

UNIVERSITY EXAMINATIONS



October/November 2023 Examination

MRL2601

Entrepreneurial Law

80 Marks

Duration four (4) hours

First examiner: Prof J Geldenhuys

Second examiner: Dr V Madlela

**PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE
ANSWERING THE EXAMINATION QUESTIONS.**

1. The examination question paper counts **80 marks**.
2. It consists of three (3) questions with sub-questions. Answer **ALL** the questions.
3. The duration of the examination on the timetable is **four (4) hours**.
4. In addition to the duration of the examination indicated on the timetable, you are given **30 minutes to FINALISE the uploading of your exam file**. Your exam file must be uploaded via the myExams platform on **31 October 2023 BEFORE 17h15 (South African Standard Time)**.
5. This is an **open-book examination**. You may consult your prescribed study material during the examination.
6. This examination is proctored via the Invigilator App. You are required to activate (or log in to) the Invigilator app between **12h30 and 13h15** (South African Standard Time).

The QR code is below:



QR Access Code: 5cf3209d

- 6.1 **Please note:** If a student is found to have been outside the invigilator app for a total of 10 minutes during their examination session, they will be considered to have violated Unisa's examination rules and their marks will be withheld.
- 6.2 **You only have 10 minutes after the due time to submit your script on the Invigilator App.**
- 6.3 You will have **48 hours from the date of their examination to upload your invigilator results from the Invigilator App.** Should you fail to do so, it will be deemed that you did not use the invigilator app.
- 7. The uploading of your exam file on the myExams platform must be **finalised within 30 minutes of the scheduled (timetabled) end of the exam.**
- 7.1 When ready to submit, open the Take-Home (Assignment) assessment again and click on the Add Submission button.

Submission status

Submission status	No attempt
Grading status	Not marked
Due date	Saturday, 11 June 2022, 12:00 AM
Time remaining	37 days 8 hours
Last modified	-

Submission comments

Comments (0)

Add submission

- 7.2. Note the file requirements such as:
- File size limit.
 - Number of files that can be submitted.
 - File formats allowed.
- 7.3. Check the acknowledgment checkbox and upload your answers document and then click on the Save changes button.

File submissions

☒ This submission is my own work, except where I have acknowledged the use of the works of other people.

Maximum file size: 50MB, maximum number of files: 1

Files

A Sample PD...

Accepted file types:

Document files .doc .docx .epub .gdoc .odt .ott .pdf .rtf
PDF document .pdf
Word 2007 document .docx
Word document .doc

Save changes Cancel

- 7.4. Review your submission information regarding the status and click on your submission file link to check if it's correct.

Submission status

Submission status	Submitted for grading
Grading status	Not marked
Due date	Saturday, 11 June 2022, 12:00 AM
Time remaining	37 days 8 hours
Last modified	Wednesday, 4 May 2022, 3:05 PM

File submissions

 A Sample PDF.pdf	4 May 2022, 3:05 PM
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Submission comments

► Comments (0)

- 7.5. If you need to resubmit a file, you can click on the Edit Submission button. Note: You will need to delete any existing files.

Submission status

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File submissions

 A Sample PDF.pdf	4 May 2022, 3:05 PM
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Submission comments

► Comments (0)


Edit submission Remove submission

- 7.6 Use proper PDF conversion software to create the final file for upload. Free PDF conversion software is available on the Internet.
- 7.7 Add your student number and the module code in the file name. That will assist you to select the correct document to upload during submission.

