

# **Tutorial Letter 201/1/2018**

## **FORMS OF BUSINESS ENTERPRISE FBE2604**

**Semester 1**

**Department of Mercantile Law**

This tutorial letter contains important information  
about your module.

BARCODE



## Dear Student

By now you should have received **TWO** tutorial letters: Tutorial Letter 101 and Tutorial Letter 102. Tutorial Letter 102 contains the names of your lecturers, information on the format of the examination and an example of the way we formulate questions in the examination.

The aim of this tutorial letter is to provide you with the memorandum of compulsory Assignments 01 and 02; the guidelines on how you should have approached the example of the way we formulate questions in the examination in Tutorial Letter 102; and the guidelines on how you should have approached the self-assessment assignment in Tutorial Letter 101.

Please consult the relevant sections of the study guide indicated in the guidelines for more details on the example of the way we formulate questions in the examination paper and the self-assessment assignment.

By giving you an **example of the way we formulate questions in the examination, we do not in any way imply or suggest that the examination paper will be based on it.** It merely serves as an example of how questions may be asked in the examination.

### MEMORANDUM OF COMPULSORY ASSIGNMENT 01

#### Question 1

##### 1.1 Advice to CT Equipments CC

In terms of the principle of *mutual mandate* each partner has implied authority to perform all acts that are necessary or incidental to the proper conduct of the business of the partnership.

A *bona fide* third party wishing to hold a partnership liable in terms of the contract concluded by one of the partners must prove that the contract fell within the scope of the business of partnership.

In the hypothetical facts, the purchase of the carpet-cleaning machine by Bashi is within the scope of the business and CT Equipments should prove that the contract fall within the scope of the business of the partnership.

Therefore, in terms of the principle of *mutual mandate* the partnership will be bound by the contract concluded by Bashi. (6)

**See study guide page 118**

##### 1.2 Advice to RRT Cars CC

In the event that a partner is given express authority to contract on behalf of a partnership, a partnership will be bound by the contract even if a transaction fall outside the scope of a partnership's business.

In the hypothetical facts, Bashi is in terms of the partnership agreement given express authority to enter into any contract on behalf of the partnership. The fact that the contract of purchasing an expensive sports car fall outside the scope of the partnership's business is irrelevant.

Therefore, the partnership will bound by the contract of purchasing the expensive sports car. (4)

**See study guide page 118**

[10]

## MEMORANDUM OF COMPULSORY ASSIGNMENT 02

### Question 1

#### 1.1 Advice to Theo

- 1.1.1 A trust is an arrangement through which ownership of a person's property is, by virtue of a trust instrument, made over or bequeathed to a trustee under a trust instrument, to be administered to the benefit of the beneficiaries. (1)

*See page 145 of the Study guide*

- 1.1.2 The intention or instruction to the trustee to manage the trust assets for the beneficiaries must be expressed as an obligation in a written trust deed. (1)

*See page 148 of the Study guide*

- 1.1.3 In terms of section 6 (1) of the Trust Property Control Act, only after authorisation by the Master can a trustee commence with his or her duties. (1)

*See page 149 of the Study guide*

- 1.1.4 Section 9(2) of the Trust Property Control Act states that any provision in the trust deed that has the effect of exempting a trustee from one of his or her duties is void. (2)

*See page 149 of the Study guide*

- 1.2 The powers of a trustee are stipulated in the trust deed. No other powers not stipulated in the trust deed may be exercised. However, a trustee also enjoys the powers that are inherent in the type of business carried out in the trust.

In the hypothetical facts, nothing is mentioned about the powers in the trust deed and the purchasing of the luxury sports car on behalf of the trust is not inherent in the business of farming tomatoes.

Therefore, Joy's conduct of purchasing a luxury sports car is unlawful and she will incur personal liability. (5)

*See page 149 of the Study Guide*

[10]

## GUIDELINES ON THE EXAMPLE OF THE WAY WE FORMULATE QUESTIONS IN THE EXAMINATION

### Question 1

- 1.1 This question is about the amendment of the MOI since the company wants to remove specific clauses that do not serve any purpose. Indicate who may propose an amendment and explain the procedure to accomplish this: **See the Study Guide in Part 1, Study unit 3, paragraph 3.8.**
- 1.2 This question is about the pre-incorporation contract in terms of section 21 of the Companies Act 71 of 2008. Note what a pre-incorporation contract is, list the requirements

that must be met before a pre-incorporation contract may be binding and explain whether Jack will be liable to Mpfari: **See the Study Guide in Part 1, Study unit 4, paragraph 4.1.**

- 1.3 This question is about the right of pre-emption. Explain what a right of pre-emption is, explain how it is applicable in this scenario and explain whether there is an obligation on Michael to offer Joe an opportunity to purchase the shares: **See the Study Guide in Part 1, Study unit 7, paragraph 7.4.**

