## IMPORTANT INFORMATION: READ NOW

## DEPARTMENT OF MERCANTILE LAW

**ENTREPRENEURIAL LAW**

MRL2601 Tutorial Letter 101/2011

**SCHEME OF WORK, STUDY RESOURCES AND ASSIGNMENTS**

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A WORD OF WELCOME

We would like to welcome you to this module and hope that you will find it both interesting and rewarding. We shall do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignment(s) properly.

You will receive a number of tutorial letters during the semester. A tutorial letter is our way of communicating with you about teaching, learning and assessment.

This tutorial letter contains important information about the scheme of work, resources and assignments for this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignment(s), preparing for the examination and addressing questions to your lecturers.

Please read Tutorial Letter 301 in combination with this tutorial letter as it gives you an idea of generally important information when studying at a distance and within a particular College.

In this tutorial letter, you will find the assignments and assessment criteria as well as instructions on the preparation and submission of the assignments. It also provides all the information you need with regard to the prescribed study material and other resources and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully. Right from the start, we would like to point out that you must read all the tutorial letters you receive during the semester immediately and carefully, as they always contain important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

Attached to this tutorial letter is a time frame to help you plan your study time for this module. Please remember that this is a semester module of 12 credits for second-year students. This means that you need to spend 10 hours per week on this module. A semester is 12 weeks long and you therefore have 120 hours to study for this module. The last three to four weeks of the semester is for revision purposes.

PURPOSE AND OUTCOMES OF MODULE

The purpose and the outcomes of this module are discussed in the Study Guide.

COMMUNICATION WITH YOUR LECTURERS

The lecturer responsible for this module is:
Lecturer’s name: Ms J Geldenhuys
Building and office number: Cas van Vuuren Building Room 06-106
E-mail address: geldej@unisa.ac.za
Telephone number: 012 429 8472
The details of the other lecturers involved in this module will be supplied to you in Tutorial Letter 103.
You might also want to write to us. Letters should be sent to:
The Module Leader (MRL2601)
Department of Mercantile Law
PO Box 392
Unisa
0003

Letters may also be faxed to us. Our fax number is (012) 429 3343.

All queries that are not of a purely administrative nature but are about the content of this module should be directed to us.

The general number for the Department of Mercantile Law is (012) 429 8579. Use this number until you have been given the names of the lecturers responsible for this course. Please have your tutorial material with you when you contact us by telephone.

Phone calls made to us when we are not available will be forwarded to an answering machine.

You can therefore leave voicemail messages for your lecturers. We shall reply as soon as possible. You are welcome to visit us to discuss any queries about or problems with the contents of this module. However, please make an appointment beforehand, otherwise you may run the risk of the lecturer not being available to see you. Our offices are situated in the Cas van Vuuren Building, Main Campus, Muckleneuk Ridge, Pretoria.

Students who have access to the Internet can contact the lecturers by e-mail via the myUNISA facility at https://my.unisa.ac.za.

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.

| Communication with the University |

If you need to contact the University about matters not related to the content of this module, please consult the publication my Studies@Unisa that you received with your study material. This booklet contains information on how to contact the University (eg to whom you can write for different queries, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you contact the University. Please note that all administrative enquiries should be directed to the Unisa Contact Centre. Enquiries will then be channeled to the correct department. The details are as follows:

- Calls (RSA only) 0861 670 411
- International Calls +27 11 670 9000
- Fax number (RSA) 012 429 4150
- Fax number (international) +27 12 429 4150
- E-mail study-info@unisa.ac.za
4 STUDENT-SUPPORT SYSTEM

For information on the various student-support systems and services available at Unisa (eg student counselling, tutorial classes, language support), please consult the publication my Studies @ Unisa that you received with your study material.

4.1 Contact with fellow students

4.1.1 Study groups

It is advisable to have contact with fellow students. One way to do this is to form study groups.

The addresses of students in your area may be obtained from the following department:

Directorate: Student Administration and Registration
PO Box 392
Unisa
0003

Please contact the Unisa Contact Centre at 0861 670 411.

