

DEPARTMENT OF MERCANTILE LAW

**ENTREPRENEURIAL LAW
MRL101-F**

**Tutorial Letter 101/2004
SEMESTERS I AND II**

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1

A WORD OF WELCOME

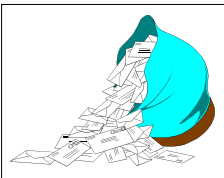
We welcome you as a student of this course. We trust that you will find your studies both useful and enjoyable. The content of this course is extensive and we therefore suggest that you commence your studies immediately. It is a good idea to plan your semester with regard to the assignment dates in all the courses for which you have registered.

THE CONTENT OF THIS TUTORIAL LETTER, AND THAT OF OTHERS YOU WILL RECEIVE DURING THE SEMESTER, IS VERY IMPORTANT. STUDY IT CAREFULLY AND KEEP THIS TUTORIAL LETTER WITH OTHER STUDY MATERIAL.

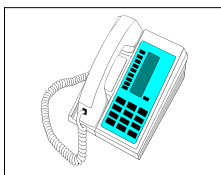
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COMMUNICATION WITH LECTURERS

All queries that are not of a purely administrative nature **but are about the contents of this module** should be directed to us. Please have your study material and student number at hand when you contact us.

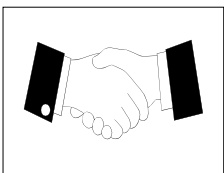


The Lecturer (MRL101-F)
Department of Mercantile Law
Unisa
PO Box 392
UNISA 0003



Fax: (012) 429-3343
Telephone: (012) 429-8436

Note that this number is the general number for the department. You will soon be informed of the direct numbers for your specific lecturers. **It is preferable for you to use these direct numbers instead of the general number.** The best time to phone us is between 07:45 and 13:00. If a lecturer is unavailable, his or her phone will be connected to an answering machine. Please use this facility as we will gladly return your call as soon as possible.



Feel welcome to visit us to discuss any queries or problems. However, please make an appointment. Our offices are on the 6th floor of the **Cas van Vuuren Building**, Main Campus, Muckleneuk Ridge, Pretoria.

STUDENTS WHO HAVE ACCESS TO THE APPROPRIATE COMPUTER TECHNOLOGY MAY CONTACT THE LECTURERS BY MEANS OF E-MAIL AT THE FOLLOWING E-MAIL ADDRESS:

mrl101-f@sol.unisa.ac.za

3 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Contact addresses of the various administrative departments are included in *Unisa: Services and Procedures*, which you received with your tutorial matter. Please contact these administrative departments on queries related to matters not connected with the content of the course.

PLEASE NOTE:

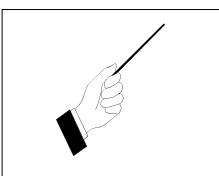
- ⇒ You may enclose more than one letter in the same envelope when you write to the university. However, do not write to more than one department in one letter - this will cause delay. Write a separate letter to each department and mark each letter clearly: "For attention (the relevant department)".
- ⇒ When writing to the University, always give your student number, the name of the course and the course code at the beginning of the letter.
- ⇒ Remember to have your student number ready whenever you contact the University.
- ⇒ Please include your address and telephone number in a letter if you want a reply.

4

STUDENT SUPPORT SYSTEM

4.1 STUDENT COUNSELLING

Students who are studying at a university for the first time experience a number of difficulties that can affect their academic performance. Some of these difficulties are a lack of study skills (students do not know how to summarise, to read or to write critically, and how to memorise what they have learnt), the big difference between teaching in high school and university teaching, the lack of contact between students and lecturers, and lack of experience in writing exams. Some of these difficulties are common to all students starting tertiary education, but others are unique to the distance-learning environment. Even senior students may benefit from assistance with study techniques.



The **Bureau for Student Counselling and Career Development** at Unisa provides a number of student-support systems to help students improve their **study skills**. Students can receive counselling and advice on study methods, and there are also memory-enhancement programmes.

For more information on the programmes and contact details of the **Bureau for Student Counselling and Career Development**, please consult **UNISA: Services and Procedures**.

