

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

07 FEBRUARY / 07 FEBRUARY 2018

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

[11]

1.1 The marriage can be:

- (a) in community of property – no additional formalities;
- (b) out of community of property with the accrual system - ANC required;
- (c) out of COP with exclusion of accrual – ANC which specifically excludes accrual. (3)

1.2 Out of COP is clearly indicated. Accrual should probably be excluded but reward any sensible answer either way. (2)

1.3 Under S.21 of Act 88/1984 the parties may jointly:

- 1.3.1 apply to court; (1)
- 1.3.2 change the property regime; (1)
- 1.3.3 they must show sound reasons; (1)
- 1.3.4 they must show notice to creditors; (1)
- 1.3.5 they must show no prejudice to other persons; (1)
- 1.3.6 the actual change is effected by means of a notarial contract duly registered. (1)

QUESTION 2

[4]

This is an exception where an inferior court (maintenance court) can amend the order of a superior court. Since the wife will not need representation the costs of taking action will be minimal. The husband may also seek a decrease. Children remain entitled to maintenance until they become self-supporting.

QUESTION 3**[19]****3.1 Special power of attorney (1)**

We, the undersigned, A & O
hereby appoint (name)
with power of substitution;
as our attorney and lawful agent to sign and execute on our behalf all documents
necessary to establish a private company; (1)
of which we will both be directors and equal shareholders; (1)
including specifically the Notice and Memorandum of Incorporation; (1)
and any other document required by CIPC in order to effect registration; (1)
and to uplift the Certificate of Registration; (1)
and we hereby:

- (a) undertake to ratify whatever our agent shall lawfully do by virtue hereof; (1)
- (b) indemnify our agent against all and any costs, expenses and charges incurred
in the lawful execution of the powers hereby conferred. (1)

Thus done and signed ...

3.2 Pre-incorporation agreement

A written agreement (1)
entered into by a person who is acting on behalf of a company which does not yet
exist; (1)
with the intention that once the company comes into existence the company will be
bound by the contract; (1)
once the company is incorporated the board of directors may, within three months of
date of incorporation, (1)
completely, partially or conditionally ratify or reject any pre-incorporation agreement; (1)
when the three month period expires the company will otherwise be deemed to have
ratified the agreement; (1)
but the person/s who entered into such contract will be jointly and severally liable for
liabilities created if: (1)

- (a) the company is not incorporated; or (1)
- (b) once incorporated, the company rejects any part of the agreement; (1)

unless the company enters into an agreement on the same terms as, or in substitution
for the agreement entered into before its incorporation; (1)

if the agreement is rejected the person who will incur liability in terms of the agreement
will be permitted to recover from the company any benefit that the company received
in terms of the agreement. (1)

QUESTION 4**[11]****4.1 A trust must have a founder (donor/settlor); trustees, beneficiaries which parties may
overlap. (3)**

- 4.2 In a discretionary trust the trustees have freedom to decide whether to make payments to whom and the amounts thereof. (2)
- 4.3.1 An income beneficiary may receive distributions of the income earned by the trust; (1)
- 4.3.2 Capital beneficiaries may or must receive a share in the capital of the trust; (1)
- 4.3.3 On its termination (or before if specifically provided for). (1)
- 4.4 The existence of a will avoids:
 delay in appointing an executor; (1)
 uncertainty arising from intestate succession; (1)
 uncertainty on the exact wishes of the deceased. (1)

QUESTION 5 **[6]**

- 5.1 It is improper to borrow money from a client unless:
- 5.1.1 the client is a money-lender; or
- 5.1.2 the client is independently advised. (3)
- 5.2 Colleague's mandate must be terminated in writing by client; ethically you should not act until colleague's fees and disbursements have been paid or secured; as a matter of etiquette, a telephone call seems indicated. Legally, a colleague has a right of retention on documents which he/she drew or on which skill and labour has been bestowed. (3)

QUESTION 6 **[11]**

- 6.1 S.15 of Act 53 of 1979 requires that the court be satisfied that applicant:
- 6.1.1 is fit and proper;
- 6.1.2 is 21 years of age;
- 6.1.3 is a SA citizen or holds permanent residence;
- 6.1.4 has obtained an acceptable LLB;
- 6.1.5 has passed the practical examination;
- 6.1.6 has attended an approved training course;
- 6.1.7 has completed the required service under a contract of articles/service. (7)
- 6.2 Under the new Legal Practice Act a National Forum of advocates and attorneys must agree on the implementation of the above requirements. Both advocates and attorneys become legal practitioners; those who take money from public still need trust accounts; practitioners who act on referral need not. (4)