4.1.2 myUnisa

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The myUnisa learning-system is Unisa’s online campus that will help you to communicate with your lecturers, with other students and with the administrative departments of Unisa – all through the computer and the internet.

To go to the myUnisa web site, start at the main Unisa web site, http://www.unisa.ac.za, and then click on the “Login to myUnisa” link on the right-hand side of the screen. This should take you to the myUnisa web site. You can also go there directly by typing in http://my.unisa.ac.za. Please consult the publication My Studies @ Unisa which you received with your study material for more information on myUnisa.

4.1.3 Discussion classes

Please ensure that you attend one of the group discussion classes that we will present during the first and second semesters of this year. These classes are not compulsory, but attendance will be to your benefit. (The time, date and venue of each will be confirmed in Tutorial Letter 103, which will follow in due course.)

This is one of the few opportunities where you can address your questions to one of the lecturers responsible for this module. You will derive the most benefit from the discussion classes if you have read the study material and have identified problem areas. We suggest that you participate in the discussion classes so that you will leave with a better understanding of the work. Regard these classes as an opportunity to assess what you know (and do not know). This will provide an indication of how much time and effort you still need to devote to different sections of the module.
4.1.4 Satellite delivery

There will be no satellite broadcasts for this module. The DVD that you received with your study package is intended to substitute the satellite broadcast and should be considered as an additional learning aide. The DVD is only available in English.

5 STUDY MATERIAL

5.1 Inventory letter

At the time of registration, you will receive an inventory letter that will tell you what you have received in your study package and also show items that are still outstanding. Also see the booklet entitled *My Studies @ Unisa*.

Check the study material that you have received against the inventory letter. You should have received all the items listed in the inventory, unless a statement like "out of stock" or "not available" is included. If any item is missing, follow the instructions on the back of the inventory letter without delay.

**PLEASE NOTE:** Your lecturers cannot help you with missing study material. Please contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see point 3 above).

5.2 Study material

The Department of Despatch should supply you with the following study material for this module:

- The Study Guide
- Tutorial Letters 101 and 301 at registration and others later

Apart from Tutorial Letters 101 and 301, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration.

Tutorial letters will be despatched to you as soon as they are available or needed (for instance, for feedback on assignments).

If you have access to the internet, you can view the tutorial letters for the modules for which you are registered on the University’s online campus, myUnisa, at [http://my.unisa.ac.za](http://my.unisa.ac.za)

5.3 Prescribed textbook(s)

Your prescribed textbooks for this module for this year are:


Please consult the list of official booksellers and their addresses listed in *my Studies @ Unisa*. If you have any difficulties in obtaining books from these bookshops, please contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see point 3 above).
5.4 Resources

5.4.1 Recommended books
There are no recommended books for this module.

5.4.2 Additional books/resources
The more important sections of the relevant Acts are adequately discussed in the Study Guide and in *Companies and other business structures in South Africa*. However, if you want to acquire a copy of the Companies Act 71 of 2008 and the amendments to the Close Corporations Act 69 of 1984, you may do so. It is available in *Companies Act (Juta’s Pocket Acts 2009)*. This book contains the full text of the Acts but no explanatory notes. It can be purchased from the official booksellers or ordered directly from the publishers. Please note that it is not prescribed for MRL2601 and you are not required to purchase it. Also note that the Library does not make provision for this additional reading matter.

5.4.3 myUnisa resources
Check the myUnisa site for this module and look under “Resources”.

5.4.4 Prescribed cases and legislation
It is **COMPULSORY** that you study the cases and legislation prescribed in the Study Guide.

6   IMPORTANT NOTICES

The questions in the examination paper will only deal with aspects of the law of *companies and close corporations*. It will **not** deal with aspects of the law of partnerships and business trusts. You will be assessed on partnerships and business trusts in Assignment 01.

Please note that the Study Guide should be studied in conjunction with the prescribed textbooks.

7   HOW THE ASSIGNMENT SYSTEM WORKS

7.1 Assignments and learning
Assignments are seen as part of the learning material for this module. As you do the assignment, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning. Looking at the assessment criteria given for each assignment will help you to understand what is required of you more clearly.

