# Specimen Exam

**Exam Name:** Business Law – South Africa (K3 ZAF)
**Time allowed:** 2 hours
**Pass Mark:** 50%

This exam contains:

**50** questions, each worth 2 marks
**100** marks in total


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**Question 1**

**In the context of partnerships, which of the following statements is CORRECT?**

A From incorporation, a partnership is a separate legal entity

B Change in membership of a partnership does not terminate the partnership agreement

C A contribution made by a partner may be in the form of services or knowledge and skill

D Partnerships can be established for the advancement of sport, culture or the promotion of charitable activities

**Question 2**

**In the context of terms of a contract, which of the following statements is CORRECT?**

A Since terms must be expressed, a tacit term can never be read into a contract

B *Naturalia* are terms which the law attaches to every contract of a particular class

C Parties to a contract cannot exclude the operation of *naturalia*

D Terms implied by law are referred to as the *incidentallia*

**Question 3**

**In the context of insider trading, which of the following statements is NOT CORRECT?**

A It is irrelevant whether an insider knows that the information that they have is inside information

B An insider who knows that they have inside information and discloses it to another person commits an offence

C Juristic persons and partnerships cannot be held criminally liable for insider trading offences

D To know that something is inside information, the primary insider must know that the information has not been made public yet


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**Question 4**

**In the context of terms of a contract, which of the following statements is NOT CORRECT?**

A A penalty clause is valid in principle but a party cannot claim in addition to claiming damages

B A forfeiture clause provides that the parties agree that one of them, or both, will lose the right to restitution

C An entrenchment clause is not valid as the parties can always amend an agreement orally if they are in agreement

D A letter of demand is not required where a cancellation clause is invoked

**Question 5**

**In the context of the South African legal system, which of the following statements is NOT CORRECT?**

A Case law is an authoritative source of law

B In certain instances, a customary rule will be recognised as a legal rule

C Legislation is the most important source of law

D International law is an authoritative source of law

**Question 6**

**In the context of a public company, which of the following statements is NOT CORRECT?**

A It must, if listed, have a social and ethics committee, unless it is exempted by the tribunal

B Its name must end with the abbreviation 'Ltd'

C It must have at least two and no more than 50 shareholders

D It can be formed by one or more persons


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**Question 7**

Ben agreed to paint and plaster four rooms for Cara for R30,000. This involved a lot of preparation work as many of the walls have damp problems. Ben has completed the work but it turns out that the damp is still there. In order to address this, additional work at a cost of R15,000 has to be carried out.

**Which of the following statements, relating to a claim for damages that Cara wishes to institute, is CORRECT?**

A Cara will be able to claim damages as the additional costs are a direct result of Ben's breach of contract

B Cara cannot claim damages as she needs to cancel the contract first

C Cara cannot institute a claim for damages as she should contribute to part of the additional costs

D Cara can claim damages but only if she institutes a claim within 15 days of breach of contract

**Question 8**

**In the context of contract law, which of the following statements is NOT CORRECT?**

A An agreement restraining a person's freedom to trade is always valid and enforceable

B A contract is generally not contrary to public policy, and thus void, merely because its terms offend an individual's sense of propriety

C An agreement depriving a contracting party of any and all opportunity to defend themselves is void

D Legal possibility requires that the agreement, as well as the rights and duties that are created, must be permitted by the law


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**Question 9**

**In the context of bribery and corruption, which of the following statements is NOT CORRECT?**

A South African legislation specifically defines bribery

B Corruption includes bribery and it is a form of corruption

C Corruption is defined as an act of accepting or offering any gratification from any other person whether for the benefit of that person or any other person

D There is no distinction between corruption involving public officials and private individuals

**Question 10**

**Which of the following statements relating to company directors is CORRECT?**

A It is good practice for the company secretary to also be a director

B The legislation provides that the roles of chief executive officer and chairman should be separated

C Directors' duties are partially codified in legislation and the common law still applies

