

# ATTORNEYS' EXAMINATION

## PART 3 ATTORNEY'S PRACTICE

24 AUGUST 2023

09:00-12:15

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 3 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.

Your firm is on the panel for Share Bank which is a large Financial Institution. They have appointed your offices for a number of transactions. They invite you for a consultation in order to clarify certain issues, among others, fees, timelines and the reporting of the progress on the various matters pending which the instructions may be forwarded to your firm.

- 1.1. The bank provides you with a list of pending bond registrations. The bank manager requests that you charge a reduced bond registration fee in comparison to what your normal charge will be because of the volume of work that you will receive. **May you do so? Explain your answer.** (2)
- 1.2. A few days later the bank manager contacts you stating that a competing attorney on the panel of Invest Bank who also wants to obtain the larger portion of Share Bank's total legal work, proposed a reduced fee, below that of what you have proposed as per 1.1. above. **May this attorney do so? Explain your answer.** (3)
- 1.3. One of the employees of the Share Bank, a Mrs Unhappy, calls you and requests your assistance in a divorce matter for herself. She informs you that seeing that you are on the panel of the bank, it will be much easier instructing your firm to assist her with her divorce.

This is a family law matter (divorce and enforcement of a maintenance order) but it is not complicated. The issue however is that you have never dealt with such a matter, and you do not know the law and practice involved.

- 1.3.1. **Can you act for a staff member of Share Bank on a personal matter and accept the mandate? Explain your answer.**

**Your answer must include the factors you will consider with regard to the option and exercising of the mandate.** (9)

- 1.3.2. Mrs Unhappy informs you that she is financially strained, and that her house has been advertised by an estate agent for sale. Thus, she is not in a position to pay your fees currently. **May you act *pro amico* for the staff of Share Bank? Explain your answer.** (3)
- 1.3.3. After the divorce is finalised, the estate agent for Mrs Unhappy has secured a buyer and the instruction for the transfer is forwarded to yourself. However, the estate agent requests that she be paid her commission as due prior to the transfer of the property. **May you pay her commission as such? Explain your answer.** (4)
- 1.3.4. Mrs Unhappy has also informed you that she has applied for maintenance for her two minor children born of the marriage. **She enquires from yourself as to what factors will a court take into account in determining the amount of maintenance to be paid by**

the ex-husband who does not have actual daily care of the minor children (i.e., the non-custodian parent)? (4)

**QUESTION 2**

**[20]**

Draft an extensive arbitration clause that could be used in any commercial agreement. The clause must make reference to **the options and details regarding facilitating the arbitration process** – the yellow was made available to all candidates writing the exams.

**QUESTION 3**

**[10]**

At which Tribunal would your client seek relief with respect to the following:

- 3.1. An order that a provision affecting R100 000.00 is unconstitutional. (1)
- 3.2. The interrogation of an insolvent who hides assets. (1)
- 3.3. Indicate which of the following are examples of credit facilities as per the National Credit Act No. 34 of 2005 (NCA). (3)
  - 3.3.1. Credit cards
  - 3.3.2. Clothing Store Facility Cards
  - 3.3.3. Bank Overdraft Account Facilities
- 3.4. What agreement will not qualify as a credit facility as per the above. (1)
- 3.5. List 4 (four) agreements that constitute a credit transaction in terms of the NCA. (4)

**QUESTION 4**

**[9]**

X and Y engage your services in obtaining assistance and advice on the formation of a partnership. They understand the provisions but are uncertain about the termination of the partnership and what would happen in the various instances related thereto.

They request you to draft the termination clause of a partnership agreement so that they can read it at their peril, whereafter they will consult with you and obtain further advice and clarification thereon.

**Draft the termination clause of a standard partnership agreement. Your clauses must include how each of the termination options may be exercised.**

**QUESTION 5****[2]**

What information obtained by an Attorney is not subject to attorney-client privilege? List 4 (four) instances.

**QUESTION 6****[16]**

- 6.1. Your client is ABC Bank which finances the purchase of motor vehicles by means of instalment sale agreements in terms of the National Credit Act No. 34 of 2005. The manager of your client tells you that one of its customers who purchased a motor vehicle on an instalment sale for R80 000.00 has recently been declared insolvent. The balance owing in terms of the instalment sale agreement is R70 000.00.

**Advise your client of its rights in terms of the Insolvency Act No. 24 of 1936 with regard to taking possession of the vehicle and recovering the outstanding balance owing under the instalment sale. What are the steps which your client must take in the circumstances? (10)**

- 6.2. You are approached by Tim Blank who advises you that six months ago he was offered a job in Durban with a yacht manufacturing company, on the strength of which he relocated from Nelspruit to Durban at a cost of R15 000.00 to take up his new job. (The company had undertaken to pay his reasonable relocation expenses.) His employment contract was for three years.

Five months later the company was liquidated. Tim Blank was not paid his salary of R10 000.00 per month for the two months prior to the liquidation of the company.

**Advise him of his rights in the circumstances. (6)**

**QUESTION 7****[11]**

You are consulted by your client who instructs you to attend urgently to the registration of a private company with limited liability in which he will be the sole shareholder and director. He tells you that the name for the company has already been reserved but that he is leaving for overseas that night for two weeks. He however does not want to delay the matter due to his absence and he wants to authorise you to do and sign everything that is necessary to effect registration of the company and obtain a certificate to commence business for it whilst he is away.

**Draw that part of the Power of Attorney that you will prepare for his signature that will give you the authority to carry out his instructions. In the Power of Attorney, you must mention every action that you will take and name each document which must be signed on behalf of your client to complete your mandate.**

Sally works at your client, Bling Hairdressers. She is still within a probationary period of three months effective from 1 April 2023. Your client is very unhappy with her and wants to give her the “usual” 24-hour notice. It is evident that she is not performing in terms of her job description, despite training and counselling. Management had addressed her about her poor performance informally, already. The contract of employment is silent on the notice period should the employer decide to terminate the agreement.

**Bling Hairdressers wants to terminate Sally’s employment. Advise your client whether the employer may terminate within the probation period, what the basic requirements are to ensure a fair dismissal in these circumstances, and what notice should be given.**

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**- THE END -**

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