- 7.8 You are advised to preview your submission (answer script) to ensure legibility and that the correct answer script file has been uploaded.
8. The cover page for your take-home exam must include your name, student number and the module code.
9. It is preferred that your take-home exam is typed. However, handwritten submissions will also be accepted. If the take-home exam is typed, the maximum length is 12 pages (which includes the cover page and the bibliography). If the take-home exam is handwritten, the maximum length is 16 pages (which includes the cover page and the bibliography).
10. Whether your answers are typed or handwritten, your submission on the myExams platform on Moodle must be made in the form of **one PDF** document. Only the last file uploaded and submitted will be marked.
 - 10.1 The exam answer file that you submit must not be password protected or uploaded as a “read only” file.
 - 10.2 Your examination answer file will not be marked if:
 - 10.2.1 you send your examination answer file via email.
 - 10.2.2 you submit the incorrect examination answer file. A mark of 0% will be awarded.
 - 10.2.3 you submit your exam answer file on an unofficial examination.
 - 10.2.4 you submit your examination answer file in the incorrect file format.
 - 10.2.5 you submit a password-protected document.
 - 10.2.6 you submit your examination answer file late
 - 10.2.7 you submit your answer file from a registered student account that is not your own.
 - 10.3 The mark awarded for an illegible examination answer file submission will be your final mark. You will not be allowed to resubmit after the scheduled closing date and time of the exam.
 - 10.4 Listening to audio (music) and utilising audio-to-text software has been strictly prohibited during your examination session, unless use of the software is related to a student's assistive device which has been declared. Listening to music, utilising such software and/or failing to declare the software is a transgression of Unisa's examination rules and the student's marks will be withheld.
11. If your answers are typed, ensure that the following requirements are adhered to. Items 11.3-11.6 applies to written assignments as well.

- 11.1 The text must be typed in Arial font, size 12 with single line spacing within the paragraph, and double line spacing after the paragraph.
- 11.2 The text must be justified.
- 11.3 All of the pages must be numbered in the right-hand corner at the bottom of the page.
- 11.4 All margins must be 2.5cm, but the left margin must be 3cm.
- 11.5 South African English and not American English should be used. For example, the correct spelling is “Labour” and not “Labor”.
- 11.6 Do not use abbreviations or SMS language.
- 11.7 All quotes that are two lines long (or less), must form part of the main text, be written in italics, and be bracketed by quotation marks. Where a quotation is longer than two lines, it must be typed in a separate paragraph in italics in size 11 font and must be indented by 1 cm. No quotation marks are required when the quotations stand alone. Use quotations very sparingly. In this take-home exam, a maximum of 5% of the text may be quoted.
12. When answering the take-home exam questions, remember that an open-book exam is a test at a higher level than the usual type of exam, where memory is tested as much as insight. In an open-book exam, you need not memorise any information. You are expected to prove that you can use information, rather than merely repeat it. In brief, what is being tested is factual knowledge, understanding and the correct application thereof, not memory skills. For this reason, you do not earn marks by merely detailing a list of all the information that you think might be relevant to a particular question. This gives no indication that you know what statutory or other provisions are applicable in a specific context. You are expected to identify precisely what information applies, and then explain why you think so.
 - 12.1 Also, because you have the guide available when answering questions, we do not give marks for direct quotations from the guide. You are therefore assessed on your level of understanding of the legal principles by looking at how well you applied the principles to the questions.
 - 12.2 **PLEASE DO NOT CUT AND PASTE ANSWERS FROM THE STUDY GUIDE (OR ANY OTHER SOURCE).**
13. The arguments that you make must be logical, well-structured and substantiated by all of the relevant legal principles. Use the time given wisely.

