

√

**PROGRAMME IN SOUTH AFRICAN INSOLVENCY LAW AND  
PRACTICE 2022**

**Practice Assessment: Paper 1 Date: 6 - 7 October 2022**

**Time limit: 24 hours (from 13:00 on 6 October to 13:00 on 7 October 2022)**

**EXAMINERS**

**Ms R Bekker Prof A Boraine Prof J C Calitz Prof H Coetzee Ms N Harduth  
Dr E Levenstein Prof A Loubser Dr M Roestoff**

**MODERATORS**

**Dr D Burdette Mr Z Cassim**

**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.**

59/100

## INSTRUCTIONS

1. This assessment paper will be made available at **13:00 (1 pm) SAST on Thursday 6 October 2022** and must be returned / submitted by **13:00 (1 pm) SAST on Friday 7 October 2022**. Please note that assessments returned late will not be accepted.
2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Avenir Next font (if the Avenir Next font is not available on your PC, please select the Arial font). This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. Please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case). Candidates who include very long answers in the hope it will cover the answer the examiners are looking for, will be appropriately penalised.
4. You must save this document using the following format:  
**studentID.Paper1Formative**. An example would be something along the following lines: 202122-336.Paper1Formative. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). 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.**
5. 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](mailto:david.burdette@insol.org).
6. 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.
7. Enquiries during the time that the assessment is written must be directed to David Burdette at [david.burdette@insol.org](mailto:david.burdette@insol.org) or by WhatsApp on +44 7545 773890. Please note that enquiries will only be responded to during office hours.
8. 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. **Answers must be written in the**

**candidate's own words; answers that are copied and pasted from the text of the course notes (or any other source) will be treated as plagiarism and persons who make themselves guilty of this will forfeit the assessment and disciplinary charges will follow.** When submitting their answers, candidates will be asked to confirm that the work is their own, that they have worked independently and that all external sources used have been properly cited.

9. 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.

10. 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.

11. You are required to answer this paper by typing the answers directly into the spaces provided (indicated by text that states [Type your answer here]). For multiple-choice questions, please highlight your answer in yellow, as per the instructions included under the first question.

12. Unless otherwise indicated, all references to sections are references to sections of the Insolvency Act 1936.

13. Prior to being populated with your answers, this assessment consists of **15 pages**.

## ANSWER ALL THE QUESTIONS

**PLEASE FOLLOW INSTRUCTIONS! HIGHLIGHT ANSWER IN YELLOW.**

### QUESTION 1

Questions 1.1 – 1.20 are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

#### Question 1.1

In terms of the Insolvency Act, “property” of an insolvent estate includes:

- Immovable property situated in the Republic of South Africa.
- Movable property situated in the Republic of South Africa.

Immovable property situated outside the Republic of South Africa.

202122-675

Movable property situated outside the Republic of South Africa.

- The contingent right of a fideicommissary heir or legatee.

**Select the correct answer:**

- (1) and (2) are correct.
- (1), (2), (3), (4) and (5) are correct.
- (1), (3) and (4) are correct.

(1), (2), (3) and (4) are correct.X

### Question 1.2

#### Select the correct answer:

The effect of the sequestration of the estate of a natural person debtor is that:

- the debtor remains owner of his or her property and only the control of his or her estate passes to the Master and then to the trustee.
- the debtor is divested of his or her estate, which estate vests in the Master until a trustee has been appointed, whereupon the estate will vest in the trustee. ✓
- the debtor is divested of his estate which estate will vest in the Master until the final liquidation and distribution account has been approved.
- The debtor is divested of his estate which estate will vest in the division of the High Court that granted the sequestration order.

### Question 1.3

#### Select the correct answer:

Section 12 of the Trust Property Control Act 1988 provides that trust property –

- forms part of the trustee's insolvent estate.
- does not form part of the trustee's personal estate. X
- does not form part of the trustee's personal estate, save as far as the trustee is also a trust beneficiary.
- vests in the Master and, after their appointment, in the trustee of the insolvent estate.

