Tutorial Letter 101/3/2017

Insolvency Law
MRL3701

Semesters 1 and 2

Department of Mercantile Law

This tutorial letter contains important information about your module. You must also register for myUnisa and activate your myLife e-mail address.
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Dear Student

1 INTRODUCTION

We are pleased to welcome you to this undergraduate module in insolvency law, and hope that you will find it both interesting and rewarding. We will 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 assignments properly.

This tutorial letter contains important information about this course. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for both semesters and instructions on the preparation and submission of the assignments.

This tutorial letter also provides all the information you need with regard to the prescribed study material 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, because they always contain important and, sometimes, urgent information.

You must be registered on myUnisa to be able to submit your assignments online, gain access to the library functions and various learning resources, to “chat” to your lecturers and fellow students about your studies and the challenges that you may encounter, and to participate in online discussion forums on myUnisa. Most important, however, is the fact that all the learning units for the module are available on myUnisa, and you will only be able to access the online study material for this module if you have registered on and have access to myUnisa. Please visit the MRL3701 module sites on myUnisa often. The module site for the first semester is MRL3701-17-S1, and the module site for the second semester is MRL3701-17-S2. To access myUnisa, follow this link: https://my.unisa.ac.za and login with your student number and password. You will see MRL3701-17-S1 and MRL3701-17-S2 in the row of modules in the grey blocks across the top of the web page. Click on the module you want to access.

Further, please activate your myLife e-mail address, as we will send all official correspondence about this module to your myLife address, and not your private e-mail address. Please consult the booklet my Studies @ Unisa for more information about activating your myLife e-mail address and accessing the MRL3701 module site on myUnisa.

We hope that you will enjoy this module and we wish you all the best!
2 PURPOSE AND OUTCOMES

2.1 Purpose

This module, Insolvency Law (MRL3701), is a third-level module dealing with the law of insolvency (voluntary surrender and compulsory sequestration), and with the liquidation (winding-up) and business rescue of companies and close corporations.

2.2 Outcomes

Learning outcomes for this module are found in your study guide, which will be sent to you.

You will notice that we have included learning outcomes for each study unit. The learning outcomes at the beginning of each study unit indicate what competence you should be able to demonstrate at the end of this learning experience. We expect you to achieve the learning outcomes. You should be able to achieve these outcomes if you work through the study material by following the guidelines and doing the activities in your study guide.

You will also find an application learning outcome as the last outcome in each unit. This learning outcome is a standard feature that will remind you that you need to be able to apply your knowledge in order to carry out the activities and to answer the self-test questions in the particular study unit.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

The lecturers responsible for this course are:

Name: Ms Z Mabe
Building and office number: Cas van Vuuren Building 4-101
E-mail address: mabez@unisa.ac.za
Telephone number: 012 429 4569

Name: Prof RG Evans
Building and office number: Cas van Vuuren Building 6-105
E-mail address: evansrg@unisa.ac.za
Telephone number: 012 429 8439

Name: Prof AD Smith
Building and office number: Cas van Vuuren Building 6-134
E-mail address: smithad@unisa.ac.za
Telephone number: 012 429 8400

Name: Ms Z Taljaard
Building and office number: Cas van Vuuren Building 6-53
E-mail address: taljaz@unisa.ac.za
Telephone number: 012 429 4584
3.2 Department

Letters should be sent to:

The Module Leader (MRL3701 – Insolvency Law)
Department of Mercantile Law
PO Box 392
UNISA 0003
Fax number: 012 – 429 3343

PLEASE NOTE:

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

3.3 University

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, which you received with your study material. This booklet contains information on how to contact the University (eg, to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you call the University.

4 RESOURCES

4.1 Prescribed books

The study material for this module consists of the following:

- Study guide

There is one study guide for this module that must be used in conjunction with the prescribed textbook as a guide through the chapters in the textbook.

- Tutorial letters (which you will receive during the semester)
- One textbook (which you must purchase)
- MO001 (Module Online)

The MO is an online presentation of this module. A printed version of the MO will be sent to you, and the electronic version of the MO will be available on myUnisa under “Additional Resources”. You will also find the individual learning units under “Learning Units” on myUnisa.

- A number of prescribed cases
The Department of Despatch should also supply you with the following printed study matter for this module:

- Study guide
- Tutorial letters which you will receive during the semester
- MO001 (Module Online)

### 4.1.1 Study guide

There is one study guide for this module that must be used in conjunction with the prescribed textbook and the MO as a guide through the chapters in the textbook.

At the beginning of the study guide, you will find detailed instructions on how to use it.

Please note that you must omit Study Units 22-24 of the Study Guide. These have now been replaced by Learning Units 22-24 of the MO, which are compulsory. Please note that you will be asked questions from these Learning Units 22-24 of the MO, and so it is important to study these Learning Units 22-24 of the MO.

### 4.1.2 Further tutorial letters

Apart from this Tutorial Letter 101, you will also receive other tutorial letters during the semester.

Some of these tutorial letters may not be available when you register. Printed versions of these tutorial letters that are not available when you register will be posted to you as soon as possible, and the electronic versions of these tutorial letters will also be available on myUnisa.

