

ATTORNEYS' EXAMINATION

PART 3 ATTORNEYS' PRACTICE

5 NOVEMBER 2020

09:00-11:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1 **[8]**

An employer may dismiss employees due to operational requirements.

- 1.1 On what must these requirements be based in terms of the Labour Relations Act? (4)
- 1.2 Name four alternatives to retrenchment that the employer should consider. (4)

QUESTION 2 **[4]**

What are the essential matters on which parties must agree in order to create a valid partnership?

QUESTION 3 **[4]**

The Electronic Communications and Transactions Act makes electronic signatures possible in some cases. Name four common legal documents in which an electronic signature would not suffice.

QUESTION 4 **[18]**

A wishes to acquire a property which is owned by a private company. He is advised to rather purchase the shares in the company.

- 4.1 Draft the warranties that A would reasonably require the seller/s of the shares to give purchaser. (10)
- 4.2 Draft a clause providing for the delivery by the seller to A of the appropriate documents (which should be described). (8)

Assume that Section 4 and 112 of the Act do not apply.

QUESTION 5 **[22]**

Chapter 6 and Regulation 6 of the Companies Act deal with a relatively new concept ... Business Rescue (BR). Explain briefly the following aspects of this process:

- 5.1 The purpose and objectives of BR; (8)
- 5.2 How BR proceedings can be initiated; (2)
- 5.3 Who can object to voluntary BR, and (4)
- 5.4 On what grounds? (3)
- 5.5 BR places a moratorium on most legal proceedings. In which circumstances may proceedings commence or proceed? (5)

(Do not deal with BR practitioners in your answers)

QUESTION 6**[15]**

Draft a clause which can be used in commercial agreements to deal with service of process and giving of notices including electronic means. (Assume that neither Credit nor Consumer Protection Act apply).

QUESTION 7**[20]**

Is it permissible for a legal practitioner to:

- 7.1 Act as such in the collection of a debt due to a person of whom he/she is the *curator bonis*, defended/not defended; (3)
- 7.2 Defend a claim against a deceased estate in which he/she is the executor; (2)
- 7.3 Act for both parties to an Antenuptial contract; (2)
- 7.4 Sue a colleague. If so, how; if not, why not; (3)
- 7.5 Start acting for a client who is unhappy with the services of a colleague in a litigious matter; if so how; if not, why not; (2)
- 7.6 Divulge confidential information about a client to client's executor, curator, trustee; (3)
- 7.7 Act for both parties in a divorce matter where the parties have separate assets, income, no children and occupy leased property if they consent in writing being aware of the potential conflicts. (5)

QUESTION 8**[5]**

You successfully handled an interim application for client in the course of a civil matter in the Magistrate's Court. May you now tax a bill in respect of the proceedings?

QUESTION 9**[4]**

Complete the following *allocatur* in the Magistrate's Court. You are not registered for VAT. Explain your calculation.

	FEES	DISBURSEMENTS
	R10 000.00	R4 500.00
Less taxed off	R4 500.00	R2 000.00

- THE END -
