

ATTORNEYS' EXAMINATION

PART 3 ATTORNEY'S PRACTICE

15 MARCH 2023

09:00-12:15

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 3 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 section.

During a consultation with your client Mrs Gold, who is married out of community of property with the accrual system, you are instructed to lodge a claim for injuries that she had sustained as a result of a motor vehicle accident on Christmas Eve. She was a passenger in the vehicle driven by her sister.

You establish that Mrs Gold has good prospects of success and are willing to lodge the claim. She indicates that her husband had recently lost his job, and that she is the sole breadwinner of her family. Hence, she does not have the funds to pay you for your services but is willing to pay you when she gets paid from the proceeds of the matter.

1.1 What sort of agreement will you conclude with her in order to facilitate the above? Explain what this agreement entails. (3)

You are successful in the matter. The Court grants apportionment of damages wherein Mrs Gold's claim succeeds as follows:

R325 000.00 for special damages;
R250 000.00 for general damages.

Upon drawing up your bill of costs for Mrs Gold, you note that your fees are R65 000.00.

1.2 What fee will you be entitled to, if you had an agreement in terms of Question 1.1 above? Explain your answer. (3)

1.3 Will the proceeds as received by Mrs Gold, form part of the accrual? Give reasons for your answer. (4)

1.4 Should the client have terminated the mandate before the finalisation of the matter, would you have been able to recover your costs? Explain. (2)

1.5 At which forum, tribunal or office would your client seek relief if she was of the view that your fees were excessive? (1)

1.6 Mention 4 (four) instances under which you as a Legal Practitioner may refuse to undertake a mandate. (4)

1.7 Mention 2 (two) instances where you, as a Legal Practitioner, may be obliged to accept a mandate. (2)

1.8 If there was no agreement as per Question 1.1 above, as concluded between yourself and the client, and you are of the view that your client may dispute the fees and / or the terms of the instructions as provided to you, what document would you draw up to avoid this? (1)

- 1.9 Draft the relevant agreement as per the aforementioned Question 1.8. Your answer must include a detailed explanation of the costs and the right of recourse for default in payment. You are not required to draft the common terms and the execution clause of the agreement. (12)**
- 1.10 Draft the clause that you would include in the document as drafted in Question 1.9 above, should your client be a Close Corporation with regards to liability. (3)**

QUESTION 2**[5]**

Legal Practitioner, Mr Sunshine, has consistently failed to pay his annual membership fees to the then Law Society of South Africa, and now the Legal Practice Council, for several years. Demand letters have been sent to him and he has acknowledged receipt of these letters. However, all the efforts of the LSSA and the LPC have proved to be futile.

Discuss the consequences of his failure to comply with payments. Your answer should also address the prospects of Legal Practitioner Sunshine being able to continue practising as a Legal Practitioner. (5)

QUESTION 3**[18]**

The bank refers Will Smith and Adam Sandler to you. They have concluded an agreement for the purchase and sale of immovable property described as Erf 888, Neverland. The Property is owned by the Will Smith Family Trust and Will Smith is the trustee authorised to conclude the agreement by virtue of a resolution signed by the trustees. The purchase price is R1 500 000.00.

The sale is conditional upon the purchaser obtaining a mortgage / loan (bond) for R950 000.00.

Using any additional facts which you consider necessary, draw the clauses which you will include in the agreement which:

- 3.1 In one instance will make the operation of the agreement dependent on the bond being obtained. (5)**
- 3.2 In the other instance will terminate the agreement upon the bond being refused. (5)**
- 3.3 Assuming that the purchaser's bond has been approved but the purchaser despite his promises made to pay the deposit, has failed to do so. Draft the letter to be forwarded to the purchaser alleging the breach and placing him on terms. (8)**

QUESTION 4**[4]**

The Electronic Communications and Transactions Act No. 25 of 2002 (ECTA) has thrust e-commerce to the fold. Electronic signatures are largely permissible.

However, what transactions / agreements cannot be signed electronically?

List 4 (four) such agreements.

(4)**QUESTION 5****[4]**

Explain the onus of proof in establishing a dismissal in terms of the Labour Relations Act No. 66 of 1995, by stating what the employee and employer must prove respectively?

(4)**QUESTION 6****[2]**

Generally speaking, it could be said that the nature of the dispute determines the route of the dispute resolution.

Which route would a dismissal dispute of 2 (two) 'retrenchees' follow? Merely state the dispute resolution bodies involved in the correct chronology.

(2)**QUESTION 7****[14]**

Draft the following clauses in a Deed of Suretyship:

7.1 The procedure in respect of disputing a claim. (10)

7.2 The effect of an amendment or novation in a Deed of Suretyship. (4)

QUESTION 8**[18]**

Mr Hogwart agrees to sell his property situated at Kingdom Palace to Mr Potter, for an amount of R4 500 000.00. They have agreed to the essential terms of the contract.

However, Mr Hogwart wants to ensure that Mr Potter is aware of the condition and the extent of the property, so that he may not later aver that he was not aware of any defects as such.

8.1 Draft the clause in the sale agreement that indemnifies Mr Hogwart from the above. (10)

8.2 The parties furthermore agree that the transaction does not fall within the ambit of the Consumer Protection Act No. 68 of 2008.

Draft the clause that confirm that the Consumer Protection Act No. 68 of 2008 is not applicable to the Seller nor the Purchaser. (8)

- THE END -