Students who have access to the Internet can view the study guides and tutorial letters for the modules for which they are registered on the University's online campus, myUnisa, at [http://my.unisa.ac.za](http://my.unisa.ac.za). We therefore encourage you to use myUnisa and to check the webpage for MRL3701 regularly.

### 4.1.3 Prescribed textbook

Your prescribed textbook for this module for this semester is:


You must therefore disregard the information in paragraph 4.2 on page 3 of the study guide concerning the previous, eighth edition of this textbook. In addition, please do not use the eighth edition or any other previous edition of the textbook, because you will then be studying out-of-date law.

Please consult the list of official booksellers and their addresses listed in *My studies @ Unisa*. If you have any difficulty obtaining books from these bookshops, please contact the Prescribed Books Section at telephone 012 429 4152 or email vosprec@unisa.ac.za.
4.1.4 MO001

The MO is an online presentation of this module. The purpose of the online presentation of this module is to introduce you to a graphic journey of the content of this subject known as Insolvency Law.

You will receive a printed version of the MO, and the electronic version of the MO will also be available on myUnisa under “Additional Resources” for printing purposes and under “Learning Units” for reading online.

Although the study guide and the MO may be similar in some circumstances, the MO must be used in conjunction with the study guide, the tutorial letters and the prescribed textbook, as a guide though the chapters in the textbook.

At the beginning of each learning unit of the MO, you will find detailed instructions on how to study for this course.

Please note that you must omit Study Units 22-24 of the Study Guide. These have now been replaced by Learning Units 22-24 of the MO, which are compulsory. Please note that you will be asked questions from these Learning Units 22-24 of the MO, and so it is important to study these Learning Units 22-24 of the MO.

4.1.5 Prescribed cases

All the prescribed cases listed below (except for one case on business rescue proceedings), together with short summaries and/or explanatory notes, are contained in the following bilingual case book: Loubser A Case Book on the Law of Partnership, Company Law and Insolvency Law / Vonnisbundel oor die Vennootskapsreg, Maatskappyereg en Insolvensiereg (1992) Juta. If you do not have direct access to the law reports, you should acquire a copy of this case book.

It is COMPULSORY that you study the cases listed below. You must study the cases in conjunction with the study guide, MO and the prescribed textbook. This will help you to gain greater insight into the relevant principles and their application.

We appreciate that it is impossible to study all the cases cited in the study guide, MO and the textbook in the time allotted to this module. We have therefore selected some of the most important decisions. Some of the cases included in the list below are leading ones; others may contain an informative discussion, a succinct statement of principles, or a set of facts which neatly illustrates such principles. We offer you merely a small selection, however, and you would be well advised to read as many additional cases as possible, not only for the reasons set out above, but also to become adept at swiftly reading through and appraising a case. This will be of inestimable value to you in practice later on. We also advise you to read the relevant cases in the law reports as they appear each month: this will enable you to keep abreast of the latest developments in the field of law that you are studying.

You should also bear in mind that the cases discussed in the study guide and the prescribed textbook which do not appear in the list below are also important and should not be ignored. They must be studied in the way in which they appear in the study guide and the textbook.
List of prescribed cases

The prescribed cases on insolvency law that you must read, summarise and study are the following:

1. *Ex parte Henning* 1981 (3) SA 843 (O)
2. *Amod v Kahn* 1947 (2) SA 432 (N)
3. *Epstein v Epstein* 1987 (4) SA 606 (C)
5. *Hendriks NO v Swanepoel* 1962 (4) SA 338 (A)
6. *Pretorius’ Trustee v Van Blommenstein* 1949 (1) SA 267 (O)
7. *Pretorius NO v Stock Owners’ Co-operative Co Ltd* 1959 (4) SA 462 (A)
8. *Estate Wege v Strauss* 1932 AD 76
9. *Ensor NO v Rensco Motors (Pty) Ltd* 1981 (1) 815 (A)
10. *Prinsloo en ’n ander v Van Zyl NO* 1967 (1) SA 581 (T)
11. *Vorster v Steyn NO en andre* 1981 (2) SA 831 (O)
12. *Joint Liquidators of Glen Anil Development Corporation Ltd (in liquidation) v Hill Samuel (SA) Ltd* 1982 (1) SA 103 (A)

The prescribed cases on winding-up and business rescue that you must read, summarise and study are the following:

1. *Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd* 1985 (2) SA 345 (W)
2. *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd* 2012 (2) SA 423 (WCC)

In paragraph 4.3 below, we explain how to download these prescribed cases from myUnisa.

4.2 Recommended books

There are no recommended books for this module.

4.3 Electronic reserves (e-reserves)

The fourteen prescribed cases listed above in paragraph 4.1.5 above have been uploaded into the “Additional Resources” folder on myUnisa for this module. There is a subfolder named “Prescribed cases” containing the cases listed there in PDF files. So, if you wish to download these cases, the series of steps to follow is: “MRL3701-17-S1” > Resources > Prescribed Cases, or “MRL3701-17-S2” > Resources > Prescribed Cases. These PDF files contain the complete cases. This is another reason to become a myUnisa user.

