

OCTOBER/NOVEMBER 2017

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Examination centre

Question No	Marks					
	Examiners					
	1		2		3	
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Total						

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FBE2604

(494611)

October/November 2017

FORMS OF BUSINESS ENTERPRISE

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

MR SN MAKHUBU

DR PM LEHLOENYA

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

INSTRUCTIONS:

- 1 This paper consists of 18 pages plus instructions for completing a mark reading sheet
- 2 The paper is divided into 2 sections
SECTION A consists of 4 questions (with subdivisions) and has to be completed in the space provided on the examination paper itself
SECTION B consists of 10 multiple choice questions counting 4 marks each. The answers to the multiple choice questions have to be filled in on the mark reading sheet provided to you
3. At the end of the examination you have to hand in both the examination paper as well as the mark reading sheet containing your answers to the multiple choice questions

SECTION A**QUESTION 1**

- 1 1 Thembi, a prospective businesswoman is of the view that entities such as companies do not enjoy rights in the bill of rights because they are not natural persons but juristic persons. Explain to her the concept of a juristic personality (separate legal personality), list two implications of being a juristic person (separate legal personality) and provide clarity on her incorrect view by referring to relevant authority (5)

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- 1 4 Masha and Vasha, intend to incorporate a company Upon their arrival at the CIPC to register their company, they read from a notice board that, in order to incorporate a company, one needs to provide a notice of incorporation, memorandum of incorporation and prescribed registration fee They ask you as an employee of the CIPC to explain what the purposes of the notice of incorporation and the memorandum of incorporation are as well as whether they are obliged to use the standard form (pro forma) of the memorandum of incorporation (6)

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**TOTAL FOR QUESTION 1: [20]****QUESTION 2**

- 2.1 Maria and Portia intend to incorporate a cosmetic company under the name M & P (Pty) Ltd. They find suitable premises for their company in the East of Pretoria. Upon enquiry about the premises, they are informed that they are in high demand and are likely to be leased within the next week. Portia recalls hearing about the Companies Act 71 of 2008 mechanism that prevents an unfortunate situation where companies would lose business opportunities because they are not yet incorporated. Explain to them the relevant mechanism provided under the Companies Act 71 of 2008, the formal requirements that must be complied with for the mechanism to be binding and the two common law alternative methods to this mechanism (6)

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- 2 2 Thabo is a former director of Egg & Bread (Pty) Ltd, a company that specialises in providing breakfast. He wants to incorporate another company that also specialises in selling breakfast. He intends to name his company Bread & Egg (Pty) Ltd. However, he is sceptical that the Commission will accept the intended name since it is similar to the name of Egg and Bread (Pty) Ltd. His wife Thembi believes that the two names are sufficiently different and the new name proposed by Thabo will be accepted by the Commission. Advise Thabo on whether the Commission will accept his intended name with reference to relevant authority (6)

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2 3 Explain the following

Legal capacity (1)

Estoppel (1)

Turquand rule (1)

(3)

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TOTAL FOR QUESTION 2: [15]

QUESTION 3

- 3 1 Tim and Warner each hold 40% of the shares in the plastic manufacturing company, T & W Plastic (Pty) Ltd. They feel that the company needs more capital to penetrate emerging markets and have resolved that it should issue 20% additional shares in order to raise the needed capital. Tim, who is the founder of the company, insists that the shares must be offered to his cousin, Troy. However, Warner is worried that his shareholding will be diluted if the new shares are offered to a third party. Explain to Warner how the dilution of his shares can be avoided, by describing the mechanism provided for in the Companies Act 71 of 2008 intended to avoid the dilution of shares held by existing shareholders, when the company issues new or additional shares.

(5)

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- 3 2 The Companies Act 71 of 2008 provides for two resolutions that may be taken by shareholders. Name the two resolutions and distinguish between them. Also explain what is meant by a quorum (6)

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- 3 3 John a former director of TyM (Pty) Ltd, has been appointed a director of Lifee (Pty) Ltd. At the time of his appointment, John decided to hide the fact that he is disqualified to act as a director because he is an unrehabilitated insolvent. Three months later, one of the shareholders of Lifee (Pty) Ltd discovers that John is an unrehabilitated insolvent and asks for your opinion on how to deal with the matter. With reference to the Companies Act 71 of 2008, advise the shareholder on the appropriate order he can apply for in court, provide two grounds for awarding this order and the relevant section of the Companies Act 71 of 2008 under which the order is provided (4)

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[illegible]

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TOTAL FOR QUESTION 3: [15]