## Question 2

- 2.1 This question is about financial assistance. Simply note the common law guidelines of what constitute a financial assistance. Do not discuss this as the question states clearly that you need to advise on the requirements of providing financial assistance in terms of section 44 of the Companies Act 71 of 2008. Simply provide and explain to the board the requirements of providing financial assistance in terms of section 44 of the Companies Act 71 of 2008. **See the Study Guide in Part 1, Study unit 7, paragraph 7.8.**
- 2.2 Here you simply list matters that must be dealt with at the AGM: **See the Study Guide in Part 1, Study unit 8, paragraph 8.6.**
- 2.3 This question is about the grounds upon which a director may be removed from the board. Note the process of removing a director from the board and highlight the grounds in section 71(3) of the Companies Act 71 of 2008 (Although you need to know the sections of the Companies Act 71 of 2008 as discussed in the Study Guide, you still need to familiarise yourself with the reading of Legislation). **See the Study Guide in Part 1, Study unit 9, paragraph 9 and the grounds in section 71(3) of the Companies Act 71 of 2008.**

## Question 3

- 3.1 This question is about the disqualification of certain persons in the appointment of an audit committee of a company to ensure objectivity and effectiveness.
- Explain that in terms of the Companies Act 71 of 2008, in order to ensure objectivity and effectiveness in the appointment of an audit committee, an audit committee should have at least three members who are non-executive directors and who have never served in the day to day business of the company in the preceding three years: **See the Study Guide in Part 1, Study unit 10, paragraph 10.6.**
- 3.2 This question is about the enforcement agencies. Here you simply list the Companies and Intellectual Property Commission ('Commission'), Companies Tribunal, Alternative Dispute Resolution ('ADR') and the High Court: **See the Study Guide in Part 1, Study unit 12, paragraph 12.1.8.**

## Question 4

- 4.1 This question is about the number and nature of members as well as the rules governing the holding of member's interest in a close corporation. Provide and explain the required number of members in the close corporation, the nature of members, the requirements or rules governing the holding of member's interest and advise Tracy on whether her intended arrangement is in line with the Close Corporations Act 69 of 1984. **See the Study Guide in Part 3, Study unit 18 and 19, paragraph 19.2.**
- 4.2 This question is about two specific duties which are the fiduciary duty and the duty of care and skill: **See the Study Guide in Part 3, Study unit 20, paragraph 20.1 and 20.2.**

- 4.3 This question is about an association agreement and what provisions or matters may be changed in the association agreement in terms of the Close Corporations Act 69 of 1984 to suit their unique requirements. Explain what an association agreement is, whether Muthu is bound by the association agreement and list the provisions or aspects, which can be changed in the association agreement to suit their unique requirements: **See the Study Guide in Part 3, Study unit 21, paragraph 21.1.**

### GUIDELINES ON THE SELF-ASSESSMENT ASSIGNMENT

#### Question 1

This question is about the various important implications of separate legal personality in terms of the British case of *Salomon v Salomon*. Provide and explain the implications. **See the Study Guide in Part 1, Study unit 1, paragraph 1.1.**

#### Question 2

This question is about the procedure to be followed in order to use the dissenting shareholders' appraisal right in terms of section 164. Explain the procedure that should be followed to enable dissenting shareholders to use this remedy. **See the Study Guide in Part 1, Study unit 12, paragraph 12.1.5.**

#### Question 3

This question is about the requirements of giving notice of a meeting. Outline and explain the requirements of giving notice of a meeting to John. **See the Study Guide in Part 1, Study unit 8, paragraph 8.2.**

#### Question 4

This question is about the powers of members of a close corporation to represent a close corporation. Discuss and explain who has the powers to represent a close corporation in terms of the Close Corporations Act 69 of 1984. **See the Study Guide in Part 3, Study unit 21, paragraph 21.2.**

**PLEASE DO NOT HESITATE TO CONTACT US IF YOU HAVE ANY QUESTIONS ABOUT THE CONTENT OF THIS MODULE.**

Mr	SN Makhubu (module leader)	<a href="mailto:makhusn@unisa.ac.za">makhusn@unisa.ac.za</a>	012 429 4878
Mrs	M Bekink	<a href="mailto:beokinm@unisa.ac.za">beokinm@unisa.ac.za</a>	012 429 8441
Adv	MA Mthembu	<a href="mailto:mthemma@unisa.ac.za">mthemma@unisa.ac.za</a>	012 429 8489
Ms	R Cassim	<a href="mailto:cassir@unisa.ac.za">cassir@unisa.ac.za</a>	012 429 6780
Mrs	M Lombard	<a href="mailto:lombam1@unisa.ac.za">lombam1@unisa.ac.za</a>	012 429 2240