



IMPORTANT INFORMATION: READ NOW

DEPARTMENT OF MERCANTILE LAW

COMMERCIAL LAW II

CLA2601

Tutorial Letter 101/2011

SCHEME OF WORK, STUDY RESOURCES AND ASSIGNMENTS

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1 A WORD OF WELCOME

We are pleased 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 year. 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!

2 PURPOSE AND OUTCOMES OF MODULE

After you have studied this module you will be able to identify, distinguish and compare the basic characteristics of a partnership, a company and a close corporation. You will learn that a partnership, for instance, does not enjoy separate legal personality, that its membership is, as a general rule, limited to twenty persons and that it must have as its object the pursuit of gain. A company and a close corporation, on the other hand, acquire a separate legal personality as soon as they are registered and neither need be incorporated for the purpose of making profit. Some of the advantages of legal personality are that the company and the close corporation acquire its own rights and liabilities and also enjoy perpetual succession. You will learn the basic characteristics of different types of companies and whether they are suitable for a particular business. You will also discover that a close corporation provides a simpler and less expensive corporate form for the single business person or for a business that has a maximum of ten participants. Once you have grasped the characteristics of the different business forms, you will be able to work out which form of enterprise is best suited to a particular business. You will be able to solve simple problems by applying the relevant legal principles.

3 COMMUNICATION WITH YOUR LECTURERS

The details of the lecturers involved in this module will be supplied to you during 2011 in Tutorial Letter 103.

You might also want to write to us. Letters should be sent to:

The Module Leader (CLA2601)
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 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 (e.g. 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 channelled 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 (e.g. 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 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 management 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* website, start at the main Unisa website, <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* website. 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.

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 there is a statement like “out of stock” or “not available”. 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 par. 3 above).

5.2 Study material

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

- Tutorial Letter 501 (**this tutorial letter replaces the study guide**) and
- 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>

5.3 Prescribed textbook(s)

Your prescribed textbook for this module for this year is:

(1) *Companies and Other Business Structures in South Africa* (2009) by D Davis, F Cassim, W Geach, T Mongalo, D Butler, A Loubser, L Coetzee and D Burdette (2009) Oxford.

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 par 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 tutorial letter 102 and in *Business Structures*. However, if you want to acquire a copy of the Companies Act 71 of 2009 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 CLA2601 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

In this module you must study the cases and legislation as discussed in your prescribed textbook and in **tutorial letter 501**. You are not expected to read the cases yourselves. Cases that are mentioned in brackets in your textbook are the references to cases from which the principle stated in your textbook was derived. You need not memorise these references. You only need to learn the name of the case and the principle decided in that case where a case is specifically discussed in the textbook. Otherwise, it is sufficient if you can name one of the parties to the case (e.g. the *Regal* case). The same principle applies where legislation is discussed.

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. You will be assessed on partnerships in Assignment 01.
- Please note that CLA2601 no longer has a study guide. Tutorial letter 501 should be studied in conjunction with the prescribed textbooks. Tutorial letter 501 therefore replaces the study guide.

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 **THREE** assignments in this module. Assignment 01 and assignment 02 are both multiple choice assignments and assignment 03 is a written self assessment assignment. **Assignment 01 is a compulsory** assignment. Assignment 02 is not a compulsory assignment. **Both Assignments 01 and 02** contribute to your year mark. **Assignment 01** must be submitted to qualify for examination admission. Remember that your assignment must be numbered number 01 or 02.

You should also provide the unique numbers for Assignments 01 and 02. Assignment 03 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 **14 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 **11 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 **22 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 **19 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 CLA2601. 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 a student's final mark for the module. The examination will then count 80 percent towards a student's final mark.

PLEASE NOTE: Enquiries about assignments (e.g. 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 par. 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, etc.