4.2 STUDY SKILLS

A revised and updated study skills guide entitled **EFFECTIVE STUDY** was published by the Bureau for Student Counselling and Career Development (BSCCD). It is available in English and it can be obtained from **Unisa Press (see details below)**. The publication deals with a variety of topics which are applicable to specific periods during the semester or year. It also contains a screening questionnaire, which will indicate to students where they may expect problems and on which areas they should focus. The topics covered in the book are as follows:

INTRODUCTION

- 1 The EFT study process

THE EXPLORATION PHASE

- 2 Assessing the study process
- 3 Creating a quality environment for effective study
- 4 Effective time management and planning
- 5 The organisation and running of study groups
- 6 Writing assignments and reports
- 7 Reading and note taking

FIXATION

- 8 Making the most of your memory: thinking and learning successfully
- 9 Dealing with multiple-choice questions

TESTING

- 10 Effective examination techniques
- 11 Academic anxiety
- 12 Assessing the effectiveness of the study process

To gain maximum advantage from the guidelines given in the publication, we suggest that you work through the book at the beginning of your studies. After this initial overview, you can consult the sections selectively as your needs emerge. The publication can be used repeatedly by both first-year and experienced students, as it was not only written for students with study problems. Successful students can use the guidelines to improve their academic performance even further.

How to obtain *Effective Study*?

Title: Van Schoor, WA, Mill, EM, & Potgieter, D. 2001. **Effective study**. Pretoria: Unisa Press.

To order: You can **order the booklet from Unisa Press**. Only prepaid orders will be accepted.

The order form is at the end of this tutorial letter.

If you want to buy a copy over the counter you can pay a visit to the sales section of Unisa Press, Department of Despatch, 2nd floor, Cas van Vuuren Building on the main campus. Price **R30.00**.

For telephone enquiries: (012) 429-3448

Fax: (012) 429-3221

The Bureau for Student Counselling and Career Development is available for consultations on study problems. In the past we have found that the consultations were more effective if a student is able to identify his/her specific study problems beforehand. We therefore suggest that you consult the publication and make notes of your specific problems.

You can contact the Bureau for Student Counselling and Career Development as follows:

In writing:

The Director
Bureau for Student Counselling and Career Development
PO Box 392
Unisa
0003

In person

You do not need to make an appointment as it is a walk-in service.
Cas van Vuuren Building 3-10 or 3-11
Main Campus
Office hours: Mon - Fri: 08:00 - 15:30

(See also the reference to the regional centres below)

Telephone: (012) 429-3513

Fax: (012) 429-3698

E-mail: counselling@unisa.ac.za

Services offered by the Bureau for Student Counselling and Career Development

For a comprehensive description of the services offered at the Main Campus and at the Regional Centres, you can visit the web page of the Bureau for Student Counselling and Career Development at: <https://sol.unisa.ac.za/counselling/>

Regional centres

Centre	Person	Contact numbers
Western Cape - Parow	Ms Sonja Barnard	(021) 936 4130 barnase@unisa.ac.za
KwaZulu-Natal - Durban	Ms Amy Reddy	(031) 3351745 reddya1@unisa.ac.za
Limpopo - Polokwane	Ms Mmemeru Lephondo	(015) 290-3441 lephomj@unisa.ac.za
Johannesburg Learning Centre	Ms Pam Nielson	(011) 4037111 nielspg@unisa.ac.za

4.3 PEER HELP PROGRAMME

We would like to inform you about the Unisa Peer Help Volunteer Programme, offered under the auspices of the Bureau for Student Counselling and Career Development.

Peer helping is based on the well-documented fact that students often seek out other students for help when they are experiencing some frustration, concern, worry or problems.

Peer helpers are trained to help other students think through and reflect on problems they might experience. These peer helpers listen and support their fellow students with regard to studies and personal problems. They explain the Unisa system and they render support regarding academic skills development. Peer helpers are trained to refer more complex cases to the professional counsellors on campus.

