Question	Correct Answer	Marks
1	**C** **A contribution made by a partner may be in the form of services or knowledge and skill** A partnership is not a separate legal entity with separate legal personality. It is only in certain instances treated by the law as if it is a separate legal entity. A change in membership terminates the partnership. Each partner must contribute something or undertake to contribute something to the partnership. This may be in the form of capital, services, knowledge or skills.	2
2	**B** ***Naturalia* are terms which the law attaches to every contract of a particular class** *Naturalia* help to determine the rights and duties of contracting parties and the effects and consequences of their contracts. They can generally be excluded by the parties by agreement.	2
3	**C** **Juristic persons and partnerships cannot be held criminally liable for insider trading offences** Criminal and civil liability is no longer confined to natural persons; it has been extended to juristic persons as well as partnerships and trusts.	2
4	**C** **An entrenchment clause is not valid as the parties can always amend an agreement orally if they are in agreement** An entrenchment clause is a valid clause making provision that an agreement can only be amended by means of a written amendment.	2
5	**D** **International law is an authoritative source of law** International law is not regarded as an authoritative source of law; it only has persuasive authority.	2

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6	**C** **It must have at least two and no more than 50 shareholders** There is no requirement as to the number of members (minimum or maximum). Previously a public company had to have at least seven members.	2
7	**A** **Cara will be able to claim damages as the additional costs are a direct result of Ben's breach of contract** A plaintiff is not automatically entitled to damages merely because a breach of contract occurred. Cara must prove that she actually sustained damages as well as the extent of her loss. The damages must be the direct result of the breach of contract. Even if the damages were caused by the breach of contract, only such damages may be claimed which were actually foreseen or should reasonably have been foreseen by the parties at the time they made the contract.	2
8	**A** **An agreement restraining a person's freedom to trade is always valid and enforceable** An agreement which misuses the administration of justice is contrary to public policy. An agreement depriving a contracting party of any, and all, opportunity to defend themselves is void (not voidable). Contracts restraining a person's freedom to trade are, in principle, valid and enforceable but will not be enforced if contrary to public policy.	2
9	**A** **South African legislation specifically defines bribery** Bribery is not specifically defined in legislation.	2
10	**C** **Directors' duties are partially codified in legislation, and the common law still applies** Directors' duties have been partially codified in South Africa (as opposed to fully) and the common law still applies. It is thus not an exhaustive list of duties; the object is to make the law clearer and more accessible. A shadow director can, in certain circumstances, be subject to directors' duties.	2

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11	**D** **The courts use the organisation test to determine whether a worker is an employee or an independent contractor** The courts make use of the multiple or dominant impression test to distinguish between an employment contract and other contracts which involve the provision of work. This test looks at the employment relationship as a whole, rather than looking at a single factor such as control or integration.	2
12	**A** **The first directors are the incorporators of the company and serve as the directors until the minimum required directors have been appointed** Shareholders can act in their own best interests when appointing directors. At least 50% of the directors must be elected by the directors. The first directors are the incorporators of the company and serve as the directors until the minimum required directors have been appointed.	2
13	**D** **Mistake with regard to a material fact, legal rule or principle will lead to the absence of consensus** A contract will be void on the ground of mistake if the mistake relates to a fact, a legal rule or principle, it is material and the mistake is reasonable.	2
14	**B** **The issue by a company of any security other than a share is an issue of a debt instrument** Debt instruments are governed by s.43 Companies Act, 2008 and it does not include promissory notes or loans.	2
15	**B** **Incorporation of a company ensures perpetual succession** A company enjoys perpetual succession, which means that notwithstanding changes in its membership, through a transfer of shares or death, the company retains its legal identity and continues to survive.	2