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: 14 March 2011**
- **Assignment 02: 11 April 2011.**

Semester 02:

- **Assignment 01: 22 August 2011**
- **Assignment 02: 19 September 2011.**

7.5 Assessment of assignments

In your assignments, we expect you to use your knowledge of the general principles of the law of partnerships, close corporations and companies to analyse and evaluate problem situations, to identify the relevant legal issues, to apply the relevant legal principles to those issues and to suggest solutions and provide responsible advice. When answering problem type questions, it is important to clarify for yourself the area of the work which contains the answer. For example, first decide whether you are asked about a partnership, close corporation or company. The nature of the company is indicated by its name, for example "(Pty) Ltd" refers to a private company and "Ltd" refers to a public company and this may be relevant to your answer. The abbreviation "CC" indicates a close corporation. Different provisions apply in each instance. Take note of the difference between partnerships, companies and close corporations while you are studying. Refer, for example, to the difference in relation to formation, membership and representation. Always identify and answer the legal question with reference to applicable legislation, court decisions and common law. Apply the legal principles to the particular set of facts. Use the correct terminology. For example, it would be incorrect to refer to shares or directors in relation to a close corporation. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where a number of 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 or provide advice. Also remember that the facts are merely there to illustrate the legal issues we want you to address - if you think the facts are insufficient, just say that it is impossible to reach a definite conclusion. Do not waste your time on unnecessarily lengthy speculations on various potential scenarios.

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 HOW THE EXAMINATION SYSTEM WORKS

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 obtained 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 2012.

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 (ie 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 (which may include cases and legislation) 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 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.

We hope that you will enjoy this module and we wish you success with your studies.

Kind regards

Your lecturers

9 ASSIGNMENTS AND ASSESSMENT CRITERIA

**ASSIGNMENT 01: MULTIPLE-CHOICE QUESTION ASSIGNMENT
DIFFERENT ASSIGNMENTS FOR FIRST AND SECOND SEMESTER STUDENTS**

COMPULSORY ASSIGNMENT

**CLOSING DATE: 14 MARCH 2011 (FIRST SEMESTER)
 AND 22 AUGUST 2011 (SECOND SEMESTER).**

**UNIQUE NUMBER: First semester:285463;
 Second semester:282083**

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 **5 multiple-choice questions**. These questions cover **ONLY THE UNITS ON PARTNERSHIPS**. Each question counts **two marks**. Thus, the assignment counts a **total of 10 marks**.
- Assignment 02 (multiple-choice question assignment) consists of **5 multiple-choice questions**. Each question counts **two marks**. Thus, the assignment counts a **total of 10 marks**.
- The assignments (assignment 01 and assignment 02 jointly) counts a **total of 20 marks**. The mark that you obtain for the assignments will be your year mark and will count 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) **and on Assignment 02** (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: 14 March 2011.

Unique number:285463

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. Assignment 01 consists of five questions. Each question counts two marks.

QUESTION 1

Lesego, Naledi, Nthabiseng and Philile enter into a partnership agreement to sell sportsware. Naledi and Philile contributed R20 000 each towards the capital, Nthabiseng contributed her property as the business offices of the partnership and Lesego contributed her car for use by the partnership. They agreed that Lesego will run the business at a salary of R5 500.

Indicate the **CORRECT** statement regarding the essentials of a partnership:

- (1) Lesego, Philile, Naledi and Nthabiseng have a right to share in the profits of the partnership because this is one of the essential elements of a partnership.
- (2) Naledi feels that Nthabiseng is not entitled to share in the profits because she did not contribute money to the partnership.
- (3) Philile and Naledi should be the only partners sharing in the profits because they contributed money to the partnership.
- (4) Philile feels that Lesego should be excluded because she is an employee and she did not contribute money to the partnership

QUESTION 2

Indicate the **INCORRECT** statement regarding the dissolution of a partnership:

A partnership may not be dissolved by reason of...

- (1) the death of a partner.
- (2) the retirement of a partner.
- (3) lack of implied authority by a partner.
- (4) the exffluxion of a period of time.