4.4 Library services and resources information

For brief information, go to [www.unisa.ac.za/brochures/studies](http://www.unisa.ac.za/brochures/studies)

For detailed information, go to the Unisa website at [http://www.unisa.ac.za/](http://www.unisa.ac.za/) and click on Library.
For research support and services of personal librarians, go to http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=7102.

The library has compiled a number of library guides:

- finding recommended reading in the print collection and e-reserves – http://libguides.unisa.ac.za/request/undergrad
- requesting material – http://libguides.unisa.ac.za/request/request
- postgraduate information services – http://libguides.unisa.ac.za/request/postgrad
- finding, obtaining and using library resources and tools to assist in doing research – http://libguides.unisa.ac.za/Research_Skills
- how to contact the library/finding us on social media/frequently asked questions – http://libguides.unisa.ac.za/ask

5 STUDENT SUPPORT SERVICES

5.1 General

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

Unisa has entered into partnerships with establishments (referred to as Telecentres) in various locations across South Africa to enable you (as a Unisa student) free access to computers and the Internet. This access enables you to conduct the following academic related activities: registration; online submission of assignments; engaging in e-tutoring activities and signature courses; etc. Please note that any other activities outside of these are for your own costing e.g. printing, photocopying, etc. For more information on the Telecentre nearest to you, please visit www.unisa.ac.za/telecentres. We therefore strongly advise you, where possible, to use a telecentre if you do not have your own means of accessing the Internet, so that you can submit all your assignments on myUnisa rather than by post (see paragraph 8.2.4 below).

5.2 Contact with fellow students

5.2.1 Study groups

It is advisable to form study groups and to have contact with fellow students. The addresses of students in your area may be obtained from the following department:

Directorate: Student Administration and Registration
PO Box 392
UNISA
0003

You can contact Unisa at: Email: study-info@unisa.ac.za
5.2.2 myUnisa

The myUnisa learner management system is Unisa’s new virtual campus that will help students to communicate with their 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, type in http://my.unisa.ac.za in your web browser.

Please consult the publication My studies @ Unisa, which you received with your study material for more information on myUnisa.

5.3 Discussion classes

There are no discussion classes for this module. We suggest that you use your study guide together with your prescribed material to study the module. You are, of course, most welcome to contact any of the lecturers if you experience any problems with the contents of this module. We will gladly assist you.

6 STUDY PLAN

We would like to support you in your learning process. We can support you, however, only if you take responsibility for your own learning. So you have to work through the tutorial letters and the learning material and plan a schedule for your learning process to ensure that you submit all the assignments and prepare for the examinations in time. We suggest that you follow the following steps in your learning process:

Step 1: Work through the overview in your study guide, the MO and Tutorial Letter 101. This step will provide all the important information that you need to complete the learning process successfully.

Step 2: Start working through the study units in your study guide and the learning units in the MO. Study the relevant chapters and cases in the textbook and case book. The readings that you have to study for each study unit and learning unit are indicated in a box. Do all the activities and self-test questions in your study guide and learning units.

Step 3: Complete and submit the relevant assignments.

Step 4: Prepare for the examination by revising the study units in your study guide, MO and the activities and self-test questions. In addition, study all the tutorial letters that you receive during the semester.

NB: Please note that you must omit Study Units 22-24 of the Study Guide. These study units have now been replaced by Learning Units 22-24 of the MO, which are compulsory. Please note that you will be asked questions from these Learning Units 22-24 of the MO, and so it is important to study these Learning Units 22-24 of the MO.
7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

There is no module practical work or work-integrated learning in this module.

8 ASSESSMENT

8.1 Assessment criteria

There are no assessment criteria in this module.

8.2 Assessment plan

8.2.1 Information about the three assignments

This tutorial letter contains three (3) assignments that are set out below. NB: Assignment 1 and Assignment 2 are both compulsory and must be submitted to Unisa for assessment.

1. Assignment 01 is a short assignment containing fill-in questions as well as true or false questions. Your answers to this Assignment 01 must be submitted to the University as a written or typed document for assessment. The submission of Assignment 01 is compulsory and is a prerequisite to gain admission to the examination. This is the only assignment that gives admission to the examination. Because it is a written or typed assignment containing fill-in questions and true or false questions, it is obvious that you must not use a mark-reading sheet to answer this assignment. But you still need to use the appropriate unique number for the assignment. Completing this Assignment 01 also gives you practice in answering the type of fill-in questions that you can expect in Question 1 of the examination paper, and the type of true or false questions that you can expect in Question 2 of the examination paper.

2. Assignment 02 is a short written or typed assignment that must be submitted to the University as a written or typed document for assessment. Because it is a written or typed assignment, you must not use a mark-reading sheet. But you still need to use the appropriate unique number for the assignment. Answering this Assignment 02 also gives you practice in answering the type of questions that you can expect in Question 3 of the examination paper.

3. Assignment 03 is a self-evaluation assignment which you must not submit to the University, but which you must answer yourself with the help of the commentary that we will send to you in Tutorial Letter 201/2017.

