

**ADMISSION EXAMINATION  
ATTORNEYS' PRACTICE  
PART 3**

**18 MARCH 2021**

**MEMORANDUM**

**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.*

**SECTION A**

**QUESTION 1**

**[17]**

1.1 Option to Extend

The lessor gives the lessee an option to extend the lease for a further period of three years on condition that: (1)

1.1.1 a written notice of such exercising of the option reaches the lessor not later than three months before the termination of the lease period; (1)

1.1.2 the rental as prescribed in the lease agreement is increased by 10% in regard to every year of such extended lease period starting on the date when the extended lease period comes into operation; (1)

1.1.3 all the remaining provisions of the lease contract save the right to extend remain applicable to such extended lease period; (1)

1.1.4 this option is granted on the express condition that the lessee strictly and faithfully complies with the provisions of the contract. (1)

1.2 Subletting, cession and assignment

The tenant shall not, without the prior written consent of the lessor (which shall not unreasonably withhold consent):

1.2.1 sublet the premises or any part thereof; (1)

1.2.2 allow any other party to occupy the premises or any part thereof on any conditions or for any reason; (1)

1.2.3 assign the lease or cede any of its rights under this lease; (1)

1.2.4 transfer a controlling interest in the lessee if it is a juristic person. (1)

1.3 Improvements / alterations

The tenant shall not make any structural alterations or additions to the premises without the landlord's consent, which shall not be unreasonably withheld. (1)

Any alterations or additions made with the landlord's consent must be carried out by the tenant:

- at its own cost; (1)
  - should the landlord so require, under the supervision of an architect (approved by the landlord) whose fee the tenant shall pay, and (1)
  - in accordance with any other reasonable conditions and requirements stipulated by the landlord. (1)
- a) The Tenant shall, if required to do so by the Landlord in writing within 30 (thirty) days after that expiration or termination, remove that alteration or addition and reinstate the Lease Premises (or part of the Leased Premises in question) at the Tenant's cost, to its same condition prior to the carrying out of that alteration or addition; (2)
- b) If the Landlord does not exercise the rights in terms of clause 1.3 (a), those additions or alterations shall not be removed by the Tenant but shall become the Landlord's property and no compensation therefor shall be paid by the Landlord; (2)

**QUESTION 2**

**[9]**

The sale of the trading business is affected by:

- 2.1 The L.R.A which provides in S197 that the purchaser in all respects steps into the shoes of the seller qua employer and is bound by all the obligations of the seller to the employees. (3)
- 2.2 The Insolvency Act (S34) provides that the sale must be advertised 30 days in advance failing which the sale will be void as against creditors and the trustee in case of insolvency of the Seller. (3)
- 2.3 The VAT Act provides that if both parties are registered vendors the transaction will be zero-rated for VAT provided certain requirements are met. (3)

**QUESTION 3**

**[10]**

DEED OF SURETYSHIP

I, the undersigned

Joe Soap

Identity number:

Married in community of property (1)

of ..... (address)

do hereby interpose and bind myself to and in favour of: (1)

Mrs. A.  
("the Creditor")

as surety and co-principal Debtor in solidum with (2)

XYZ (Pty) Ltd  
Reg no.: .....(1)  
("the Debtor")

renouncing the benefits of the *exceptiones excussionis* and *cedendarum actionum* (1) for the due and timeous fulfilment by the Debtor of all its obligations (1) in terms of or arising out of a deed of sale of a business (1) between the Creditor and Debtor and for the payment of all amounts owing by the Debtor to the Creditor in terms thereof. (1)

Thus done and signed.....

CONSENT

I, the undersigned, Mary Soap, ID no: ..... (1) being married to the surety in community of property (1) herewith consent that Joe Soap enters into the above suretyship (1).

This consent is given in terms of section 15(2) of the Matrimonial Property Act (1).

Thus done and signed....

**(maximum 10 marks)**

#### **QUESTION 4**

**[6]**

4.1 Benefit of excussion (*beneficium excussionis*)

Where the surety may claim that the debt must as far as possible be recovered from the principal debtor before he himself is sued. (2)

4.2 Benefit of division (*beneficium divisionis*)

It means that where there is more than one surety, the one who is sued may claim that the debt be divided between all the sureties so that he is only liable for his proportionate share. (2)

4.3 Benefit of cession of actions (*Beneficium cedendarum actionum*)

Where a surety may in fact refuse to pay unless the creditor cedes to him all actions which the latter may have against the principal debtor and other sureties. (2)

#### **QUESTION 5**

**[12]**

5.1 An *inter vivos* trust is created by the founder executing a trust deed before a notary public. (2)

5.2 The trust deed should identify the founder, the trustees and the beneficiaries (in respect of income and capital). (3)

