

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

20 FEBRUARY / FEBRUARIE 2020

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

[10]

- 1.1 A body corporate gives continuity and sometimes protection against personal liability. It may be beneficial to avoid sequestration and has a better organised regulatory structure and may have tax flexibility. (5)
- 1.2 See Section 8 and definition of "non-profit company" in new Companies Act No. 71 of 2008. Types of company are:
- 1.2.1 Profit company, which can be either a
- (a) State-owned company; or
 - (b) Private company;
 - (c) Personal liability company; or
 - (d) Public company.
- 1.2.2 Non-profit company, i.e. incorporated for a public benefit or other object (similar to old Section 21 Company). (5)

QUESTION 2

[24]

Note: this precedent is what is taught to candidates in the Practice Manual to reflect "plain English"

The agreement:

1. ACKNOWLEDGEMENT

I, the undersigned,

JOHN DOE

acknowledge that I owe

ABC LOAN SPECIALISTS CC
CK 90/00492/23

("the creditor")

R200 000 (two hundred thousand Rand)
("the capital sum") (4)

In respect of monies lent and advanced to me by the creditor.

2. INSTALMENTS

2.1 I will pay the instalments:

- 2.1.1 in cash, free of deduction or set-off;
- 2.1.2 On the first day of each month, commencing in the month following that in which this acknowledgement is signed;
- 2.1.3 To the creditor at the address which it specifies in writing from time to time, being initially [state payment address].

2.2 If so required by the creditor, I shall arrange (at my own expense) for payments to be made by means of a stop or debit order. (4)

2. ADDITIONAL CHARGES (2)

The creditor may include in the principal debt or recover all amounts permitted by the National Credit Act, 2005, to be included or recovered if the creditor is authorised by written agreement to do so. Such charges are the following: [The consumer has a right to information in terms of the NCA and such charge amounts must be set out in the agreement. Be lenient.]

3. DEFAULT (8)

3.1 Should I fail to make payment on due date of any amount owing in terms of this acknowledgement, I will be liable for interest on that amount at the rate then payable on the capital sum in terms of 2.1.

3.2 If any of the following occurs:

- 3.2.1 I fail to make payment of any amount by due date;
- 3.2.2 I am sequestered (provisionally or finally) or if I take steps to surrender my estate;
- 3.2.3 I make, or attempt to make, a compromise with any of my creditors;
- 3.2.4 Any of my property is attached in execution of a court judgment; the full balance outstanding (including interest) will immediately become due and payable and the creditor will be entitled, without prejudice to any other remedy he may have against me, to proceed immediately for recovery of the balance.

4. PROOF OF AMOUNT OF INDEBTEDNESS (2)

A certificate signed by a person identified in the certificate (or otherwise) as a member of the creditor will be proof, until the contrary is proved, of the amount then owing by me and the due date (dates) for payment.

5. LEGAL COSTS (4)

I will be liable for:

- 5.1 the legal costs (including any tax or duty) incidental to the negotiation, preparation, and signing, of this acknowledgement of debt;
- 5.2 any legal costs, including attorney and own client costs, incurred by the creditor in enforcing this acknowledgement of debt, except costs which the creditor incurred, or which were incurred on its behalf, before it gave instructions to institute proceedings.
- 5.3 Value Added Tax on the costs and collection commission.

[Date and place for debtor and witnesses to sign.]

[Magistrates' Court has jurisdiction into s 29 of the Magistrates' Court Act for enforcing the AOD.]

QUESTION 3 **[5]**

- 3.1 Included (1)
- 3.2 Included (1)
- 3.3 Excluded (1)
- 3.4 Excluded (1)
- 3.5 Included (1)

QUESTION 4 **[17]**

- 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 Court; (2)
- 4.7 The Law Society (Assessment Panel); (2)
- 4.8 The Attorneys Fidelity Fund and Law Society; (3)
- 4.9 Sue the attorney in the appropriate court. The attorney may approach the AIIF and his own indemnity insurers. (2)

QUESTION 5**[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).

QUESTION 6**[20]**

a) Stocktaking

On the take-over date the parties will do a stocktaking of the business in accordance with the following provisions:

- Each party will be entitled to be present or represented at the stocktaking.
 - The stock will be valued at the cost price thereof.
 - After the stocktaking, a schedule reflecting the stock and its value will be prepared and signed by the parties.
 - Any stock which is damaged or is unsaleable will be excluded for the purpose of valuing the stock unless the parties agree in writing as to its value.
 - If there is a dispute as to whether any stock is damaged or unsaleable the Seller will retain ownership therein and this stock shall also be excluded for the purposes of valuing the stock.
- The parties agree that the value of the stock as reflected in the said schedule shall be final and binding upon them. (8)

b) Restraint of trade

The Seller, in order to protect the goodwill of the business and the interest of the Purchaser in such goodwill, agrees and undertakes in favour of the Purchaser that he will not, within a radius of 50 km from the premises in which the business is conducted, and for a period of three years after the take-over date, either as principal, agent, partner, shareholder, director, employee, or in any similar capacity, directly or indirectly be associated with or engaged in any firm, business, or company which carries on a business the same as, or similar to the business sold or in any new but similar business. The Seller agrees that the restraints imposed by this clause are necessary to protect the Purchaser and are reasonable both as to area and duration. Each of the restraints constitutes a separate and independent restraint several from others. (12)

QUESTION 7**[9]**

The claim is "extinguished" and becomes unenforceable (1). Payments may validly be received (1) but a summons is open to a special plea (1). You advise client to seek independent advice (1) but do not admit liability (1); inform the AIIF and your own insurers (1) of any claims; pay the excess deductible (1). You need not inform the Law Society (1) but must respond to any complaints (1).

QUESTION 8

[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.

QUESTION 9

[5]

| | | |
|---|----------|---------------------|
| Damage A | R100 000 | |
| 50% thereof | | R50 000 |
| Damage B | R90 000 | |
| 50% thereof | | R45 000 |
| Net award to A | R5 000 | |
| Costs awarded to A but probably on scale C. | | |
| | | TOTAL: [100] |