8.2.2 Commentaries on assignments

The commentaries on the assignments will be sent to all students registered for this module in a follow-up tutorial letter, and not only to those students who have submitted the assignments.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important component of your study material for the examination.
The commentary on the self-evaluation assignment (Assignment 03) is included in Tutorial Letter 201/2017. This will enable you to mark your assignment as soon as you have completed it.

To obtain the full benefit of completing the assignment, you should, after receiving it back, also go through the process of self-assessment in accordance with the memorandum that you will receive in Tutorial Letter 201/2017.

The purpose of the self-evaluation of assignments is fourfold:

1. to help you work through the tutorial 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: in other words, to teach you to combine different ideas and arguments in a single answer; to gather material and present it in a logical, orderly fashion and supported with convincing arguments (merely copying the tutorial 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.

The fact that the Assignment 03 is a self-evaluation assignment implies the following:

1. You have to complete the assignment.
2. You must evaluate your assignment yourself by using the memorandum, which we will send to all students in a tutorial letter during the course of the semester.
3. The value of the assignment lies in doing it. Because the questions in the assignment are similar to examination questions, we do, however, require you to answer them under examination conditions. For example, had the assignment been an examination counting 50 marks, you would have been given one hour to complete it. This means that you must not write pages and pages for an answer that counts for only 10 marks.
4. The background knowledge that you get by doing Assignment 03 and marking it is an excellent opportunity to increase your knowledge and understanding of the work to the point that you can approach the examination with confidence.

8.2.3 General approach to answering essay or problem-type questions in assignments

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

- To complete your assignment satisfactorily, you must consult your study guide, prescribed textbook, prescribed cases, MO and tutorial letters. Read the questions carefully, ascertain what they deal with, and then use only the relevant information from your study material to answer the questions.
Students normally complain that they cannot rewrite the study material in their own words. Unfortunately, you have to get used to doing this, since you will not have your textbook at hand during the examination. However, there are three easy steps towards accomplishing 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.

You are often expected to consult textbooks and cases when answering an assignment, and then to cite these materials as authority in your answer. Case law must be cited in full when used for the first time in the text (eg, *Kanhym Bpk v Oudtshoorn Munisipaliteit* 1990 (3) SA 252 (C)); thereafter an abbreviated reference is sufficient (eg, *Kanhym supra*). Criminal-law cases may simply be referred to by the name of the accused (eg, *Mokgethi*). Textbooks can be referred to in your answer by merely giving the author’s name and the page number (eg, Snyman 20). The full bibliographical details are then supplied in a bibliography at the end of your assignment (eg, Snyman CR *Criminal law* (1995) Butterworths:). **Do not refer to sources you have not personally consulted.**

- **Note that it is not necessary to provide full references in the examination.**

- **Quotations** from case law and other sources must be kept to a minimum.

- If you do use quotations, they must be **accurate** and you must give **proper attribution**. The use of other sources, without the necessary acknowledgement, amounts to plagiarism. **Plagiarism** takes place when you use words, ideas and thoughts of other persons and represent them as your own. Plagiarism is a form of theft that can materialise in various dishonest academic activities.

- **Names of cases and Latin expressions** must either be underlined or typed in italics.

- **Neatness** is a prerequisite. **Plan** your answers in advance. For essay-type answers, you should do a number of **rough drafts** before you write the final answer.

- 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 these 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.
8.2.4  Guidance on submitting your assignments via the post

If you wish to submit your assignment via the post, please note the following:

- Please remember to number your assignment Assignment 01 or Assignment 02 (as appropriate).
- Please ensure that your name and address, student number, subject and module, and assignment number are written clearly on the assignment cover and on the first page of your answer. **This information must be correct.** Each successive page must also indicate at least your student number and the module code.
- 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. The answers to all the questions of the same assignment must be submitted together. Do not submit answers to the different assignments together.
- It is wise to **make a copy of the assignment** before submitting it, in case your assignment gets lost in the post.

8.2.5  Guidance on submitting your assignments online via myUnisa

If you wish to submit your assignments online via myUnisa, then please note the following:

- Type your answers to the assignment in a document in a computer programme such as, for example, Microsoft Word.
- When you have finished your assignment, check that it states the law correctly and that it is spelt correctly. To check the spelling, use the spell-checker (shortcut in MS Word: Press the F7 key).
- **Save the final version of your assignment in a document that is formatted in PDF.**
- Submit your PDF document online via myUnisa.

**Saving your document in PDF format**

You can use various computer programmes to save your assignment in PDF format. A variety of these programmes can be downloaded from myUnisa. Go to the web page entitled “Electronic resources” at [https://my.unisa.ac.za/portal/site/lgateway/page/c919799a-6cdd-4ec2-0019-839c23c198f8](https://my.unisa.ac.za/portal/site/lgateway/page/c919799a-6cdd-4ec2-0019-839c23c198f8).

At this point, we explain two further ways of using programmes to save your assignments in PDF format:

1. **Microsoft Word 2010**

In MS Word, click on the “File” tab in the top left corner of your screen. In the drop-down list that opens, you may perhaps see an item named “Save as PDF” as the third item. Use that option if it is available. Follow the steps to save your document in PDF format.
If you cannot see “Save as PDF” in the drop-down list, click on the “Save As” item. It is the second item in the drop-down list. In the field named “Save as type”, click on the bar with the down arrow. The seventh item in the list that you can then see is “PDF (pdf)”. Choose that option. In the bottom right corner of the next window, click the “Save” button. Your MS Word document will then be saved in PDF format.

