

October / November 2021

MRL3701

Insolvency Law

100 Marks

24 Hours

First examiner: Mrs Z Taljaard

Second examiner: Mrs Z Mabe

INSTRUCTIONS FOR A PORTFOLIO OR TAKE-HOME EXAM ON MYEXAMS

This paper consists of 9 pages.

Instructions:

Please read the below very carefully to ensure you comply with all instructions.
Be reminded to tick the Honour Pledge (Honesty Declaration) before you submit.
Read the instructions on the platform and specific submission tool carefully.

We wish you the best for your examination!

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE ANSWERING THE EXAMINATION QUESTIONS.

This paper consists of nine (9) pages.

1. The examination question paper counts **100 marks**.
2. It consists of **three** questions. Answer **ALL** of the questions.
3. The duration of the examination is **24 hours**. Your portfolio must be submitted via myUnisa **on 8 October 2021** on or before **18:00** (South African Standard Time).
4. This is an **open-book examination**. You may consult your prescribed study material during the examination.
5. This examination is not proctored (or invigilated).
6. **SUBMISSION OF YOUR EXAMINATION ANSWER FILE**

Your answer to this portfolio or take-home examination must be submitted online on the myExams platform.

- 6.1 Access myExams at <https://myexams.ac.za/portal> and login using your student number and myUnisa password.
- 6.2 Go to your specific examination site through the site tabs on the horizontal navigation bar. Also check your **Sites** link in the top right-hand corner if you do not find the site on the horizontal navigation bar.
- 6.3 Once the site has loaded, select the **eAssessment** tool from the left-navigation menu
- 6.4 The list of all available assessments in the site will be displayed.
- 6.5 Select the assessment for which you want to upload the examination answer file by **clicking on the title of the assessment** in the list. A new page will open.
- 6.6 Submit your examination answer file.

Submission

Attachments

No attachments yet

Select a file from computer

Choose File

No file chosen

or select files from workspace or site

☐ Honor Pledge: I have neither given nor received aid on this assignment.
(You must respond to submit your assignment.)

Submit

Preview

Save Draft

Cancel

Don't forget to save or submit!

You are allowed to attach **ONE** PDF file.

Under **Attachments**, click the **Choose File** button to browse for a file on your device.

Submission

This assignment allows submissions by attaching documents only.

Attachments

 Examination 1 Responses.docx (12 KB; 11-Feb-2018 13:09) [Remove](#)

Select more files from
computer

No file chosen

Honor Pledge: I have neither given nor received aid on this assignment. ☒
(You must respond to submit your assignment.)



Don't forget to save or submit

Once you have attached your answer file, the name of the file, as well as the file size and upload time stamp will be displayed under **Attachments**.

Tip: You may click **Remove** to remove the attachment if you selected the wrong file.

Tip: Select the **honour pledge**. Students **MUST** check the honour pledge before submission if it appears on the screen. A student will not be able to submit the assessment if he/she did not check the honour pledge.

When you are ready and satisfied that you have correct answer file, click the **Submit** button to complete your assessment submission.

Tip: If you are not yet ready to submit, you may click **Preview** to preview the submission, or **Save Draft** to save your submission and submit it later. Click **Cancel** to exit the assessment without saving or submitting.

You are advised to preview your submission to ensure that it is legible and that the correct answer file has been uploaded.

Time permitting, you will be allowed to resubmit your exam file twice.

6.7 Submission confirmation

Submission Confirmation

☒ You have successfully submitted your work. You will receive an email confirmation containing this information.

User: [REDACTED]

Class site: ABT1511-15-S1

Assignment title: Examination 1

Submission ID: [REDACTED]

Submitted on: 11-Feb-2016 13:38

History [REDACTED]

Your submission included the following:

Submitted Attachments

Examination 1 Responses.docx (12 KB; 11-Feb-2016 13:09)

[Back to list](#)

Once you have submitted your assessment, you will receive a confirmation message on the screen. **Make a screen copy for your records.** In addition, if you have opted to receive email notifications, you will also receive an email confirmation of your submission.