You can contact a peer helper at:

Main Campus (Pta) Cas van Vuuren Building Hall A Room 3-11 Tel: (012) 429-8694/5	Times Monday - Fridays 08:00 - 15:30
Western Cape Campus Unisa A Room G1-35 15 Jean Simonis Street Parow Tel: (021) 936-4130	Times Monday - Thursdays 09:00 - 15:00
Kwazulu Natal Campus Room 1B-7 Masifunde Study Centre Durban Tel: (031) 335-1745	Times Monday - Friday 08:00 - 13:00 Certain Saturdays 08:00 - 12:00
Limpopo Campus 23 Landdros Maré Street Polokwane Tel: (015) 290-3432/3441	Times Monday - Friday 10:00 - 15:00

Johannesburg Learning Centre Room 206 C/o De Korte & Eendracht Street Braamfontein Tel: (011) 403-7111	Times Monday - Friday 09:00 - 15:00 Saturday by appointment 09:00 - 13:00
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4.4 LEARNING CENTRES AND TUTORING

We do not offer group discussions in this subject, but tutorial programmes are offered at the learning centres. Please consult the brochure **UNISA: Services and Procedures** for the contact details of the various learning centres.

Unisa has established learning centres where students may study, obtain library services and gain academic as well as general support in the form of tutorials given by tutors appointed by the University. The aim is to help students to become independent, autonomous learners. These services are available to all Unisa students upon payment of an enrolment fee.

Please note that students who are interested in tutor classes should contact the learning centre in their area **before the end of January 2004**. The availability of tutor classes depends on the number of students who are interested in possible tutor classes.

You are welcome to contact with the following learning centres for more information:

Learning Centres		
Name & address	Tel no & e-mail	Contact Person
Cape Town Learning Centre Unisa Western Cape 15 Jean Simonis street PAROW	(021) 936-4122/3 (021) 936-4124(Fax) oosmep@unisa.ac.za or alberap@unisa.ac.za	Dr Marietjie Oosthuizen Mrs Lida Alberts Ms Thandeka Mzileni
Satellite attached to Cape Town Learning Centre: Unisa Western Cape Huguenot College WELLINGTON	(021) 873-1181 (021) 873-2377(Fax)	Mrs Vonschlicht
Durban Unisa KwaZulu Natal 230 Stanger street DURBAN	(031) 355-1749 (031) 337-2026(Fax) sewdud@unisa.ac.za or mahard@unisa.ac.za	Mr Dhaya Sewduth Mr Dev Maharaj Mrs Thandi Phewa
Satellite attached to Durban Learning Centre: Unisa/Sacol 1 Long Market Street PIETERMARITZBURG	(033) 394-3668	Mr Thuso Moisea
Satellite attached to Durban Learning Centre: Kwa Dukuza Resource Centre Old Mutual Building C/o Jackson & Hullett Street STANGER	(032) 551-6251/2 (032) 551-6250	Mr Pravin Narrandes

Johannesburg Learning Centre: 25 De Korte street C/o De Korte Eendraght BRAAMFONTEIN	(011) 403-0101 (011) 403-0101 mabasth@unisa.ac.za	Mr Thulani Mabaso Ms Caroline Dayeli Ms Tshidi Mokoena
Polokwane Learning Centre: Unisa Limpopo Province 23 Landdros Maré street POLOKWANE	(015) 290-3417/9 (015) 290-3434(Fax) tshamn@unisa.ac.za or segoomj@unisa.ac.za	Mr Walter Tshamano Mr John Segooa Ms Bessie Molokomme
Thutong Learning Centre: Harmony Building Sunnyside Campus C/o Walker & Joubert str PRETORIA	(012) 484-1190/2/3 (012) 484-1194 masalmc@unisa.ac.za	Ms Moipone Masalesa Ms E Motsuenyane
Umtata Learning Centre: Steve's Motor Building 26 Victoria Street C/o Victoria Street & Madeira Road UMTATA	(047) 531-5002 (047) 531-5120 (Fax) msenge@unisa.ac.za or tshaknn@unisa.ac.za	Mrs Nolundi Msengana Mrs Neliswa Tshaka Nokuzula Kenqu

5

TUTORIAL MATERIAL

5.1 INVENTORY

When you register, you will receive an inventory letter containing information about your tutorial matter. See also ***Unisa: Services and Procedures*** (which you received with your tutorial matter).