QUESTION 3

Tinyiko, Itumeleng and David formed a partnership. They ask your advice on the legal nature of a partnership.

Indicate the **CORRECT** statement:

- (1) A partnership exists independently of the partners.
- (2) The rights and liabilities of the partnership are those of the partnership.
- (3) A partnership enjoys perpetual succession.
- (4) The assets of a partnership are held by partners as co-owners.

QUESTION 4

Indicate the **INCORRECT** statement:

- (1) If the estate of a trust is declared insolvent, the estate of the trustee must also be sequestered.
- (2) A trustee is under a legal duty to prevent the assets from his estate mingling with those of the trust.
- (3) The trustee is the owner of the trust property for purposes of administration of the trust.
- (4) A trust cannot conclude a contract in its own name.

QUESTION 5

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) Only natural persons may be parties to a trust.
- (3) A trust may be given perpetual succession.
- (4) A trust enjoys greater confidentiality than other forms of enterprise.

Total: (2x5):10

ASSIGNMENT 01 FOR SECOND SEMESTER STUDENTS**Due date: 22 August 2011****Unique number:282083****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

Indicate the **CORRECT** statement:

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

QUESTION 2

Indicate the **INCORRECT** statement:

- (1) Each partner has a right to participate in the management of the partnership.
- (2) Partners have equal management powers irrespective of the size or value of their respective contribution to the partnership.
- (3) The partners may agree that one partner will not have the power to represent the partnership in transactions falling within the partnership business.
- (4) No partner may be excluded from management of the partnership.

QUESTION 3

Which of the following is **NOT** a natural consequence (*naturalia*) of a partnership agreement?

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

QUESTION 4

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 5

Indicate which of the following statements about the **duties** of a trustee is **INCORRECT**:

- (1) A trustee must comply with his powers in terms of the trust deed or any other inferred powers.
- (2) A trustee must exercise an independent discretion at all times with respect to trust matters.
- (3) A trustee must act with care diligence and care reasonable expected of a person who manages the affairs of another.
- (4) A trustee must invest the trust property prudently in a manner which ensures capital growth for the trust.

Total: (2x5): 10

**ASSIGNMENT 02: MULTIPLE –CHOICE QUESTION ASSIGNMENT
DIFFERENT ASSIGNMENTS FOR FIRST AND SECOND SEMESTER STUDENTS**

CLOSING DATE: 11 APRIL 2011 (FIRST SEMESTER)
AND 19 SEPTEMBER 2011 (SECOND SEMESTER)

UNIQUE NUMBER: First semester: 391066
Second semester: 206983

PLEASE NOTE!!! PLEASE NOTE!!!

Assignment 02

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.

ASSIGNMENT 02 FOR FIRST SEMESTER STUDENTS

Due date: 11 APRIL 2011.

Unique number: 391066

You must submit this assignment in time in order for your assignment to count towards your final year mark!

Remember that **Assignment 02 should be completed on the mark reading sheet** provided to you as part of your tutorial matter on registration. However, if you have access to the Internet, you may submit your assignment electronically by using the University's *myUnisa* facility at <https://myUnisa.ac.za> . Assignment 02 consists of five questions. Each question counts two marks.

QUESTION 1

Which of the following statements about pre-incorporation agreements is **INCORRECT**?

- (1) A written contract is entered into by a person who is acting on behalf of a company to be formed
- (2) The person entering into the agreement has the intention that once the company comes into existence the company will be bound by the contract.
- (3) A person who enters into a pre-incorporation contract will be jointly and severally liable if the company is not incorporated or once incorporated, the company rejects any part of the agreement.
- (4) Once the company is incorporated the board of directors may, within 12 months after the date of incorporation, completely, partially or conditionally ratify or reject any pre-incorporation contract.

QUESTION 2

Which of the following statements about the appointment of a proxy is **INCORRECT**?