### Question 1.4

The following assets **will** form part of the insolvent estate of a natural person debtor:

- The family home.
- Clothing and bedding of the insolvent.

- Household furniture.
- Antique furniture.
- Property of third parties.
- Tools and other means of subsistence as the creditors or the Master determine.

**Select the correct answer:**

- (1), (2), (3), (4) and (6) are correct.
- (2), (3), (5) and (6) are correct.
- (1), and (4) are correct.
- (1), (4) and (5) are correct.X

**Question 1.5**

Indicate which of the following estates **cannot** be sequestrated:

- The insolvent estate of a deceased person.
- The estate of an individual incapable of handling their own affairs;
- A partnership.
- A company. ✓

**Question 1.6**

Which of the following courts **has jurisdiction** to issue a sequestration order?

- A Magistrate's Court.
- A Small Claims Court.
- A High Court. ✓
- A Criminal Court.

**Question 1.7**

Indicate the **incorrect** statement:

- A provisional sequestration order may not be appealed.
- **A provisional sequestration order may not be rescinded.**
- An order refusing acceptance of a voluntary surrender of an estate may not be appealed.
- There is no provision for the suspension of a provisional sequestration order by the court.X

### Question 1.8

Indicate the **correct** statement:

- The grounds for setting aside a sequestration order or a winding-up order are found in the common law.
- A sequestration order may be set aside based on the common law, but a final winding-up order may be set aside only on statutory grounds contained in the Companies Act 2008.
- A sequestration order may be set aside on the grounds contained in the Insolvency Act but the grounds for setting aside a final liquidation order are found in the common law.
- The grounds for setting aside a sequestration order or a winding-up order are contained in the Insolvency Act and the Companies Act 1973, respectively. ✓

### Question 1.9

Select the **correct** answer:

Claims submitted for proof against an insolvent estate must-

- Be liquid.
- Be proved before the estate can be finally distributed.

- Be secured claims
- Only be proved at the first meeting of creditors.
- Both (a) and (b) are correct. ✓
- Both (c) and (d) are correct.

### Question 1.10

Indicate whether the following statement is **true or false**:

Section 44(7) of the Insolvency Act provides for the examination of a claim before it is proved.

- True
- FalseX

### Question 1.11

Indicate whether the following statement is **true or false**:

Only the Master of the High Court may preside at a section 417 (of the Companies Act 1973) enquiry.

- True
- False✓

### Question 1.12

A common requirement for all the prescribed statutory voidable dispositions is that a disposition of his or her property by a debtor will become voidable where one creditor is preferred above others.

Select the **correct** answer:

- The statement is correct, since sections 26 to 31 of the insolvency Act prescribe this requirement in all instances.
- The statement is correct since the requirement is limited to only one preferred creditor.



- The statement is not correct since the preference of one creditor above others is not prescribed in the case of dispositions for value, as dealt with in section 26 of the Insolvency Act. ✓
- The statement is correct since this requirement is also prescribed for the common law *actio Pauliana* and was taken up as such in the Insolvency Act.

### Question 1.13

Where the court orders the setting aside of a statutory voidable disposition, such as a disposition without value or a voidable preference, the court will order restitution of the disposed property and, where it is no longer available in the hands of the recipient, the court may order the recipient to return the value of such property as it was on the date of the disposition by the debtor.

Select the **correct** statement:

- The statement is correct since section 32 of the Insolvency Act provides for the return of the value of the property at the date of the dispositions, as mentioned in the statement above.
- The statement is not correct since the court may only order the return of the disposed property.
- The statement is not correct since section 32 of the Insolvency Act provides for the return of the value of the property at the date of the court order setting aside the disposition.
- The statement is not correct since section 32 of the insolvency Act requires that the court must declare that the trustee is entitled to recover the property itself, or the value thereof at the date of disposition, or at the date on which the disposition was set aside, whichever is the greater. ✓

### Question 1.14

Where the trustee or liquidator of an insolvent estate decides not to continue with an unexecuted / uncompleted contract entered into by the insolvent party prior to commencement of sequestration or liquidation, the solvent party may, in terms of the general rule applicable to this situation, claim specific performance against the insolvent estate.

