

MRL2601
October/November 2024

UNIVERSITY EXAMINATIONS



October/November 2024

MRL2601

Entrepreneurial Law

80 Marks
Duration: four hours

First examiner: Prof J Geldenhuys
Second examiner: Dr V Madlela

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

This paper consists of 11 (ELEVEN) pages.

1. The examination question paper counts **80 marks**.
2. It consists of FOUR (4) questions. Answer **ALL** of 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 **27 April 2024 BEFORE 12h30pm (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 **07h45am and 08h30am on 30 OCTOBER 2024** (South African Standard Time).

The QR code is below:



QR Access Code: 519b4d85

- 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 scheduled (timetabled) exam time to submit your script on the Invigilator App.**
- 6.3 You will have **48 hours from the date of the examination to upload the invigilator results from the Invigilator App**. Failure to do so will result in students deemed not to have utilised the invigilation or proctoring tools.
- 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 .oth .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. **Do not click on the Remove submission button.** Note: You will need to delete any existing files by clicking on the file and then on delete.

Submission status

Submission status	Submitted for grading
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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 8 pages (which includes the cover page and the bibliography). If the take-home exam is handwritten, the maximum length is 10 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 any other person or request assistance from any other person during their examinations. The use of Telegram, WhatsApp or any other instant messaging services with any other person (except when asking for technical assistance via official channels of the SCSC or the Invigilator WhatsApp line) are strictly prohibited. **Plagiarism is a violation of academic integrity and students who plagiarise, copy from published works or use Artificial Intelligence Software (eg ChatGPT) or online sources (eg course material) will be in violation of the Policy on Academic Integrity and the Student Disciplinary Code and may be referred to a disciplinary hearing.** Unisa has a zero tolerance for plagiarism and/or any other forms of academic dishonesty.

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

[10]

Complete the sentences in this question by filling in the correct word/s or term/s.

- 1.1 The is the person responsible for drawing up the financial statements in a close corporation. (2)
- 1.2 A(n) is one of the units into which the proprietary interest in a profit company is divided. (2)
- 1.3 A(n) is the person who is appointed to represent a shareholder at a meeting. (2)
- 1.4 The is the date on which a company determines the identity of its shareholders and their shareholding for purposes of establishing who is entitled to shareholder rights. (2)
- 1.5 The is the principal administrative officer of a company. (2)

QUESTION 2

[30]

- 2.1 Beauty and Phineas each hold shares in Veritaste (Pty) Ltd. The only other shareholder is Bongiwe, who is a preference shareholder without any voting rights. Beauty and Phineas are also the only two directors of Veritaste (Pty) Ltd. Veritaste (Pty) Ltd's Memorandum of Incorporation provides that the shareholders, in a shareholders' meeting, must approve the dividends proposed by the board of directors. At a meeting of the board of directors, Beauty and Phineas agree that the company must declare a dividend of 50 cents per share.

With reference to the given set of facts, answer the following questions:

- 2.1.1 What type of company is Veritaste (Pty) Ltd? Also mention the distinctive characteristics of this type of company. (5)
- 2.1.2 Explain, with reference to the Companies Act 71 of 2008, whether it is possible for Beauty and Phineas to pass the resolution to declare dividends without convening a meeting of shareholders. Refer to relevant case law in your answer. (8)

- 2.1.3 List the legal requirements under the Companies Act 71 of 2008 that must be complied with before a company may validly declare and pay a dividend. (7)
- 2.2 Alice, Precious and Zaiboon are three friends who wish to start their own company. While driving one Saturday afternoon, Zaiboon comes across the perfect office building. She wishes to purchase this building on behalf of the proposed company. Advise Zaiboon on the requirements that need to be adhered to in terms of the Companies Act 71 of 2008 to conclude a valid and binding contract on behalf of the company before its incorporation. (5)
- 2.3 Explain whether Windex Ltd is required to hold an annual general meeting. (2)
- 2.4 List three (3) grounds on which an application can be brought against a director for an order declaring him or her delinquent in terms of the Companies Act 71 of 2008. (3)

QUESTION 3

[25]