- 13.1 Ensure that you give reasons for each answer. Substantiate your answers by referring to ALL of the relevant authorities, e.g. sections from relevant legislation and/or court cases in the text or in your footnotes.
- 13.2 You are required to have read and summarised the prescribed cases yourself. The summaries in the Study Guide are not sufficient for this exam. When using case law to support your answer, please include complete references to the relevant cases in your footnotes. This means that you must not only include the name of the case but also the exact page and section and/or paragraph where the information can be found. The same applies to articles and books used.
- 13.3 A number of students lose marks because they do not approach problem-type questions correctly. When answering such questions, it is important to first clarify for yourself the area of work where the answer must be sought. Once you have done this, set out the relevant legal principles. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where most of the students lose marks - they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve. Finally, state your conclusion.
14. You must complete the online declaration of own work when submitting.
- 14.1 By ticking the Honesty Declaration, you confirm that you have read (i) the University's [Policy on Copyright Infringement and Plagiarism](#) and the [Student Disciplinary Code](#), which are both available on myUnisa: www.unisa.ac.za/unisarules, and (ii) the information relating to student values and plagiarism that is found at <https://www.unisa.ac.za/sites/myunisa/default/Study-@-Unisa/Student-values-and-rules>.
- 14.2 Students suspected of dishonest conduct during the examinations will be subjected to disciplinary processes. Students may not communicate with other students, or request assistance from other students during examinations. Plagiarism is a violation of academic integrity, and students who do plagiarise or copy verbatim from published work will be in violation of the Policy on Academic Integrity and the Student Disciplinary Code and may be referred to disciplinary hearing. Unisa has a zero tolerance for plagiarism and/or any other forms of academic dishonesty.
- 14.3 The use of Artificial Intelligence software (ChatGPT, etc) and online sources (Course Material) during your online examination session is strictly prohibited.

14.4 Unless a student is exempted because of disability or incarceration, students who have not utilised invigilation or proctoring tools will be deemed to have transgressed Unisa's examination rules and will have their marks withheld.

PLEASE NOTE:

If you experience challenges with the Invigilator app, please send a WhatsApp **message** to the technical helpdesk on 073 505 8273. Do not contact the lecturers.

For all other exam-related challenges, you may contact the SCSC on 080 000 1870 or e-mail Examenquiries@unisa.ac.za or refer to [Get-Help](#) for the list of additional contact numbers.

QUESTION 1

- 1.1 Beauty, Phineas and Samson are three friends who wish to start their own publishing company. While driving one Sunday afternoon, Samson comes across the perfect office building. He wishes to purchase this building on behalf of the proposed company. Advise Samson on the requirements that would need to be adhered to in terms of the Companies Act 71 of 2008 in order to conclude a valid and binding contract on the company's behalf before its incorporation. (5)
- 1.2 Nonhlanhla and Petrus want to start a catering business together called Bayview (Pty) Ltd. Briefly explain the procedure that they must follow in order to incorporate the company. (5)
- 1.3 Everite Ltd showed an increase in profits for the 2023 financial year. At a board meeting, the directors decide that dividends should be paid out to the company's shareholders. Indicate what the requirements are in terms of the Companies Act 71 of 2008 that must be adhered to before the dividends may be declared and paid. (5)
- 1.4 Woodin Ltd intends to convene its annual general meeting on 12 June 2024. List any five (5) matters t h a t must be discussed at this meeting in terms of the Companies Act 71 of 2008. (5)
- 1.5 Amos is a registered auditor. Until November 2022 he was a director of Antix Intellectual Services (Pty) Ltd. During October 2022 Amos became seriously ill and resigned due to health reasons. He has now recuperated fully. Indicate which persons are disqualified from being an auditor of a company and explain whether Amos can be appointed with immediate effect as the auditor of Antix Intellectual Services (Pty) Ltd. (5)

SUBTOTAL: [25 marks]

QUESTION 2

2.1 The Memorandum of Incorporation of Contempo (Pty) Ltd contains the following provisions:

- (1) If the company issues new shares, the shares must first be offered to the company's existing shareholders.
- (2) Directors hold their office for life.

2.1.1 Discuss what the provision in clause 1 of the Memorandum of Incorporation entails. Also explain what the purpose of this provision is. (5)

2.1.2 Anthea is a director of Contempo (Pty) Ltd. The board of directors removes Anthea as director. Indicate whether Anthea can invoke clause 2 of the Memorandum of Incorporation to prevent her removal or to claim damages for her premature removal. (5)

2.2 Kim wishes to incorporate a company in order to raise funds for the prevention of and education about HIV/AIDS. Advise Kim what type of company would be most appropriate, and on the requirements for this type of company. (5)

2.3 The main business of Furniture Whole Sales (Pty) Ltd is to manufacture and distribute furniture. The Memorandum of Incorporation contains the following clauses:

- (1) Any director of the company may conclude contracts on behalf of the company.
- (2) The right of the directors to enter into loan agreements on behalf of the company is limited to an amount of R1 million.
- (3) Prior approval by the shareholders in a general meeting is required for loans exceeding R1 million.