[TURN OVER]

4 1 The association agreement of Yoo Fruit & Veg CC clearly provides that among all the ten members of the CC, only Mas and Tom have the authority to conclude contracts on behalf of the CC. Sam, another member of the CC, concludes a contract to purchase ten pool tables from his friend Boy. The other members of the CC insist that the contract is invalid. They base their argument on, firstly, the fact that in terms of the association agreement, Sam lacks the capacity to conclude contracts on behalf of the CC and, secondly, that the contract is beyond the scope of the CC as it specialises in selling fruit and vegetables. Clarify for the members of the CC whether the contract is valid or not with reference to relevant authority. (6)

[illegible]

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[TURN OVER]

4.2 Two friends who recently received qualifications in Woodworking want to purchase an existing CC. However, they want to make the following changes to the CC:

- They want their CC to have 15 members
- They want the members' interest of the CC to be out of 150%
- They want Solly and Sammy, their fellow graduates, to jointly hold 15% of the members' interest as they do not have sufficient funds to acquire the members' interest individually
- They want Real Wood CC to acquire 15% of members' interest in the CC

Advise the two friends on whether they can make the above-mentioned changes in the CC and provide reasons for your advice. Make sure that you address each change that the two friends want to make.

(4)

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[TURN OVER]

TOTAL FOR QUESTION 4: [10]**TOTAL FOR SECTION A: [60]****SECTION B****MULTIPLE - CHOICE QUESTIONS****INSTRUCTIONS**

1. Answer all questions by filling in the answers on the mark reading sheet provided.
2. Use a soft pencil.
3. Please ensure that you fill in your student number on the mark reading sheet. All the student numbers contain eight digits. In some instances, this includes a "0" at the beginning. You must also use the last pink block.
- 4 Each correct answer earns four (4) marks. No marks will be deducted for incorrect answers.

[TURN OVER]

Question 1

The memorandum of incorporation of Tinta (Pty) Ltd provides that the heads of three departments in the company are the directors of the company by virtue of being head of departments. As head of the chemical department of the company, Thelma is a/an

- 1 *ex – officio* director
- 2 non – executive director
- 3 memorandum of incorporation appointed director
- 4 independent director

(4)

Question 2

Which of the following types of companies are obliged to appoint a company secretary?

- 1 Public company and private company
- 2 External company and domesticated company
- 3 Personal liability company and domesticated company
- 4 Public company and state - owned company

(4)

Question 3

A dissenting shareholders' appraisal right is a right to require a company to buy the dissenting shareholders shares at a fair value if a company takes any of the triggering actions. Choose the **CORRECT** statement regarding the appraisal right

- 1 The appraisal right is provided in terms of section 161 of the Companies Act 71 of 2008
- 2 The appraisal right is provided in terms of section 163 of the Companies Act 71 of 2008
- 3 The appraisal right is provided in terms of section 164 of the Companies Act 71 of 2008
- 4 The appraisal right is provided in terms of section 165 of the Companies Act 71 of 2008

(4)

Question 4

[TURN OVER]

- 1 The estate of the company is assessed apart from the estates of the individual shareholders or members
- 2 Any shareholder is qualified by virtue of his or her shareholding or membership to act on behalf of the company
- 3 The assets of the company are its exclusive property, the shareholders have no proportionate proprietary rights therein
- 4 Where the company is wronged, the company must seek redress

(4)

Question 5

An/a _____ is a provision of Companies Act 71 of 2008 to the effect that the company's memorandum of incorporation may not change, except to impose a higher standard, greater restriction, longer period of time or any similar more onerous requirement than contained in the provision of the Companies Act 71 of 2008. Choose the **CORRECT** statement

- 1 unalterable provision
- 2 ring fenced provision
- 3 alterable provision
- 4 anti – avoidance provision

(4)

Question 6

Which one of the following statements is **INCORRECT**?

