

UNIVERSITY EXAMINATIONS

**MRL2601****Entrepreneurial Law****100 Marks**
Duration: 24 HoursFirst examiner: **PROF J GELDENHUYS**
Second examiner: **DR V MADLELA****QUESTION 1****12 MARKS**

Themba, who was a manager of the Men's Club, approached the Commission for Conciliation, Mediation and Arbitration (the CCMA) seeking severance pay after he was retrenched. The trade union that he belongs to was informed that he was not employed by the Men's Club, but that he was in fact employed by a close corporation named Bad Boys CC. The trade union duly cited Bad Boys CC as the respondent in a referral to the CCMA. The sole member of Bad Boys CC, Tendai Munyai, during conciliation indicated that the Men's Club was insolvent and that Themba had been dismissed for operational reasons. The commissioner advised Themba to refer an unfair dismissal dispute. When the matter was referred for arbitration, both the Men's Club and Bad Boys CC were cited as respondents. After hearing the matter, the commissioner ordered Bad Boys CC to pay Themba an amount of R250 000 for his unfair dismissal. However, it was discovered that Bad Boys CC had no assets. In fact, Tendai Munyai who also participated in the running of the business had provided financial assistance to Bad Boys CC and he had secured claims against the close corporation for repayment of the loan amounts.

Themba intends to seek an order from the Labour Court to the effect that Tendai Munyai was his true employer and that he must pay him the amount of R250 000. With reference to the relevant legislation and case law, indicate what Themba would have to prove in order to hold Tendai Munyai liable.

(12)

Maximum 12 marks

- Section 65 of the Close Corporations Act 69 of 1984 has to be discussed and applied to the fact.
- Case law had to be discussed (here the question dealt with a close corporation and the following prescribed cases were relevant:
- *s (Pty) Ltd and another v Telefon Beverages CC and others, Le' Bergo Fashions CC v Lee and another, Haygro Catering BK v Van der Merwe en Andere* and *Airport Cold*

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Table of Contents Memorandum Fo Pyc15oct Nov 2014 Paper

1. Understanding the eBook Memorandum Fo Pyc15oct Nov 2014 Paper
 - The Rise of Digital Reading Memorandum Fo Pyc15oct Nov 2014 Paper
 - Advantages of eBooks Over Traditional Books
2. Identifying Memorandum Fo Pyc15oct Nov 2014 Paper
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Memorandum Fo Pyc15oct Nov 2014 Paper
 - User-Friendly Interface
4. Exploring eBook Recommendations from Memorandum Fo Pyc15oct Nov 2014 Paper
 - Personalized Recommendations
 - Memorandum Fo Pyc15oct Nov 2014 Paper User Reviews and Ratings
 - Memorandum Fo Pyc15oct Nov 2014 Paper and Bestseller Lists
5. Accessing Memorandum Fo Pyc15oct Nov 2014 Paper Free and Paid eBooks

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 - Memorandum Fo Pyc15oct Nov 2014 Paper eBook Subscription Services
 - Memorandum Fo Pyc15oct Nov 2014 Paper Budget-Friendly Options
6. Navigating Memorandum Fo Pyc15oct Nov 2014 Paper eBook Formats
- ePub, PDF, MOBI, and More
 - Memorandum Fo Pyc15oct Nov 2014 Paper Compatibility with Devices
 - Memorandum Fo Pyc15oct Nov 2014 Paper Enhanced eBook Features
7. Enhancing Your Reading Experience
- Adjustable Fonts and Text Sizes of Memorandum Fo Pyc15oct Nov 2014 Paper
 - Highlighting and Note-Taking Memorandum Fo Pyc15oct Nov 2014 Paper
 - Interactive Elements Memorandum Fo Pyc15oct Nov 2014 Paper
8. Staying Engaged with Memorandum Fo Pyc15oct Nov 2014 Paper
- Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Memorandum Fo Pyc15oct Nov 2014 Paper
9. Balancing eBooks and Physical Books Memorandum Fo Pyc15oct Nov 2014 Paper
- Benefits of a Digital Library
 - Creating a Diverse Reading Collection Memorandum Fo Pyc15oct Nov 2014 Paper
10. Overcoming Reading Challenges
- Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Memorandum Fo Pyc15oct Nov 2014 Paper
- Setting Reading Goals Memorandum Fo Pyc15oct Nov 2014 Paper
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Memorandum Fo Pyc15oct Nov 2014 Paper
- Fact-Checking eBook Content of Memorandum Fo Pyc15oct Nov 2014 Paper
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
- Utilizing eBooks for Skill Development

- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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