5.3 A trust must be registered with the Master of the High Court in the area where the founder resides. (1)

The Master will require (**give credit for a maximum of 6 of the following**):

- 5.3.1 The Trust deed in duplicate (1)
- 5.3.2 The prescribed fee (1)
- 5.3.3 Security by the trustee or exemption by the Master (1)
- 5.3.4 Acceptance of Trust by the trustee (1)
- 5.3.5 Consent to act of an Auditor (1)
- 5.3.6 Name of the Bank where the Trust will operate its account (1)
- 5.3.7 Name and address of person who will keep the records of the Trust (1)
- 5.3.8 Occupation of the Trustee (1)
- 5.3.9 Experience of Trustees, as such (1)
- 5.3.10 If exemption is asked for the Master may have further requirements. (1)

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**QUESTION 6** **[6]**

The Prescription Act provides that the claim is extinguished (1). This means that while the claim cannot be enforced it does remain a natural obligation (1). The claim can therefore be resisted in litigation by way of a special plea (1). However, if the debtor pays on receipt of a demand or summons the amount may validly be accepted (1). If the special plea is not raised, the presiding officer may not raise it *mero motu* (1). The practical approach is to sue and withdraw if the special plea is raised (1).

**SECTION B**

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**QUESTION 1** **[9]**

Having satisfied him/herself of the identity of the deponent (1) the commissioner of oaths must ask the deponent whether he/she knows and understand the contents of the affidavit (1), must ask the deponent whether he/she has any objection to taking the prescribed oath (1), must ask the deponent whether he/she regards the oath as binding on his/her conscience (1). If the deponent has an objection to taking the oath, he/she may make a solemn declaration (1). The affidavit or solemn declaration is then signed in the presence of the commissioner of oaths, who also signs it (1). A certificate must be added to the bottom of the document, confirming that the document was signed and attested to before him/her (1). The affidavit must contain the full names, physical address and authority of the commissioner of oaths (2).

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**QUESTION 2** **[9]**

- 2.1 Small Claims court (1)
- 2.2 The High Court (1)
- 2.3 The Compensation Commissioner and Road Accident Fund (2)
- 2.4 The High Court (Rule 43) or Regional Court (2)
- 2.5 Magistrate's Court (1)
- 2.6 CIPC (1)
- 2.7 Magistrate's Court (1)

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**QUESTION 3** **[5]**

A private for profit company is registered –

- in terms of Act 70/2008 (1)
- by one or more person (S.13 (1)) (1)
- completing and signing a notice of incorporation (S13, Rule 14) in prescribed form (COR 14.1) (1)
- lodging it with CIPC (1)
- together with a memorandum of incorporation (S 13(2)(b) Rule 15) (1)
- in the form of forms (COR I51A OR 151B or any unique form in compliance with S15). (1)

**Any five (5) answers would suffice.**

**QUESTION 4** **[4]**

The benefits of conducting a business in corporate form rather than as a sole proprietor or partnership, are:

- 4.1 Continuity (survives death of individual); (1)
- 4.2 Avoiding personal liability; (1)
- 4.3 A sound regulatory and governance system; (1)
- 4.4 Possible tax benefit. (1)

**QUESTION 5** **[6]**

A person who believes (usually has been informed) that his attorney has allowed his claim to prescribe should be advised to:

- 5.1 Terminate the mandate, collect his file from the negligent attorney to have his position assessed by the new attorney; (1)
- 5.2 Instruct his new attorney to send a letter of demand to the previous attorney; (1)
- 5.3 Inform the Legal Practice Council in his region of the claim; (1)
- 5.4 Await an approach from the attorneys for the LP Insurance Indemnity Fund who are likely to seek a settlement; (1)
- 5.5 If there is undue delay issue summons against the negligent attorney for damages; (1)
- 5.6 Consider any offers of payment or settlement from either the attorney himself or the LPIIF, taking into account any contributory negligence. (1)

**QUESTION 6** **[5]**

The court has held that lawyers serve society and that allowing them to advertise their services would provide consumers with valuable information about available legal assistance (1). After certain landmark cases, attorneys could advertise to obtain clients (1). They cannot, under their logo and brand names, advertise themselves in a way that transgresses the rules governing touting (1).

They are bound to market both their practices and businesses within the confines of the Legal Practice Rules and the LP Act (1). Furthermore, they cannot conduct a copying business under the name and style of the practising attorney, as this is in contravention of the applicable legislation, and not allowed (1).

***Guideline - to test the candidates' ability to differentiate between touting and running more than a practice as an attorney from an attorney's practice. Reference to specific parts of the Act and Rules is not necessary but the explanation from the ethical point of view relating to attorneys is.***

**QUESTION 7**

**[2]**

All four actions are permissible.



**TOTAL: [100]**

LAW SOCIETY  
OF SOUTH AFRICA