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16	**A** **In certain circumstances a juristic person or partnership may be appointed to hold the office the company secretary** A juristic person or partnership may be appointed as a company secretary provided that no employee or partner is disqualified from serving as a director.	2
17	**A** **Distributions include a transfer of money or other property as well as the waiver of an obligation** The Companies Act 2008 defines what will qualify as a distribution. A distribution must be authorised by the company's board of directors unless the distribution is pursuant to an existing obligation of the company or a court order. No shareholder approval is required.	2
18	**B** **2 and 3** Fraudulent, reckless and insolvent trading is regulated in s.22 Companies Act 2008. It does, however, not replace any common law remedies that may apply to the same set of facts or circumstances.	2
19	**B** **A non-executive director is only a part-time director and not an employee of the company** A *de facto* director will qualify as a director under certain circumstances and will be subject to directors' duties. Temporary directors are subject to directors' duties. A non-executive director is only a part-time director and not an employee of the company. This is different from an executive director, who is also an employee.	2
20	**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** These are the two ways in which an amendment can be authorised; by the board of directors or by a shareholder holding at least 10% of the voting rights that may be exercised on the matter. This amendment must then be approved by a special resolution.	2

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21	**B** **One high court has to follow the decisions of another high court in all circumstances** The *stare decisis* doctrine applies in South African law, meaning the 'decision stands'. South African courts follow a middle course in this regard, as a court is bound by its own decisions unless, and until, they are overruled by a superior court. There is legislation to assist in the interpretation of legislation. One high court does not have to follow the decision of another high court as they belong to different areas of jurisdiction, however, a court will not depart from a decision without good reason.	2
22	**C** **A detailed definition is provided, in legislation, as to what constitutes specific or precise information** Inside information is defined in the Financial Markets Act 2012 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 it would be likely to have a material effect on the price or value of any securities listed on a regulated market. There is no definition of what is specific or precise.	2
23	**C** **The works of old jurists are still authoritative in courts today** Roman and Roman-Dutch law play an important role in the development of South African law. The works of old jurists of Holland are still authoritative in the courts today.	2
24	**C** **To nominate the external auditor and oversee the auditor's independence and performance** The audit committee is responsible for overseeing the external audit process, including nominating the auditor, ensuring their independence, and monitoring their effectiveness as required by s.94 Companies Act, 2008.	2

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25	**A** **1 only** 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. The burden of proof to establish knowingly is on the balance of probabilities, not beyond reasonable doubt.	2
26	**C** **A company name may consist of words in any language** A company name may consist of words in any language. The company registration number may also be used, as long as it is followed with the expression, South Africa.	2
27	**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** The company will usually be able to choose between suing its auditor for breach of contract or in delict, as the same conduct on the part of the auditor is usually actionable on either of these two grounds. If the company couch its action for damages against the auditor in delict the elements of delictual liability must be proved before the auditor can incur any liability and apportionment of loss is possible.	2
28	**B** **A company resolution is always required to commence business rescue proceedings** Business rescue proceedings can commence by way of a resolution of the board of directors to voluntarily begin the proceedings, or they can be commenced by way of a court order (applied by an affected person).	2

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29	**A** **2 only** Financial assistance for the acquisition of a company's securities is regulated in legislation. If a company buys an asset from the person in order to enable that person to purchase shares in the company, it will depend on the facts whether there was financial assistance. Factors considered are whether the company needs the asset in its normal business and whether the company paid a fair price for it.	2
30	**B** **It must consist of at least three members, all of whom must be independent non-executive directors** Section 94 Companies Act, 2008 requires that an audit committee must consist of at least three members who must be directors of the company and must not be: (i) involved in the day-to-day management of the company's business or have been so involved at any time during the previous financial year, (ii) a prescribed officer, or full-time employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years, or (iii) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship and (iv) not be related to anybody who falls within the aforementioned criteria.	2
31	**A** **It is an example of unlawful competition and may concern the using of a competitor's distinctive mark** Passing off is the most common form of unlawful competition. The use or imitation of a competitor's distinctive mark may constitute passing off. Actual competition is not required. Potential competition will be sufficient. An interdict is normally asked for, not damages.	2

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32	**C** **On the sequestration or liquidation of the employer, the contract of employment is suspended** Suspension of a contract of employment is provided for in the Insolvency Act 1936 should the employer be sequestrated or liquidated. The effect of this is that employees are not required to tender their services and employers are not required to remunerate employees.	2
33	**A** **1 and 2** A business rescue practitioner does not have to be an admitted attorney; such a person must, however, be of good standing in legal, accounting or business management.	2
34	**B** **The regulation of market manipulation or market abuse is fully codified in South Africa** The regulation of market manipulation or market abuse is not fully codified; the common law still applies.	2
35	**D** **Allowing proceeds of crime to be laundered through your bank account, unknowingly, is not a criminal offence as fault is required** It is irrelevant whether the holder of the bank account had knowledge of the money laundering or not.	2
36	**B** **All listed public companies, state owned companies, and certain other companies with a high public interest score** Regulation 43 of the Companies Regulations, 2011, requires all listed public companies, state owned companies, and other companies with a public interest score above 500 to establish a social and ethics committee.	2