- 1 To avoid deception of the public, a company's name may not be the same as the name of another company
- 2 To avoid deception of the public, a company's name may not be confusingly similar to a name, trademark and word
- 3 To avoid deception of the public, a company's name may be similar to a name, trademark and word of another company provided the services or the products offered by the company differs to the services or the products offered by the affected company
- 4 To avoid deception of the public, a company's name may not give a false impression that the company is associated with the government, or a particular person or a government office

(4)

[TURN OVER]

Question 7

Choose the **CORRECT** statement

- 1 In terms of the common law, a contract is *ultra vires* the company when the conclusion of the transaction is within the scope of legal capacity of the company
- 2 Section 20(1) (a) of the Companies Act 71 of 2008 provides that a company has the legal capacity and all the powers of a natural person, except to the extent that the juristic person is incapable of exercising any such power, or the company's memorandum of incorporation provides otherwise
- 3 Section 19(1) (b) of the Companies Act 71 of 2008 provides that the company has all the legal capacity and powers of a natural person, except to the extent that juristic person is incapable of exercising any such power, or the company's memorandum of incorporation provides otherwise
- 4 Section 20(9) of the Companies Act 71 of 2008 provides that each shareholder has a claim for damages against any person who fraudulently or due to gross negligence, causes the company to do anything inconsistent with the Companies Act, or a limitation, restriction or qualification of the powers of the company as stated in the memorandum of incorporation of the company unless ratified by a special resolution in terms of section 20(2) of the Companies Act 71 of 2008

(4)

Question 8

Which one of the following statements is **CORRECT**?

- 1 In *Lipchitz v UDC Bank Ltd* 1979 (1) SA 789 (A) [138], it was held that the transaction must be assessed in two phases First, it must be ascertained whether there was financial assistance, secondly, it must be ascertained whether that assistance was for the purpose of acquiring shares in the company
- 2 In *Lipchitz v UDC Bank Ltd* 1979 (1) SA 789 (A) [138], it was held that the transaction must be assessed in two phases First, it must be ascertained whether the transaction complies with solvency, secondly, it must be ascertained whether it complies with liquidity
- 3 In *Lipchitz v UDC Bank Ltd* 1979 (1) SA 789 (A) [138], it was held that the transaction must be assessed in two phases First, it must be ascertained whether the transaction is fair, secondly, whether the transaction is reasonable

[TURN OVER]

- 4 In *Lipchitz v UDC Bank Ltd* 1979 (1) SA 789 (A) [138], it was held that the transaction must be assessed in two phases First, whether the directors have authorised the transaction, secondly, whether shareholders have ratified the decision of the directors

(4)

Question 9

Which section of the Close Corporations Act of 1984 regulates the disposal of the members' interest when a member is insolvent?

- 1 Section 51
- 2 Section 34
- 3 Section 65
- 4 Section 23

(4)

Question 10

Which of the following duties does not form part of the fiduciary duties of the members of a close corporation?

- 1 Duty to act honestly and in good faith
- 2 Duty to avoid a conflict between the interests of a member and those of the close corporation
- 3 Duty of care and skill
- 4 Duty not to compete with the close corporation's business activities in any way

(4)

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TOTAL FOR SECTION B: [40]

**TOTAL [100]
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PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e.g. PSY100 X
STUDIE-EENHEID by (PSY100-X)

INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

PAPER NUMBER
VRAESTELNOMMER

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BY PRETORIA)