7. The **cover page** to your portfolio exam must include your name, student number and the module code.
8. It is preferred that your portfolio exam is **typed**. However, **handwritten submissions** will also be accepted. If the portfolio exam is typed, the maximum length is **12** pages (which includes the **cover page and the bibliography**). If the portfolio exam is handwritten, the maximum length is **16** pages (which includes the cover page and the bibliography).
9. Whether your answers are typed or handwritten, your submission on the myExams platform must be made in the form of **one PDF** document.
- 9.1 The exam answer file that you submit must not be password protected or uploaded as a “read only” file.
- 9.2 Your examination answer file will not be marked if:
 - 9.2.1 you send your examination answer file via email.
 - 9.2.2 you submit the incorrect examination answer file.
 - 9.2.3 you submit your exam answer file on an unofficial examination platform (including the invigilator cellphone application).
 - 9.2.4 you submit your examination answer file in the incorrect file format.
 - 9.2.5 you submit a password-protected document.
 - 9.2.6 you submit your examination answer file late.
- 9.3 The mark awarded for an incomplete examination answer file submission will be your final mark. You will not be allowed to resubmit after the scheduled closing date and time of the exam.
- 9.4 The mark awarded for an illegible examination answer file submission will be your final mark. You will not be allowed to resubmit after the scheduled closing date and time of the exam.

10. If your answers are typed, ensure that the following requirements are adhered to. Items 9.3-9.6 applies to written assignments as well.
 - 10.1 The text must be typed in Arial font, size 12 with single line spacing within the paragraph, and double line spacing after the paragraph.
 - 10.2 The text must be justified.
 - 10.3 All of the pages must be numbered in the right-hand corner at the bottom of the page.
 - 10.4 All margins must be 2.5cm, but the left margin must be 3cm.
 - 10.5 South African English and not American English should be used. For example, the correct spelling is "Labour" and not "Labor".
 - 10.6 Do not use abbreviations or SMS language.
 - 10.7 All quotes that are two lines long (or less), must form part of the main text, be written in italics, and be bracketed by quotation marks. Where a quotation is longer than two lines, it must be typed in a separate paragraph in italics in size 11 font and must be indented by 1 cm. No quotation marks are required when the quotations stand alone. Use quotations very sparingly. In this take-home exam, a maximum of 5% of the text may be quoted.
11. When answering the take-home exam questions, remember that an open-book exam is a test at a higher level than the usual type of exam, where memory is tested as much as insight. In an open-book exam, you need not memorise any information. You are expected to prove that you can use information, rather than merely repeat it. In brief, what is being tested is factual knowledge, understanding and the correct application thereof, not memory skills. For this reason, you do not earn marks by merely detailing a list of all the information that you think might be relevant to a particular question. This gives no indication that you know what statutory or other provisions are applicable in a specific context. You are expected to identify precisely what information applies, and then explain why you think so.
 - 11.1 Also, because you have the guide available when answering questions, we do not give marks for direct quotations from the guide. You are therefore assessed on your level of understanding of the legal principles by looking at how well you applied the principles to the questions.
 - 11.2 **PLEASE DO NOT CUT AND PASTE ANSWERS FROM THE STUDY GUIDE (OR ANY OTHER SOURCE).**
12. The arguments that you make must be logical, well-structured and substantiated by all of the relevant legal principles. You are given **24** hours (not 2 hours) to complete the take-home exam. Use the time given wisely.
 - 12.1 Ensure that you give reasons for each answer. Substantiate your answers by referring to ALL of the relevant authorities, e.g. sections from relevant legislation and/or court cases in the text or in your footnotes.

- 12.2 You are required to have read and summarised the prescribed cases yourself. The summaries in the Study Guide are not sufficient for this exam. When using case law to support your answer, please include complete references to the relevant cases in your footnotes. This means that you must not only include the name of the case but also the exact page and section and/or paragraph where the information can be found. The same applies to articles and books used.
- 12.3 A number of students lose marks because they do not approach problem-type questions correctly. When answering such questions, it is important to first clarify for yourself the area of work where the answer must be sought. Once you have done this, set out the relevant legal principles. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where most of the students lose marks - they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve. Finally, state your conclusion.
13. By ticking the Honour Pledge, you confirm that you have read (i) the University's [Policy on Copyright Infringement and Plagiarism](#) and the [Student Disciplinary Code](#), which are both available on myUnisa: www.unisa.ac.za/unisarules, and (ii) the information relating to student values and plagiarism that is found at <https://www.unisa.ac.za/sites/myunisa/default/Study-@-Unisa/Student-values-and-rules>.
- 13.1 Students suspected of dishonest conduct during the examination will be subjected to disciplinary processes. UNISA has zero tolerance for plagiarism and/or any other forms of academic dishonesty.

