



INSOL
INTERNATIONAL



PROGRAMME IN SOUTH AFRICAN INSOLVENCY LAW AND PRACTICE 2022

Practice Assessment: Paper 2

Date: 11 - 12 October 2022

Time limit: 24 hours (from 13:00 on 11 October to 13:00 on 12 October 2022)

EXAMINERS

Dr Reghard Brits

MODERATOR

Dr D Burdette

It is imperative that all candidates read and take cognisance of the examination instructions on the next page.

All candidates are expected to comply with ALL the instructions.

INTRUCTIONS

1. This assessment paper will be made available at **13:00 (1 pm) SAST on Tuesday 11 October 2022** and must be returned / submitted by **13:00 (1 pm) SAST on Wednesday 12 October 2022**. Please note that assessments returned late will not be accepted.
2. All assessments must be submitted electronically in one of the following formats:
 - Microsoft Excel spreadsheet; or
 - Microsoft Word (with the use of tables); or
 - Hand-drafted, scanned and submitted.

As far as possible, please use the Avenir Next or Arial 11-point font when answering this assessment.

3. You must save the document containing your answer using the following format: **[studentID.Paper2Formative]**. An example would be something along the following lines: 202122-336.Paper2Formative. **Where possible, please also include the filename as a footer to each page of the answer to the assessment, or at the top of each page to the assessment.** Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
4. The assessment can be downloaded from your student portal on the INSOL International website. The assessment must likewise be returned via your student portal as per the instructions in the Course Handbook for this course. If for any reason candidates are unable to access their student portal, the answer script must be returned by e-mail to david.burdette@insol.org.
5. Due to the high incidence of load shedding currently taking place across South Africa, candidates are required to determine whether any load shedding is scheduled during the examination period and, if so, to make alternative arrangements to write elsewhere if at all possible.
6. Enquiries during the time that the assessment is written must be directed to David Burdette at david.burdette@insol.org or by WhatsApp on +44 7545 773890. Enquiries will only be responded to during office hours.
7. While the assessments are open-book assessments, it is important to note that candidates **may not receive any assistance from any person** during the 24 hours that the assessment is written. When submitting the answers candidates will be asked to confirm that the work is their own and that they have worked independently.
8. Once a candidate's assessment has been uploaded to their student portal (in line with the instructions in the Course Handbook), a confirmatory e-mail will be auto-generated confirming that the assessment has been uploaded. If the confirmatory

e-mail is not received within five minutes after uploading the assessment, candidates are requested to first check their junk / spam folders before e-mailing the Course Leader to inform him that the auto-generated e-mail was not received.

9. If a candidate is unable to complete this practice assessment, please note that the practice assessments (mock examinations) are not compulsory and no further opportunity will be provided to complete it. The marking guide for the two practice assessments (Paper 1 and Paper 2) will be uploaded to the course pages after Paper 2 has been written and submitted.
10. This assessment consists of **8 pages**.

QUESTION 1

In 2006 Marjorie Pienaar started her own business by incorporating the company **Friendly City Homes (Pty) Ltd**. Marjorie and her husband Gerhard were the only shareholders and directors of the company, with Marjorie holding 51% of the shares and her husband Gerhard holding the remaining 49%. The main business of Friendly City Homes (Pty) Ltd was the publication of a high quality magazine carrying articles and advertisements relating to home improvement products and services in the city of Port Elizabeth. The company's income was generated by selling advertising space in their magazine, *Friendly City Homes*.

Initially the *Friendly City Homes* magazine was a great success, with businesses clamouring to place their advertisements in the magazine which was distributed throughout the Eastern Cape. However, in 2008 a competitor magazine, offering identical products but at a lower advertising fee, entered the Eastern Cape market. This magazine, called *Windy City Homes*, soon put pressure on the income generated by the *Friendly City Homes* publication. Friendly City Homes (Pty) Ltd tried unsuccessfully to put a stop to the competition created by *Windy City Homes*, even approaching the court in a number of court applications to try and prevent them from publishing the competitor magazine. The cost involved in the court applications soon had Friendly City Homes hovering on the brink of insolvency.

After having not been paid a salary for nearly three months, the sales representatives for *Friendly City Homes*, Charles Oliphant, brought an application for the winding-up of Friendly City Homes (Pty) Ltd on the ground of the company's inability to pay its debts. The application was lodged with the Registrar of the Port Elizabeth Division of the High Court on 5 April 2021. On 9 April 2021 the Port Elizabeth High Court granted a final winding-up order, placing Friendly City Homes (Pty) Ltd in liquidation.