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37	**B** **The innocent party is entitled to damages as a remedy, whether they have cancelled the contract or claimed its execution** Damages are available irrespective of the form of the breach of contract. The idea is that by paying damages the innocent party must be placed in the position they would have been had the contract indeed been carried out.	2
38	**D** **Preference shareholders' rights cannot be restricted** Preferential shareholders' rights can be restricted, for example, the right to surplus.	2
39	**C** **Fault includes intent as well as negligence** The elements of a delict are an act, unlawfulness, fault, causation and damage or injury. Fault includes negligence as well as intent. Causing damage is not sufficient to establish delictual liability, as further requirements must be present before delictual liability can follow.	2
40	**C** **Authorisation to act as an agent must always be given expressly and in writing** Authority to act as an agent may be express or implied by law or on the facts.	2
41	**B** **1 and 3** A partner may not, without permission, carry on a business in competition with the partnership. They may not coax away partnership clients or use partnership information for their own account or compete in any way with the partnership. A partner must disclose all information that affects the partnership to their co-partners. If a partner possesses information regarding a business opportunity that falls within the scope of the partnership business, they must disclose the information. Information which a partner possesses and which can influence a decision of the partners must also be disclosed.	2

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42	**B** **Dismissal based on participating in a protected strike is automatically unfair** Some dismissals are automatically unfair where they infringe a basic human right. The Labour Relations Act 1995 lists these dismissals and a dismissal concerning a protected strike or protest action as automatically unfair.	2
43	**B** **Overtime work has to be agreed between both parties, and it is limited to ten hours per week** Overtime work should be at 1·5 of the usual rate and overtime on Sundays is not prohibited. As a minimum, an employee is entitled to four months' consecutive maternity leave but there is no provision for paid maternity leave. This can be arranged through an individual or collective agreement. Limited benefits are also available under the employment insurance fund, subject to contributions being made.	2
44	**A** **Private law consists of legal rules which govern the relationship between the state and its citizens** Public law consists of legal rules which govern the relationship between the state and its citizens. Private law consists of legal rules which govern the relationship between citizens in their dealings with each other.	2
45	**C** **Long-term insurance and investment in unit trusts are examples of financial transactions that must be reported by institutions** In terms of the Financial Intelligence Centre Act 2001, all accountable institutions are obliged to report certain financial transactions of a specific threshold or frequency of occurrence. Several exceptions relating to long-term insurance such as life, disability or medical policies and investment in unit trusts or on the stock exchange such as pension funds, retirement annuities or provident funds are exempt from reporting.	2

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46	**A** **A dismissal cannot be automatically unfair, since the employee bears the onus to prove that it was unfair** In certain instances, a dismissal can be automatically unfair. A court or arbitrator will then normally not have a discretion in deciding the fairness of such a dismissal.	2
47	**A** **The general rule is that no formalities are required for the formation of a contract** Generally, no formalities are required when concluding a contract. In most cases informal contracts are binding and validly concluded without the observation of any formalities.	2
48	**B** **An ordinary resolution is necessary to liquidate a company voluntarily** A special resolution is required for a voluntary liquidation of a solvent company.	2
49	**C** **A scientific theory, a mathematical method and a discovery are all examples of inventions that can be patented** A scientific theory, a mathematical method and a discovery are not inventions and cannot be patented. A patent may be granted for any new invention which involves an inventive step and which is capable of being used or applied in trade or industry or agriculture.	2
50	**A** **Generally, an advertisement or display constitutes an offer** The general rule is that an advertisement or a display in itself does not constitute an offer but rather an invitation to do business. An offer must be addressed to a particular person or persons, or in general to an unknown person or to the general public. No rights or duties are transferred to the deceased's estate unless the offer expressly or impliedly permits acceptance by, or to, the executor of the deceased's estate.	2

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