- (1) A proxy may delegate authority to act on behalf of the shareholder to another person
- (2) A copy of the proxy appointment form must be delivered to the company before the shareholders meeting
- (3) A copy of the proxy appointment form must be registered with the Companies and Intellectual Property Commission
- (4) A shareholder may alter proxy by cancelling it in writing, appointing another proxy and deliver a copy of the revocation to the proxy and the company

QUESTION 3

Which of the following companies must appoint an auditor?

- (1) Public companies and state owned companies.
- (2) Private companies.
- (3) Personal liability companies.
- (4) Non profit companies.

QUESTION 4

The memorandum of incorporation of Masuku (Pty) Ltd makes provision for a class of share that caters for remuneration of promoters of the company, for services rendered in the establishment thereof.

This type of share may best be described as?

- (1) Participating preference share
- (2) Deferred share
- (3) Convertible preference share
- (4) Ordinary share

QUESTION 5

Indicate the **CORRECT** statement:

- (1) New members of a close corporation will not be bound by any existing formal association agreement unless they sign it.
- (2) The manner in which members will settle disputes may not be regulated in the association agreement.
- (3) An association agreement is not a prerequisite for the formation and running of a close corporation.
- (4) If the members of a close corporation have concluded an association agreement, they may not conclude other members' agreements.

Total: (2x5): 10

ASSIGNMENT 02 FOR SECOND SEMESTER STUDENTS

Due date: 19 SEPTEMBER 2011

Unique number:206983

You must submit this assignment in time to in order for your assignment to count towards your final year mark.

Remember that **Assignment 02 should be completed on the mark reading sheet** provided to you as part of your tutorial matter on registration. However, if you have access to the Internet, you may submit your assignment electronically by using the University's *myUnisa* facility at <https://myUnisa.ac.za> Assignment 02 consists of five questions. Each question counts two marks.

QUESTION 1

Fabulous NPC is a duly incorporated entity with the sole purpose of providing educational material to underprivileged schools in Eastern Cape Province. It can therefore best be described as a:

- (1) Private company
- (2) Non profit company
- (3) Close corporation
- (4) State owned company

QUESTION 2

Which of the following statements about a share is **INCORRECT**?

- (1) It is one of the units into which the proprietary interest in a profit company is divided.
- (2) It is issued by a company and is movable property transferable in any manner provided for by the Companies Act or any other legislation.
- (3) It is the interest of a shareholder in a company, measured by an amount of money, for purposes of liability and interest but also consisting of a series of mutual covenants entered into by the shareholders.
- (4) It is a document issued by the company acknowledging that it is indebted to the holder in the amount stated therein

QUESTION 3

The directors of Locke Intel Ltd want certain special conditions to be applicable to the company. These special conditions will be set out in the company's...

- (1) notice of incorporation.
- (2) memorandum of incorporation.
- (3) company rules of the board of directors.
- (4) registration certificate.

QUESTION 4

James is a member of Beukes CC. He is also a property evaluator with 15 years' experience. He is instructed by Beukes CC to do a property evaluation of a property owned by Beukes CC . James negligently failed to find out if the City Council of Cape Town has any development plans for the property next to Buekes CC's property and reported that the property is worth R 5000 00. The property was sold and subsequently it was discovered that the City Council plans to build a shopping centre on the adjacent property. Beukes CC would have sold the property at a substantially higher price had it known of the City Council of Cape Town plans.

James is in breach of his:

- (1) duty of care and skill.
- (2) fiduciary duty and duty of disclosure.
- (3) duty of care and skill and duty of disclosure.
- (4) fiduciary duty.

QUESTION 5

Indicate the **INCORRECT** statement:

A member's interest in a close corporation...

- (1) may be held by a trustee of an *inter vivos* trust.
- (2) may be held by an insolvent or other legally disabled person
- (3) may be held jointly by two persons.
- (4) may be held by a minor.

