

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN**

**ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK**

**PART 3 / DEEL 3**

**19 AUGUST / AUGUSTUS 2015**

**ANSWERS / ANTWOORDE**

**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.*

**QUESTION 1**

**[55]**

- 1.1 The various law societies have rules on attorney-and-client fees for debt collection. You may enter into a contingency fee agreement. The agreement must be in writing in the prescribed form, stating on what contingency you become entitled to a fee and how it is calculated and that your client was informed of all options. You may not recover more than double your normal fee or more than 25% of the amount recovered (whichever is lower). (8)
- 1.2 You may recover the tariff stipulated in the rules of the magistrate's court for undefended actions or any attorney-and-client fees if the debtor has consented in writing. In the Northern Provinces Rule 81 will apply. (4)
- 1.3 It was clearly the intention that the brothers should bind themselves jointly and severally as sureties as appears from the wording of the deed. Therefore the failure by one of the sureties to sign the document will render it invalid in terms of the provisions of section 6 of Act no 50 of 1956. You will not succeed against the signatory unless the suretyship specifically provides otherwise. (6)
- 1.4 It is normal practice to appoint a tracing agent on a "no trace no pay" basis. In your summons you must add a further claim for tracing costs. Substituted service is possible but not cost-effective. (4)
- 1.5 Yes, since A was a partner and liable at the time the cause of action arose, he remains liable. (2)
- 1.6 You may claim against Abe's insolvent estate and require the trustee to set aside the sale of the business in terms of Section 34 of the Insolvency Act. Ben should have required the sale to be advertised in terms of Section 34. (6)

1.7

14 July 2014

PER REGISTERED POST

Mr D Debtor  
23 Bank Street  
Margate

Dear Sir,

We act on behalf of A and refer to the acknowledgement of debt signed by you on the (date) in terms of which you acknowledged your indebtedness to our client as will more fully appear from the acknowledgement of debt.

The acknowledgement of debt provided that in the event of your failure to pay any instalment by due date our client would be obliged to give 14 days notice in writing by prepaid registered post requiring you to effect payment and in the event of your failure to make such payment our client would have the right to claim the full outstanding balance. The balance owing is the sum of R50 000 together with interest thereon at the rate of 9% per annum.

The instalment of R5 000 which was payable by you on the (date) has not been paid and consequently in accordance with the provisions of the acknowledgement of debt we hereby call upon you to effect payment of such instalment within 14 days from date of the receipt of this letter by you. Should you fail to effect payment the aforementioned full balance will become due and payable and we have instructions to issue summons against you for the recovery thereof.

This notice to you is in terms of Section 129 of the National Credit Act and you are entitled to approach us, or a debt reviewer, to deal with the repayment thereof. (5)

*(Guide to examiner – this answer is a guide only. Marks to be allocated for appropriately drafted letters – reference must be made to Section 129).*

1.8 You may in addition to the usual Section 65 remedies

1.8.1 Obtain an emolument attachment order in order to recover part of the salary directly from the employer;

1.8.2 You could attach the vehicle and have same sold in execution; and

1.8.3 You could attach the claim against debtor's brother by way of garnishee order.

1.9.1 The issue here is whether there is a danger of a contribution your client may be required to pay at the end of the day. A contribution is payable when there are not enough funds in the estate to defray the costs of liquidation, in which event a contribution becomes payable by those (concurrent) creditors that proved claims, on a pro rata basis. (5)

- 1.9.2 a) Resolution by your clients, if applicable;  
b) Special power of attorney;  
c) Affidavit;  
d) Statement of account and/or other documentary proof of the claim. (4)

1.9.3 Letter to client:

We confirm that the claim forms have now being submitted to the Liquidator who will see to it that the claim will be proved at the next meeting of creditors.

After the second meeting of creditors, and provided no special meetings are held, the liquidator has to draw his account and submit same to the Master of the High Court who will inspect same, prepare a list of queries or approve the account and allow the liquidator to advertise the fact that the account will be confirmed. Thereafter the liquidator will make a distribution in terms of the account and will pay dividends to the proved creditors insofar as they have not been paid earlier. (6)

**QUESTION 2**

**[10]**

An attorney may in principle refuse or accept any mandate. An attorney must refuse in the following circumstances:

- 2.1 He does not have the necessary expertise to do the work;  
2.2 He does not have sufficient time to do the work;  
2.3 He is in a conflict of interest situation;  
2.4 He cannot come to a satisfactory arrangement about fees;  
2.5 The instruction is unlawful, immoral or contrary to public policy.  
He must accept a mandate from an existing client in an emergency situation. He might have to accept the mandate if there are a limited number of attorneys in a particular area which has the effect that there is no other attorney to assist the client.

**QUESTION 3**

**[15]**

- 3.1 First the necessary research e.g. read Lewis and any relevant authority, then seek guidance from senior colleagues and finally from your Law Society. (3)
- 3.2 It is not only in order but also advisable that an attorney agrees on a fee in advance with the advocate as this will eliminate the surprise element and resultant problems if the fee is more than anticipated. It is the attorney's duty to keep his client informed of the cost implications of each case. (2)
- 3.3 Section 83(8) provides that only an attorney may prepare the following documents with the expectation of a fee, gain or reward;
1. An agreement or deed in respect of immovable property or rights in or to immovable property, other than leases not exceeding 5 years;
  2. Conditions of sale or broker's notes;
  3. a will or testamentary writing;
  4. memorandum and articles of association or prospectus of a company;
  5. documents relating to the creation or dissolution of a partnership or any variation of the terms thereof; and

6. any instrument or document required or intended for use in civil proceedings in the Republic.

There are exemptions for advocates, trust companies and trustees in insolvencies. (5)

- 3.4 An attorney may not under any circumstances arrange a consultation if he knows that he will not be able to be present. Should unforeseen circumstances occur and the consultation must necessarily take place, the attorney must arrange that one of his partners, a professional assistant or a candidate attorney in his employ or a correspondent, attend to the consultation. If it is necessary for the attorney himself to attend because it is the wish of his client that he does so, the consultation should rather be postponed. (5)

**QUESTION 4**

**[20]**

- 4.1 i) Notarial Bond on the equipment sold – executed in favour of seller.  
ii) Cession of book debts  
iii) A surety by a third party on behalf of the purchaser  
iv) The taking out of an insurance policy on the life of purchaser/or a policy ceded to the seller for the balance of the purchase price.  
v) Also ensure that the agreement makes provision for the reservation of ownership and has an acceleration clause. (5)
- 4.2 1) Perfecting of a lease agreement with a landlord  
2) Obtaining/transfer of liquor licence. (2)
- 4.3 In the event of the purchaser failing to make any payment on due date, the entire amount/balance due in terms of this agreement shall immediately become due owing and payable. (3)
- 4.4 The seller will not for a period of five years, calculated from the effective date, operate a business or have an interest in/*albeit* direct or indirect in any bottle store business in Gauteng. The seller agrees that this restriction is fair and reasonable having regard to the nature of the business purchased, the duration thereof and the area to which it applies. (5)

4.5

**SECTION 34 OF THE INSOLVENCY ACT 36 AS AMENDED**

Notice is hereby given in terms of Section 34(1) of the Insolvency Act 24 of 1936 that Adams Smith intends to sell his business trading as ..... carried on at ..... to John Brown after a period of 30 days from the date of the last publication of this notice.

DATED AT ..... THIS DAY OF ..... 2014.07.21

\_\_\_\_\_  
XYZ ATTORNEYS  
ADDRESS

(5)

**TOTAL: [100]**