D A shadow director is under no circumstances subject to the duties of directors

**Question 11**

**In the context of labour law, which of the following statements is NOT CORRECT?**

A The *essentialia* for a contract of employment are work and remuneration

B The 'no work, no pay' rule is a common law rule and does not make provision for paid leave

C Employees should generally not work more than 45 hours per week

D The courts use the organisation test to determine whether a worker is an employee or an independent contractor


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**Question 12**

**Which of the following statements relating to the appointment of company directors is CORRECT?**

A The first directors are the incorporators of the company and serve as the directors until the minimum required directors have been appointed

B Companies legislation makes provision for cumulative voting by shareholders

C When appointing directors, shareholders need to act in the best interests of the company

D At least 75% of the directors must be elected by the shareholders

**Question 13**

**Which of the following statements relating to the requirements of a valid contract is CORRECT?**

A Insolvency always affects a person's capacity to act

B A minor over the age of seven always needs the assistance of a guardian to perform juristic acts

C Unassisted contracts concluded by a prodigal are void

D Mistake with regard to a material fact, legal rule or principle will lead to the absence of consensus

**Question 14**

**Which of the following statements relating to debt instruments is CORRECT?**

A They include promissory notes and loans

B The issue by a company of any security other than a share is an issue of a debt instrument

C The courts have clearly defined what is a debenture and what is not

D Legislative restrictions apply on the manner in which a debt instrument is secured


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**Question 15**

**Which of the following statements about separate legal personality is CORRECT?**

A Disregard of separate legal personality is fully codified in legislation
B Incorporation of a company ensures perpetual succession
C Separate legal personality is absolute and can never be ignored
D Separate legal personality and limited liability are the same thing

**Question 16**

**In the context of the company secretary, which of the following statements is CORRECT?**

A In certain circumstances a juristic person or partnership may be appointed to hold the office of the company secretary
B All companies must appoint a company secretary
C A company secretary must report on an annual basis to the board of directors and the shareholders on the fulfilment of their duties
D A company secretary is required to have an accounting or legal qualification

**Question 17**

**Which of the following statements relating to distributions is CORRECT?**

A Distributions include a transfer of money or other property as well as the waiver of an obligation
B Conversion of shares into debt instruments is expressly regarded as a distribution
C The company's board of directors must initiate a distribution and shareholder approval is also required
D Prohibitions relating to a distribution can be provided for in the memorandum of incorporation


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**Question 18**

**Which of the following statements relating to fraudulent and reckless trading is/are CORRECT?**

(1) Fraudulent and reckless trading by a company as well as trading under insolvent circumstances are only regulated by the common law and not by legislation
(2) Fraudulent or reckless trading will result in personal liability of a director for any loss, damages or costs sustained by the company
(3) The common law provides for remedies with regard to reckless and fraudulent trading

A 1 and 3
B 2 and 3
C 1 only
D 2 only

**Question 19**

**Which of the following statements relating to types of company directors is CORRECT?**

A A nominee director can also be defined as a puppet director
B A non-executive director is only a part-time director and not an employee of the company
C A *de facto* director has not been validly appointed and can thus not act as a director
D A temporary director is subject to less duties than the other directors on the board as they will only serve for a short period of time


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**Question 20**

**In the context of the formation and constitution of companies, which of the following statements in relation to the amendment of the memorandum of incorporation is CORRECT?**

A It may be amended at any time by way of an ordinary resolution

B An amendment may be proposed by the board of directors or by a shareholder holding at least 10% of the voting rights that may be exercised on the matter

C An amendment takes effect as soon as it has been agreed at a formal meeting

D Any amendment must be approved at a formal meeting, in-person, with the appropriate quorum present

**Question 21**

**In the context of the South African legal system, which of the following statements is NOT CORRECT?**

A The appeal jurisdiction of the Supreme Court of Appeal is unlimited, subject to matters within the sole jurisdiction of the Constitutional Court

B One high court has to follow the decisions of another high court in all circumstances

C Magistrates' courts have limited jurisdiction and cannot hear a matter that falls within the jurisdiction of a higher court