- 7.1.1 The landlord will be entitled to cancel this lease by written notice to the tenant if the latter:
- (a) fails to make any payment in terms of this lease on due date and remains in default for 7 (seven) days after receiving written notice from the landlord to make the payment;
 - (b) commits any other breach of this lease and fails to remedy the breach within 14 (fourteen) days after receiving written notice from the landlord to do so.
- 7.1.2 Should the tenant, fail to make payment to a third person as required by the lease or fail to perform any other obligation due in terms of this lease, and remain in default for 7 (seven) days after receiving written notice from the landlord, to remedy the default the landlord may without prejudice to its rights under 1, make the payment or carry out the obligation and recover the amount paid or the cost of carrying out the obligation (as the case may be) from the tenant on demand.
- 7.1.3 The landlord's remedies under 1 and 2 are additional to any other remedies he may have.
- 7.1.4 Should the landlord cancel this lease and the tenant dispute the landlord's right to do so and remain in occupation of the premises then, pending the determination of the dispute:
- (a) the tenant shall continue to make all payments in terms of this lease on their due dates;
 - (b) the landlord's acceptance of those payments will not in any manner affect his right to cancel this lease or any other remedy he may have.
- 7.1.5 Should the dispute between the landlord and the tenant be determined in favour of the landlord, the payments made in terms of (a) will be regarded as amounts paid by the tenant on account of the loss sustained by the landlord as a result of the holding over of the premises by the tenant. (12)
- 7.2.1 For the purpose of the giving of notices and the serving of legal process in terms of this agreement the tenant chooses as its *domicilium citandi et executandi* (domicilium) the following:
- (physical address)
 - (post box)
 - (fax number).
- 7.2.2 The tenant may at any time, by notice in writing to the landlord/lessor change its domicilium to any other address in the Republic of South Africa which is not a post box or *poste restante*.
- 7.2.3 Any notice given in terms of this agreement shall, save where a particular form of notice is stipulated, be:

- (a) delivered by hand;
- (b) sent by prepaid registered post; or
- (c) sent by courier; or
- (d) sent by telegram; or
- (e) sent by telefax;
to the *domicilium* or address as selected by tenant.

7.2.4 A notice given as set out above shall be deemed to have been duly given:

- (a) if delivered by hand, on the date of delivery; or
 - (b) if sent by prepaid registered post, on the 7th day after posting; or
 - (c) if sent by courier, on the date of delivery by the courier concerned; or
 - (d) if sent by telegram, on the day following the day on which the text of the notice is given to the post office for transmission; or
 - (e) if sent by telefax, on the expiration of 24 hours after the time of transmission.
- (10)

7.3 The lessee shall not, except with the prior written consent of the lessor:

7.3.1 cede all or any of its rights under this lease;

7.3.2 sublet the premises or any part thereof;

7.3.3 give up possession of the premises or any part thereof to any third party; provided that if the lessee is a juristic person the transfer of a controlling interest in lessee shall be deemed to be a cession; and provided further that the lessor shall not withhold its consent unreasonably.

(5)

7.4 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:

7.4.1 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.

7.4.2 Lessee may exercise the option by delivering to lessor a written notice to that effect at lessor's *domicilium*.

7.4.3 The sale arising from the exercise of the option shall further be subject to the terms and conditions set forth in Annexure A hereunto annexed, including the obligation of lessee/purchaser to pay all costs of transfer.

(6)

VAT CLAUSE:

- 8.1 The purchaser and the seller hereby reciprocally warrant to each other that they are at the signature date, duly registered as VAT vendors; (1)
- 8.2 And it is agreed between them that:
- 8.2.1 the enterprise is disposed of as a going concern; (1)
- 8.2.2 the purchaser and seller have agreed that the enterprise will be an income producing activity at the date of transfer thereof; (1)
- 8.2.3 that the consideration agreed upon is inclusive of VAT at the rate of zero percent; (1)
- 8.2.4 if the Commissioner of Inland Revenue, rules that VAT is payable in respect of the sale of the business pursuant to this agreement at a rate exceeding zero percent then the purchaser shall pay such VAT in addition to the purchase price. (1)

TOTAL: [100]

LAW SOCIETY
OF SOUTH AFRICA