

ATTORNEYS' EXAMINATION

PART 3 ATTORNEYS' PRACTICE

22 AUGUST 2019

09:00-11:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1 **[6]**

A client consults you about her husband's proposed actions, viz

- a. Intention to issue summons for divorce at once;
- b. Ejecting her and some minor children from the common residence;
- c. Denying her (a housewife) access to any funds.

Advise her on available remedies and the relief she can seek under the Court Rules and the benefits thereof.

QUESTION 2 **[5]**

Section 197 of the Labour Relations Act deals with the transfer of a business as a going concern (the outsourcing of parts of a business) and amends certain common law principles. What, briefly, are the effects of Section 197?

QUESTION 3 **[4]**

Your client wishes to obtain an interdict based on what she read in newspapers. Explain briefly what requirements must be met before courts will grant an interdict.

QUESTION 4 **[4]**

Your client is hesitant to institute actions because the intended defendants are difficult to trace:

- a. One's address is known but it is outside the RSA;
- b. The other is in the RSA but exact address is unknown.

Which solutions contained in the Rules can you propose?

QUESTION 5 **[8]**

Operational requirements are recognised as grounds for dismissal of an employee.

- 5.1 On what needs of the employer must the requirements be based? (2)
- 5.2 Such a dismissal requires a fair procedure. What are the three requirements for fairness named in Section 189? (6)

QUESTION 6 **[7]**

How should a commissioner of oaths administer the oath to a deponent making an affidavit before him/her?

QUESTION 7 **[4]**

Are the following credit agreements?

- 7.1 An acknowledgement of debt; (½)
- 7.2 **The charging of interest on:**
- 7.2.1 the late payment of a doctors account; (½)
- 7.2.2 the late payment of sectional body corporate levies; (½)
- 7.2.3 the late payment of rental in terms of an oral lease agreement of a residential flat. (½)
- 7.3 A lease agreement on land; (1)
- 7.4 **A suretyship securing the purchase price of goods bought:**
- 7.4.1 for cash; (½)
- 7.4.2 in terms of an instalment agreement. (½)

QUESTION 8 **[11]**

Define or describe, briefly and without use of examples:

- 8.1 Fit and proper to be an attorney; (1)
- 8.2 A conflict of interest; (1)
- 8.3 Overreaching as opposed to overcharging; (1)
- 8.4 The documents subject to an attorney's lien/hypothec for fees; (1)
- 8.5 The purpose for which the Attorneys Fidelity Fund was established; (2)
- 8.6 Legal professional privilege; (2)
- 8.7 The circumstances requiring an attorney to decline a mandate. (3)

QUESTION 9 **[20]**

Draft an extensive arbitration clause that could be used in any commercial agreement.

QUESTION 10 **[15]**

Mr Adam Smith sells his restaurant business to John Brown. You act on behalf of the purchaser. He submits a draft contract to you for your consideration and comment.

- 10.1 According to your client he will be buying the stock on hand. You notice the contract does not contain a clause dealing with the stock, stock taking and the purchase price of the stock. Draft such a clause for submission to the seller's attorney for consideration. (5)

- 10.2 As he is paying a substantial amount of goodwill, your client wishes to be protected in the sense that Smith must not be allowed to open a restaurant in the close vicinity. Draft a clause to give effect to the purchaser's wishes. (5)
- 10.3 You notice that there is no provision for the publication of the sale of this business in terms of the Insolvency Act in the agreement. What will your advice be to your client with regard thereto? (5)

QUESTION 11

[8]

The bank has a potential client who wishes to deposit a very large amount with them in hard cash. They are worried about FICA (Financial Intelligence Centre Act) and suggest he pays the amount to you so that you can give the bank a trust cheque. What duties does FICA place on you? Can you claim that client affairs are confidential? Discuss.

QUESTION 12

[8]

You negligently permit a damages (not personal injuries) claim to prescribe. Your partner who is overseas requests you to explain what you did on discovering the problem and what the client's and your own rights are if it is assumed that the claim was good for R200 000.00. Draft a letter to your partner responding to his enquiry dealing with your firm's position *vis a vis* the client and the firm's potential liability.

- THE END -

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