

UNIVERSITY EXAMINATIONS



October/November 2024

MRL3701

Insolvency Law

100 Marks
4 Hours

First examiner: Mrs Z Taljaard
Second examiner: Ms E Mbiriri

YOUR EXAM QR CODE & EXAM
ACCESS CODE



Exam Access Code: 1c2754f3

INSTRUCTIONS FOR A TAKE-HOME EXAM ON MYEXAMS.

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

This paper consists of 11 pages.

1. The examination question paper counts **100 marks**.
2. It consists of **three** (three) questions. Answer **ALL** of the questions.
3. The duration of the examination on the timetable is **4 (four) hours**.

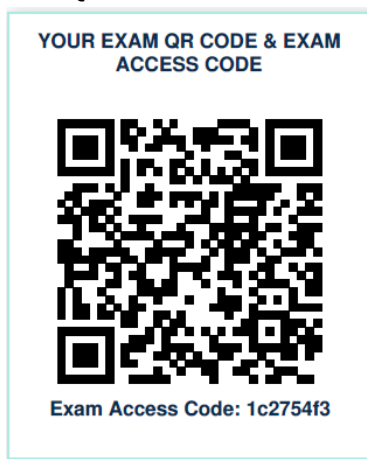
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4. In addition to the duration of the examination indicated on the timetable, you are given **30 minutes to FINALISE the uploading of your exam file**. Your exam file must be uploaded via the myExams platform on **23 October 2024 BEFORE 12:30pm (South 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 **07:45 and 08:30am** (South African Standard Time).

The QR code is below:



- 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 their examination to upload their 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.

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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.

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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
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
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
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.

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- 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 exam is typed. However, handwritten submissions will also be accepted.
- 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.

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- 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,

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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 (e.g. ChatGPT) or online sources (e.g. 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.
- 14.3 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 and DO NOT CALL the WhatsApp number, you must message them.**

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 When a debtor is sequestrated in terms of section 149(1) of the Insolvency Act 24 of 1936, a court has jurisdiction over the debtor in regard to the debtor's estate in certain circumstances. Explain the circumstances under which this jurisdiction occurs, particularly with reference to section 149(1). **(5)**
- 1.2 Fundamental assumptions of the South African Law of Insolvency are being questioned. The Insolvency Act 24 of 1936 remains one of the oldest statutes of general application still in force. It is therefore important that we reform the Law of Insolvency to bring it in line modern trends. Five (5) problematic areas have been identified in the South African Law of Insolvency. Name these five (5) initiatives that can assist in law reform. **(5)**
- 1.3 Regarding section 150 of the Insolvency Act 24 of 1936, which deals with the setting aside of a sequestration order, explain the circumstances regarding the lodging of an appeal against an order sequestrating a debtor. **(5)**
- 1.4 Mpumi owes David R125,000 for a motorcycle purchased from him. David knows that you are studying for your LLB degree and approaches you for advice. He informs you that he has sent several messages to Mpumi by way of SMS, email and registered mail, asking her to settle the debt, and yet he has had no response from her. He therefore decided to go to Mpumi's home to speak to her in person. A neighbour sees David standing at the door knocking for a while and goes out to him to assist. He informs David that Mpumi has gone to the Eastern Cape to care for her father who has suffered from a heart attack, and he does not know when she will return. David now asks of you whether he can apply for the sequestration of Mpumi's estate. Explain to David the implications based on the aforementioned facts. **(10)**

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- 1.5 See the table below and match the columns to answer the following questions. You must therefore match three columns; list the case name, the applicable *ratio decidendi* of the case, and area of Insolvency Law applicable. Below is an example of how to answer the question: (see example below). (15)

EXAMPLE:

1. **Case name:** *Joint Liquidators of Glen Anil v Hill Samuel* 1982 (1) SA 103 (A).
2. **Ratio decidendi of the case:** The bonds in favour of Hill Samuel did confer a preferent status.
3. **Area of Insolvency Law applicable:** Special Mortgages.

Case Name: (1)	Ratio decidendi of the case: (1)	Area of Insolvency Law applicable: (1)
<i>Magnum Financial Holdings (Pty) Ltd v Summerly & Another</i> NNO 1984 (1) SA 160 (W)	Section 21 of the Insolvency Act 24 of 1936 authorises the Master to allow the trustee to attach the property of the solvent spouse.	The purpose of a sequestration order.
<i>Walker v Syfret</i> NO 1911 AD 141	The court indicated that the only point in issue was whether a disposition had intended to prefer one creditor above other creditors.	Meaning of the word "debtor".
<i>Harksen v Lane</i> NO & Others 1998 (1) SA 300 (CC)	The question to be decided was whether the trust before the court was susceptible to sequestration.	Dispositions intended to prefer one creditor (section 30 of Insolvency Act 24 of 1936).
<i>Pretorius NO v Stock Owners' Co-operative Co Ltd</i> 1959 (4) SA 462 (A)	The sequestration of a debtor establishes a <i>concursum creditorum</i> .	When it is just and equitable for a company to be wound up by court.

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<i>Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd</i> 1985 (2) SA 345 (W)	1. With the disappearance of the company's substratum. 2. If there is fraud committed. 3. A deadlock in management. 4. The dissolution of a partnership and oppression.	Vesting of the assets of the solvent spouse.
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- 1.6 Regarding Transformative Constitutionalism in the Law of Insolvency, discuss interrogations under sections 152(2) to 152(7) of the Insolvency Act 24 of 1936. **(10)**

TOTAL QUESTION 1: [50]

Question 2

- 2.1 The Insolvency Act 24 of 1936 states that an insolvent cannot enter into a contract which is prohibited in terms of the Act. What is the legal effect of a contract entered into by an insolvent? **(5)**
- 2.2 Jonathan approaches you for advice. He knows that a debtor with a substantial estate will soon be sequestrated and wishes to become the trustee of the estate. He is however worried because he has heard a rumour that Albert also wishes to be appointed as a trustee. Explain to Jonathan whether he and Albert can both be appointed as trustees of the insolvent estate. **(8)**
- 2.3 Explain the general legal principle applicable to an insolvent debtor's capacity to contract. **(5)**

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- 2.4 In terms of the Insolvency Act 24 of 1936, the trustee may set aside dispositions that they are voidable. Provide a detailed discussion of a disposition in terms of section 31 of the Insolvency Act. (7)

TOTAL QUESTION 2: [25]

Question 3

- 3.1 Discuss the general application of the interrogations of the insolvent and of other witnesses in terms of the Insolvency Act 24 of 1936. (10)
- 3.2 Discuss the difference between a company being wound-up by the court, and a company being voluntarily wound-up. (10)
- 3.3 Companies in financial trouble have two (2) possible alternatives to winding up: A compromise with their creditors, or business rescue. The purpose of business rescue is to facilitate the rehabilitation of a financially distressed company. Keeping this in mind, what does the phrase 'rescuing the company' mean? (5)

TOTAL QUESTION 3: [25]

TOTAL MARKS: [100]