In some cases, additional assessment might be available on the myUnisa site for your module. For students attending tutorial sessions, tutors may also set additional tasks and give feedback in class.
7.2 General remarks

There are **TWO** assignments in this module. Assignment 01 is a multiple-choice assignment and Assignment 02 is a written assignment. **BOTH** assignments are **compulsory** assignments and contribute to your year mark. **Assignment 01** must be submitted to qualify for examination admission. Remember that your assignment must be numbered 01 or 02.

You should also provide the unique number for Assignment 01. Assignment 02 does not have a unique number. State the module code and assignment number in all enquiries about assignments.

Students who use word processors should consult the brochure *My Studies @ Unisa* about the format and paper to be used for assignments. It is wise to make a copy of the assignment before submitting it, in case it gets lost in the post. On the due date for the assignment, the commentary on the assignment will be sent to students. **As a result, no extension for submission of the assignment will be granted under any circumstances.**

Don't even apply for an extension, as no extensions will be granted.

You will not receive credit for assignments received after the due date. Students registered for the **first semester** must submit **Assignment 01 for first-semester students** on or before **11 March 2011** to gain admission to the examination and to have the mark count towards the year mark. **Assignment 02 for first-semester students** must be submitted on or before **8 April 2011** in order to have the assignment count towards the year mark.

Students registered for the **second semester** must submit **Assignment 01 for second semester students** on or before **19 August 2011** to gain admission to the examination and to have the mark count towards the year mark. **Assignment 02 for second-semester students** must be submitted on or before **16 September 2011** in order to have the assignment count towards the year mark.

If you do not submit Assignment 01 before the relevant date, your registration will be cancelled and you will not be admitted to the examination in MRL2601. If you do not submit Assignment 02 you will forfeit a portion of your year mark.

Assignments 01 and 02 will each count 50 percent of your year mark. The year mark will count 20 percent towards your final mark for the module. The examination will then count 80 percent towards your final mark.

**PLEASE NOTE:** Enquiries about assignments (eg whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see point 3 above). You might also find information on myUnisa.

Assignments should be addressed to:
The Registrar
PO Box 392
Unisa
0003
You may submit written assignments and assignments done on mark-reading sheets either by post or electronically via myUnisa. Assignments may not be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned, see the brochure My Studies @ Unisa that you received with your study material.

To submit an assignment via myUnisa:

- Go to myUnisa.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

### 7.3 Commentaries and feedback on assignments

Commentaries on compulsory assignments will be sent to all students registered for this module in a follow-up tutorial letter, and not only to those students who submitted the assignments. The tutorial letter number will be 201, 202, etcetera.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination.

### 7.4 Submission dates

The closing dates for the submission of the assignments are:

**Semester 01**
- Assignment 01: 11 March 2011
- Assignment 02: 8 April 2011

**Semester 02**
- Assignment 01: 19 August 2011
- Assignment 02: 16 September 2011

### 7.5 Assessment of assignments

Please note: Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.
8.1 Examination admission

All students who submit Assignment 01 in time (before or on the date of submission) will be admitted to the examination, regardless of the marks obtained for the assignment. In other words, a student who submitted Assignment 01, but obtained 0%, will be allowed to sit for the examination. The submission of Assignment 02 does not determine whether a student will have admission to write the examination, but contributes to a student’s year mark.

The marks you obtain for the Assignment 01 and 02 will make up a total of 20% of the final mark (10% for each assignment). You need to obtain at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has a year mark of 0% or a bad year mark.

8.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2011 and the supplementary examination will be written in October/November 2011. If you are registered for the second semester you will write the examination in October/November 2011 and the supplementary examination will be written in May/June 2011.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

8.3 Examination paper

You will write one two-hour paper. The paper counts 100 marks. Your examination mark out of 100 will be adapted to a mark out of 80. Your year mark will be adjusted to a mark out of 20 (i.e. the mark obtained for assignments 01 and 02) and will be added to your examination mark out of 80 to get to your final mark for this module. Remember, you have to obtain a subminimum of 40% in the examination before your year mark out of 20 (your mark for Assignments 01 and 02) will be taken into account.

