

ATTORNEYS' EXAMINATION

PART 3 ATTORNEYS' PRACTICE

20 OCTOBER 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 if 50% or more is attained. If a candidate achieves a score from 40% and below 50% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this examination.

SECTION A

You are the chairperson of the local Attorneys Association in a large town. Colleagues and candidates regularly consult you regarding professional and practical matters. How will you advise them in the following situations?

QUESTION 1 **[9]**

A candidate preparing for admission asks you for crisp definitions of the following:

- 1.1 Fit and proper to be an attorney; (2)
- 1.2 A conflict of interest; (2)
- 1.3 Legal professional privilege; (2)
- 1.4 The circumstances requiring an attorney to decline a mandate. (3)

QUESTION 2 **[6]**

Colleague A has a client who seems to have a good and substantial claim for damages arising from a motor collision but cannot afford litigation. What kind of arrangement can you recommend, what are the requirements and what maximum fee can A charge?

QUESTION 3 **[6]**

A follows your advice and negotiates for the maximum fee. His client's damage was set by the court at R500 000, but the Defendant's damage is R600 000. His client was judged to be 20% negligent. What is the maximum fee A can charge? Show the calculations, taking into account apportionment of damages.

QUESTION 4 **[11]**

Colleague B's client informs him that one of his staff Mr Pick Pocket has been charged with shoplifting. He is aware that B's firm does not usually involve itself in criminal matters but wonders if he would be prepared to help as a special favour to him.

- 4.1 Can B accept the mandate as a favour to him? (4)
- 4.2 Mr Pick Pocket admits unequivocally his guilt to B during consultation but refuses to plead guilty at Court and insists on pleading not guilty when the matter appears in Court.

Could B continue to represent him at his trial if he pleads not guilty to theft, and if so, how should B conduct each part of the trial until judgment. (7)

QUESTION 5 **[9]**

- 5.1 Colleague C enquires for what purpose the Legal Practitioners' Fidelity Fund was established. (2)

- 5.2 It appears that the bank which holds Attorney C's trust monies due to the Trust Creditors in terms of Section 86(2) is liquidated. What is the client's right of recourse against:
- 5.2.1 The Bank; (2)
 - 5.2.2 The LPFF (Legal Practitioners' Fidelity Fund); (2)
 - 5.2.3 Attorney C; (2)
- 5.3 Does attorney C have any rights against the LPFF? (1)

QUESTION 6 **[6]**

Colleague D enquires from you how he should act having just discovered that he has negligently allowed a good claim for damages of his client, to prescribe. Advise him fully.

SECTION B

You are consulted by a local businessman Mr X regarding various matters and in particular the sale of a residence to Mr Y who will require a mortgage loan from a bank. The following situations arise:

QUESTION 1 **[25]**

- 1.1 The sale is conditional upon the purchaser obtaining a bond for 80% of the purchase price. Using any additional facts which you consider necessary, draw the clauses which you, acting on behalf of the seller Mr X, would include in the agreement which:
- 1.1.1 In the one instance will make the operation of the agreement dependant on the bond being obtained (include a heading); (5)
 - 1.1.2 In the other instance will terminate the agreement upon the bond being refused (include a heading); (5)
- 1.2 You are advised that the purchaser approached the seller directly after seeing that the house was vacant. The purchaser warrants that he approached the seller directly without being aware of estate agents.
- 1.2.1 Draft the clause in the agreement dealing with the agent's commission. (5)
- 1.3 The parties furthermore agree that the Purchaser has the option of cancelling the agreement within five (5) days of signature of the deed of sale by the purchaser.
- 1.3.1 Would the Purchaser be entitled to cancel the agreement? Motivate your answer. (2)
 - 1.3.2 Draft the clause, including the heading, that allows for the Purchaser to cancel as per above. (8)

QUESTION 2 **[14]**

Mr X has also verbally granted Mr Grantee a right of pre-emption in respect of Erf 786, Blessed Township (a different property).

Draft the clauses suitable to give effect to the pre-emption clause. Do not draft standard clauses which do not relate to the particular transaction.

QUESTION 3**[6]**

During discussions Mr X enquires whether he could sign on behalf of a trust or a company which does not yet exist.

- 3.1 Explain at which stage a (proposed) trustee will be able to act on behalf of the trust. (2)
- 3.2 Draft a clause that would protect the seller if he should agree that the purchaser may sign on behalf of a private company not yet incorporated. (4)

QUESTION 4**[8]**

While you are waiting for deed searches and chatting to Mr X and Mr Y they raise similar issues.

- 4.1 A man is married out of community of property. His wife who is in possession of most of his assets, is being sequestered. Advise them of the effects under the Insolvency Act and of possible remedies. (5)
- 4.2 Do spouses who were married in community of property remain liable for each other's liabilities (incurred during the marriage) after divorce? Discuss briefly. (3)

- THE END -
