

ATTORNEYS' EXAMINATION

PART 3

ATTORNEYS' PRACTICE

20 FEBRUARY 2020

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**[10]**

- 1.1 Give reasons why in certain circumstances conducting a business through a legal entity is preferable to doing so as a sole proprietor or partnership; (5)
- 1.2 What types of company can be incorporated under the New Companies Act No. 71 of 2008? (5)

QUESTION 2**[24]**

A borrows from B an amount of R200 000-00 repayable in 60 equal monthly instalments. Draw a complete acknowledgement of debt omitting only clauses relating to the rate of interest, early repayment and domicile.

QUESTION 3**[5]**

Which of the following would be included in the calculation of the accrual as between spouses:

- 3.1 Large income earned by the husband while his wife remained at home to manage the household; (1)
- 3.2 Money earned by the wife by part-time dressmaking for neighbours; (1)
- 3.3 The husband inherits R20 000-00 out of his father's estate; (1)
- 3.4 The wife received R20 000-00 general damages arising from an accident; (1)
- 3.5 The RAF pays the wife R50 000-00 for medical expenses. (1)

QUESTION 4**[17]**

At which tribunal, forum or office would you or your client seek relief in respect of the following:

- 4.1 A claim for damages for R9 000-00; (1)
- 4.2 An order that a provision affecting R100 000-00 is unconstitutional; (2)
- 4.3 A claim for reinstatement after unfair dismissal; (2)
- 4.4 An unfair calculation of pension benefits by a pension fund; (1)
- 4.5 The interrogation of an insolvent who hides assets; (2)
- 4.6 Amendment or enforcement of a High Court maintenance order; (2)
- 4.7 An excessive fee charged by an attorney in a criminal trial; (2)
- 4.8 Trust money apparently stolen by an attorney; (3)
- 4.9 Loss due to professional negligence of an attorney. (2)

QUESTION 5**[5]**

Before the start of a criminal trial in which you will represent the accused, you discover that the magistrate is the mother of the complainant. How would you apply the applicable rules of conduct and what will you do if you are unsuccessful?

QUESTION 6**[20]**

You are consulted by the Seller and the Purchaser of a Café business. They tell you they have agreed on most of the terms of the sale but they are not certain what provision should be made to determine the value of the stock in the business on the take-over date or how to provide that the Seller will not conduct a similar business in the area. They ask you to draft clauses for their consideration which are to be included in the deed of sale covering these two aspects which are fair to both parties.

QUESTION 7**[9]**

You negligently allow a claim for damages to prescribe. What is the effect of prescription? What should you advise your client; and what can you do in regard to your own position?

QUESTION 8**[5]**

What are the grounds that would entitle an attorney to withdraw as attorney and terminate his client's mandate?

QUESTION 9**[5]**

The Court finds in a civil trial that in a motor collision your client, A, suffered damages of R100 000 but was 50% negligent. The defendant's damage was R90 000 and negligence also 50%. What is the net effect and what order for costs will be made?

- THE END -