Select the **correct** statement:

- The statement is not correct since in terms of the general rule specific performance cannot be claimed in such an instance, even though the trustee or liquidator's repudiation of the contract amounts to breach of contract. ✓

- The statement is correct since specific performance is always available to the solvent party in a case of breach of contract by the trustee or liquidator.
- The statement is correct since case law has confirmed that the solvent party may claim specific performance in these circumstances.
- The statement is correct since the election of the trustee or liquidator in fact amounts to cancellation of the contract.

### Question 1.15

X purchases a car from W on 10 May 2022 in terms of an ordinary credit sale agreement. Although the last instalment is only due to be paid on 10 November 2022, by agreement ownership in the car had already passed on delivery. The estate of X is sequestrated on 7 July 2022.

Select the **correct** answer:

- W may reclaim the car if he has not been paid in full.
- W has lost ownership of the car since it is a credit sale in terms of the common law. ✓
- W enjoys a tacit hypothec that secures the balance of this claim.
- W enjoys a preferential claim against the estate of X regarding any damages that he may have suffered.

### Question 1.16

Alpha Limited has recently been placed under business rescue in terms of an order of court as contemplated in section 131 of the Companies Act 2008. Mr Thobejane is an employee of Alpha Limited (in business rescue). He is concerned that his employment with Alpha Limited is about to come to an end by virtue of the commencement of business rescue proceedings. He approaches you for advice.

Which of the following statements **correctly** describes the position of employees during business rescue proceedings?

- During a company's business rescue proceedings, employees of the company immediately before the beginning of those proceedings continue to be so employed on the same terms and conditions, except to the extent that changes occur in the ordinary course of attrition, or the employees and the company agree on different terms and conditions of employment, in accordance with applicable labour laws ✓

- During a company's business rescue proceedings, the business rescue practitioner can unilaterally vary the employment terms and conditions of the employees of the company immediately before the beginning of those proceedings, subject to the approval of the company's creditors at the first meeting of creditors
- During a company's business rescue proceedings, all employment contracts that existed immediately before the beginning of those proceedings are automatically suspended
- All of the above

### Question 1.17

Which of the following statements is / are **correct** in relation to compromises between a company and its creditors in terms of section 155 of the Companies Act 2008?

- A proposal for a compromise in terms of section 155 is adopted by the creditors of the company, or a class of creditors, if it is supported by a majority in number representing at least 75% in value of the creditors or class present and voting in person or by proxy.
- Section 155 does not apply where a company is under business rescue proceedings.
- A liquidator, where a company is being wound up, may propose an arrangement or a compromise of the company's financial obligations.
- All of the above statements are correct. ✓

### Question 1.18

Select the **correct** answer:

What are the aims or goals of the business rescue process as set out in Chapter 6 of the Companies Act 2008?

- The development and implementation of a business rescue plan to rescue the financially distressed company, which plan has the aim of allowing the company to continue in existence on a solvent basis.
- To provide a better return for the financially distressed company's creditors or shareholders than would result from the immediate liquidation of the company.

- Both statements (a) and (b) are correct ✓
- None of the above statements are correct.

### Question 1.19

#### Select the correct answer:

- Only the provisions of the Companies Act 2008 apply to the liquidation of solvent companies.
- Only the provisions of the Companies Act 2008 and the Companies Act 1973 apply to the liquidation of solvent companies. X
- Some provisions of the Insolvency Act also apply to the liquidation of solvent companies.

