

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK**

PART 3 / DEEL 3

17 AUGUST / 17 AUGUSTUS 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 12

[6]

Kindly award up to six (6) marks based on the general impression and the standard of draftsmanship in order to achieve a fair outcome.

QUESTION 1

[14]

I, the undersigned, Mr B of _____ address _____ which address I choose as my domicilium citandi et executandi for purpose of this agreement (herein "the Debtor").

Do hereby admit that I am liable, and hold myself bound to Mr A.
(name of creditor) (herein "the Creditor")

For the due and proper payment of the amount of R100 000.00 (One Hundred Thousand Rand) by reason of money lent and advanced to me by the Creditor (herein "the Principal Debt") and further that I am bound to the following conditions viz:

- 1.1 The Principal Debt shall bear interest at the rate of 12% (Twelve Percent) per annum, the amount of which shall be calculated monthly in arrears on the outstanding balance due on the last day of each calendar month and shall be so calculated and capitalised on the same day of each and every month until the total amount due in terms hereof shall have been paid.

- 1.2 The Principal Debt, together with the interest calculated as set out in clause 1.1 above, shall be paid in 12 (Twelve) monthly instalments, the first of which shall be made on the last day of the month during which this document is signed, and thereafter on the last day of every succeeding month until the Principal Debt together with the interest shall have been paid full.
- 1.3 Should any payment due in terms hereof not to be made on due date the Creditor may regard the balance of The Principal Debt and interest owing in the terms hereof as due and payable immediately, and may issue summons therefore in any competent court without further notice or demand to the Debtor.
- 1.4 The Debtor hereby expressly renounces the benefits of the legal exceptions of the revision of accounts, *errore calculi*, no value received.
- 1.5 The Debtor agrees to the jurisdiction of the Magistrate's Court in terms of section 45 of Magistrate's Court Act 32 of 1944 for the recovery of any amount due in terms hereof.
- 1.6 The Principal Debt shall become due and payable immediately in the event of the insolvency of the Debtor, or if the Debtor commits an act of insolvency.
- 1.7 The Debtor shall pay the costs hereof on demand. Should the Creditor incur costs in the collection of the Principal Debt, the Debtor shall pay such costs on the attorney-and-client scale as well as collection costs calculated at 10% (Ten percent) of each and every payment made in reduction of the Principal Debt, interest and costs.
- 1.8 The Creditor shall be entitled to cede or pledge his interest herein or to trade therewith at his own discretion without the consent of the Debtor.
- 1.9 The Creditor may allocate any payment to capital, interest, costs or any other item as he deems fit despite any allocation made or deemed to be made by the Debtor.
- 1.10 The full outstanding balance shall become due and payable upon the death of the Debtor.

Signed at _____ on _____

Signature _____

QUESTION 2

[6]

Below are contracts which must be in writing to be valid:

- Alienation of land
- Consumer agreements prescribed by Minister
- Sale of interest in share-block scheme
- Sale of time-share interest
- Credit transaction under NCA

- Deed of suretyship
- Franchise agreement
- Long lease of land
- Lease of mineral rights
- Prospecting agreement
- Lay-by agreement
- Donation
- Apprenticeship
- ANC
- Learnership

(Any six)

QUESTION 3

[15]

3.1 OPTION TO PURCHASE

The Lessor grants to the Lessee for the duration of the lease period an option to purchase the premises on the following terms and conditions, viz:

The purchase price shall be the amount of R500 000 payable against registration of transfer which payment Lessee shall secure by delivery to Lessor or its nominee of a bank guarantee in customary form within 14 days of exercising the option and further on the standard terms set forth in Annexure "A".

Lessee may exercise the option by delivering to Lessor a written notice to that effect at Lessor's domicilium. (5)

3.2 Lessee may not, without the prior written consent of the Lessor (which shall not be unreasonably withheld)

3.2.1 sublet the premises or any part thereof;

3.2.2 allow any other person to occupy the premises or any part thereof;

3.2.3 assign this lease or cede any of its rights under the lease;

3.2.4 alienate the shares or interest in the lessee. (6)

3.3 The Lessee shall, provided he has complied with all the terms and conditions of the lease before the expiry of the lease agreement, be entitled not later than 3 (three) months before the expiry of the lease to renew the lease for a further period of 5 (five) years on, the same terms and conditions save the right to renew. Written notice of the Lessee's intention must be forwarded to the Lessor at his chosen domicilium. (4)

QUESTION 4

[16]

Approach:

