

ATTORNEYS' EXAMINATION

PART 3 ATTORNEYS' PRACTICE

18 MARCH 2021

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.

NB! The number of marks indicate the length of the required answer.

SECTION A

Your client, Mrs A, is a widow with three (3) minor children. She has inherited substantial assets from her parents and from her late husband, including a large trading business and a building containing flats and offices which are let out to tenants. She is finding these business interests demanding and consults you on various areas of concern.

These facts apply to all the questions in this section.

QUESTION 1 **[17]**

You are asked to prepare a standard lease that can be used for all tenants. Draft suitable clauses to be included dealing with the following matters:

- 1.1 The rights of tenants to extend / renew their leases after the initial period; (5)
- 1.2 The usual restriction on subletting; (4)
- 1.3 Improvements or alterations to the premises by the tenant to protect the owner. (8)

QUESTION 2 **[9]**

She has negotiated a sale of the trading business to a new company which has been established for the purpose by a wealthy local businessman, Mr B. Explain to her briefly how the transaction might be affected by the following legislation (which should therefore be dealt with in the deed of sale):

- 2.1 The Labour Relations Act; (3)
- 2.2 The Insolvency Act; and (3)
- 2.3 The Value Added Tax Act. (3)

QUESTION 3 **[10]**

You inform Mrs A. that while Mr B. may be wealthy, the new company has no assets. She instructs you to draft a short deed of suretyship to be signed by Mr B. who is married in community of property. Also draft any required consent/s.

QUESTION 4 **[6]**

Mrs A. and her late husband signed surety for a bank overdraft and she enquires from you the meaning of the following exceptions which they were required to renounce:

- 4.1 *Beneficium excussionis* (Benefits of excussion); (2)
- 4.2 *Beneficium divisionis* (Benefits of division); (2)

4.3 *Beneficium cedendarum actionem* (Benefits of cession of action). (2)

Explain these exceptions.

QUESTION 5 **[12]**

Mrs A. has been advised by her accountant to create a trust for the benefit of her minor children. Explain to her the following aspects:

5.1 How is a trust established / created? (2)

5.2 Which parties must be identified as being involved in the trust? (3)

5.3 Where and how is the trust formally registered? Specify the required documents. (7)

QUESTION 6 **[6]**

Due to her inexperience Mrs A. has allowed some claims to become prescribed. Explain to her the effect of prescription of a claim as regards her right and possible courses of action.

SECTION B

You are an experienced attorney practising in a large country town with a district and regional court. You are regularly consulted by young colleagues practising on their own or with the local Legal Aid Clinic on ethical and professional issues. Set out the advice you would give on the problems mentioned below:

QUESTION 1 **[9]**

Colleague W wishes to know exactly how to perform his duties when a person deposes to an affidavit before him in his capacity as Commissioner of Oaths.

QUESTION 2 **[9]**

Indicate in which forum, tribunal or office one should seek relief in the following cases:

2.1 The return of your goods worth R14 000. (1)

2.2 Authorising acceptance as valid of a will which does not comply with the formalities of the Wills Act. (1)

2.3 Damages arising from a motor vehicle collision where the injured parties (driver and passenger) were both acting in the scope of their employment. (2)

2.4 Interim maintenance, contribution to costs, interim custody in a pending divorce matter. (2)

2.5 Liquidation of a Close Corporation. (1)

- 2.6 Deregistration of a Close Corporation. (1)
- 2.7 An Administration order for a person unable to pay his/her debts. (1)

QUESTION 3 [5]

Where and how does one register a private for-profit company?

QUESTION 4 [4]

Why could it be beneficial to conduct business as a juristic person rather than as sole proprietor or partnership?

QUESTION 5 [6]

How to enforce the rights of a person whose attorney has negligently allowed a damages claim to prescribe?

QUESTION 6 [5]

Attorney X has taken offices right next to the Magistrate's Court in which he mainly practises. He is well supported by walk-in clients in the preparation and filing of pleadings and the preparation and notarisation of documents and contracts. He finds that copying is lucrative as he has a good heavy-duty photocopier and would welcome much more copying. Would it be permissible to put up a shingle reading:

"ATTORNEY X SPECIALIST IN MAGISTRATE'S COURT CLAIMS, FASTEST IN NOTARISATION, BEST AND CHEAPEST IN COPIER SERVICES."

Discuss briefly.

QUESTION 7 [2]

In which of the following ways may one assist a crucial but unsophisticated and indigent witness you intend to call in a culpable homicide trial:

- 7.1 Provide her with money for fare to ensure attendance; (½)
- 7.2 Interview her before trial so that she will be more at ease when she testifies; (½)
- 7.3 Prepare an affidavit of her testimony, which she will then verify before court; (½)
- 7.4 Give her examples of the questions you might ask during the trial. (½)

- THE END -