For the examination you have to study the prescribed sections of your textbooks, the prescribed cases as well as all the tutorial letters you received during the semester. The questions in the examination paper will only deal with aspects of the law of companies and close corporations. It will not deal with aspects of the law of partnerships and business trusts.

Partnerships and business trusts will only be evaluated by way of Assignment 01. Company law will comprise approximately 70 percent of the total marks in the examination, while the law of close corporations will make up the balance.

8.4 Previous examination papers

Previous examination papers are not generally available to students. You may, however, accept that examination questions will be similar to the questions asked in the activities in tutorial letters and in the assignments.
8.5 Tutorial letter with information on the examination

To help you in your preparation for the examination, you will receive a tutorial letter that will explain the format of the examination paper, give you examples of questions that you may expect and set out clearly what material you have to study for examination purposes.

9 ASSIGNMENTS AND ASSESSMENT CRITERIA

ASSIGNMENT 01: MULTIPLE-CHOICE QUESTION ASSIGNMENT
DIFFERENT ASSIGNMENTS FOR FIRST AND SECOND SEMESTER STUDENTS
COMPULSORY ASSIGNMENT
CLOSING DATE: 11 MARCH 2011 OR 19 AUGUST 2011.
UNIQUE NUMBER
First semester: 208524
Second semester: 744603

PLEASE NOTE!!! PLEASE NOTE!!!
The information that follows is extremely important. It deals with the instructions on how to complete and submit the assignment, as well as the content and the purpose of the assignment.

Please read this information very carefully before you start with the assignment.

Assignment 01 consists of multiple-choice questions. You must mark your answers to the assignment questions directly on the orange mark-reading sheet that you received as part of your study package. This mark-reading sheet will be marked by the computer. Check that Unisa has supplied you with a mark-reading sheet. Written answers on a sheet of paper will not be marked.

Please consult the brochure My Studies @ Unisa for instructions on how to use and complete a mark-reading sheet, as well as an example of an orange mark-reading sheet used for assignment purposes. Follow the instructions very carefully.

Please ensure that your name, address, student number, unique number, module code and assignment number appear on the mark-reading sheet, and that this information is correct.

Please use an HB pencil when you fill in the mark-reading sheet. Please do not use a pen when you complete the mark-reading sheet. Please mark the number of the statement that you choose next to the number of the relevant question. You may choose only ONE statement for each question.

Each year a number of students submit faulty mark-reading sheets that cannot be processed by the computer. Sheets that are rejected by the computer will be returned to students without being marked.

When submitting a multiple-choice question assignment to ASSIGNMENTS, you must send only your mark-reading sheet in one of the brown envelopes that you received as part of your study package. Do not send an assignment cover sheet with your mark-reading sheet. You may also submit the assignment via myUnisa. Do not fax the assignment to the University. Also, do not fax or e-mail the assignment to the lecturers.
. Do not submit the assignment a second time. The computer will simply reject this assignment as a duplicate assignment.

. Make sure that you submit the mark-reading sheet before or on the closing date. No extension will be granted for the submission of the assignment, since the assignment is marked by the computer.

. Students who submit the assignment long before the closing date will have to wait for their results until the assignment is marked by the computer. No results will be available before the closing date of the assignment.

. Soon after the closing date of the assignment you will receive a computer printout giving your answers, the correct answers to the questions (ie the lecturer’s answers) and your mark for the assignment.

. Assignment 01 (multiple-choice question assignment) consists of 10 multiple-choice questions. These questions cover ONLY THE UNITS ON PARTNERSHIPS AND TRUSTS. Each question counts one mark.

. Thus, the assignment counts a total of 10 marks. The mark that you obtain for this assignment will contribute 50% towards your year mark and will ultimately count 10% towards your final mark, provided that you obtain a subminimum of 40% in the examination.