- 3.1 Indicate five (5) main characteristics of the modern corporate world. (5)
- 3.2 The main object of Manoqueen (Pty) Ltd is sewing dresses and selling them to the public. The Memorandum of Incorporation provides that the board of directors may appoint a managing director who will be authorised to enter into contracts on behalf of the company. Should a contract, however, exceed the amount of R150 000, prior consent of the shareholders in a shareholders' meeting is required. Geraldine, one of the directors, buys a beach house for R2.5 million from Nonhlanhla on behalf of Manoqueen (Pty) Ltd.
- Geraldine had contracted on behalf of Manoqueen (Pty) Ltd with Nonhlanhla on previous occasions. The other directors, upon hearing about the transaction, approach you for legal advice as they feel the company should not be held liable for performance as Geraldine was never appointed as the managing director and she had no authority to conclude the contract. Explain whether Nonhlanhla could possibly hold Manoqueen (Pty) Ltd bound to the contract. Refer to relevant case law. (6)

- 3.3 Vela is a shareholder of King Sun (Pty) Ltd. He believes that the board of directors is using company funds for personal gain. He wants to bring a derivative action on behalf of the company. Briefly advise Vela on the steps that must be taken to bring a derivative action. (4)
- 3.4 Tendai is a non-executive director of Vanitee (Pty) Ltd. She attended a meeting where she became aware of the fact that the company had defaulted on certain payments due to Move-it (Pty) Ltd, which is responsible for the distribution of the company's products. Move-it (Pty) Ltd had threatened to cancel the contract. However, Vanitee (Pty) Ltd's chief financial officer assured the board of the company that this was only due to a temporary cash flow problem. Tendai relies on this assurance. Tendai does not attend the next two board meetings. At a subsequent board meeting, Tendai learns that Move-it (Pty) Ltd has cancelled the contract due to ongoing non-payments by Vanitee (Pty) Ltd. As a result of the interruption in distribution, Vanitee (Pty) Ltd suffered a loss in excess of R5 million. Shortly thereafter, Vanitee (Pty) Ltd is placed in liquidation.

With reference to the set of facts answer the following questions:

- 3.4.1 Identify the duty that the liquidator may rely on to potentially hold the directors of Vanitee (Pty) Ltd liable for the loss that the company suffered (Do not discuss the fiduciary duties of directors). (1)
- 3.4.2 Explain how the court would determine whether or not the directors of Vanitee (Pty) Ltd are liable for the loss suffered by the company based on breach of the duty in 3.4.1 above. Refer to relevant case law in your answer. (5)
- 3.4.3 Explain whether Tendai will be able to rely successfully on the business judgment rule to avoid personal liability for the loss suffered by Vanitee (Pty) Ltd. (4)

QUESTION 4

[15]

- 4.1 Jerome operated a fast food establishment in Cape Town under a franchise agreement with Franco's CC. In terms of the agreement, Jerome is not allowed to operate a similar business in the Cape Town area for three years after the end of the agreement.

Jerome does not renew the franchise agreement with Franco's CC when its term ends, but he continues to operate a fast food restaurant from the same premises that he had previously occupied.

Franco's CC wants to institute an action against Jerome for breach of the original franchise agreement. Jerome's defence is that the new business is owned by a newly incorporated corporation, Sausage and Fry CC, which was not a party to the original agreement. Jerome is the sole member of Sausage and Fry CC.

Discuss the possibility that the court may hold Jerome personally liable for breach of the franchise agreement in these circumstances. Refer to relevant case law in your answer. (10)

- 4.2 Anthea, Bernadette, Callum and Dumisani are the members of Sitex CC. The main business of the close corporation is buying and selling of immovable property. The close corporation wishes to buy a certain property for development and resale. Callum, being fully aware of the fact that the close corporation wishes to buy the property, purchases the property in his personal capacity for R8 million. He proceeds to sell it to Sitex CC for R10 million.

Advise the other members regarding the following:

- 4.2.1 Indicate the duty that Callum could possibly have breached under these circumstances. (1)
- 4.2.2 Explain the effect that a breach of the duty in 4.2.1 above would have on the validity of the contract of sale for the purchase of the property. (2)
- 4.2.3 State the possible legal action that can be instituted against Callum for a breach of this duty, and identify who is entitled to institute such an action. (2)

TOTAL: 80 marks