inquiry into the suitability of these creditor (finance capital) biased practices to public enterprises is necessary. The implications of financial regulations and practices in share capital and non share capital public enterprises have to be discussed. The conflict between the social obligations and the economic obligations also deserve attention.

- Ref:
1. Herbert Weiner, **British Labour and Public Ownership**, Public Affairs Press, 1960.
  2. John Redwood, **Going for Broke.... Gambling with Taxpayers' Money**, Basil Blackwell 1984.
  3. A. H. Hanson, **Public Enterprise and Economic Dev.** Chapt. XIV.
  4. **W. Friedmann, Public and Private Enterprises in Mixed Economies**, Chapt. III on Nigeria.
  5. W. Friedmann and Garner, (above) Chapters 15 and 16.

## 6. Organizational Structures of Public Enterprises.

The part is mainly concerned with decision-making and the relationship between various actors on the public enterprise scene and between each of them and their enterprises. This section prepares us to understand the control mechanisms in public enterprise management which are covered in Section 7. The actors include:

- (a) The Directors; What is the difference between a Private enterprise director and the public enterprises director? Is their difference geographical?
- (b) The Management: Through various statutes we can see the extent of the powers of the Public Enterprise Management and decide who controls the internal decision - managers of directors. Are Managers servants or masters?
- (c) The Workers: Workers have to have a share in decision-making or should they?

### **Required Reading**

- 1. Ghai, Y. P. **Law in the Political Economy of Public Enterprises**, pp. 15-48 and 81-126.
- 2. Some statutes.

### **Recommended Readings**

- (i) Y. Avdakov and V. Borodin, **USSR State Industry During the Transition Period**, Progress Publishers 1977.
- (ii) Lajos Szamel, **Legal Problems of Socialist Public Administrative Management**, Akademia Kiado 1973.
- (iii) Tony Cliff, **State Capitalism in Russia**, Pl to Press, 1974.
- (iv) Lajos Fiezere, **The Socialist state Enterprise**, Adademia Kiado, 1974.
- (v) Gyula Eorsi and Attila Harmathy, **Law and Economic Reform in Socialist Countries**, Akademia Kiado, 1971.
- (vi) Juma Volter Mwapachu, **Management of Public Enterprises in Developing Countries**, Oxford & IBH Calcutta (1983).
- (vii) P. B. Mihyo, G. Makusi and H. Mapoly, "Workers' participation as factor of economic and Social Change in Tanzania", ICPE 1985 [monograph]

## 7. The Control of Public Enterprises

As the course draws towards the end bigger issues begin to arise. What we have seen in the previous section are institutional power aspects of the public enterprise - an enterprise which at one part marks decentralization of governmental power and concentration of government finances. But the control patterns of the enterprises tend to point to the opposite direction - centralized power and concentration of finance. The public and the taxpayers are likely to be both beneficiaries and victims of the positive and negative aspects of public enterprise control. We shall study here the control exercised by the executives, the parliament and the public in their comparative and contrasting aspects. Each corporate form will be tackled separately but not necessarily differently.

### Required Reading

1. Y. P. Ghai, (above pp. 206 - 266)
2. Y. P. Ghai, "Executive Control over Public Enterprises in Africa" in G. Ram Reddy, **Government and Public Enterprise**, Frank Cass and N. M. Tripathi, 1983 pp. 181-219.
3. Y. P. Ghai, **Parliament and Public Enterprise**, ICPE, 1983
4. Horacio Boneo, "Government and Public Enterprise in Latin America" in G. Ram Reddy (2 above) pp. 14.. 156
5. R. H. Floyd. "Government Relationship With Public Enterprise in Papua New Guinea" in Ibid. pp. 220-248.
6. Tan Chwee-Hual, "Public Enterprise and the Government in Singapore", Ibid. p. 249-263.
7. Laxmu Narain, "Parliament and Public enterprises in India" Ibid. pp. 264 - 286.
8. W. Friedmann, **Public and Private Enterprise in Mix Economies** chapter III, IV and V.
9. A. Hanson, **Public Enterprises and Economic development** Chapter 12.
10. W. Friedmann and Garner, Chapters 4, 6, 7 and 9

### **Recommended Readings**

1. ILC, **Law and Public Enterprises in Asia**, Preager, 1974.
2. Commonwealth secretariat, **Parliaments, Governments and Public Enterprise**.
3. J. Mwapachu, **Management of Public Enterprises in Developing Countries**. (cited earlier).
8. **Public Enterprise and the International Market.**

The focus here will be the behaviour of public enterprises on the international technology market.

