

ATTORNEYS' EXAMINATION

PART 3 ATTORNEYS' PRACTICE

16 MARCH 2022

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 if 50% or more is attained. If a candidate achieves a score from 40% and below 50% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

PART A

QUESTION 1

[84]

Your client Mr A, a local affluent businessman, who is in the grocery business, wants to purchase a grocery store that is currently a flourishing business in Gauteng from Mr B. The store has been in operation for ten years and is a registered vendor for Value Added Tax (VAT) purposes.

Mr A has considered various enterprise forms and has been advised by his bookkeeper to set up a company who will be the purchaser of the grocery store. Mr A and his wife whom he is married to out of community of property, will be the only shareholders and directors in the company to be incorporated.

1. List the forms of companies that can be formed and incorporated in terms of the Companies Act 71 of 2008. (5)
2. Which company form will you advise Mr A to incorporate for his new venture? (2)
3. Section 76 of the Companies Act 71 of 2008 (as amended) addresses the standard of conduct expected from directors and extends it beyond the common law duty. Name 4 (four) instances in terms of which a director is compelled to exercise this standard of conduct. Do not give examples. (4)
4. Draft the clause in the Sale of Business Agreement between Mr A's company and the seller of the grocery store that deals with VAT. Accept that both parties will be VAT vendors and that the enterprise is sold as a going concern. (5)
5. Section 197 of the Labour Relations Act (the LRA) deals with the transfer of a business as a going concern and amends certain common law principles. What, briefly, are the effects of Section 197 of the LRA on the parties, including the employees? (5)
6. Mr A wants to ensure that he is able to minimize the competition in the market of groceries. Hence he requests your advice on an appropriate way to address this in the Sale of Business Agreement that limits the Seller from trading in a similar kind of business in competition to Mr A. Draft the clause, with a heading in order to accommodate Mr A's concerns. (5)
7. Mr A has been informed by a friend of his, that if the Sale of the Business is not advertised, there may be legal implications that can affect the validity of the sale.

Explain to Mr A:

- 7.1 The requirements for the advertisement. (5)
- 7.2 The reasons for the advertisement. (4)
- 7.3 What is the proviso in 7.2 intending to prevent in terms of the Seller and Purchaser from doing? (2)

- 7.4 The effects of not advertising the Sale of Business in so far as the Purchaser is concerned. (2)
- 7.5 The effects of advertising the Sale of Business. (3)
8. Draft the notice that must be published as per question 7 above. (5)
9. Mr A notices that you have very little furniture in your office and upon enquiry, you inform him that you have a cash flow problem hence you are unable to buy more furniture currently. Mr A offers to lend you money for your office furniture. You would like to borrow the money from him.
- 9.1 Would you borrow the money from Mr A? (1)
- 9.2 Discuss how you would handle the offer. (4)
10. Mr A has successfully taken over the business as per your advice above, and a few months later, consults with you. There are some debtors that are not paying for the groceries as purchased. He brings you a list of monies due and owing to him by various debtors and instructs you to proceed against them by issuing summons.

Matter 1

- 10.1 You realise that there is a debt that has prescribed. You explain this to Mr A, as you are of the view that the claim will not succeed, but he insists that you proceed and issue summons. May you issue the summons? How will you explain the situation to your client, Mr A? (3)

Matter 2

- 10.2 On one of the other collections, you proceed with an application for summary judgment. You have drawn up an affidavit in support of your application. No other Commissioner of Oaths is available, except for a partner from your Law Firm. May he/she administer the oath? (3)
- 10.3 Would the position be different if it were a Conveyancing matter? Explain. (2)

Matter 3

- 10.4 You have proceeded to issue summons, and the debtors, Mr and Mrs X, who are married in community of property, offer to pay off their debt of R200 000,00, in equal monthly installments over a period of 20 months. Mr A, accepts the offer, and requests you to draft the complete document in order to protect his interests. Omit the common clauses. (24)

PART B

QUESTION 1

[16]

Mr A and Mrs A are married out of community of property. Mrs A has inherited office furniture from her late father's deceased estate. The furniture is currently in her husband's possession

since he is using it at his office. Mr A's business, a sole proprietorship, has been hard hit by a pandemic and he faces numerous claims from creditors.

1. Mrs A consults you and wants to know what effect it would have on her property if Mr A were to be sequestered. Advise her fully of the potential risks and what she would have to do to protect her interest and to enforce her rights in the event of Mr A being sequestered. (10)
2. It appears that Mr A was unable to meet his payment obligations with his creditors and is later sequestered. You, as the attorney of Mrs A, have instructed Counsel on her behalf to assist with proving her claim, as per your advice in 1. above. You have arranged for a consultation between your client, Mrs A, and Counsel, but subsequently discover that you are unable to attend the consultation. May the consultation take place without you? (5)
3. May you share your fees with Counsel in the circumstances in 2. above? (1)

- THE END -

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