

ATTORNEYS' EXAMINATION

PART 3 ATTORNEYS' PRACTICE

17 AUGUST 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.

QUESTION 1 **[5]**

Explain the following:

- 1.1 A beneficiary in a trust. (1)
- 1.2 The difference between a capital beneficiary and an income beneficiary in a trust. (2)
- 1.3 Is it permissible to be both an income and a capital beneficiary in a trust? (1)
- 1.4 May a person who is a beneficiary in a trust also act as a trustee in that very same trust? (1)

QUESTION 2 **[8]**

Legal ethics combines two separate disciplines, namely law and ethics. Explain the concept. Your answer should specifically include an understanding of ethics as well as that of legal ethics.

QUESTION 3 **[12]**

Yesterday two employees, Ms Perfect and Ms Smart, were having a brawl after work, at the gate of the office, as a result of a derogatory remark passed by one of them against the other whilst waiting. Ms Perfect called Ms Smart “*an idiot with fake lips*”.

Ms Smart then, in anger, swore at, bit and grabbed the hair of Ms Perfect whilst they were standing outside the gate to the firm’s premises.

Draft the Notice of Disciplinary Hearing, together with the Charges, that your principal has instructed you to prepare regarding the above incident.

QUESTION 4 **[30]**

Your client Mr Strong informs you that he has negotiated a lease with a tenant Setting Sun (Pty) Ltd. represented by Mr Cloudy and Mr Sunny, and would like to include a clause wherein the tenant has the option to purchase the premises during the subsistence of the lease so as to encourage the sale of the property, during these difficult recessionary times and to help your client to try to find a buyer for the property quicker. He instructs you as follows:

- 4.1 Draft a clause in the deed of lease wherein there is an option to purchase the property for a purchase price of R500 000,00, with such option being exercised by the tenant on or within 14 (fourteen) days of having selected this option. (6)
- 4.2 Mr Strong advises the above lease has been negotiated between the parties themselves. This means that there was no estate agent involved, although he does have an estate agent who has advertised other properties in the market for him. Draft the clause that you would likely insert in order to confirm that there is no estate agent involved in the transaction in paragraph 4.1 above. (8)

4.3 Mr Strong requests that Mr Cloudy and Mr Sunny, who are both directors of Setting Sun (Pty) Ltd. will have to sign as sureties for the fulfillment of the obligations as per the lease agreement. Draft the following clauses that you would insert in the deed of surety:

4.3.1 Draft only the paragraph in the deed of surety making provision for the sureties to stand surety as per paragraph 4.3 above. (6)

4.3.2 Draft only the waiver clause in the suretyship agreement which specifically includes the three accepted common law waivers, in three parts (a, b and c), so that it is clear that you understand the meaning and that the sureties (who are lay persons) understand what they are waiving. (Do not simply draft a clause waiving the defences by name and indicating that the sureties understand them, you must show what they mean). (10)

QUESTION 5 **[3]**

Is a director of a company in normal circumstances personally liable for the debts of the company? Discuss the general rule and any exceptions thereto. For purposes of answering this question you may accept that the director has fulfilled all his/her duties in terms of the Act and has not acted recklessly or fraudulently.

QUESTION 6 **[14]**

Mr Problem who was a former client of ABC Attorneys Incorporated, terminated his mandate with the said firm. He has decided to venture in a partnership with Mr Solution, who has indicated that his attorney, being yourself, will render the necessary services for the partnership.

While in law a client/principal may at any time terminate a mandate given to an attorney/agent the attorneys concerned are subject to further rules of conduct.

6.1 Based on the above premise, what must the “new” attorney, in other words, yourself, do in order to proceed with the matter? You are required to list three factors. (3)

6.2 May the former (“old”) attorney retain any documents? Explain? (3)

6.3 Would you, as the “new” attorney speak to the former (“old”) attorney regarding the matter at hand? Explain your answer. (2)

6.4 List six (6) benefits of a partnership. (6)

QUESTION 7 **[2]**

What are the two (2) main principles that you as the attorney must comply with when a client seeks advice in an insolvency matter?

QUESTION 8**[4]**

Your client is the only member in a close corporation that operates a liquor store in Sebokeng. He wants to take over the business of a competitor. The competitor is also a close corporation. Your client instructs you to draft a deed of sale in terms of which his (your client's) close corporation buys the members' interest in the other close corporation. Can a close corporation hold members' interest in another close corporation, advise your client?

QUESTION 9**[22]**

9.1 Mr Husband and Mrs Wife who are married out of community of property with the accrual, decide to divorce and reach an agreement to share the same lawyer in order to save money. They instruct you as their attorney to represent each of them in the divorce matter for the dissolution of their marriage. You explain to them that there is an obvious conflict of interest here, but Mr Husband and Mrs Wife insist, and sign informed consent forms waiving the conflict and their rights to assert any future claims related to the conflict. Mr Husband and Mrs Wife have no children, and have always kept separate bank accounts. Each purchased their own car from the money in their own bank account and each car's title is in each person's own name. They live in an apartment whose lease is expiring soon, so there is no real property to divide.

Would it be proper for you to represent them both in the divorce? Explain, with specific reference to addressing the factors that you will consider with regard to their circumstances as well as your professional ethical principles and due process. (5)

9.2 The parties furthermore require your opinion on the legal status of the following, bearing in mind their matrimonial property regime. Your opinion should include an explanation for whether it forms part of the accrual or not, as well as possible exceptions, if any.

9.2.1 Mrs Wife is due to inherit from the estate of her deceased father, during the next week. (3)

9.2.2 Mrs Wife has also signed a settlement with the Road Accident Fund for compensation for injuries that she has sustained in a motor vehicle accident wherein Mr Husband was the driver. Her claim has been settled for special and general damages. (5)

9.2.3 A family heirloom that has been passed on for generations and valued at a substantial price has been donated by Mr Husband to Mrs Wife. (2)

9.2.4 Explain four (4) advantages of a marriage out of community of property with the accrual. (4)

9.2.5 Explain two (2) disadvantages of a marriage out of community of property with the accrual. (2)

9.2.6 Mrs Wife has subsequently been diagnosed with cancer, and is due to receive a policy pay-out for dread disease. Will this form part of the accrual? Simply answer yes or no. (1)

- THE END -