PLEASE NOTE: Your lecturers cannot help you with missing tutorial material. Please contact the Department of Despatch.

5.2 TUTORIAL MATERIAL

The tutorial material for MRL101-F consists of the following:

- (1) Prescribed textbooks (which you must purchase yourself). See paragraph 5.3.
- (2) Study guide
- (3) Tutorial letters (which you will receive during the semester)

PLEASE NOTE: All the above-mentioned tutorial letters will not necessarily be available at the time of your registration. TUTORIAL LETTERS WILL BE POSTED TO YOU AS SOON AS THEY ARE AVAILABLE.

- (4) Cases (The extracts are contained in one of your prescribed textbooks, namely *Student case book on business entities*)
- (5) The Companies Act 61 of 1973 and the Close Corporations Act 69 of 1984

5.3 PRESCRIBED TEXTBOOKS

The prescribed textbooks for the course are:

- (1) Cilliers, HS, Benade, ML & Henning JJ. *Entrepreneurial law* 3 ed (2003). Butterworths.
- (2) Pretorius, JT. (gen ed). *Student case book on business entities* 2 ed (2000) Juta.

Please consult the list of official booksellers and their addresses at the end of this tutorial letter.

Should you encounter any difficulties with obtaining the prescribed books from these booksellers, please contact the Registrar (Academic) as soon as possible at telephone number (012) 429-4152.

NOTE:

Since this avenue of assistance is available to you, we will not accept as a valid excuse for the late submission of assignments the fact that you experienced problems obtaining the prescribed books.

5.4 STUDY GUIDE

The study guide is an aid to the prescribed books referred to in paragraph 5.3. **Read the introduction to the study guide carefully** before proceeding with your studies. It explains how the guide complements the prescribed books.

The topics discussed in your prescribed books are:

- (1) law of partnership
- (2) company law
- (3) law of close corporations
- (4) law of business trusts

The study guide also contains activities to encourage you to test yourself as you study. If you can answer the activities and the self-assessment questions in your study guide without the aid of your textbooks, you should be well prepared for the exams.

5.5 FURTHER TUTORIAL LETTERS

Apart from Tutorial Letter 101, you will receive other tutorial letters for MRL 101-F during the semester.

Tutorial letters are part of your study material for assignment and examination purposes. Read and reread each tutorial letter; keep it for reference purposes, and study it again.

5.6 CASES

Study the cases as prescribed in the study units of your study guide. You will find these cases in the prescribed book: Pretorius, JT (gen ed) *Student case book on business entities* 2nd edition (2000). The study guide contains guidelines on how to approach the study of decided cases for this course. Please consult the introduction of your study guide.

5.7 ADDITIONAL READING MATTER: THE COMPANIES ACT 61 OF 1973 AND THE CLOSE CORPORATIONS ACT 69 OF 1984

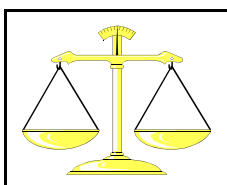
The more important sections of the relevant Acts are adequately discussed in your study guide and in *Entrepreneurial Law*. However, we suggest that you acquire copies of, or have access to, the Companies Act 61 of 1973 and the Close Corporations Act 69 of 1984.

The Companies and Close Corporations Acts are available in Pretorius *Companies Act 61 of 1973 and Close Corporations Act 69 of 1984* 8 ed (2003/2004) Juta & Co Ltd, and Strydom *Company Legislation Handbook 2003* 16 ed (2003) Butterworths. These books contain the full text of the statutes but no explanatory notes. They can be purchased from the official booksellers or ordered directly from the publishers.

Please note that the library does not make provision for additional reading matter.

6 EXAMINATION AND ADMISSION TO THE EXAMINATION

6.1 EXAMINATION



At the end of the semester you will write **one two-hour paper** on MRL101-F. The paper counts 100 marks. To pass you need to obtain at least 50 percent for the paper.

Information on the preparation for and the writing of examinations will be provided in a later tutorial letter.

6.2 ADMISSION TO THE EXAMINATION

Registered students for this course have **automatic admission** to the examination. It is nevertheless advisable to complete Assignment 01 and submit it, in order to prepare yourself well for the examination.