Total: (2x5): 10

WRITTEN ASSIGNMENT 03 FOR FIRST AND SECOND SEMESTER STUDENTS**SELF – EVALUATION ASSIGNMENT**

Assignment 03 is a **self- evaluation assignment** and it contains short to medium length questions. We will not mark it, but will provide you with a tutorial letter containing the answers so that you can check your answers.

The purpose of the self-evaluation assignment is

- to assist you to work through the study material
- to teach you the necessary reading and writing skills
- to teach you to make a synthesis from various sources, in other words, to gather material and present it in a logical, ordered fashion and with convincing arguments (**merely copying the tutorial material is totally unacceptable**).
- self-evaluation

The value of Assignment 03 lies in its completion. Because the type of questions in the assignment is similar to the type of questions which you can expect in the examination, you should try to answer them under examination conditions. Had the assignment been an examination counting 20 marks, you would have been given 20 to 25 minutes to complete it. This means that you cannot write an answer that is several pages long for a 5-mark question.

The background knowledge that you obtain by doing the assignment and marking it, provides a good opportunity to increase your knowledge and understanding of the work to such a degree that you will be able to approach the examination with more confidence.

GENERAL APPROACH TO PROBLEM-TYPE QUESTIONS

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

- 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:
 - **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.
 - **Summarise** that particular section or chapter in your own words by using your notes and key words.
 - **Finalise** your summary by making use of references to the study material, case law and other relevant authority.
- 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.
- **Neatness** is essential. **Plan** your answers in advance.
- 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 03 FOR FIRST SEMESTER STUDENTS**This is a SELF- EVALUATION assignment.****NO UNIQUE NUMBER****QUESTION 1**

Sarah wants to conclude a contract with Obex (Pty) Ltd. She has heard that the doctrine of constructive notice might have an influence on the agreement. Explain to her what the doctrine of constructive notice entails, as well as whether this doctrine will be applicable regarding her anticipated contract if this contract is concluded after the Companies Act 71 of 2008 has come into operation.

(5)**QUESTION 2**

Big (Pty) Ltd and Small (Pty) Ltd intend to conclude a contract in terms of which the two companies will transfer all their respective assets and liabilities to a new company that will be formed for this purpose. The new company will be called Medium (Pty) Ltd. Assume that the companies will comply with all the requirements for the approval of the proposed transaction. Explain whether the shareholders of the respective companies who do not agree with the proposed transaction will have appraisal rights. Also explain the procedure to be followed in order to employ this remedy.

(5)**QUESTION 3**

Max and Li are the only members of Jinx CC, which they incorporated in 2006. The association agreement of the corporation specifically precludes any of the members from concluding contracts in excess of R10 000 without the knowledge and consent of the other. Li concludes a contract with Techno Music Ltd on behalf of the close corporation to buy a music system from them at the cost of R15 000 without the knowledge and consent of Max.

Advise Max on whether the CC is bound to the contract.

(5)**QUESTION 4**

List the circumstances under which a member of a close corporation can be liable for the corporation's debts in terms of the Close Corporations Act 69 of 1984.

(5)**Total: 20**

ASSIGNMENT 03 FOR SECOND SEMESTER STUDENTS**This is a SELF- EVALUATION assignment****QUESTION 1**

Discuss the procedure followed in incorporating a company **(5)** and the role of the Commission in this procedure. **(5)**

QUESTION 2

Chill Factor (Pty) Ltd is a newly formed company specialising in refrigeration equipment. The board of directors of Chill Factor (Pty) Ltd are uncertain about the extent to which they may temper with the rules relating to the governance of the company as certain of the newly formed company's rules are contained in the Memorandum of Incorporation as well as in the Rules of the Board of Directors.

Advise the board of directors on the following:

- a) The legal status of the Memorandum of Incorporation and the Rules of the Board of Directors.
- b) What happens if a provision in the Rules of the Board of Directors is inconsistent with the Memorandum of Incorporation? **(5)**

QUESTION 3

Describe the circumstances under which a director may be removed by the board of directors. **(5)**

Total: 20