D There is legislation assisting with the interpretation of statutes


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**Question 22**

**In the context of insider trading, which of the following statements is NOT CORRECT?**

A Inside information is defined in legislation as being specific or precise information, which has not been made public, is obtained or learned as an insider and if it were made public would be likely to have a material effect on the price or value of any securities listed on a regulated market

B Maintaining, at a level that is artificial, the price of a security listed on a regulated market is an example of a prohibited trading practice

C A detailed definition is provided, in legislation, as to what constitutes specific or precise information

D An insider includes someone who has inside information through being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates

**Question 23**

**In the context of sources of law, which of the following statements is CORRECT?**

A South African law has its origins in Roman law only

B South African law is based on a civil law system

C The works of old jurists are still authoritative in courts today

D Textbooks and journal articles are regarded as an authoritative source of law

**Question 24**

**Which of the following are duties of the audit committee?**

A To prepare the company's annual financial statements for submission to the board of directors

B To appoint and directly manage all employees in the finance department

C To nominate the external auditor and oversee the auditor's independence and performance

D To approve all company contracts and procurement processes


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**Question 25**

Hotel Group (Pty) Ltd is a company that owns various hotels and spas. The business was never particularly successful. Its directors, John and Karel, have been ordering household supplies on credit from Soft Silk Ltd for a long time. John and Karel have been aware that Hotel Group (Pty) Ltd has been making huge losses but nevertheless they have persisted in paying themselves excessive salaries.

**In view of these facts, which of the following statements is/are CORRECT?**

(1) John and Karel would be held personally liable as they carried on trading after it was clear that they ought to have known that there was no reasonable chance of the company avoiding insolvent liquidation
(2) In this context, knowingly means that there must be proof beyond reasonable doubt, that the person had knowledge of the facts in question
(3) Directors cannot be held personally liable under any circumstances due to the company being a separate legal entity

A 1 only
B 1 and 2
C 3 only
D 2 only

**Question 26**

**In the context of the formation and constitution of companies, which of the following statements in relation to company names is CORRECT?**

A The discretion to approve or reject a company name sits with the Registrar of Companies
B An application to approve and reserve a name must be made prior to registration of the company
C A company name may consist of words in any language
D The company registration number cannot be used as the name of the company under any circumstances


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**Question 27**

Audit for Life Inc, an auditing firm, had an auditing agreement with a public company. Audit for Life Inc audited its year-end financial statements but failed to discover accounting manipulations to hide unprofitability.

**Which of the following with regard to the law of delict is CORRECT?**

A Audit for Life Inc is not liable because the company must have better internal controls in place

B Audit for Life Inc is not liable because the company itself was at fault

C Audit for Life Inc is liable but the damages can be apportioned between the parties if negligence of the company can also be shown

D Audit for Life is liable because auditors have a duty of care to prevent fraud

**Question 28**

**Which of the following statements relating to business rescue proceedings is NOT CORRECT?**

A Generally, the plan must be published within 25 business days after the appointment of the business rescue practitioner

B A company resolution is always required to commence business rescue proceedings

C The directors remain directors during the proceedings but the business rescue practitioner has full management control over the company

D If the plan is adopted it binds the company, each creditor and every holder of the company's securities


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**Question 29**

Dave wants to purchase shares in Furniture for Life (Pty) Ltd. He does not have money available but he offers to sell some furniture, available from a previously unsuccessful business, to the company. He will then use that money to purchase shares in Furniture for Life (Pty) Ltd. The company wants to know whether this is allowed.

**In the context of the provision of financial assistance, which of the following statements is/are CORRECT?**

(1) A company can provide financial assistance only if 50% of the shareholders agree to it
(2) To give financial assistance, a company must satisfy solvency and liquidity tests
(3) There is a total prohibition on the provision of financial assistance by a company

A 2 only
B 1 and 2
C 3 only
D 1 only

**Question 30**

**Which of the following statements in relation to the composition of the audit committee is CORRECT?**

A It must consist of at least two directors, be that executive or non-executive directors
B It must consist of at least three members, all of whom must be independent non-executive directors
C It must consist of a minimum of three members, including at least one executive director
D It must consist of at least two members, who may include non-directors appointed by the shareholders