7.1 PURPOSE OF THE ASSIGNMENTS

Assignments are an extremely important part of the module. In an assignment you must prove your ability to deal with the subject-matter. The purpose of assignments is fourfold:

- (1) to force you to work through the study material
- (2) to teach you the necessary reading and writing skills expected of a future legal practitioner
- (3) to teach you to make a synthesis from various sources; to gather material and present it in a logical, ordered fashion and with convincing arguments (**merely copying the study material is not acceptable**)
- (4) self-evaluation: when you join the legal profession, you will have to evaluate your own arguments and submissions, and therefore you should acquire this skill as soon as possible

It is essential that you answer the assignments without referring back to your textbooks. This is the only way in which you can determine whether you understand that part of the work. It also gives us the opportunity to provide you with useful feedback on the mistakes you have made.

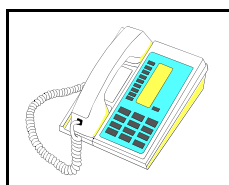
7.2 GENERAL APPROACH TO ESSAY-TYPE ASSIGNMENTS

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines may be of help:

- Students normally complain that they cannot rewrite the **study material in their own words**. Unfortunately you have to get used to this, since you will not have your textbook at hand during the examination. However, there are three easy steps to accomplish this:
 - ✎ **Study** the relevant study material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.
 - ✎ Put away your study material and try to **summarise** that particular study unit in your own words by **using your notes** and list of key words.
 - ✎ Use the study material to **finalise** your summary with **references** to case law and other relevant authority.
- We restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers but such answers do not earn good marks. You must learn to summarise your study 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.

- Please ensure that your name and address, student number, subject and course, and assignment number are written clearly on the assignment cover. **This information must be correct.**
- Remember that your assignment must have precisely the same number as that given in this tutorial letter. Specify the course code and assignment number in all enquiries about assignments.
- Ensure that the pages of your assignments are in the correct order and fastened securely. Please do **NOT** write on both sides of the page. Leave a margin sufficiently wide for our comments on the right-hand side - we cannot write any comments if there is no space to do so. Submit each assignment separately.
- It is wise to **make a copy of the assignment** before submitting it, in case your assignment gets lost in the post.

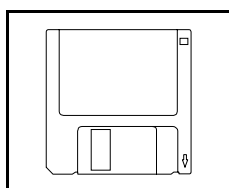
PLEASE NOTE



Enquiries about assignments (eg whether or not the University has received your assignment, the allocation of marks, or the date on which an assignment was returned to you) must be addressed to the **Assignment Section (012) 429-4155.**



Assignments should be addressed to:
The Registrar
 UNISA
 PO Box 392
 UNISA 0003

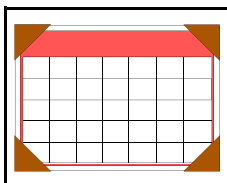


NO ASSIGNMENTS MAY BE SUBMITTED BY FAX, STIFFY OR VIA E-MAIL DIRECTLY TO THE LECTURER. However it is possible to submit written assignments via the Internet by using the SOL. **Note that these assignments should not be mailed to the lecturer or department,** but to assignments section, which is the usual route.

For detailed information and requirements as far as assignments are concerned, see **Unisa: Services and Procedures**, which you received with your tutorial matter.

To submit an assignment **via SOL:**

- Go to Students Online.
- Log in with your student number and password.
- Select the course.
- Click on assignments.
- Click on "submit assignment".
- Follow the instructions.



Please note the submission dates for assignments. **No extensions will be granted, since the assignments are optional.**

ASSIGNMENTS

- (1) TWO ASSIGNMENTS have been set for this module. **Only ONE assignment will be marked.** Students must submit only ASSIGNMENT 01 for marking. Assignment 02 is a self-evaluation assignment and must **not** be submitted.

However, you will receive a tutorial letter containing the suggested answers to both Assignments 01 and 02.

