



**UNIVERSITY OF JOHANNESBURG**

**FACULTY OF LAW (AUCKLAND PARK CAMPUS)**

**SUBMISSION OF FINAL EXAMINATION PAPERS**

**JUNE/JULY 2017**

MODULE NAME: Law of Insolvency  
MODULE CODE: INR 001 / LIN 4130  
LECTURER (S): Prof JC Guitz & Mrs S Laurenson  
HEAD OF DEPARTMENT: Prof Kt Van der Linde  
EXIT MODULE: YES/NO YES  
FOR EXIT MODULES:  
EXTERNAL MODERATOR: Prof M Roestoff  
EXTERNAL MODERATOR FORM ATTACHED: \_\_\_\_\_

**INSTRUCTIONS:**

1. How many of the following items will be required per student?
- |                              |            |
|------------------------------|------------|
| Examination script (4 pages) | <u>2</u>   |
| Scanner sheet                | <u>N/A</u> |
| Other (please specify)       | <u>N/A</u> |
2. How many students are still attending lectures (with a view to the number of examination papers required)? 300

**SIGNATURE OF LECTURER:**

**DATE:**

**SIGNATURE AS HEAD OF  
DEPARTMENT  
(AS INTERNAL MODERATOR)**

**DATE:**

**FOR ADMINISTRATIVE PURPOSES:**

**Noted:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**UNIVERSITY OF JOHANNESBURG**  
**KINGSWAY CAMPUS**

**FACULTY OF LAW**  
**EXAMINATIONS 2017**

**SUBJECT NAME:** INSOLVENCY LAW  
**SUBJECT CODE:** INR0011 / LIN41B0

**DURATION:** 2 HOURS  
**MARKS:** 75

**EXAMINERS:** 1) PROF JC CALITZ  
2) MS S LAWRENSON  
3) PROF M ROESTOFF (UP)

**THIS PAPER RUNS TO 3 PAGES.**

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**QUESTION 1:**

**BRIEFLY explain or discuss the legal principles/concepts:**

- 1.1 Section 339 of the Companies Act 61 of 1973. (4)
  - 1.2 "Special meeting of creditors" in terms of section 42 of Insolvency Act 24 of 1936. (3)
  - 1.3 "Reckless trading" as set out in *Ozinsky NO v Lloyd* 1995 (2) SA 915 (AD). (4)
  - 1.4 "Distressed company" in terms of section 128(1)(b) of the Companies Act 71 of 2008. (4)
- [15]**

**QUESTION 2:**

"A solvent company is wound up and liquidated in terms of Part G of Chapter 2 of the Companies Act 2008 and an insolvent company is wound up and liquidated under the Companies Act of 1973." On the basis of the relevant authority discuss what is meant by the term "solvent" in the context of the abovementioned statement. **[5]**

**QUESTION 3:**

"It is the Master who has the power, and who appoints the trustees to sequestrated estates. He or she enjoys discretion as to who to appoint as provisional trustees to insolvent estates. This is to be done in accordance with the Policy determined by the Minister in terms of section 158(2) of the Act." The Supreme Court of Appeal in *Minister of Justice and Constitutional Development and Another v South African Restructuring and Insolvency Practitioners Association* (693/15) [2016] ZASCA 196 declared the Policy unconstitutional. Briefly discuss the mentioned judgement with specific reference to the court's view on whether the Policy unlawfully fetters the discretion of the Master. (In your answer you should also refer to the current legislative provisions and case law). **[8]**

**QUESTION 4:**

Lebombo (Pty) Ltd is a construction company specialising in the building of vacation homes and has three directors. John and his son Duduzane are two of the directors and also the majority shareholders of the company. As a result of the declining economy Lebombo (Pty) Ltd has not been getting much work and is barely able to pay its debts as they fall due.

The third director, James, believes that the company can become very successful if new projects were pursued with more enthusiasm. However, the other two directors are more interested in their other business ventures and are ready to simply put the company into liquidation.

James believes that if the company is placed under business rescue it can be rescued and returned to a successful concern. He is particularly anxious that the company should not be liquidated because he is also a director or advisor of several other construction companies and fears that his reputation will be harmed if the company fails.

James wants your advice on the following aspects. (Please refer to the relevant case law in your answer):

- 4.1 "Rescuing the company" in this context means achieving the goals set out in the definition of 'business rescue' (section 128(1)(h) of the Companies Act 71 of 2008). Briefly discuss this statement considering the relevant authority and case law. (7)
- 4.2 The other two directors have threatened to immediately apply for the liquidation of Lebombo (Pty) Ltd if James makes any attempt to have the company placed under business rescue. Explain whether an application for a provisional or final liquidation order issued before a business rescue order will successfully prevent the issue of an order commencing business rescue proceedings. (5)

**[12]**

**QUESTION 5:**

On the 1st of March 2015 ABC Properties (Pty) Ltd was placed into business rescue in terms of section 129 of Companies Act 71 of 2008 (Companies Act) by resolution of its directors. On the 15th of March 2015 a notice of the resolution was published to every affected person and Mr Solo was appointed as business rescue practitioner. The business rescue plan was subsequently approved and the property in the estate was also sold in accordance with the plan. When the transfer of the property to the purchaser was imminent, an application was launched by the shareholders of ABC Properties (Pty) Ltd requesting the court to rule whether the company's alleged non-compliance with the procedural requirements of section 129 of Companies Act resulted in a nullity of the resolution. On the basis of recent legal development advise Mr Solo of the shareholders' chances of succeeding with such an application. **[5]**

**QUESTION 6:**

"Directors will have to "up their game". They need to be aware of the increased obligations in the Act, particularly regarding the potential exposure to director's liability whilst sitting on the Boards of companies." Critically discuss and compare section 424 of the Companies Act 61 of 1973 and section 22, read with section 214 and section 218, of the Companies Act 71 of 2008. **[5]**

**QUESTION 7:**

The Insolvency Act 24 of 1936 also makes provision for an inquiry to be instituted by the Master, whenever he is of the opinion that the insolvent, the trustee, or any other person is able to give information which he (the Master) considers desirable to obtain concerning the insolvent, his estate, the administration of his estate, or any claim or demand made against the estate (section 152(2)). Write a brief note regarding the nature and scope of an inquiry in terms of section 152 as accepted by the courts over the years. [5]

**QUESTION 8:**

Creditors' meetings are held in a winding-up of a company by the court and in a creditors' voluntary winding-up. Mention 3 (three) compulsory meetings to be held during the liquidation process of a company and mention at least 1 (one) purpose of each such meeting. [5]

**QUESTION 9:**

One of the burning issues currently in the context of successful business rescues is the regulation of business rescue practitioners. With reference to the relevant provisions in the Companies Act 71 of 2008 as well as case law, write a short note on the role of the business rescue practitioner. Include the following in your discussion:

- Qualifications and regulation of a business rescue practitioner;
- Fee structure of business rescue practitioners including the test to determine the business rescue practitioner's entitlement to reimbursement for expenses and disbursements (with reference to case law); and
- The ranking and nature of a business rescue practitioner's claim for remuneration in subsequent liquidation proceedings (with reference to case law). [15]

**TOTAL: [75]**

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