(2) Google Drive

Another way of saving your work in PDF format is to use Google Drive. It is free via the Chrome web browser. Download Chrome at https://www.google.com/chrome/browser/. Google Drive is accessible at https://drive.google.com/#my-drive. To create your document in Google Drive, click on the red “Create” button in the top left corner. In the window that opens, choose the “Document” option.

Google Drive saves your document automatically online. It also has a spellchecker to help you correct your work.

When you have finished working on your assignment and you wish to save your work in a PDF document, click on the word “File” in the top left corner. In the list, you will see the option “Download as…” Click on that item. The fourth format that you can choose is “PDF document (pdf)”. Choose that format to download your work. In your “Downloads” folder on your computer, you can open the PDF file that contains your assignment.

**NB: Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. That will amount to plagiarism and none of these assignments will be marked. Furthermore, these students may be penalised or subjected to disciplinary proceedings of the University.**

8.3 Assignment numbers

8.3.1 General assignment numbers

There are no general assignment numbers in this module.

8.3.2 Unique assignment numbers

You must submit your Assignments 1 and 2 to Unisa to be marked. You must not submit your Assignment 3 to Unisa, but mark it yourself. Assignments 1 and 2 each have unique assignment numbers.
Please note: from 2015 onwards, there are different assignments for each of the two semesters. Students registered for Semester 01 must answer Assignment 01 and Assignment 02 for Semester 01; these assignments are in Addendum A to this tutorial letter, in paragraph 11 below. Students registered for Semester 02 must answer Assignment 01 and Assignment 02 for Semester 02; these assignments are in Addendum B to this tutorial letter, in paragraph 11 below.

8.4 Assignment due dates

The relevant details are stated below:

SEMESTER 01

ASSIGNMENT 01: DUE DATE: 3 MARCH 2017 (UNIQUE NO: 828996)

ASSIGNMENT 02: DUE DATE: 7 APRIL 2017 (UNIQUE NO: 725517)

SEMESTER 02

ASSIGNMENT 01: DUE DATE: 11 AUGUST 2017 (UNIQUE NO: 829935)

ASSIGNMENT 02: DUE DATE: 15 SEPTEMBER 2017 (UNIQUE NO: 897184)

8.5 Submission of assignments

We wish to draw your attention to two important aspects of submitting your assignments:

1 Try your utmost to submit all your assignments electronically on myUnisa, so that the lecturers can see them all promptly on myUnisa. Otherwise, if you submit your assignments by post, they may not reach the lecturers quickly and the lecturers also cannot see them on myUnisa if there is a problem with the postal submission of your assignments.

2 Submit your assignments on myUnisa several days before the due dates shown in Tutorial Letter 101. This foresight helps you to avoid the rush, bottlenecks, and delays when so many students are busy trying to submit their assignments on myUnisa.

No extension: On the due dates for Assignments 01 and 02, the commentary on the assignment will be sent to students. As a result, no extension for submission of these assignments will be granted under any circumstances. Assignments mailed after the due date will be returned unmarked.
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 Unisa at:

Email: study-info@unisa.ac.za

8.5.1 Assignments submitted by post

Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

8.5.2 Assignments submitted via myUnisa

Students may submit their typed assignments for MRL3701 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, which 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.

8.6 The assignments

Assignment 01 deals with the examinable portions of Hockly, MO and the study guide, and the information contained in this and your further tutorial letters. Should you therefore fail to study your tutorial letters, you may end up doing the wrong work for the assignments and examination.

In our experience, students who obtain a mark of 65% or higher for assignments in MRL3701 stand a reasonable chance of passing the examination, but students who obtain less than 65% for these assignments are at risk of failing the examination.

Those students at risk need to spend a great deal more time on mastering the details of insolvency law, and particularly on improving their technique in answering problem-type questions.
How to plan the assignments:

- Recognise that this is a semester course that requires prompt attention.
- To identify what part of the work is covered by each question, make use of:
  - The **table of contents** in Hockly
  - The **index** at the end of Hockly (e.g., under the word “insurance” in the Index you are referred to, amongst other things, “policies”)
  - The **table of statutes** at the beginning of Hockly, which tells you, for example, where to find, among other things, references to the Long-term Insurance Act 52 of 1998 in the text of Hockly
  - The **Insolvency Act**, also at the end of Hockly. (There are page references to the text of Hockly at the end of every section of the Act. For example, the word “debtor” is defined in section 2 of the Act. After the definition, pages of Hockly are mentioned. On each of these pages in Hockly, you will find a discussion of the word “debtor.”)
  - For the discussion of **court cases**, first look up the case in the **table of cases** at the beginning of Hockly. Then read about it in the text of Hockly, and then study the case discussion in the case book by Loubser, or in the actual law report.

8.7 Other assessment methods

There are no other assessment methods for this module.

