

- WARNING**
- 1 A candidate who without authorisation takes into the examination venue any book, document or object which could assist him in the examination, and does not hand over such material to the invigilator before the official commencement of the examination, will be guilty of infringing the University's examination regulations and will be liable to punishment as determined by Council
  - 2 Rough work may be done only on the examination question paper and must be labelled as such
  - 3 No notes may be made on any part of the body, such as the hands, or on any garment
  - 4 This page/paper is the property of the University and under no circumstances may the candidate retain it or take it out of the examination venue
- NB COMPLETE THE ATTENDANCE REGISTER ON THE BACK PAGE, TEAR OFF AND HAND TO THE INVIGILATOR**

**FBE2604**

( 473566)

May/June 2017

**FORMS OF BUSINESS ENTERPRISE**

Duration 2 Hours

100 Marks

**EXAMINERS**

FIRST

MR SN MAKHUBU

SECOND

DR PM LEHLOENYA

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**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 Sipho, a prospective law student 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 him the concept of juristic personality (separate legal personality), list two implications of being a juristic person and with reference to relevant authority, provide clarity on his incorrect view (5)

**( )****[TURN OVER]**

- 1 2 Themba, the only shareholder and director of a newly incorporated financial services company known as Financial Freedom (Pty) Ltd, used the company to defraud a number of people by pretending that he was investing their money in a profitable new venture of the company. In actual fact he took the money for himself. When the victims of his fraud demanded their money back, he argued that the company was liable because it had received the money and was a separate juristic person. However, the company was unable to pay. With reference to the Companies Act 71 of 2008, advise the claimants about a suitable remedy that can be used in this case to claim the money from Themba (5)

( )

[TURN OVER]

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( )

- 1.4 Theo and Mashudu are in the process of drafting the MOI for the company they intend to incorporate. They intend to appoint two directors who will run the company. In an attempt to protect their investment, they insert a special restrictive condition in the MOI of the company. The special restrictive condition requires directors to get authorisation before concluding transactions that exceed R 60 000 00. In addition to this, they insert another condition that prohibits the amendment of the aforementioned

[TURN OVER]

special restrictive condition Thuli, Theo's daughter, a second year law student, informs her father that the name of the company they intend to incorporate must be followed by the abbreviation "RF" Advise Theo and Mashudu whether Thuli is correct, provide the meaning of the abbreviation "RF", explain the significance of "RF" and advise them on the requirement that must be complied with in the Notice of incorporation

(6)

( )

TOTAL FOR QUESTION 1: [20]



[TURN OVER]

21 Thabo discovers suitable premises for his dry cleaning business that is not yet incorporated as a company. The estate agent responsible for the premises informs him that the premises are in demand and therefore doubts that they will be available in the next two weeks. Thabo is anxious that the company he intends to incorporate will miss this promising opportunity. His son, a law graduate, informs him that there is a mechanism in the Companies Act 71 of 2008 which is intended to avoid a situation where companies would miss good opportunities because they are not yet incorporated. Thabo approaches you for advice. Advise him about the available mechanism, the formal requirements for the mechanism to be binding in terms of the Companies Act 71 of 2008 and list two common law alternative methods to this mechanism. (6)

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- 2 2 Selby, a young entrepreneur, wants to reserve a name for a company that he intends to incorporate in the next 8 months. He wants to know the duration of the name reservation and whether there is a possibility for extension of such a reservation and if there is an extension, the duration of such an extension. Advise him accordingly and list three criteria to avoid deception of the public when choosing a company name.

