

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK
PART 3 / DEEL 3**

10 FEBRUARY / FEBRUARIE 2016

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 **[10]**

1. This agreement shall be of no force or effect unless, within 30 days reckoned from the effective date or any extension of such date by mutual agreement in writing:-
- 1.1 the Seller's rights and obligations in terms of the existing lease agreement concluded between (A) as landlord and the Seller as tenant in respect of the premises are ceded and assigned from the Seller to the Purchaser with effect from the effective date with the consent of the landlord; or (5)
- 1.2 the existing lease agreement between the landlord and the Seller is cancelled and a new lease agreement is concluded between the Purchaser and the landlord on terms and conditions which are substantially the same or mutually acceptable to both. (5)

QUESTION 2 **[20]**

- 2.1 Application to Reserve a Name COR 9.1 (Section 11 and 12 of the Companies Act)
Notice of Incorporation COR 14.1 (Section 13 of the Companies Act)
Memorandum of Incorporation (Section 13 of the Companies Act)
Power of Attorney (Optional) (3)
- 2.2 State-owned company
Private Company
Personal Liability Company
Public company (4)
- 2.3 Within 3 (three) months after the date on which the company was incorporated, the board of directors of the company must ratify the pre-incorporation contract.
If the board of directors has neither ratified nor rejected the agreement within (3) three months from date of incorporation, the company will be regarded as having ratified the agreement. (3)

2.4 SPECIAL POWER OF ATTORNEY

I, the undersigned, **JOE SOAP** IDENTITY NUMBER **600122 0019 001** MARRIED OUT OF COMMUNITY OF PROPERTY

do hereby appoint

PETER BARRISTER
IDENTITY NUMBER 750615 5035 012
MARRIED OUT OF COMMUNITY OF PROPERTY
(herein called the AGENT)

with power of substitution to be my lawful agent with full power and authority for and in my name to sign a Deed of Sale and any documents as may be necessary to effect the sale of the hereinafter mentioned property, registered in my name, into the name of the Company (B) once the said company has been incorporated at a price of R1 000 000,00 (one million rand).

ERF 20104 Pofadder, also known as 13 Church Street, Pofadder

AS HELD under Deed of Transfer T1000/2001.

1. I hereby agree to indemnify the AGENT against all costs, charges, expenses and losses which the agent may incur in the lawful execution of the powers hereby conferred upon him/her.

Signed at Bloemfontein ON 1ST January 2016

In the presence of the undersigned witnesses:

WITNESSES

- 1.....
- 2.....

JOE SOAP

LAW SOCIETY
OF SOUTH AFRICA

(10)

QUESTION 3

[4]

Claim A is	R150 000	
60% thereof is		R90 000
Claim B is	R160 000	
40% thereof is		R64 000
A is thus awarded a nett		R26 000
Contingency fee 20% (one fifth)		R5 200

QUESTION 4

[28]

- 4.1 In principle the main division of marital regimes is between those in and those out of community of property. (1)

- (a) Marriages are *ipso iure* in community of property if no ante nuptial contract is concluded before date of marriage. There is only one joint estate. Either spouse can in principle act o.b.o the joint estate but there are many exceptions i.t.o the Marital Property Control Act. (3)
- (b) To achieve a marriage out of community of property, the parties must enter into an ante nuptial contract before a notary public. The marriage will be subject to accrual unless it is excluded. While in either case the parties retain their separate estates throughout the marriage the accrual means that at the end of the marriage the growth/accrual in the two estates is shared equally. You would recommend out of c.o.p without accrual. (6)
- 4.2 If the parties marry in community of property the whole joint estate will normally be subjected to any sequestration. If out of community of property the sequestration of A would vest the assets of B in the Master and later A's trustee. The solvent spouse will have to apply, usually on affidavit, to have her assets released by providing evidence of ownership. The Insolvency Act refers to assets which the solvent spouse acquired: before the marriage, under a marriage settlement, by title valid against creditors or with the proceeds of the above. The trustee cannot retain assets because he has a claim under some other provision. Mrs B must therefore keep sound records of her assets and transactions. (10)
- 4.3 The trust will be registered with the Master of the High Court in the area where Mrs B resides. She must lodge:
- (a) Two copies of the deed of trust;
 - (b) Letter from an auditor to act;
 - (c) Acceptance of trust by the trustees.