8.8 The examination

**General comments**

Submission of the first compulsory assignment will give a student **admission to the examination**. The marks for this assignment will contribute **10%** to the student’s final marks. The marks a student obtains for the second **compulsory** assignment will contribute another **10%** to the student’s final marks. The examination will then contribute **80%** towards a student’s final marks.

*No automatic admission to the examination:* Submission of Assignment 01 is a **prerequisite for admission to the examination** in this module.

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. Please contact the Examination Section if you wish to check these administrative details of the examinations.

**Restriction of the examinable portion of the study material**

Because this module is now presented in semesters, we have had to cut down on the examinable portion of the tutorial material.
Certain chapters and paragraphs in chapters of the prescribed textbook (Sharrock R, Van der Linde K, and Smith A Hockly’s Insolvency Law 9th ed (2012)) will therefore NOT form the subject of questions in the examinations at the end of the two semesters. In the study guide, we tell you which of these chapters and paragraphs may be excluded for examination purposes.

NB: Please note that you must omit Study Units 22-24 of the Study Guide. These have now been replaced by Learning Units 22-24 of the MO, which are compulsory. Please note that you will be asked questions from these Learning Units 22-24 of the MO, and so it is important to study these Learning Units 22-24 of the MO.

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, and the supplementary examination will be written in October/November. If you are registered for the second semester, you will write the examination in October/November, and the supplementary examination will be written the next May/June.

Examination paper

The examination paper for this course is a two-hour fill-in examination paper. This means that all the answers to the examination questions are written in the spaces provided in the examination paper directly below each question. After students complete the answers to all the questions, the examination paper containing these answers is handed in to the invigilators for marking by the examiners. Students may therefore not keep the examination paper after the examination has been written.

The examination consists of three questions totalling 100 marks. Each question contains a number of sub-questions.

Question 1 totals 40 marks and consists of several theory-type questions; students are required to fill in a word or a phrase to complete each sentence.

Question 2 totals 30 marks and consists of 15 true or false questions, with each question counting two marks.

Question 3 totals 30 marks and consists of several problem-type questions.

To pass this module, you must obtain a subminimum of 50% for the combined semester mark and the examination mark.

Previous examination papers

In this module, the previous year’s October/November examination paper is available to students. It will be sent to students, together with the answers, in Tutorial Letter 102/2017. We advise students, however, not to focus only on the old examination paper, because the content of modules and, therefore, examination papers change from year to year.
However, you may accept that the type of questions that will be asked in the examination will be similar to the questions asked in the activities and self-test questions in your study guide and learning units and in the assignments.

**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 various aspects of the examination paper. It will include the previous October/November examination paper, together with the suggested answers to that paper, and the suggested answers to the assignments.

**9 FREQUENTLY ASKED QUESTIONS**

Question: Can I use a previous edition of the prescribed textbook?

Answer: It is important to use the most recent version of the prescribed textbook, Hockly. Do not use an outdated edition of the textbook; otherwise you will learn the incorrect law.

Question: Can I just study out of the study guide and the MO to pass the examination?

Answer: It is essential to study the prescribed textbook. The study guide is designed to explain the textbook and the prescribed cases. You cannot pass by only studying the study guide and the MO.

Question: Where do I get the prescribed cases?

Answer: You can find some of the prescribed cases in the recommended casebook or download all the prescribed cases from “Additional Resources” on myUnisa.

Question: Are there discussion classes for this module?

Answer: There are no discussion classes for this module.

Question: I am trying to submit my multiple-choice assignment for Assignment 1 on myUnisa and I am struggling to do so.

Answer: Your Assignment 1 is a fill-in question and true or false assignment but it is still an ordinary typed assignment and not a multiple-choice assignment. **Do not try to submit Assignment 1 as a multiple-choice assignment.** Do not use a mark-reading card. It is also advisable not to leave it to the last minute to submit your assignments on myUnisa, because the computer system may be under pressure on the submission date.
Question: I haven’t studied for the exam tomorrow: can you give me some “tips” or “scope” about what to concentrate on and what to leave out?

Answer: We do not give “tips” or “scope”. We inform you clearly at the beginning of each study unit in the study guide which study material to study and which parts of the study material you may omit. We include activities and self-test questions. We emphasise the importance of studying the prescribed cases. In a further tutorial letter, we include a previous examination paper and the memorandum for it. We also provide previous examination papers on myUnisa, under “Official Study Materials”.

10 IN CLOSING

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

Kind regards

THE LECTURERS
11 ADDENDA CONTAINING THE ASSIGNMENT QUESTIONS

ADDENDUM A: FIRST-SEMESTER ASSIGNMENTS

Due date: 3 March 2017 (UNIQUE NO: 828996)

This is an ordinary written or typed assignment. Do not use a mark-reading card. Include the unique assignment number for Semester 01 Assignment 01.

In Questions 1-5, you must fill in the missing word or words. DO NOT give a written explanation; only fill in the missing word or words. The chapter in Hockly or the Learning Unit in the MO where the answer can be found is indicated in brackets after each question. Please note: the answer may be found in Hockly, the MO, the study guide, or the prescribed case. Answering these questions also gives you practice in answering the type of fill-in questions that you may expect in Question 1 of the examination.