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**Question 31**

**Which of the following statements in relation to the law of passing off is CORRECT?**

A It is an example of unlawful competition and may concern the using of a competitor's distinctive mark
B It concerns an infringement of goodwill through untrue disparagement
C It occurs when there is a likelihood, beyond reasonable doubt, that members of the public may be confused into believing that the business of one trader is that of another
D When passing off can be proven, damages will be claimed

**Question 32**

**In the context of labour law, which of the following statements in relation to a contract of employment is CORRECT?**

A A contract of employment can only be terminated if the employee was at fault
B Wages or salaries must always be paid in cash rather than in kind
C On the sequestration or liquidation of the employer, the contract of employment is suspended
D Renewal of a contract of employment has to be in writing, it cannot be impliedly renewed

**Question 33**

**In the context of business rescue proceedings, which of the following statements is/are CORRECT?**

(1) The board of directors of a company may resolve that the company voluntarily begins business rescue proceedings and place the company under supervision
(2) The company must publish the business rescue plan, prepared by the practitioner, within 25 business days after the appointment of the practitioner
(3) A business rescue practitioner must be an admitted attorney of the High Court

A 1 and 2
B 2 and 3
C 1 and 3
D 2 only


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**Question 34**

**In the context of market abuse, which of the following statements is NOT CORRECT?**

A An example of market abuse is the engagement in prohibited trading practices

B The regulation of market manipulation or market abuse is fully codified in South Africa

C A 'wash sale' creates a false or deceptive appearance of trading activity in connection with a security

D Maintaining an artificial price for dealing in listed securities is an example of a deceptive trading practice

**Question 35**

**Which of the following statements relating to the nature of money laundering is NOT CORRECT?**

A The Prudent Authority applies a risk-based supervisory framework to identify, assess and understand the money laundering risks in the banking and life insurance sectors

B Money laundering typically happens in three stages, namely 'placement', 'layering' and 'integration'

C Money laundering can be in the form of concealment of the true source or the true source or ownership of the criminal proceeds or by converting illicit cash to another asset

D Allowing proceeds of crime to be laundered through your bank account, unknowingly, is not a criminal offence as fault is required

**Question 36**

**Which of the following companies are required to have a social and ethics committee in place?**

A Private companies regardless of size or activity

B All listed public companies, state owned companies, and certain other companies with a high public interest score

C Companies listed on the Johannesburg Stock Exchange

D Non-profit companies that receive public funding


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**Question 37**

**In the context of remedies for a breach of contract, which of the following statements is CORRECT?**

A Cancellation of a contract is always an option available to the innocent party in the case of a breach of contract

B The innocent party is entitled to damages as a remedy, whether they have cancelled the contract or claimed its execution

C There is no duty on an innocent party to mitigate damages

D Specific performance is an absolute remedy and can be made against a person whose estate has been sequestrated

**Question 38**

**Which of the following statements relating to classes of shares is NOT CORRECT?**

A The basic presumption is that all shares enjoy equal rights

B Shares that enjoy no preferred rights are classed as ordinary shares

C Cumulative preference shares give the holder a prior right to both arrears and current preference dividends

D Preference shareholders' rights cannot be restricted

**Question 39**

**Which of the following statements relating to the law of delict is CORRECT?**

A Causing damage to another will always result in delictual liability

B There are a fixed number of grounds of justification

C Fault includes intent as well as negligence

D An act, as an element of a delict, has to be a wilful act, omissions are not included


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**Question 40**

**In the context of the law of agency, which of the following statements is NOT CORRECT?**

A An agent may renounce their authority at any time on just grounds
B An agent's authority may include the authority to delegate
C Authorisation to act as an agent must always be given expressly and in writing
D Rights acquired, and duties assumed by the agent, will be for the principal and not the agent

**Question 41**

Josh and Joe are partners who own several jewellery shops. While on a business trip to India, Josh comes across a goldsmith business that specialises in handmade exotic gold necklaces and he buys a large quantity of them to sell in South Africa. Upon his return, he opens a separate shop in his sole name from which to sell the necklaces. Joe discovers this and is aggrieved.