4.1 The small claims court; (1)

4.2 A High Court; (2)

- 4.3 The CCMA; (2)
- 4.4 The Pension Fund Adjudicator; (1)
- 4.5 The Master of the High Court who may appoint a magistrate; (2)
- 4.6 The Maintenance/Family Court; (2)
- 4.7 Statutory Law Society (Assessment Panel); (2)
- 4.8 The Attorneys Fidelity Fund and Statutory Law Society; (2)
- 4.9 Sue the attorney in the appropriate court. The attorney may approach the AIF and his own indemnity insurers. (2)

QUESTION 5

[10]

Statements which are made expressly (1) or impliedly (1) without prejudice in the course of bona fide negotiations for the settlement of a dispute cannot (1) be disclosed in evidence without the consent (1) of both parties. A letter written by one attorney to another with the object of settling a dispute is not admissible (1) in evidence. It is considered public policy (1) to allow people to try to settle their disputes without the fear that what they may have said will be held against them if the negotiations should break down. A statement to be privileged must form part of the negotiations, and is not privileged merely by having been written in a letter containing the words "without prejudice" at the top.

The reply to such a letter is likewise not admissible in evidence (1). If, however, statements are made in such letters which are not relevant to the dispute, such statements may well be admissible in evidence (1). Thus, if a letter contains a defamatory statement which is irrelevant with regard to the dispute, such statement will be actionable (1) and an acknowledgement of inability to pay debts is an act of insolvency even if it is made without prejudice. When the settlement offer contained in a letter written without prejudice is in fact accepted by the other side and the dispute is then settled on that basis both letters will become admissible in evidence.

QUESTION 6

[8]

- 6.1 The attorney must advise his client in writing that the claim has become prescribed. He must, however, not admit to negligence as this may vitiate his rights under his professional indemnity policy and the master policy issued by the Attorneys Indemnity Insurance Fund. The attorney must also advise his client to consult another attorney regarding the original claim and the prescription. (4)
- 6.2 In order to protect himself the attorney must, immediately the fact that the claim has prescribed becomes known, advise his professional indemnity insurer and the Attorneys Indemnity Insurance Fund of the potential claim. If a formal demand or summons is received, this must also be handed to the insurer(s). (4)

QUESTION 7 **[5]**

- 7.1 Included; (1)
- 7.2 Included; (1)
- 7.3 Excluded; (1)
- 7.4 Excluded; (1)
- 7.5 Included. (1)

QUESTION 8 **[5]**

A list of the sources where you would find the rules of Professional Conduct:

- The Attorneys Act No. 53 of 1979, as amended and the Regulations promulgated thereunder
- The Rules of the various Law Societies
- The rulings of the Councils
- The Common Law
- South African textbooks
- Foreign influences
- Court Judgements

QUESTION 9 **[5]**

- 9.1 The onus is on the attorney to satisfy the court on a balance of probabilities that there has been a genuine, complete and permanent reformation on his part. (1)
- 9.2 He must show that the defect in character that led to the strike-off no longer exists. (1)
- 9.3 He must show that if re-admitted he would in future conduct himself as an honourable member of the profession. (1)
- 9.4 He must show that he could now be trusted to carry out the duties of an attorney. (1)
- 9.5 He must show that the public will not be prejudiced by his re-admission. (1)

QUESTION 10 **[5]**

Professional privilege does not apply to:

- Documents which are not otherwise privileged. They do not become privileged merely because your client hands them to you.
- Communications made for the purpose of facilitating a crime or fraud, (*Harksen v Attorney-General Cape and Others* 1999(1)SA 718(C), *Waste Products Utilisation (Pty) Ltd v Wilkes and Another* 2003 (2) SA 515 (W)).

- The name of your client; you can be compelled to disclose it
- Facts learned by you with your own senses
- Where a statute expressly or by implication provides that the privilege is inapplicable.
- Where confidentiality of oral evidence is destroyed by such evidence, the confidentiality of contemporaneous records is likewise destroyed. (*Bank of Lisbon and South Africa Ltd v Tandrien Beleggings (Pty) Ltd and Others* (2) 1983 (2) SA 626 (W); *Kommissaris van Binnelandse Inkomste v Van der Heever* 1999(3) SA (SCA).

QUESTION 11

[5]

Lewis (at 249) gives as an example a number of reasons as to when there is good cause for an attorney to withdraw:

- Improper conduct on the part of the client;
- The client's deliberate fraud;
- If the attorney finds that his own personality clashes with that of the client;
- Where the client does not accept his attorney's advice and persists or defending an action when his attorney most strongly advises settlement;
- The failure to provide funds to enable the attorney to continue will also justify his terminating the relationship;
- Also failure to give instructions;
- Illness of the attorney.

TOTAL: [100]

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OF SOUTH AFRICA