### **Reference:**

1. Ghai, Y. P. **Law in the Political Economy of Public Enterprises**, pp. 267-323.
2. P. B Mihyo, **Bargaining for Technology Imports in Tanzania's Public sector: Some experiences**\_(Forthcoming 1985).
3. Issa G. Shivji, **Class Struggles in Tanzania**, TPR.
4. P. B. Mihyo, H. Mlawa, S. Wangwe, "Transfer of Skills Through Management Consultancy in Tanzania" (unpublished) 1985.

### **Recommended Readings.**

1. Ravi Gullati and Uday Sekhar, "Industrial Strategy for Late starters: The Experience of Kenya, Tanzania and Zambia" in **World Development**, Vol 10 No. 11 pp. 949-972 (1982).
2. Martin Fransann and Kenneth King, **Technological Capability in the Third World**, Macmillan 1984.
3. Martin Fransann, **Industry and Accumulation in Africa**, Heinemann 1982.

## **SECTION C CO-OPERATIVE**

**(A knowledge of the Law of Associations is assumed).**

### **1. General Principles:**

Role of Co-operatives and Public Enterprises in the economy of Tanzania. Classification of Co-operatives. Distinction between Co-operatives and Public Enterprises (parastatals and government departments) Principles common place in the commercial world: Legal personality, limited liability and ultra vires. Criminal Law and the protection of property of parastatals (including Co-operatives).

### **2. Law of Co-operatives.**

Development of Co-operatives in Tanzania. Types Villages Settlement Co-operatives. Agricultural Producers co-operatives. Transformation of Co-operative Movement.

Co-operatives Principles and the Co-operative Societies Act. Co-operative Principles and the Arusha Declaration

Incorporation: drafting By-laws (marketing, consumer, agricultural production and housing co-operatives) Registration. Condominium.

Rights and responsibilities of Co-operators. Property and Funds of Societies.

Organs and Management. Mode of Dispute Settlement. The State and Co-operatives.

## **BIBLIOGRAPHY**

Legislation: Co-operatives Societies Act No. 1982.

Co-operative Societies Rule G. N. 264/68

Model By-laws: Bye-Laws for Consumer's Societies (.....) Mlimani Co-operative Society By-Laws (Draft) By-Laws for Marketing Society (Model) Suggested By-Laws for an Agricultural Production Society (model) By-Laws for Housing Co-operatives (model) Model Rules of Building and Housing Co-operatives (Prague).

(All the above By-Laws are on stencils)

Policy Documents: **Ujamaa essays on Socialism** (J. Nyerere) 2<sup>nd</sup> Five year Plan (1969) Government Printers) "Presidential Special Committee of Enquiry in Co-operative Movement" (1966 Government Printers). Achieving the Objectives of the Arusha Declaration: Managing Rural Development (1971).

**Books: The Organization and Management of Co-operative societies** (Published by Union of German Consumer Co-operative Societies).

**A Manual of Co-operative Law and Practice:** Surridge and Digby.

**Co-operatives and Rural Development in East Africa** (ed. Widstrand).

**The Economic of Co-operative Enterprise,** Heln

**New Trends in Co-operative Law of English Speaking Countries in Africa,** Hans Munkner.

**Co-operatives and New Colonialism** Karel Pernica: Control co-operative Council).

(Note a more comprehensive bibliography on co-operatives will be handed out)

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### **3. Parastatals (Including District Development Corporations)**

Definition - Role. Organizational forms and Structure. Merits and demerits of the company form.

Formation of corporations and their Subsidiaries and Associated Companies. Organs. Workers participation. Management and Consultancy Agreement.

Controlling bodies and the System of Control with Reference to the Implementation of policy.

Borrowing: mortgages debentures, hypothecation, chattel transfers and guarantees.

Winding-up.

#### **4. Sem-state Enterprises (Associated Companies)**

Controls

A Common Enterprise Law?

### **BIBLIOGRAPHY**

#### **Directives**

G. N. No. 1966/67, "Appointment of Presidential Standing Committee on Parastatal Organizations".

Presidential Circular No. 2/1969: "Rationalization of Parastatal Organizations".

Presidential Circular No. 1. Of 1970 "The establishment of Workers' Councils, Executive Boards and Boards of Directors" (James 71/39).

#### **Legislation**

(A list of legislation is supplied separately, most of them are on stencils.)