- (2) If you are registered for the first semester, you should submit your assignment on the date indicated for the first semester students. **If you are registered for the second semester, you should not submit your assignment during the first semester** - submit it in the second semester on or before the date indicated for second semester students.
- (3) We have indicated from which part of the study material we have asked the questions for Assignment 01. Please work through these study units before attempting to answer the assignment questions. Then answer the questions without referring back to the textbooks. This is the only way in which the assignments can add value to your studies.

ASSIGNMENT 01

FIRST SEMESTER STUDENTS: SUBMISSION DATE 26 March 2004
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SECOND SEMESTER STUDENTS: SUBMISSION DATE 27 August 2004
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Assignment 01 must reach the Registrar **on or before** the submission date.

Remember to fill in the correct study unit code and assignment number on the assignment cover, namely Assignment 01 for MRL 101-F.

NOTE THAT YOUR ASSIGNMENT MAY NOT EXCEED EIGHT WRITTEN OR FIVE TYPED PAGES.

QUESTION 1

Study unit 3

Tumi, Rachel and Claudia are partners in a florist trading as Flower World. In terms of their partnership agreement, Rachel is not allowed to enter into contracts on behalf of the partnership which exceeds the value of R2 000. Rachel enters into a contract on behalf of the partnership with John for the supply of twenty bushes of red roses every week for four months. The value of the contract is R3 000. Advise Tumi and Claudia on whether John can enforce this contract against Flower World. (5)

QUESTION 2

Study unit 20

Rancho CC is a close corporation that does business as a tile manufacturer. Mr Liso is a member of Rancho CC. At the incorporation of the close corporation he undertook to contribute a patent for a new tile to the close corporation. He has still not contributed the patent. Mr Lebo, another member of Rancho CC, wishes to claim the contribution from Mr Liso on behalf of the close corporation. Explain how section 50 of the Close Corporations Act 69 of 1984 regulates such an action. (5)

QUESTION 3

Study unit 11

Capricorn Constructions (Pty) Ltd is a construction company. The company wants to purchase a crane, and Michael as a director of the company is instructed to buy one. However, Michael cannot reach an agreement with the owner of the crane. Michael then buys the crane for himself for R50 000 and proceeds to sell the crane to Capricorn Constructions (Pty) Ltd at a price of R70 000. Consider whether Michael's conduct is a breach of his fiduciary duties towards Capricorn Constructions (Pty) Ltd. (5)

QUESTION 4**Study unit 14**

John has preference shares in Anglo Ltd. His rights as a preference shareholder include the right to share in the surplus assets on liquidation. These rights are varied, with the result that he is no longer entitled to share in the surplus assets. In exchange, John is given the right to participate in the profit of the company and in any bonus issue of shares. After the amendment of John's rights, the price of the preference shares increases significantly. John feels that the amendment of his rights as a preference shareholder is unfairly prejudicial to him. Advise John on whether the remedy provided in section 252 of the Companies Act 61 of 1973 is available to him. You must refer to the relevant case law. (5)

TOTAL: [20]

ASSIGNMENT 02

Assignment 02 has been included as an additional exercise in order to assist you in your preparation for the examination.

This assignment must **not** be submitted and will **not** be marked. However, we will send you a tutorial letter containing the answers to this assignment.

QUESTION 1

Consider the following statements:

- A One of the *essentialia* (essential elements) of a partnership is that the partnership agreement should be in writing and signed by all the parties thereto.
- 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 all the *essentialia* of a partnership are present in an agreement, but the parties did not intend to conclude a partnership agreement, the agreement will still constitute a partnership agreement.
- D If any one of the *essentialia* of a partnership is not present in an agreement, 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 only.
- (2) B, C and D only.
- (3) B and D only.
- (4) D only.

QUESTION 2

Indicate the INCORRECT statement:

A partnership is automatically dissolved by reason of...

- (1) the death of a partner.
- (2) the retirement of a partner.
- (3) the expiration of the term for which the partnership is established.
- (4) the breach by a partner of his fiduciary duties.

QUESTION 3

Indicate the CORRECT statement:

- (1) In a close corporation a division exists between the providers of capital and management.
- (2) A close corporation is allowed to return its capital to its members, provided that it maintains the necessary solvency and liquidity.
- (3) A close corporation must have as its object the pursuit of gain.
- (4) A close corporation can have a share capital.

