

**ADMISSION EXAMINATION
ATTORNEYS' PRACTICE
PART 3**

20 OCTOBER 2021

MEMORANDUM

**PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY
NOT BE A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE
MOMENT OF READING.**

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

SECTION A

QUESTION 1 **[9]**

Note: *too many examples indicate lack of understanding or of drafting ability*

- 1.1 A person who displays the characteristics of honesty, integrity and reliability; (2)
- 1.2 Anything which is likely to affect your judgment adversely in advising or representing your client; (2)
- 1.3 It is a rule of evidence that an attorney may not disclose to the Court without the consent of the client information given to him for purpose of legal advice or representation. (2)
- 1.4 Lack of expertise/qualification/experience (1) danger of a conflict of interest (1); mandate to do or assist in the doing of something illegal or improper (1).

QUESTION 2 **[6]**

- A contingency fee agreement. (1)
- It is governed by the Contingency Fee Act 66 of 1997. (1)
- An attorney is entitled to charge double his normal fee, (1)
- up to a maximum of 25%, (1)
- of the total amount awarded, whichever is the lesser. (2)

QUESTION 3**[6]**

Damage client: (½)	R500 000	80%	=	R400 000 (1)
Damage defendant: (½)	R600 000	20%	=	R120 000 (1)
Netto award to client			=	R280 000 (1)
25% of award (1)			=	R70 000 (1)

QUESTION 4**[11]**

- 4.1 Yes (1), B can accept the mandate, if he is comfortable with the matter (1), and if he has enough experience and/or expertise within the firm to render the service (1). B must however, still charge fees, as the favour is to assist, not to do it *pro bono* (1).
- 4.2 This question is an ethical question. Each person has a constitutional right to plead not guilty (1) (no duty to assist the State to prove their guilt) and a right to legal representation and a fair trial. Thus, despite a Legal Practitioner having a duty not to mislead the Court (1) he/she may still represent an accused client knowing due to the admission, that the client is in fact guilty of the offence and yet wants to plead not guilty (1).

However, to remain ethical, the Legal Practitioner must conduct the trial in a very specific manner (½). The accused may offer no plea explanation (½) (thus exercising his Constitutional right to silence). During cross-examination of the State witness(es), the Legal Practitioner may not put any false statement to the witness(es). The Legal Practitioner may effectively test the credibility of the State witness(es) and in doing so be conducting the trial in a way to ensure that his/her client has a fair trial (1).

At the close of the State's case, the Legal Practitioner may, if appropriate, apply for a Section 174 discharge (½). If discharge was refused, or it was not appropriate to apply for, the accused's case must be closed without leading any evidence either by the accused or any witnesses and argument follows on the evidence lead by the State alone (1). The Legal Practitioner would have to try to argue that the state has failed to prove the accused's guilt beyond reasonable doubt (½.)

QUESTION 5**[9]**

- 5.1 The Fund was established to reimburse members of the public (½) who suffer financial loss due (½) to the theft by an attorney, his employee or candidate (½) of money or property entrusted to that attorney (½).
- 5.2.1 The trust creditor cannot claim against the bank (1) as it is not the Bank's customers; (1)
- 5.2.2 There can also be no claim against the Fund, (1) this loss is not covered by the LPFF;(1)

- 5.2.3 The attorney is liable to make good any trust shortfall (1). If the bank goes insolvent, he would be liable to repay all monies due to the trust creditor (1).
- 5.3 No. The attorney can institute a claim as a concurrent creditor in the insolvent estate of the bank (1).

QUESTION 6 **[6]**

An attorney who has allowed a claim to prescribe in his hands should:

- 6.1 Inform the client of the fact at once; (1)
- 6.2 Advise the client to consult another attorney regarding his rights in respect of both the prescribed claim and subsequent action; (1)
- 6.3 Not admit liability in order not to vitiate insurance cover with the LPIIF and his own insurers; (1)
- 6.4 Report the full facts to the LPIIF and private insurer; (1)
- 6.5 Consider whether it may be wise to settle the matter himself if the amount is not too high and if there may be contributory negligence; (1)
- 6.6 Co-operate with the attorneys for the insurers; (1)
- 6.7 There is no need to report the claim to the LPC but if there is a complaint, then he must respond. (1)

Any of the above to a maximum of 6 marks.

SECTION B

QUESTION 1 **[25]**

1.1.1 SUSPENSIVE CONDITION (1)

This agreement is conditional upon the purchaser obtaining a bond for 80% of the purchase price from a financial institution (1), within 30 days from date hereof (1). If the bond is not obtained this agreement shall be null and void (1) and neither party shall have any claim against the other arising here from (1).