In Questions 6-10, you must indicate whether the following statements are TRUE (T) or FALSE (F). DO NOT give a written explanation; use only the letters T or F. The chapter in Hockly or the Learning Unit in the MO where the answer can be found is indicated in brackets after each question. Please note: the answer may be found in Hockly, the MO, the study guide, or the prescribed case. Answering these questions also gives you practice in answering the type of true or false question that you may expect in Question 2 of the examination.

QUESTIONS: Semester 01 Assignment 01 (One mark per question)

FILL-IN QUESTIONS

1. The legislator has designated certain acts or omissions by a debtor as “acts of ____________________”. (See chapter 3.)
2. A ____________________ creditor does not enjoy any advantage over other creditors of the insolvent. (See chapter 16.)
3. Once the new Companies Act 2008 came into effect, the law was divided. Since then, the winding-up of ____________________ companies is dealt with in terms of the Companies Act 2008. (See MO Learning Unit 22.)
4. With regard to a close corporation, there are several important differences between payments by reason of membership, and salaries or remuneration. The all-important difference is the difference of ____________________. (See MO Learning Unit 23.)
5. A ____________________ business rescue starts with a resolution by the directors of the juristic person concerned. (See MO Learning Unit 24.)
TRUE (T) OR FALSE (F) QUESTIONS

6. As a rule, only a Provincial or Local Division of the High Court may adjudicate upon an insololvency matter. (See chapter 1.)

7. For sequestration to be to the advantage of creditors it must “yield at the least, a not negligible dividend”. (See chapter 3.)

8. If a trustee vacates his office, is removed from office, or dies, the estate revests in the insolvent until a new trustee is appointed. (See chapter 5.)

9. As a general rule, sequestration suspends or puts an end to a contract. (See chapter 7.)

10. A minor is an example of a person absolutely disqualified from being a trustee. (See chapter 10.)

TOTAL FOR ASSIGNMENT 01: [10]
Assignment 02

Due date: 7 April 2017 (UNIQUE NO: 725517)

This is an ordinary written or typed assignment. Do not use a mark-reading card. But you must include the unique assignment number for Semester 01 Assignment 02. Answering this question also gives you practice in answering the type of questions that you may expect in Question 3 of the examination.

QUESTION: Semester 01 Assignment 02

According to section 2 of the Insolvency Act 24 of 1936, “disposition” means “any transfer or abandonment of rights to property, and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation, or any other contract therefor, but does not include a disposition in compliance with an order of the court”. The dispositions which may be set aside include those not made for value, voidable preferences, undue preferences, collusive dealings and those made in fraud of creditors.

Study chapter 12 of Hockly together with study units 14, 15 and 16 of the study guide and answer the following questions in respect of the above:

1.1 Which of the dispositions mentioned above may be set aside in terms of the common law? (1)

1.2 What is the relevant action in common law that may be used to set aside the disposition in question 1.1, above? (1)

1.3 Section 26 of the Insolvency Act sets aside dispositions made for no value. What is section 26’s objective? (3)

1.4 Section 30 of the Insolvency Act sets aside dispositions made with the intention of preferring one creditor above another. What is the test to be applied to determine whether the insolvent had an intention to prefer when making a disposition? (3)

1.5 What is the difference between the test in section 30 in question 1.4 above and the test to determine whether a disposition was made in the ordinary course of business, in section 29 of the Insolvency Act? (2)

TOTAL FOR ASSIGNMENT 02: [10]
ADDENDUM B: SECOND-SEMESTER ASSIGNMENTS

Assignment 01

Due date: 11 August 2017 (UNIQUE NO: 829935)

This is an ordinary written or typed assignment. Do not use a mark-reading card. Include the unique assignment number for Semester 02 Assignment 01.

In Questions 1-5, you must fill in the missing word or words. DO NOT give a written explanation; only fill in the missing word or words. The chapter in Hockly or the Learning Unit in the MO where the answer can be found is indicated in brackets after each question. Please note: the answer may be found in Hockly, the MO, the study guide, or the prescribed case. Answering these questions also gives you practice in answering the type of fill in questions that you may expect in Question 1 of the examination.

In Questions 6-10, you must indicate whether the following statements are TRUE (T) or FALSE (F). DO NOT give a written explanation; use only the letters T or F. The chapter in Hockly or the Learning Unit in the MO where the answer can be found is indicated in brackets after each question. Please note: the answer may be found in Hockly, the MO, the study guide, or the prescribed case. Answering these questions also gives you practice in answering the type of true or false question that you may expect in Question 2 of the examination.

QUESTIONS: Semester 02 Assignment 01 (One mark per question)

FILL-IN QUESTIONS

1. An application for compulsory sequestration brought by a creditor who is not at arm’s length is generally referred to as a ___________________ sequestration. (See chapter 3.)
2. A landlord who is owed rent has a ___________________ over movable property brought on to the leased premises for use by the tenant. (See chapter 16.)
3. Once the new Companies Act 2008 came into effect, the law was divided. Since then, the winding-up of ___________________ companies is dealt with in terms of the Companies Act 1973. (See MO Learning Unit 22.)
4. With regard to a close corporation, there are several important differences between payments by reason of membership, and salaries or remuneration. The all-important difference is the difference of ___________________. (See MO Learning Unit 23.)
5. A ___________________ business rescue starts with an application to court. (See MO Learning Unit 24.)
TRUE (T) OR FALSE (F) QUESTIONS

6. The notice of surrender (and consequently the debtor’s application for surrender) never lapses, even if the court does not accept the surrender. (See chapter 2.)