You are required to draft a **Liquidation and Distribution and/or Contribution Account** together with a **Bank Reconciliation Statement** in this estate, reflecting all the facts furnished below. It is essential that you take note of the following important information when drafting this account:

- You need not prepare a liquidator's affidavit nor insert dates, addresses, voucher numbers and repetitive headings.
- All interest calculations in respect of a secured claim(s) must be shown and reflected in the relevant Encumbered Asset Account(s).
- In the event of you making assumptions, you are to clarify same by stating why you are of the opinion that insufficient facts have been given or, where in your opinion, the facts given are ambiguous.
- The expected date of confirmation of the account is **20 January 2022**. You are to assume that all final payments will be made on this date.
- The account may be drafted in any order that suits you.

- In the Distribution and / or Contribution Account you are to reflect at least the total claim and the secured, statutory preferent and concurrent portion of each claim separately. You need not provide for a shortfall (deficiency) column in respect of any of the claims and you need not add up unnecessary totals. The Distribution and / or Contribution Account must reflect awards to all classes of creditors, ie secured, preferent and, where applicable, concurrent creditors, as well as the amount upon which contribution is payable (if any) and the amount of contribution payable by each creditor, if applicable.
- **Friendly City Homes (Pty) Ltd** is registered as a vendor in terms of the Value-Added Tax Act. Your account must therefore make provision for Value-Added Tax (VAT). Provision must be made in the account for the allocation of VAT in which you show the estate's liability for VAT. You may include this calculation either in the body of the account or by way of a separate schedule.
- **The liquidator** is registered with the South African Revenue Service as a VAT vendor. His / her remuneration must be reflected in accordance with the *Spendiff* decision. These calculations may likewise be contained either in the body of the account or in a separate schedule.
- Where it is stated in the facts that an amount includes VAT, please accept that VAT is indeed included in such amount, even if you are of the opinion that, in practice, VAT would not have been included in such amount. Conversely, if it is stated that VAT is excluded you are to treat it as such, and accept that no VAT is payable even if you are of the opinion that, in practice, VAT would indeed be payable.
- Use only the amounts provided for in the given set of facts. It is unnecessary for you to make up your own amounts for the purposes of this question. You are, however, required to calculate and reflect the statutory fees due to the Master of the High Court and the liquidator's remuneration.
- Please note that some calculators may require that the amounts must be rounded off to the nearest cent. Minor errors made by students in this regard will not be penalised. Likewise, students will be given a leeway of two (2) days each way in regard to the number of days on which interest calculations are made. **[100]**

1. ASSETS REALISED

- 1.1 The following assets were sold at a public auction held by Mandela Bay Auctioneers (Pty) Ltd on 12 June 2010:
- | | | |
|-------|--|----------------------|
| 1.1.1 | Proceeds of Erf 1067 Port Elizabeth, Eastern Cape (VAT inclusive).... | R2,130,000.00 |
| 1.1.2 | Proceeds of 2004 Mercedes Benz Light Delivery Vehicle, registration FCH 506 EC (VAT inclusive) | R220,000.00 |
| 1.1.3 | Proceeds of computer and other office equipment (VAT inclusive) | R25,000.00 |

- 1.2 The following book debts (advertising fees not yet paid by advertisers) owing to the company were also collected:
- 1.2.1 Book debts collected by April and Vogel Attorneys upon instruction by the liquidator (no VAT is payable on this transaction) **R119,000.00**
- 1.2.2 Book debts collected by the liquidator in the course of winding-up the company (no VAT is payable on this transaction) **R23,713.77**
- 1.3 Occupational interest payable on Erf 1067 Port Elizabeth by the purchaser, F L Greyvenstein (this amount is due to be paid to the liquidator) (VAT inclusive) **R168,000.00**
- 2. EXPENSES PRESENTED TO THE LIQUIDATOR FOR PAYMENT:**
- 2.1 **Bay Insurance Brokers (Pty) Ltd**, bond of security premium (R12,500.00) paid and provision for renewal (R12,500.00) (VAT inclusive)..... **R25,000.00**
- 2.2 Taxed Bill of Costs of **De Villiers Inc**, the attorneys acting for the applicant creditor, Charles Oliphant (VAT inclusive) **R14,323.40**
- 2.3 **Val's Auto**, for service to Mercedes Benz Light Delivery Vehicle prior to it being sold by public auction (VAT inclusive)..... **R12,688.09**
- 2.4 **April and Vogel Attorneys**, for collection costs on the collection of the book debts on behalf of the liquidator - see 1.2.1 above(VAT inclusive) **R9,566.40**
- 2.5 **Mandela Bay Auctioneers (Pty) Ltd**, for commission on the sale of the property sold by public auction referred to in 1.1 above (VAT inclusive) **R150,000.00**
- 2.6 Provision for advertising as follows:
- 2.6.1 Second (general) meeting (VAT inclusive) **R250.00**
- 2.6.2 Inspection and confirmation (VAT inclusive)..... **R250.00**
- 2.6.3 Destruction of books and records (VAT inclusive) **R250.00**
- 2.7 **Weston Bank Ltd**, bank charges (including a provision of R500.00) payable on the estate banking account (VAT inclusive)..... **R934.26**
- 2.8 Petties, postage and stationery allowed by the Master (VAT inclusive) **R1,025.00**
- 2.9 **Nelson Mandela Bay Municipal Council**, arrear rates and taxes owing on Erf 1067 Port Elizabeth, Eastern Cape, for approximately one year up to date of liquidation (there is no VAT payable on this transaction)..... **R97,514.87**
- 2.10 **Nelson Mandela Bay Municipal Council**, rates and taxes paid in order to obtain a rates clearance certificate on Erf 1067 Port Elizabeth, Eastern Cape, from date of liquidation to date of transfer (there is no VAT payable on this transaction) **R36,086.34**