STUDENT NUMBER
STUDENTENOMMER

UNIQUE PAPER NO.
UNIEKE VRAESTEL NR

For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK

1. GEBRUIK SLEGS 'N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
2. MERK AS VOLG
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VASTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1	a1 a2 a3 a4 a5	36	a1 a2 a3 a4 a5	71	a1 a2 a3 a4 a5	106	a1 a2 a3 a4 a5
2	a1 a2 a3 a4 a5	37	a1 a2 a3 a4 a5	72	a1 a2 a3 a4 a5	107	a1 a2 a3 a4 a5
3	a1 a2 a3 a4 a5	38	a1 a2 a3 a4 a5	73	a1 a2 a3 a4 a5	108	a1 a2 a3 a4 a5
4	a1 a2 a3 a4 a5	39	a1 a2 a3 a4 a5	74	a1 a2 a3 a4 a5	109	a1 a2 a3 a4 a5
5	a1 a2 a3 a4 a5	40	a1 a2 a3 a4 a5	75	a1 a2 a3 a4 a5	110	a1 a2 a3 a4 a5
6	a1 a2 a3 a4 a5	41	a1 a2 a3 a4 a5	76	a1 a2 a3 a4 a5	111	a1 a2 a3 a4 a5
7	a1 a2 a3 a4 a5	42	a1 a2 a3 a4 a5	77	a1 a2 a3 a4 a5	112	a1 a2 a3 a4 a5
8	a1 a2 a3 a4 a5	43	a1 a2 a3 a4 a5	78	a1 a2 a3 a4 a5	113	a1 a2 a3 a4 a5
9	a1 a2 a3 a4 a5	44	a1 a2 a3 a4 a5	79	a1 a2 a3 a4 a5	114	a1 a2 a3 a4 a5
10	a1 a2 a3 a4 a5	45	a1 a2 a3 a4 a5	80	a1 a2 a3 a4 a5	115	a1 a2 a3 a4 a5
11	a1 a2 a3 a4 a5	46	a1 a2 a3 a4 a5	81	a1 a2 a3 a4 a5	116	a1 a2 a3 a4 a5
12	a1 a2 a3 a4 a5	47	a1 a2 a3 a4 a5	82	a1 a2 a3 a4 a5	117	a1 a2 a3 a4 a5
13	a1 a2 a3 a4 a5	48	a1 a2 a3 a4 a5	83	a1 a2 a3 a4 a5	118	a1 a2 a3 a4 a5
14	a1 a2 a3 a4 a5	49	a1 a2 a3 a4 a5	84	a1 a2 a3 a4 a5	119	a1 a2 a3 a4 a5
15	a1 a2 a3 a4 a5	50	a1 a2 a3 a4 a5	85	a1 a2 a3 a4 a5	120	a1 a2 a3 a4 a5
16	a1 a2 a3 a4 a5	51	a1 a2 a3 a4 a5	86	a1 a2 a3 a4 a5	121	a1 a2 a3 a4 a5
17	a1 a2 a3 a4 a5	52	a1 a2 a3 a4 a5	87	a1 a2 a3 a4 a5	122	a1 a2 a3 a4 a5
18	a1 a2 a3 a4 a5	53	a1 a2 a3 a4 a5	88	a1 a2 a3 a4 a5	123	a1 a2 a3 a4 a5
19	a1 a2 a3 a4 a5	54	a1 a2 a3 a4 a5	89	a1 a2 a3 a4 a5	124	a1 a2 a3 a4 a5
20	a1 a2 a3 a4 a5	55	a1 a2 a3 a4 a5	90	a1 a2 a3 a4 a5	125	a1 a2 a3 a4 a5
21	a1 a2 a3 a4 a5	56	a1 a2 a3 a4 a5	91	a1 a2 a3 a4 a5	126	a1 a2 a3 a4 a5
22	a1 a2 a3 a4 a5	57	a1 a2 a3 a4 a5	92	a1 a2 a3 a4 a5	127	a1 a2 a3 a4 a5
23	a1 a2 a3 a4 a5	58	a1 a2 a3 a4 a5	93	a1 a2 a3 a4 a5	128	a1 a2 a3 a4 a5
24	a1 a2 a3 a4 a5	59	a1 a2 a3 a4 a5	94	a1 a2 a3 a4 a5	129	a1 a2 a3 a4 a5
25	a1 a2 a3 a4 a5	60	a1 a2 a3 a4 a5	95	a1 a2 a3 a4 a5	130	a1 a2 a3 a4 a5
26	a1 a2 a3 a4 a5	61	a1 a2 a3 a4 a5	96	a1 a2 a3 a4 a5	131	a1 a2 a3 a4 a5
27	a1 a2 a3 a4 a5	62	a1 a2 a3 a4 a5	97	a1 a2 a3 a4 a5	132	a1 a2 a3 a4 a5
28	a1 a2 a3 a4 a5	63	a1 a2 a3 a4 a5	98	a1 a2 a3 a4 a5	133	a1 a2 a3 a4 a5
29	a1 a2 a3 a4 a5	64	a1 a2 a3 a4 a5	99	a1 a2 a3 a4 a5	134	a1 a2 a3 a4 a5
30	a1 a2 a3 a4 a5	65	a1 a2 a3 a4 a5	100	a1 a2 a3 a4 a5	135	a1 a2 a3 a4 a5
31	a1 a2 a3 a4 a5	66	a1 a2 a3 a4 a5	101	a1 a2 a3 a4 a5	136	a1 a2 a3 a4 a5
32	a1 a2 a3 a4 a5	67	a1 a2 a3 a4 a5	102	a1 a2 a3 a4 a5	137	a1 a2 a3 a4 a5
33	a1 a2 a3 a4 a5	68	a1 a2 a3 a4 a5	103	a1 a2 a3 a4 a5	138	a1 a2 a3 a4 a5
34	a1 a2 a3 a4 a5	69	a1 a2 a3 a4 a5	104	a1 a2 a3 a4 a5	139	a1 a2 a3 a4 a5
35	a1 a2 a3 a4 a5	70	a1 a2 a3 a4 a5	105	a1 a2 a3 a4 a5	140	a1 a2 a3 a4 a5