1.1.2 RESOLUTIVE CONDITION (1)

Should the purchaser be advised in writing (1) that his application for a bond for 80% of the purchase price has been unsuccessful or should the purchaser not be successful in obtaining the said bond within 21 days from date of signature hereof (1) this agreement shall terminate (1) and each party shall, insofar as any terms of this agreement have been implemented, be obliged to restore the other into the same position as he would have been had the agreement never been concluded (1).

- 1.2.1 The issue involved in this question is the indemnity of the seller by the purchaser. If the seller has employed agents and is likely to be responsible towards them for

commission. He must be sure that the purchaser who approaches him directly has not in fact been introduced by an agent. In addition, it is likely that if the seller sells directly, he will have discussed a reduction in the purchase price because he will be relieved of paying commission. These factors must be taken into consideration. The answer should be along the lines:

- 1.2.1.1 The purchaser confirms that this contract was entered into without the purchaser having been introduced to the seller directly or indirectly ($\frac{1}{2}$) by any estate agent and that no agent was the effective cause for the conclusion of this contract of sale ($\frac{1}{2}$).
- 1.2.2.2 As a result of the sale by the seller to the purchaser on these grounds ($\frac{1}{2}$) the purchase price has been reduced by an amount equal to the expected agent's commission ($\frac{1}{2}$).
- 1.2.2.3 The purchaser consequently indemnifies the seller ($\frac{1}{2}$) against any legitimate claim which may be brought against the seller for agent's commission arising from this sale (1). The seller shall call upon the purchaser to assist the seller in any actual or threatened litigation arising from any claim for commission and shall put the seller in funds to do so ($\frac{1}{2}$). The seller shall however be free to decide on the best manner of settlement of any such action ($\frac{1}{2}$). Any costs or charges including legal fees on all scales and any capital sum payable shall be recoverable from the purchaser as liquidated damages ($\frac{1}{2}$).
- 1.3.1 Yes (1). In terms of Section 29A of the Alienation of Land Act (the cooling-off clause) he may cancel the agreement within 5 days (1).

1.3.2 PURCHASER'S RIGHT TO CANCEL

Subject to the provisions of Section 29A of the Alienation of Land Act No. 68 of 1981, the purchaser is entitled to cancel this agreement; (1)

- a. by way of a written notice, (1)
 - b. delivered to the seller or its agent, (1)
 - c. within 5 (five) days of signature of this agreement by the purchaser. (1)
Provided that the notice; (1)
- a. is signed by the purchaser or its agent authorised in writing, (1)
 - b. clearly identifies this agreement; (1)
 - c. and is unconditional. (1)

QUESTION 2

[14]

PROHIBITION ON ALIENATION

- 2.1 The grantor may not alienate the property for a period of thirty (30) days after informing the grantee of an offer which the grantor is prepared to accept unless (1)

- 2.1.1 he has first offered to sell it to the grantee as set out in this Agreement; (1)
- 2.1.2 the grantee has either refused the offer or failed to accept it timeously or in the manner prescribed in as set out in this Agreement, and (2)
- 2.1.3 the price payable to the grantor by any other buyer is not less than the market value as set out in 2.2; (2)

2.2 OFFER BY GRANTOR

The offer referred to within this Agreement must:

- 2.2.1 be open for acceptance by the grantee for a period of 30 (thirty) days following the date of receipt of the offer by the grantee; (1)
- 2.2.2 stipulate the price, which must be the reasonable market value of the property. "Reasonable market value" for these purposes means the average of written valuations of two estate agents (selected by the grantor) carrying on business in the magisterial district of Happyland). Copies of the valuations must be attached to the offer or the price which grantor is prepared to accept from a third party; (5)

2.3 ACCEPTANCE BY GRANTEE

Acceptance of the offer by the grantee must be:

- 2.3.1 in writing; (1)
- 2.3.2 unconditional, save that the grantee may stipulate that payment of the price will be subject to first obtaining a loan against the security of a first mortgage bond over the property. (1)

QUESTION 3 **[6]**

- 3.1 It is not possible to sign for a trust still to be established (1). After the trust is created the trustee must first receive letters of authority / appointment to act (1).
- 3.2 If, within three months from the date of incorporation of the company (1), the buyer has not been incorporated (1), or having been incorporated has failed for any reason to adopt this agreement (1) then A will personally be deemed to be the buyer in terms of the agreement (1).

QUESTION 4 **[8]**

- 4.1 Those assets vest in the Master (1) and then in the trustee (1). Spouse may obtain release (1) by proving his ownership usually by affidavit (1) and if necessary by High Court application (1).
Section 24 of Insolvency Act (5)
- 4.2 Spouses of a marriage in community of property remain bound and liable for debts incurred during the subsistence of the marriage, (1) after the dissolution of the marriage, subject to the proviso that the debts were incurred with the requisite lawful consent of both parties. (1) See generally ***BP South Africa (Pty) Ltd v Viljoen en 'n ander 2000 (5) SA 630 (O)***. (1) (3)

TOTAL: [100]