Furniture Whole Sales (Pty) Ltd's financial director enters into a loan agreement in the amount of R5 million on behalf of the company. No meeting was held for the approval of the loan by the shareholders. Advise the shareholders of Furniture Whole Sales (Pty) Ltd whether in terms of the Companies Act 71 of 2008 the loan agreement is valid and enforceable against the company. (5)

- 2.3 As an alternative to applying for relief to a court, a person entitled to relief or to file a complaint may refer it to various other forums in terms of the Companies Act 71 of 2008. List the alternative forums to which such a person may refer the matter. (5)
- 2.4 Cool Coals (Pty) Ltd operates within a poor community and made three times the usual profit at the end of 2022. The board of directors of Cool Coals (Pty) Ltd debates whether the company should issue university bursaries to learners who have completed grade 12 in 2022 in the community. Some of the directors are opposed to this view. They claim that the company should be managed exclusively in the interests of the shareholders with the result that: (a) the interests of other stakeholders such as the community and its grade 12 learners cannot be taken into account; and (b) all the profits of the company must be distributed to the shareholders of Cool Coals (Pty) Ltd. As the company secretary, the board of the company approaches you for advice.

With reference to the principle of *Ubuntu* as expressed by Madala J in the case of *S v Makwanyane* 1995 (6) BCLR 665 (CC) and the facts in the scenario above, advise the board of Cool Coals (Pty) Ltd on whether the payment of university bursaries may be justified on the basis of the principle of *Ubuntu*, or whether the profits of the company should be distributed exclusively to its shareholders. (5)

SUBTOTAL: [30 marks]

QUESTION 3

- 3.1 Lesedi and Zaza are the members of It-out CC. Upon formation of the close corporation, they agree that their respective membership contributions will consist of cash only. Each member was required to contribute R100 000, and these amounts were duly recorded in the founding statement. Apart from the monetary contribution, Lesedi also entered into a lease agreement in terms of which he rents out a building he privately owns to the close corporation for use as an office. Zaza, who is a part-time student at UNISA, also enters into an employment contract with the close corporation. In terms of the contract of employment he is required to be in the office to attend to the corporation's day-to-day business.

At a meeting of the members, Lesedi and Zaza decide that due to a lack of profits generated from the business, the corporation will repay each member five percent of their respective contributions to enable them to provide for personal needs. They further agree that the corporation will make some payments to them in respect of their respective rental and employment agreements. Advise the members of It-out CC whether these proposed payments meet the requirements in terms of the Close Corporations Act 69 of 1984. (5)

3.2 Explain whether a close corporation is exempt from financial reporting and if it is required to have its financial statements audited. (10)

3.3 Vela is a member of Mnandi CC. The close corporation is currently contemplating converting into a company, and it also has a few trivial legal problems. Vela concludes a contract on behalf of the close corporation with an attorney, Mr Smooth, despite the fact that the members have never discussed appointing a legal representative. Mr Smooth agrees to act as the legal advisor and representative of the corporation for a period of twelve (12) months in return for a retainer of R20 000 per month. When the other members became aware of this, they were very upset because they had not been consulted before the appointment was made. Furthermore, they argue that they excluded the possibility of the close corporation being bound by this exorbitant agreement by agreeing in an association agreement that all members must consent to contracts exceeding the amount of R10 000. They come to you for advice as to whether or not the close corporation is bound by the agreement. Refer to relevant authority in your answer. (10)

SUBTOTAL: [25 marks]

TOTAL: [80 marks]