. It is not easy to do a multiple-choice question assignment. It requires much effort and time. Multiple-choice questions do not only test knowledge, but are also used to test comprehension and application of the study material. In the examination, you will be asked a number of multiple-choice questions. This assignment is, therefore, an important step in your preparation for the examination and you will be rewarded if you spend sufficient time completing this assignment!

. The detailed commentary on Assignment 01 (multiple-choice question assignment) will be sent to you in another tutorial letter so that you can check your answers by using the commentaries.
ASSIGNMENT 01 FOR FIRST SEMESTER STUDENTS
Due date: 11 March 2011
Unique number: 208524

You must submit this assignment in time to remain registered as a student in this module and to be admitted to the examination!
Remember that Assignment 01 should be completed on the mark-reading sheet provided to you as part of your tutorial matter on registration.

QUESTION 1
Which one of the following is NOT a feature of a business trust?

(1) The debts of a trust are normally payable out of the trust estate.
(2) A trust may be given perpetual succession.
(3) Only natural persons may be parties to a trust.
(4) There are few statutory restrictions on trusts.

QUESTION 2
Indicate the INCORRECT statement:

(1) A legal person may be a founder of a trust.
(2) A trustee may expose the trust assets to risk.
(3) A business trust enjoys the benefit of limited liability.
(4) A legal person may be a beneficiary of a trust.
QUESTION 3

Which of the following relationships could constitute a valid partnership?

A. Petrus bequeaths his farm to his two sons in his will and stipulates that they must farm in partnership.

B. Lena, a 52 year old unmarried woman and Max (Pty) Ltd conclude a partnership agreement.

C. A few pharmacists enter into a partnership agreement with the object of repackaging and selling stolen medicines.

D. Gogga, an 18 year old assisted by his guardian, enters into a partnership agreement with Pluto CC with the object of marketing and distributing toys.

Indicate the CORRECT statement(s):

(1) A and C only.

(2) B and C only.

(3) A and B only.

(4) B and D only.

QUESTION 4

A partnership is formed to build an office block. Which of the following does NOT comply with the requirement that each partner should make a contribution to the partnership?

(1) Maya contributes R10 000 provided it is repaid unconditionally within six months.

(2) Patrick undertakes in writing to contribute his expertise as qualified civil engineer when required.

(3) Sara contributes the use of a truck that is to remain her personal property.

(4) Connie, an architect, contributes her professional services for which she will be paid R10 000 as soon as a profit is shown.
QUESTION 5

Twelve squash enthusiasts decide to form a partnership to build their own squash court where they can play whenever they want to. One of them will provide the labour of a bricklayer who works for him in the construction business he owns another will provide building material at cost price from her business which sells building equipment and the other ten will contribute money to cover building costs. To cover the costs of maintenance and equipment, they will allow non-partners to use the court against payment of an hourly fee.

Has a valid partnership come into existence?

(1) Yes, because all essential requirements have been met.
(2) No, because the main object of the agreement is not to make a profit
(3) No, because the building materials still have to be paid for and cannot therefore be regarded as a valid contribution.
(4) Yes, because the parties intended to form a partnership.

QUESTION 6

Indicate the INCORRECT statement:

(1) The partners may agree that one partner will not have the power to represent the partnership in transactions falling within the partnership business.
(2) Each partner has a right to participate in the management of the partnership.
(3) No partner may be excluded from management of the partnership.
(4) Each partner is entitled to inspect the accounting records of the partnership.
QUESTION 7

Ron, Ross and Ryan are partners in a ploughing business. Ron wants to use the partnership’s tractor to plough on his own farm.

Consider the following statements:

A If Ron’s personal use of the partnership’s tractor conflicts with the interests of the partnership, but his co-partners consent thereto, Ron is allowed to use the partnership’s tractor.

B Ron can use the partnership’s tractor at any time and for any purpose, because all partners are co-owners of partnership assets.

C If Ron’s co-partners are unaware of his personal use of the partnership’s tractor, but this use is so limited that it does not conflict with the interests of the partnership, Ron is allowed to use the partnership’s tractor.

Indicate the CORRECT statement(s):

(1) A only.
(2) B only.
(3) A and C only.
(4) C only.