(6)

( )

- 2 3 Define the following terms

Legal capacity (1)

Representation (1)

*Ultra vires* (1)

(3)

[TURN OVER]



3 1 Hilda and Toto want to subscribe for shares in a new telecommunications company. However, they do not want to run the risk of receiving lower dividends when the company fails to make high profits in a particular year. They want to receive fixed dividends when they are declared. They approach you for advice about the suitable type of shares to subscribe for, the two benefits that comes with this type of shares and one disadvantage of this type of shares. Advise them accordingly. (5)

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- 3.2 List 4 (four) partly codified duties of directors in terms of Companies Act 71 of 2008  
(4)

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- 3.3 John, a director of an estate agent company known as Top Property (Pty) Ltd, is instructed to purchase an expensive house in one of the expensive estates in the country. While busy negotiating the purchase price with the owner of the house, he decides to resign before finalising the purchase contract. A month later he decides to purchase the house in his own account and subsequently sells it to Top Property (Pty) Ltd at a profit. The board of directors of Top Property (Pty) Ltd comes to you for advice on whether John has breached any of his duties as a director of the company and about the possible remedy available to the company. With reference to relevant authority, advise the board of directors accordingly  
(6)

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TOTAL FOR QUESTION 3: [15]

**QUESTION 4**

- 4.1 A judgment has been taken against Ronny, one of the members of TYM CC. Subsequently, his member's interest has been attached. The other members of the CC are anxious about what will happen to his member's interest. They come to you for advice. With reference to relevant authority, advise them accordingly. (5)

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[TURN OVER]

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- 4 2 Distinguish between the founding statement and the association agreement of a close corporation and list three particulars that are contained in the founding statement (5)

( )

[TURN OVER]

**TOTAL FOR QUESTION 4: [10]**



**TOTAL FOR SECTION A: [60]**



**[TURN OVER]**

**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.

**Question 1**

Anne is a newly appointed director at Agri-Tech Ltd. After reading through the company's memorandum of incorporation, Anne discovers that the company's name is misspelt on all the pages of the company's memorandum of incorporation. As such, Anne wishes to effect the necessary alteration. Indicate which statement is **INCORRECT**.

1. A notice of alteration must be published in accordance with the memorandum of incorporation and the rules.
2. Prior written approval from all the shareholders is required to effect the alteration.
3. A notice of alteration (Form C o.R 15.3) must be filed.
4. A filing fee must be paid.

**(4)****[TURN OVER]**

**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
- 3 Personal liability company
- 4 Public company and state-owned company

**(4)**

**Question 3**

Ferragamo Enterprises Ltd requires its shareholders to vote on a proposed resolution. Themba, a majority shareholder of the company, is unable to attend and vote at the meeting. However, he would like to appoint a proxy on his behalf to vote on the proposed resolution. Indicate which of the following statements regarding the requirements for the appointment of a proxy is INCORRECT.

- 1 Themba cannot appoint a proxy and has to vote as he is the majority shareholder in the company.
- 2 The appointment must be in writing and signed by Themba.
- 3 The appointment is valid for one year.
- 4 A copy of the proxy appointment form must be delivered to the company before the shareholder's meeting.

**(4)**

**Question 4**

Section 46 of the Companies Act 71 of 2008 allows a company to make a distribution to one or more of its shareholders or beneficial holders of shares. Indicate which statement regarding the circumstances in which a distribution may be made is CORRECT.

- 1 A distribution must be approved by a special resolution of the shareholders.
- 2 It must reasonably appear that the company will be able to satisfy the solvency and liquidity test for six months after the distribution was made.

[TURN OVER]

- 3 The auditors of the company must apply the solvency and liquidity test and conclude that the company will satisfy the test before a proposed distribution may be made
- 4 The company must satisfy the solvency and liquidity test again where the distribution was not made within 120 days after the initial test

(4)

**Question 5**

Which party cannot apply to court for a director to be declared delinquent?

- 1 Director of a company
- 2 Shareholder of a company
- 3 Company secretary
- 4 A supplier of the company

(4)

**Question 6**

Which one of the following statements is CORRECT?