2.11 **FCS Security Services CC**, for night watchmen and other security services provided in order to protect Erf 1067 Port Elizabeth (VAT inclusive)..... **R127,011.80**

3. CLAIMS PROVED AGAINST THE ESTATE:

3.1 **NMB Publishers (Pty) Ltd**, amounts owing for printing and packaging of Friendly City Homes magazine **R34,987.98**

3.2 **Charles Oliphant**, a sales representative and employee the company, for arrear salary, leave pay and severance pay owing **R25,300.00**

This amount is made up as follows:

| | |
|--|-----------|
| Salary for January 2021 | R6,000.00 |
| Salary for February 2021 | R6,000.00 |
| Salary for March 2021 | R6,000.00 |
| Leave pay owing for 2020 | R4,500.00 |
| Severance pay for the period of employment | R2,800.00 |

3.3 **Solly's Stationery Store CC**, for goods sold and delivered..... **R3,266.00**

3.4 **PE Bank Ltd**, for monies lent and advanced by way of overdraft, credit cards and personal loans..... **R108,675.88**

These monies are secured by a cession *in securitatem debiti* of the company's book debts. The liquidator has found the cession to be in order and has advised the bank that he / she recognises their security. Interest is payable on this transaction at a rate of 17% per annum and the creditor **did not** rely on its security.

3.5 **Unemployment Insurance Fund (UIF)**, for contributions deducted from the employee's salary but never paid over **R2,017.82**

3.6 **Mercedes Benz Finance Corporation Ltd** for financing of the purchase of the 2004 Mercedes Benz Light Delivery Vehicle..... **R184,741.02**

This claim is secured by a an instalment sale transaction over the Mercedes Benz Light Delivery Vehicle that was sold to the company. The liquidator has recognised the creditor's claim as well as its security in terms of section 84 of the Insolvency Act. Interest is payable on this transaction at 14,75% per annum. This creditor **has not** relied on its security.

3.7 **South African Revenue Service (SARS)**, for amounts owing **R15,974.48**

This amount is made up as follows:

| | |
|--|-----------|
| PAYE deductions that were deducted from the employee's salary but never paid over, with interest thereon | R6,567.03 |
| VAT owing prior to liquidation..... | R9,407.45 |

- 3.8 **PE Bank Ltd**, for monies lent and advanced for the purchase of Erf 1067 Port Elizabeth, Eastern Cape **R1,239,410.78**
 This claim is secured by a first mortgage bond registered over Erf 1067 Port Elizabeth in favour of PE Bank Ltd. Interest is payable on this transaction at a rate of 11,5% per annum. This creditor **has not** relied on its security.
- 3.9 **Marjorie Pienaar**, for arrear salary owing to her in her capacity as director of Friendly City Homes (Pty) Ltd **R54,000.00**
 This amount is made up as follows:
 November 2020 R18,000.00
 December 2020 R18,000.00
 January 2021 R18,000.00
- 3.10 **Gerhard Pienaar**, for arrear salary owing to him in his capacity as director of Friendly City Homes (Pty) Ltd **R24,000.00**
 This amount is made up as follows:
 November 2020 R8,000.00
 December 2020 R8,000.00
 January 2021 R8,000.00

4. BANK STATEMENTS

The bank statements (of the estate banking account) in the hands of the liquidator reflect the following receipts and payments (for the purposes of this question please assume that no interest was earned on credit balances).

| ITEM NO | PAYMENTS | RECEIPTS |
|---|------------|---------------------|
| 1.1 and 2.5 | | 2,225,000.00 |
| 1.2.1 and 2.4 | | 109,433.60 |
| 1.2.2 | | 23,713.77 |
| 2.1 | 12,500.00 | |
| 2.2 | 14,323.40 | |
| 2.3 | 12,688.09 | |
| 2.7 | 434.26 | |
| 2.9 | 97,514.87 | |
| 2.10 | 36,086.34 | |
| 2.11 | 127,011.80 | |
| Balance on date of drafting of the account | | 2,054,834.11 |
