

ADVOCATES' EXAMINATION

PAPER 5

Legal Writing and Drafting
Regulation 7(9)(g)

8 SEPTEMBER 2021

09:00-14:15

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 5 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, the left side (underside) must only be used for your own notes.
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.
6. Admission papers 1 to 4 have orals for candidates who achieves a score from 40% and below 50%.
7. The legal writing and drafting paper (paper 5) does not have any orals, candidates must achieve a minimum score of 50% to pass this paper.

Read all the text below and answer all the relevant questions.

QUESTION 1

[30]

Always Open (Pty) Ltd is a food store in The Modern Mall. Always Open is four months behind on its rent of R10,000.00, its electricity of R2,000.00 and its water of R500.00 *per* month. With all other expenses levied by The Modern Mall as lessor of the premises, Always Open is indebted to The Modern Mall by more than R70,000.00.

1. The owner of Always Open, John Bolt has tried to get the management of The Modern Mall to give Always Open a rent holiday for four months. John Bolt bases his request on the effects of the Covid-19 coronavirus pandemic.
2. The management of The Modern Mall is unimpressed. From their observation Always Open is the only shop in the mall that has maintained normal foot traffic during the lockdown levels since late March 2020.
3. Last night someone from the management of the mall padlocked the only customer entrance to Always Open and cut off the water and electricity. The delivery entrance is still open. But without water and electricity it is not easy to do business and customers are reticent to use the delivery entrance.
4. This morning your attorney, Nick Quick from Dewey, Cheatham and Howe Incorporated arrived at your chambers with John Bolt. Your brief is to draft an application for a *mandament van spolie*.
 - 1.1. Can you move the *mandament van spolie* without notice to the management of The Modern Mall? (1)
 - 1.2. Draft the Notice of Motion paying particular attention to the prayers for relief. (14)
 - 1.3. Draft the founding affidavit for Always Open (Pty) Ltd. (15)

QUESTION 2

[30]

The Modern Mall has filed an answering affidavit to the spoliation application. In the answer the managing director of The Modern Mall, Chris Confucius has set out in detail why The Modern Mall has a right to close the shop until Always Open has paid all the arrears. After all, the foot traffic to Always Open has remained the same since before the lockdown in March 2020.

The Acting Judge hearing the matter is not certain what to do. So, she has requested Heads of Argument from counsel representing the parties.

Draft the appropriate Heads of Argument.

QUESTION 3**[40]**

Nick Quick and John Bolt are back in your chambers. John Bolt liked the work you did in the spoliation application. He now has a personal matter.

John Bolt married Sarah Nomad on 14 February 2019 out of community of property but with the accrual system. Initially the marriage went well.

However, Sarah has just got a very lucrative job in Melbourne, Australia. She wants to leave South Africa next month. John does not want to go to Australia. John and Sarah do not have any children.

They have decided each to go their own way. They have prepared a draft settlement agreement overseen by Nick Quick. The settlement is sound and fair. They are still in love. But they accept more is needed than just love for a marriage.

Nick is concerned that the facts do not sustain an irretrievable breakdown of marriage.

You are instructed to draft Particulars of Claim for divorce in a manner that is accurate as to the facts, yet may persuade a court to grant a divorce.

- THE END -
