

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

15 FEBRUARY / FEBRUARIE 2017

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

[25]

- 1.1 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)
- 1.2 1) Perfecting of a lease agreement with a landlord.
 2) Obtaining transfer of liquor and trading licence. (5)
- 1.3 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)
- 1.4 The seller will not for a period of two 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. (7)

1.5 SECTION 34 OF THE INSOLVENCY ACT 36 AS AMENDED

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

DATED AT THIS DAY OF2014.

XYZ ATTORNEYS
ADDRESS

(5)

QUESTION 2

[15]

WHOLE AGREEMENT

This document contains the entire agreement between the parties. Neither party will have any right or remedy arising from any undertaking, warranty, or representation not included in this document. (5)

(In consumer legislation such as the NCA s90 and the CPA s50(1)(g)(1) such term is sometimes unlawful and is prohibited.)

VARIATION

This contract cannot be varied, added to, or cancelled by agreement otherwise than by means of a further written agreement between the parties or their duly appointed agents. (5)

(Note that variation requirements of certain contracts are dealt with in legislation. E.g. consumer legislation such as the NCA, ss116 to 120 and the CPA s46)

JURISDICTION OF MAGISTRATE'S COURT

Each party consents in terms of section 45 of the Magistrate's Courts Act, 1944, to the jurisdiction of the district magistrate's court in respect of any proceedings pursuant to this agreement. (5)

(From 15 October 2010, there are also Regional Magistrates' Courts with civil jurisdiction up to R300 0000 in some instances and hence the word "district" can be inserted to avoid uncertainty in this type of clause.)

(Such a clause is not necessary for credit agreements as the Magistrates' Court has unlimited jurisdiction in such instances.)

SEVERABILITY

Each clause or part of a clause in this agreement is separate and severable from the rest of the agreement (unless severing would render the agreement unlawful or it would not be reasonable to do so having regard to the price, the clause or the agreement as a whole.)

Should any clause or part thereof be unenforceable, it will not affect the enforceability of the rest of the agreement (unless severing would render the agreement unlawful or it would not be reasonable to do so having regard to the price, the clause or the agreement as a whole.) (5)

QUESTION 3

[15]

3.1 Consumer Protection Act Sections 55 and 56

In terms of Sections 55 and 56 of the Consumer Protection Act there is an implied provision in any transaction or agreement that the producer or importer, the distributor and the retailer each warrant that the goods are

- i reasonably suitable for the purpose they are generally intended;
- ii are of good quality, in good working order and free of any defects;

- iii will be reliable and durable for a reasonable period of time;
- iv comply with the Standards Act.

If the goods fail to comply with the abovementioned requirements and it is still within 6 (six) months after delivery of the goods, the consumer may return the goods to the supplier without penalty and at the suppliers risk and expense and the supplier must:

- i repair or replace the goods; or
- ii refund to the consumer the price paid by the consumer.

If a supplier repairs any goods and within 3 (three) months after that repair, the failure, defect or unsafe feature has not been remedied the supplier must:

- i replace the goods; or
- ii refund the purchase price. (12)

3.2 No, the supplier cannot contractually exclude the implied warranty in terms of the Act. (3)

QUESTION 4 (10)

4.1 It is not wrong to issue summons on a claim which you believe will not succeed as in the case of prescription. The client must, however, be fully informed of the implications i.e. the probability of an order for costs against the client if the claim is unsuccessful. It is wise to confirm your advices to client in a letter as clients often choose to forget how they were advised. In the particular case the position is that if prescription is raised as a special plea the claim can be withdrawn before too much costs are incurred and if it is not raised by the Defendant the court may not do so *mero motu*. (6)

4.2 You may not administer the oath in a matter in which you have an interest. By definition a court case in which your firm is involved is a matter in which you or your firm has an interest. It is permissible to administer the oath in Conveyancing matters as the act and regulations specifically exclude Conveyancing matters from those in which you are regarded as having an interest. (4)

QUESTION 5 (10)

5. See Section 8 and definition of "non-profit company" in Companies Act no 71 of 2008. Types of company are:

5.1.2 Profit company, which can be either a

- (a) State-owned company; or
- (b) Private company;
- (c) Personal liability company; or
- (d) Public company;

5.1.2 Non-profit company, i.e incorporated for a public benefit or other object (similar to old Section 21 Company). (5)

5.2 Each partner must contribute; all must share in profits and losses; the purpose must be to conduct business; the purpose must be to generate profits. (5)

QUESTION 6**[5]**

Those assets vest in the Master (1) and then in the trustee (1). Spouse may obtain release (1) by proving her ownership usually by affidavit (1) and if necessary by High Court application (1).

QUESTION 7**[5]**

Any five of:

- 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

QUESTION 8**[10]**

Dear X

On discovering that the claim of A had prescribed due to our negligence I called A in and informed him of the position. While not admitting liability I advised him to consult another attorney to assert his rights. As you know we cannot continue to act in this matter (e.g. by taking the chance that the defendant will not raise a plea of prescription).

The client will no doubt get his new attorney to send us a letter of demand which I shall pass on to the Attorney Indemnity Insurance Fund. We are covered for amounts in excess of R200 000 and should be out of pocket in the worst case by no more than the excess payment of R20 000. I understand that the AIIF normally instructs their own attorneys to handle the matter and either to defend or settle same as they may be advised in consultation with us.

QUESTION 9**[5]**

The magistrate must recuse herself. You must first inform her in chambers (1) that you will apply for recusal. If she declines you apply in open court (1) if she still refuses you continue (i.e. no review/appeal) (1). If your client is acquitted, no harm done (1); If client is convicted you have grounds for review (1).

TOTAL: [100]