**In view of these facts, which of the following statements is/are CORRECT?**

(1) Having decided to buy the necklaces, Josh was obliged to do so on behalf of the partnership
(2) Josh is never allowed to carry on a business in competition with the partnership
(3) Josh is obliged to share with Joe any profits from the sale of the necklaces

A 1 only
B 1 and 3
C 3 only
D 2


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**Question 42**

**In the context of labour law, which of the following statements is CORRECT?**

A Incapacity relates to poor work performance based on some fault of the employee
B Dismissal based on participating in a protected strike is automatically unfair
C The employee bears the onus of proving that there has been a dismissal and that it was unfair
D Constructive dismissal can never be unfair as it is the employee who terminates the employee relationship

**Question 43**

**In the context of the contract of employment, which of the following statements is CORRECT?**

A An employee working overtime has to be paid at least double for that work
B Overtime work has to be agreed between both parties and it is limited to ten hours per week
C An employer is obliged to give a pregnant employee four months of paid maternity leave
D An employer may never expect an employee to work on Sundays

**Question 44**

**In the context of private and public law, which of the following statements is NOT CORRECT?**

A Private law consists of legal rules which govern the relationship between the state and its citizens
B Family law and the law of persons fall under private law
C Criminal law, international law and constitutional law are all public law subjects
D Patrimonial law falls under private law and it relates to a person's rights and duties which may be valued in money


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**Question 45**

**Which of the following statements relating to money laundering is NOT CORRECT?**

A Money laundering is the process used by criminals to hide, conceal or disguise the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds

B For the money laundering control procedures to be effective, legislation prescribes that accountable institutions, such as a person who carries on the business of dealing in foreign exchange, must know who they do business with

C Long-term insurance and investment in unit trusts are examples of financial transactions that must be reported by institutions

D Legislation makes provision for a supervisory body who is responsible for the monitoring of compliance, guidance and onsite visits of accountable institutions

**Question 46**

**In the context of labour law, which of the following statements is NOT CORRECT?**

A A dismissal cannot be automatically unfair, since the employee bears the onus to prove that it was unfair

B An employer may have good reasons for differentiating between employees, such as experience and difficulty of the job

C The conduct of an employer can constitute discrimination but it will not necessarily be unfair

D Ill heath can result in a dismissal


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**Question 47**

**In relation to the law of contract, which of the following statements relating to contract formation is CORRECT?**

A The general rule is that no formalities are required for the formation of a contract

B A contract which restricts a person's freedom to participate in trade is not enforceable

C A person becomes a major and so can then conclude any lawful contract when they reach the age of 16

D A contract that has been orally concluded must be reduced to writing

**Question 48**

**In the context of company liquidation, which of the following statements is NOT CORRECT?**

A A solvent company may be dissolved by way of a voluntary liquidation initiated by the company itself or by a court order

B An ordinary resolution is necessary to liquidate a company voluntarily

C A court has discretion as to whether or not to grant a winding-up order and will not merely do so based on any resolution that may have been passed

D Prior to filing a resolution to voluntarily liquidate a company, security must be arranged for payment of the company's debts within a maximum of 12 months after the commencement of the liquidation

**Question 49**

**In the context of the protection of intellectual property, which of the following statements is NOT CORRECT?**

A Literary works, musical works and artistic works can all be subject to copyright

B The two inherent requirements for the existence of copyright is originality and material embodiment

C A scientific theory, a mathematical method and a discovery are all examples of inventions that can be patented

D In certain instances, copyright infringement can be a criminal offence


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**Question 50**

**In the context of the law of contract, which of the following statements is NOT CORRECT?**

A Generally, an advertisement or display constitutes an offer

B If the offeror or the offeree dies before the offer is accepted, the offer falls away, the rights and duties do not pass to the deceased's estate

C An offer and acceptance can be made tacitly, expressly or by way of conduct

D An offer and acceptance for the purchase or donation of land must be made in writing


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