7. An insolvent who brings an action in the magistrate’s court is obliged to give security for the costs of the action if the defendant requests it. (See chapter 4.)

8. Where the joint estate of spouses married in community of property is sequestrated, both spouses become insolvent and s 21, accordingly, has no application. (See chapter 6.)

9. A special meeting may be called for either of the following purposes: (i) Proof of claims, and (ii) To elect a trustee. (See chapter 9.)

10. The Master may remove a trustee from office on the ground that the majority of creditors has requested in writing that he be removed. (See chapter 10.)

TOTAL FOR ASSIGNMENT 01: [10]

Assignment 02

Due date: 15 September 2017 (UNIQUE NO: 897184)

This is an ordinary written or typed assignment. Do not use a mark-reading card. Include the unique assignment number for Semester 02 Assignment 02. Answering this question also gives you practice in answering the type of question about a prescribed case that you may expect in Question 3 of the examination.

QUESTION: Semester 02 Assignment 02

Discuss Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd 2012 (2) SA 423 (WCC) in respect of the question whether business rescue proceedings may be used to secure a better return for creditors or shareholders where there is no clear prospect of the company continuing to operate on a solvent basis or being restored to solvency.

You must read the judgment in order to answer this question. The judgment is available under “Additional Resources” on myUnisa.

Summarise the facts in no more than five to ten lines. The judgment and the reasons for the judgement, however, must be discussed in detail.

Please take note of the announcement (“Discuss a particular case”) which is placed on myUnisa for MRL3701, and which should be of great assistance to you in answering this question.

Take note that in order to pass the examination, you must read all the prescribed cases.

TOTAL FOR ASSIGNMENT 02: [10]
SELF-TEST ASSIGNMENT

QUESTIONS: Assignment 03 (WHICH YOU DO NOT SUBMIT TO UNISA)

(1) Name one of the ways in which a sequestration order can be obtained. (1)

(2) What is the definition of “disposition” in terms of section 2 of the Insolvency Act 24 of 1936? (4)

(3) Under which circumstances may a court having jurisdiction over a debtor refuse (or postpone) the surrender or sequestration of the debtor’s estate? (3)

(4) What is the meaning of “special mortgage” as defined in section 2 of the Insolvency Act 24 of 1936? (5)

(5) Does the right of a spouse (A) to share, in terms of the Matrimonial Property Act 88 of 1984, in the accrual of the estate of the other spouse (B) form part of the insolvent estate of the first spouse (A)? Give reasons for your answer. (2)

(6) The trustee may terminate employment contracts between the insolvent employer and the employees after consultation with certain parties. Name these parties. (5)

(7) Name one consequence of a composition in terms of section 119 of the Insolvency Act 24 of 1936. (1)

(8) Name three situations in which the court may postpone the insolvent’s application for rehabilitation. (3)

(9) Name one of the two ways in which a company may be wound up under the legislation on companies. (1)

(10) A court has given judgment of R10 000 against Sam in favour of Jen. Upon the demand of the officer whose duty it is to execute the judgment, Sam fails to satisfy it and also fails to indicate to the officer, disposable property sufficient to satisfy it. The return made by the officer states that he has not found sufficient disposable property to satisfy the judgment. Explain to Jen what the implications of the aforementioned facts may be. (5)

(11) Anne is an insolvent. She very much wishes to stand as a candidate in the coming provincial elections for the FEM party. Her trustee is of the opinion that she should not begin her political career at this stage. Explain whether Anne’s trustee may interfere with her intended political career. (2)
Don, an art dealer, sells a Henry Moore sculpture to Mat for R500 000 cash and delivers the sculpture to Mat on 10 June. Mat promises Don that he will pay him the cash on 14 June. On 14 June, before paying Don for the sculpture, Mat’s estate is sequestrated. What action must Don take to recover the sculpture from the trustee of Mat’s insolvent estate? Note that this is a cash sale, and not a credit agreement.

Discuss Pretorius NO v Stock Owners’ Co-operative Co Ltd 1959 (4) SA 462 (A) in connection with the setting aside of an undue preference in terms of section 30 of the Insolvency Act. Do not discuss the facts in more than four lines.

Jack’s estate has been sequestrated. Three creditors proved their claims against his estate, Andrew, Barker and Charlize. Jack is indebted to these creditors in the amounts of R10 000, R20 000 and R40 000 respectively. At the first meeting of creditors, Vincent was elected as the trustee by Andrew and Barker while Charlize elected Winnie as the trustee. Who will be appointed as the trustee of Jack’s insolvent estate? Substantiate your answer.

Briefly state the facts in Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd 1985 (2) SA 345 (W) and discuss the legal principles set forth in the judgment regarding the need to establish a “just and equitable” ground for the winding up of a company.