- 1 Directors will be exempted from liability where they appoint committees and delegate authority to these committees
- 2 A private company and a non-profit company must have at least 3 directors
- 3 An ex-officio director is a person appointed to the board of directors of a company as a substitute for a particular elected director of that company
- 4 A company may not indemnify a director in respect of a liability arising out of a breach of his/her fiduciary duties

(4)

**Question 7**

Elijah is a director and shareholder at KMH Express (Pty) Ltd. It has come to the attention of Frank who is also a shareholder that Elijah has defrauded the company of a substantial amount of money but no steps have been taken by the board to claim repayment of the money to the company. Choose the CORRECT remedy available to Frank to institute an action against Elijah for repayment.

- 1 Application to place a director under probation
- 2 Relief from oppressive or prejudicial conduct

[TURN OVER]



- 3 Derivative action
- 4 Dissenting shareholders' appraisal right

(4)

### Question 8

Which one of the following statements is INCORRECT?

- 1 A member's interest in a close corporation may not be jointly held
- 2 A member's interest is a corporeal, immovable thing
- 3 A member's interest in a close corporation is similar to a share in a company
- 4 The aggregate (total) of member's interest must always be 100%

(4)

### Question 9

Which section of the Close Corporations Act of 1984 regulates the authority of the members of the CC to conclude contracts on behalf of the CC?

- 1 Section 51
- 2. Section 54
- 3. Section 65
- 4. Section 23

(4)

### Question 10

Which of the parties may not be members of the CC?

- 1 Companies
- 2 Trustees in their capacity as trustees of trusts
- 3 Minors
- 4 Persons with disability

(4)

[TURN OVER]

PART 1 (GENERAL/AUGEEN) DEEL 1

STUDY UNIT: PSY100 X

STUDIE-EENHEID: PSY100-X

VRAESTELNOMMER

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UNIQUE PAPER NO

UNIEKE VRAESTEL NR

INITIALS AND SURNAME

VOORLETTERS EN VAN

DATE OF EXAMINATION

DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)

EKSAMENSENTRUM (BY PRETORIA)

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
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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## MARK READING SHEET INSTRUCTIONS

Your mark reading sheet is marked by computer and should therefore be filled in thoroughly and correctly

### USE ONLY AN HB PENCIL TO COMPLETE YOUR MARK READING SHEET

*PLEASE DO NOT FOLD OR DAMAGE YOUR MARK READING SHEET*

Consult the illustration of a mark reading sheet on the reverse of this page and follow the instructions step by step when working on your sheet

Instruction numbers ① to ⑩ refer to spaces on your mark reading sheet which you should fill in as follows

- ① Write your paper code in these eight squares, for instance

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- ② The paper number pertains only to first-level courses consisting of two papers

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- ③ Fill in your initials and surname
- ④ Fill in the date of the examination
- ⑤ Fill in the name of the examination centre
- ⑥ WRITE the digits of your student number HORIZONTALLY (from left to right) Begin by filling in the first digit of your student number in the first square on the left, then fill in the other digits, each one in a separate square
- ⑦ In each vertical column mark the digit that corresponds to the digit in your student number as follows [-]
- ⑧ WRITE your unique paper number HORIZONTALLY  
NB Your unique paper number appears at the top of your examination paper and consists only of digits (e.g. 403326)
- ⑨ In each vertical column mark the digit that corresponds to the digit number in your unique paper number as follows [-]
- ⑩ Question numbers 1 to 140 indicate corresponding question numbers in your examination paper. The five spaces with digits 1 to 5 next to each question number indicate an alternative answer to each question. The spaces of which the number correspond to the answer you have chosen for each question and should be marked as follows [-]
- ◆ For official use by the invigilator. Do not fill in any information here

attendance register  
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Centre

Date

This is to certify that I have read the rules governing the examinations as set out on the inside cover of this examination answer book and in the examination instructions

That the information supplied by me in this answer book is correct and valid

I undertake to adhere to the procedures, rules and regulations of the University of South Africa as published in the official brochures

Signature of candidate

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NOTE Not a valid document if not completed by the Invigilator

attendance register  
(student copy)



Fill-in/MCQ



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