QUESTION 4

Lesedi is a member of Candle Mania CC. The business of the close corporation is to manufacture candles. The association agreement of Candle Mania CC provides that Lesedi may not enter into contracts on behalf of the close corporation where the value of the contract exceeds R1 000. Lesedi, a keen sportsman, concludes a contract on behalf of the close corporation with Dina, in terms of which he purchases soccer balls to the value of R1 200 from her.

Indicate the CORRECT statement:

- (1) The contract will bind the Candle Mania CC because Lesedi is a member of the close corporation and Dina did not know about the limitation on his authority.
- (2) The contract will not bind the Candle Mania CC because the contract falls outside the close corporation's business sphere.
- (3) The contract will bind the Candle Mania CC because of the application of the *Turquand* rule.
- (4) The contract will not bind the Candle Mania CC because Lesedi's authority to bind the close corporation has been limited in the association agreement.

QUESTION 5

Indicate the CORRECT statement:

- (1) Section 36 of the Companies Act 61 of 1973 abolished the *ultra vires* doctrine.
- (2) In terms of section 36 a company may be bound by an *ultra vires* contract even if the other contracting party knows that the company is acting *ultra vires*.
- (3) In terms of the common law, the members of the company in a general meeting could validate an *ultra vires* act.
- (4) The capacity of a company is determined by the main objects clause as set out in the articles of association.

QUESTION 6

The memorandum of association of Viro (Pty) Ltd provides that the main object of the company is to develop computer programs to solve problems caused by computer viruses. The board of directors of the company concludes a contract with Mr Slot in terms of which the company purchases a block of holiday apartments which the company will sell under sectional title.

Indicate the CORRECT statement:

- (1) The contract is not binding on Viro (Pty) Ltd because the contract falls outside the main and ancillary objects of the company.
- (2) The contract is not binding on Viro (Pty) Ltd because this contract is in breach of the fiduciary duties of the directors and thus void unless it is ratified by the general meeting.
- (3) The contract is not binding on Viro (Pty) Ltd because in terms of the doctrine of constructive notice Mr Slot is deemed to know what is contained in the memorandum of association.

- (4) The contract is binding on Viro (Pty) Ltd even if Mr Slot had actually read the memorandum of association and knew that the contract fell outside the main and ancillary objects of the company.
- (5) The contract is binding on Viro (Pty) Ltd because Mr Slot is entitled to rely on the *Turquand* rule.

QUESTION 7

Which one of the following statements about a section 53(b) company is CORRECT?

- (1) The directors are liable for the company's contractual debts and liabilities, but not for the company's delictual liabilities.
- (2) The company is considered to be a public company and must have at least seven members.
- (3) The company's name must end with the words "Ltd".
- (4) The company's articles of association must prohibit the payment of dividends to its members.

QUESTION 8

In *Regal (Hastings) v Gulliver* [1942] 1 All ER 378 (HL) the court held that...

- (1) the managing director of a company may be appointed as a director of a competing company.
- (2) a director who acts outside the capacity of the company (*ultra vires*) is liable for any loss suffered by the company as a result thereof.
- (3) a director is liable if he derives advantage from his office as a director even if it is done openly, in good faith and at no expense to the company.
- (4) a director is personally liable as a result of the *Turquand*-rule if he contracts on behalf of the company without the necessary authority.

QUESTION 9

Indicate the CORRECT statement.

- (1) No debenture or debenture certificate is entitled to be issued unless the conditions of the debenture are stated on the debenture or the debenture certificate.
- (2) A debenture holder is not entitled to demand the interest on his debenture unless the company has earned sufficient profits to pay it.
- (3) All shares must be evidenced by a share certificate issued by the company.

- (4) The authorised share capital is the total nominal value of the shares which have been issued to the shareholders of the company.

QUESTION 10

Indicate the INCORRECT statement.

- (1) Only public companies are compelled in terms of the Companies Act 61 of 1973 to appoint a company secretary.
- (2) A body corporate or a partnership may be appointed to hold the office of company secretary.
- (3) The company secretary of a public company may also act as auditor of the same company.
- (4) A company secretary may also be a director of the company if the articles allow it.

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