QUESTION 8

Ann, Ben and Charles enter into a valid partnership agreement. Charles buys a car from Damascena for his wife, Zola. Two months later the car is stolen from Zola, and Charles decides to stop the monthly payments for the car to Damascena. Damascena now wants to sue for payment of the outstanding balance of the purchase price, but is uncertain who can be held liable.

Indicate the CORRECT statement:

(1) Damascena is obliged, during the subsistence of the partnership, to sue Ann, Ben and Charles together for payment of the amount still owing on the purchase price of the car.

(2) Damascena may sue anyone of the partners for payment of the full amount and such partner may then in turn claim repayment of their pro rata liability from the other partners.

(3) A creditor may not execute against the interest of one partner in a partnership during the subsistence of the partnership.

(4) Damascena may sue only Charles because this is not a partnership debt and he is therefore personally liable.
QUESTION 9
Which of the following is NOT a natural consequence (*naturalia*) of a partnership agreement?

(1) The partners share the net losses of the partnership.
(2) The partners own the assets of the partnership as co-owners.
(3) A partner is not entitled to compensation for his contribution.
(4) The partners must carry on the partnership business for their joint benefit.

QUESTION 10
Indicate the CORRECT statement:

(1) A silent partnership is formed when two persons agree to trade as a partnership without making it known to the outside world.
(2) Even if the name of an extraordinary partner becomes known to outside parties, his protection remains unaffected.
(3) A partner en commandite shares only in the profits of the partnership.
(4) The liability of both the silent partner and the partner en commandite for partnership debts is limited to a fixed amount.

TOTAL: [10 marks]
QUESTION 1

Indicate the CORRECT statement:

(1) A silent partnership is formed when two persons agree to trade as a partnership without making it known to the outside world.

(2) Even if the name of an extraordinary partner becomes known to outside parties, his protection remains unaffected.

(3) A partner en commandite shares only in the profits of the partnership.

(4) The liability of both the silent partner and the partner en commandite for partnership debts is limited to a fixed amount.

QUESTION 2

John, William and Peter are partners in a business that sells soft drinks. In terms of their partnership agreement, only John may contract with outsiders on behalf of the partnership. Should he wish to enter into an agreement where the value exceeds R10 000, he must obtain the prior consent of William and Peter. John buys a speedboat in the name of the partnership for R80 000 without the knowledge of his partners. William concludes a contract on behalf of the partnership for the purchase of a fridge to store the soft drinks, without the knowledge of his partners. The purchase price of the fridge is R20 000.

Indicate the CORRECT statement:

(1) The partnership will be bound by both contracts.

(2) The partnership will not be bound by either of the two contracts.

(3) The partnership will be bound by the contract entered into by William, but not by the one entered into by John.

(4) The partnership will be bound by the contract entered into by John, but not by the one entered into by William.
QUESTION 3

A partnership is formed to build an office block. Which of the following does NOT comply with the requirement that each partner should make a contribution to the partnership?

(1) Patrick undertakes in writing to contribute his expertise as qualified civil engineer when required.

(2) Maya contributes R10 000 provided it is repaid to her unconditionally within six months.

(3) Sara contributes the use of a truck that is to remain her personal property.

(4) Connie, an architect, contributes her professional services for which she will be paid R10 000 as soon as a profit is shown.

QUESTION 4

Indicate the INCORRECT statement:

(1) A trustee is under a legal duty to prevent the assets from his estate mingling with those of the trust.

(2) The trustee is the owner of the trust property for purposes of administration of the trust.

(3) A trust cannot conclude a contract in its own name.

(4) If the estate of a trust is declared insolvent, the estate of the trustee must also be sequestrated.

QUESTION 5

Indicate the INCORRECT statement:

(1) A legal person may be a founder of a trust.

(2) A business trust enjoys the benefit of limited liability.

(3) A trustee may expose the trust assets to risk.

(4) A legal person may be a beneficiary of a trust.

QUESTION 6

Which one of the following is NOT a feature of a business trust?

(1) The debts of a trust are normally payable out of the trust estate.

(2) A trust may be given perpetual succession.