PLEASE NOTE:

If you experience technical problems of any kind on the day(s) of the examination (including network or loadshedding challenges) and your examination answers are not submitted by the cut-off time, please apply online for an aegrotat exam within 3 days of the examination session. Include supporting documentation with your application. Students experiencing technical challenges may contact the SCSC on 080 000 1870 or email Examenquiries@unisa.ac.za or refer to [Get-Help](#) for the list of additional contact numbers.

Question 1

- 1.1 Briefly explain what is meant by the concept of “*concursum creditorum*”. (5)
(Your answer must not exceed half a page or 120 words)
- 1.2 Explain why the court in *Ex Parte Arntzen (Nedbank Ltd as Intervening Creditor)* 2013 (1) SA 49 (KZP) held that creditors are more vulnerable in voluntary surrender applications than in compulsory sequestration which then gives rise to the requirement of a higher level of disclosure. (10)
(Your answer must not exceed one page or 250 words)
- 1.3 Dumisani approaches you for advice. He informs you that his brother, Benson, owes him R24 000 for gardening services rendered by his company. Dumisani explains to you that despite various attempts to get Benson to pay his debts, he has yet to make any payment. Dumisani is especially upset because he has heard a rumor that Benson and his wife has apparently now relocated their home from Johannesburg to Cape Town because his wife is ill and needs medical treatment at a care facility in Stellenbosch. Dumisani wants to know from you whether you can assist him to apply for the compulsory sequestration of Benson’s estate, because his brother has fled from his home and therefore his responsibilities. Refer to the relevant act of insolvency, including a reference to the relevant legislation. (10)
(Your answer must not exceed one page or 250 words)
- 1.4 Explain how section 27 of the Insolvency Act 24 of 1936 has the potential to violate section 9(3) of the Constitution. (10)
(Your answer must not exceed one page or 250 words)
- 1.5 Regarding meetings of creditors, discuss the main differences between the first and second meeting. (10)
(Your answer must not exceed one page or 250 words)

- 1.6 At a meeting of creditors, four creditors proved claims against the insolvent estate of Joseph. Lerato has a claim of R20 000, Albert a claim of R5 000, Susanna a claim of R40 000, and Ronald a claim of R5 000. Lerato nominates Jenny as a trustee, and Susanna nominates Joy. Lerato, Albert and Ronald vote for Jenny, and Susanna votes for Joy. Who will be appointed as trustee? (5)

(Your answer must not exceed half a page or 120 words)

TOTAL QUESTION 1: [50]

Question 2

- 2.1 Discuss the instances when the Master may refuse to appoint a trustee. (5)

(Your answer must not exceed half a page or 120 words)

- 2.2 With reference to section 29 of the Insolvency Act 24 of 1936, state which form of impeachable disposition this refers to. In your answer, also discuss whether there is an exception to section 29, and if so, what it is, and which test would be applied to determine if it would apply. (5)

(Your answer must not exceed half a page or 120 words)

- 2.3 With reference to impeachable dispositions, discuss the difference between the trustee's powers under section 30 and section 29 of the Insolvency Act 24 of 1936. (10)

(Your answer must not exceed one page or 250 words)

- 2.4 Explain the requirements for the common law application for a disposition if value has been received? (5)

(Your answer must not exceed half a page or 120 words)

TOTAL QUESTION 2: [25]

Question 3

- 3.1 Sue-Ann is a friend of yours. She informs you that she was sequestered in 2009. She now wishes to purchase a car, but the car dealership said that they will first do a reference check. She says to you that she is worried that she will not be approved for the loan, due to the fact that she is considered an insolvent. Explain to Sue-Ann whether or not she has been rehabilitated. (5)

(Your answer must not exceed half a page or 120 words)

- 3.2 Critically discuss the important issues the court considered regarding the abuse of the sequestration process in *Ex Parte Snooke* 2014 (5) SA 426 (FB). (10)

(Your answer must not exceed one page or 250 words)

- 3.3 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. (10)

(Your answer must not exceed one page or 250 words)

TOTAL QUESTION 3: [25]

TOTAL: [100]