She must further provide:

- (a) The name of the bank where the trust will operate its account;
- (b) The name and address of the person who will keep and maintain the records of the trust;
- (c) Occupation of trustees.
- (d) Whether or not the trustees have any previous experience as trustees

The Master also has a number of further requirements should he be requested to waive his right to insist on security by the trustees. (8)

QUESTION 5

[10]

- 5.1 Both spouses have equal powers with regard to the disposal of assets of the joint estate, the contracting of debts which lie against the joint estate and the management of the joint estate. Any one of them may perform any juristic act with regard to the joint estate without the consent of the other subject to many exceptions – see Sections 14 and 15 (1) of the Act. (4)
- 5.2 A number of acts can only be done by one spouse with the written consent of the other, namely:
- (1) Alienation, burdening of or giving a real right in immovable property of the joint estate;

- (2) Alienation, cession or pledge of shares, insurance policies, mortgage bonds, fixed deposits or any similar assets or any investment by the other spouse in a financial institution, forming part of the joint estate.
- (3) Alienation or pledge of any jewellery, coins, stamps, paintings or any other asset of the joint estate held mainly as investments;
- (4) Withdrawal of money held in the name of the other spouse in any bank or Post Office savings bank;
- (5) As a credit receiver entering into a credit agreement as defined in the Credit Agreements Act no 75 of 1980;
- (6) As a purchaser enter into contract as defined in the Alienation of Land Act (i.e. where the purchase price is paid by instalments);
- (7) Binding himself/herself as surety

(Any four of the above)

A number of other acts may only be done with the consent (also verbally) of the other spouse, namely alienation of furniture or other effects of the common household forming part of the joint estate; receiving money due to the other spouse by way of earnings, pension etc. by virtue of the profession or business of other spouse, or damages for loss of income, or inheritance, etc. donating to another person an asset of value forming part of the joint estate.

(Any two of the above)

(6)

QUESTION 6

[17]

- 6.1 Pro Amico is free representation by an attorney of a client who is in a particular relationship to the attorney (typically a relative or colleague). No fees may be charged but disbursements may be recovered. **(2)**
- 6.2 Acting pro bono means representing indigent persons but also some services to poor communities without charging fees. **(2)**
- 6.3 Contingency fees constitute a percentage (up to 25%) of a client's successful claim if the claim sounds in money or are fees that are chargeable at a rate higher than normal (not more than double) if the work is successfully concluded. This type of fee was legalised by legislation if certain formalities are complied with. The so-called common law contingency agreement has been found invalid. **(5)**
- 6.4 Costs *de Bonis Propriis*. These are costs which a Court may order the attorney (or other person in fiduciary relationship to the litigant) to pay personally, either on a party and party or attorney and client basis as a mark of displeasure with the conduct of the attorney or other person (trustee, executor, etc.). **(3)**
- 6.5 This is an interim order made by a court relating to costs incurred in a matter that is not finalised and means that these costs will follow the final costs order in the matter. **(2)**

6.6 Party and party costs are costs according to tariff which a successful litigant may recover from the losing party if the court makes a costs award in favour of the winner. If the costs cannot be recovered from the losing party, the successful party's attorney may recover only the party and party costs from his own client unless there is an agreement that he may charge more. If an attorney fails to discuss fees with the client he may not charge him more than the party and party fees. (3)

QUESTION 7

[11]

7.1 Firstly consult the relevant authorities, then consult with a senior colleague and finally ask your Law Society. (2)

7.2 You will not be allowed to practise or to charge fees. (2)

7.3 The fund was established to reimburse members of the public who suffer financial loss due to the theft by an attorney, his employee or candidate of money or property entrusted to that attorney. (2)

7.4 It will ensure that the wishes of the deceased are known that the administration of the estate takes place speedily and that disputes are avoided. (2)

7.5 A practitioner:

7.5.1 May not share fees with CA. (1)

7.5.2 May pay C.A commission on fees generated. (1)

7.5.3 May not share fees with counsel. (1)

LAW SOCIETY
OF SOUTH AFRICA

TOTAL: [100]