(3) A trust enjoys greater confidentiality than other forms of enterprise.

(4) Only natural persons may be parties to a trust.
QUESTION 7

In which of the following situations would the actio pro socio NOT be the correct action to institute between partners?

(1) Partner A wants to apply for a court order declaring which part of the goodwill of the business he is entitled to after dissolution of the partnership.

(2) Partner A wants to apply for an interdict against partner B to stop him from using partnership assets for private purposes.

(3) Partner A wants to apply for a court order forcing partner B to comply with the provisions of the partnership agreement.

(4) Partner A wants to claim dissolution of the partnership because partner B has acted in breach of their fiduciary relationship.

QUESTION 8

Consider the following statements:

A. One of the essentialia (essential elements) of the partnership is that the partnership agreement must be in writing.

B. The Partnership Act 75 of 1998 provides that a partnership agreement will only be valid if it contains all the essentialia of a partnership.

C. If any one of the essentialia of a partnership is not present, but the parties intended to conclude a partnership agreement, the agreement will not constitute a partnership agreement.

Indicate the CORRECT statement(s)

(1) A, B and C

(2) A and C only

(3) C only

(4) B only
QUESTION 9

Indicate the INCORRECT statement:

(1) The Rules of Court provide that a partnership need not sue or be sued in the name of all partners, but may sue in its business name.

(2) A partnership is treated as a separate entity in the Insolvency Act and thus, if the estate of a partnership is sequestrated, the estates of individual partners are never affected.

(3) Although the partners, and not the partnership, own the assets of the partnership, execution of a judgment against the partnership must first be levied on partnership assets before assets of individual partners may be attached.

(4) An individual partner cannot be sued for a debt of a partnership during the subsistence of the partnership.

QUESTION 10

Paarl Bank Ltd granted two loans to Cox & Co, a partnership consisting of Cox and Mokgadi. Cox resigned from the partnership and it was dissolved. Cox settled one of the two loans from Paarl Bank Ltd. Paarl Bank Ltd seeks to recover the second loan.

Indicate the CORRECT statement:

(1) Paarl Bank Ltd can sue Cox, and Cox can recover his proportionate share from Mokgadi.

(2) Paarl Bank Ltd cannot sue Cox and Mokgadi jointly because the partnership has been dissolved.

(3) Paarl Bank Ltd cannot sue Cox because he settled the first loan.

(4) Paarl Bank Ltd can sue Cox & Co, and not the individual partners.

TOTAL: [10 marks]
ASSIGNMENT 02: WRITTEN ASSIGNMENT
DIFFERENT ASSIGNMENTS FOR FIRST AND SECOND SEMESTER STUDENTS

CLOSING DATE: 8 April 2011 OR 16 SEPTEMBER 2011.
NO UNIQUE NUMBER

PLEASE NOTE!!! PLEASE NOTE!!!
Assignment 02 is a compulsory assignment and contains short to medium length questions.
This assignment counts a total of 10 marks. The mark that you obtain for this assignment will contribute 50% towards your year mark and will ultimately count 10% towards your final mark, provided that you obtain a subminimum of 40% in the examination.

GENERAL APPROACH TO PROBLEM-TYPE QUESTIONS

In order to answer problem-type questions satisfactorily, you must work through the prescribed tutorial material carefully. The following basic guidelines may assist you in this regard:

1. Students normally complain that they find it difficult to rewrite the tutorial material in their own words. Unfortunately, you have to get used to this, because you will not have your tutorial matter with you during the examination. However, there are three easy steps to assist you in answering problem-type questions:

   o Study the relevant tutorial material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.

   o Summarise that particular section or chapter in your own words by using your notes and key words.

   o Finalise your summary by making use of references to the study material, case law and other relevant authority.

2. In order to complete your assignments satisfactorily you are expected to consult your study guide, prescribed textbooks and tutorial letters. Carefully read the questions, determine what they pertain to, and use the relevant information in your tutorial material to answer the questions. You should make sure that you have identified the relevant legal aspect, set out the legal principles briefly with reference to applicable case law and other authorities, applied these principles to the facts given in the question, reached a conclusion and have answered any specific question that may have been asked.


4. Restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write a long, rambling answer encompassing everything which could possibly relate to the problem, but such an answer does not earn good marks. You must learn to summarise your tutorial material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.
Ensure that the pages of your answer are stapled together properly and in the correct order, but do not join answers to different assignments together. Submit each assignment separately.

Please do **NOT** write on both sides of the page. Leave a margin that is sufficiently wide for your lecturer’s comments on the right-hand side.

Answers to all the questions in the assignment should be submitted simultaneously.
ASSIGNMENT 02 FOR FIRST SEMESTER STUDENTS
Due date: 08 April 2011
This is a COMPULSORY assignment.
NO UNIQUE NUMBER

QUESTION 1

Eddie wishes to start his own business. His friend Charl registered a close corporation in 2007 and wishes to sell the business. Eddie is unsure whether he should register a private company or buy Charl’s close corporation. Advise Eddie of the advantages of the close corporation as a business form. (5)

QUESTION 2

Bongi and Zandile each hold 50% of the shares in Monateness (Pty) Ltd. They are also the only two directors of the company. Monateness (Pty) Ltd’s Memorandum of Incorporation provides that the company in general meeting may declare final dividends and that no dividend may exceed the amount recommended by the directors. At a meeting of the board of directors, Bongi and Zandile agree that the company must declare a dividend of 25 cents per share. The dividend is paid out to them without a general meeting being held to formally declare the dividend. Was the declaration of the dividend valid? Refer to relevant case law in your answer. (5)

TOTAL FOR ASSIGNMENT 2: [10]
QUESTION 1

Anthony, Brett, Carl and Daniel are employees of Beta Ltd. Anthony and Brett are also directors of the same company. Beta Ltd makes loans to Anthony, Carl and Xander to enable them to subscribe to shares of the company.

Which requirements need to be adhered to render transactions where financial assistance is provided, valid? (5)

QUESTION 2

The founding statement of Ikhaya CC describes the principal business of the close corporation as, “buying of residential homes for purposes of resale”. Asanda, one of the members of the corporation, concludes a contract to buy construction equipment on behalf of Ikhaya CC. The other members of Ikhaya CC reject the contract as invalid on the basis that it goes beyond the scope of the corporation’s business.

Explain what the capacity of a close corporation is and what consequences a transaction outside of such capacity hold for third parties. (5)

TOTAL FOR ASSIGNMENT 2: [10]
10. SCHEDULE FOR STUDYING MRL2601

Please note: This schedule should be used as a guideline only when planning your study time table for MRL2601.

FIRST AND SECOND SEMESTER

Week 1  Read tutorial letters (4 hours)
Watch DVD (4 hours)

Week 2  Parts 2 (study unit 10) and 4 (study unit 12) (10 hours) (Answer assignment 01 questions on these study units)

Week 3  Parts 2 and 4 (10 hours) (Answer Assignment 01 questions on these study units)

Week 4  Parts 2 and 4 (5 hours) (Answer Assignment 01 questions on these study units)
Week 5  Part 1, study units 1 & 2 (10 hours) (When studying the study units on companies attempt answering Assignment 02 questions). Finalise Assignment 1 & hand in before 11 March 2011 (FIRST SEMESTER) or 19 August 2011 (SECOND SEMESTER) (5 hours)

Week 6  Study units 3 & 4 (10 hours)

Week 7  Study units 5 & 6 (10 hours)

Week 8  Study unit 7 (10 hours)

Week 9  Study unit 8 (10 hours)

Week 10  Revision of study units 1 – 8 (5 hours)
Finalise Assignment 2 and hand in before 8 April 2011 (FIRST SEMESTER) or 16 September 2011 (SECOND SEMESTER) (5 hours)

Week 11  Study unit 9 (10 hours)

Week 12  Study unit 11 (10 hours)

Week 13 to Week 16 Exam
Revision of all study units dealing with companies & close corporations
***Attend discussion classes in Pretoria, Durban or Cape Town (See Tutorial Letter 103)