### Question 1.20

#### Select the correct answer:

- A voluntary winding-up by the company is possible only if the company has no unpaid debts.
- In a solvent voluntary winding-up by the company, the shareholders have the right to appoint the liquidator.
- From the moment of commencement of a solvent voluntary winding-up by the company, the company stops being a juristic person.
- A company can be put into insolvent liquidation even if its assets exceed its liabilities. ✓ [14]

**RE QUESTION 1: IN FUTURE PLEASE READ INSTRUCTIONS VERY CAREFULLY ↑**

### QUESTION 2

What is the legal position after sequestration regarding debts that were due to an insolvent debtor before their sequestration? **(3)**

*[All debts due to insolvent debtor before sequestration are payable to Trustee, ✓ and asset form par of the insolvent estate.] [1]*

Commented [CJ1]: Bona fide payments? Obligation not terminated.

### QUESTION 3

Explain the difference between the “advantage for creditors” requirement in voluntary surrender and compulsory sequestration. **(2)**

[In voluntary surrender is required full disclosure by debtor, court must be satisfied. After all formalities complied with, documentary proof, that is sufficient free residue for costs, proof that sequestration is to advantage of creditors as group. -Compulsory sequestration, the applicant must proof that debtor is factually insolvent, there is a reason to believe that sequestration will be to the advantage of Creditors as a group.] v[1]

Commented [CJ2]: Positive proof. Onus more strenuous. See memo.

### QUESTION 4

Write a short note on the different manners in which a witness to an insolvency enquiry may be subpoenaed. **(5)**

[Interrogations are very important tool for insolvency practitioners, to investigate (insolvent, insolvent spouse, directors of a companies etc. -Subpoena is prepare by practitioner, submitted to presiding officer for signature. -Sec 44(2) Insolvency Act, special meeting with Master's consent on trustee or creditor's request to interrogate the insolvent. -Sec 64(2) Insolvency Act, officer who presides at any meetings of creditors, summons any person upon reasonable grounds to give information concerning Property of insolvent. -Sec 65 Insolvency Act, at any meetings of creditors presiding officer may call and administer oath the insolvent and any other person at the meeting. -Sec 65(2) Insolvency Act, provides that any person gives evidence is obliged to answer, any questions which may incriminate them be ordered to be held on camera-confidential. -Sec 381(2) Companies Act, empowers Master to enquire, liquidator and any other person under oath. -Sec 417 Companies Act, summoning and examination of any person and affairs of a company. -Sec 418(2) Companies Act, examination by commissioner appointed by master or court. Sec 414(2) Companies Act, master or presiding officer at any meeting of creditors may subpoena. -Sec 152 Insolvency Act, master may subpoena insolvent, trustee, or any other person who is able to give information about the estate or administration of the estate.] [1]

Commented [CJ3]: Proceedings re issuing of a subpoena not different types of enquiries. See memo.

### QUESTION 5

List the three steps that must be taken to determine whether a specific provision of the Insolvency Act applies to the liquidation of a company. **(3)**

[Sec 339 Companies Act, provides Law of Insolvency to be applied mutatis -mutandis

*In the winding-up of a company unable to pay its debts, insolvency law shall apply, in respect of any matter not provided in the companies act.*

*To decide if specific provisions of insolvency will apply to winding-up of a company some steps should be applied;*

- 1. to determine if provision is cable of application in widened -up. ✓*
- 2. to determine if the matter is specially provide for by ✓companies act.*
- 3. if the companies act does not provide for the matter applicable to companies enable to pay its debts, provisions of Insolvency Act or Common Law regard to insolvent individual is applicable mutatis - mutants.] ✓[3]*

**Commented [CJ4]:** See memo... does the provision apply to the type of winding up.

## QUESTION 6

What is the effect of the sequestration of a partnership estate on the individual partners in their personal capacities? **(2)**

*[-Sec 13(1) Insolvency Act provides that if the partnership estate is sequestrated, shall simultaneously ✓sequester the state of every member of that partnership -✓, PARTNERSHIP WILL TERMINATE, DISOLVE ][2]*

## QUESTION 7

Briefly explain the effects of the publication of a notice of surrender (in the voluntary surrender of a debtor's estate). **(3)**

*[-Publication of noticed voluntary surrender stops all sale in execution. ✓  
Any formal defect or delay or debtor dosed continue with the application,  
Publication of notice of surrender constitutes Act of insolvency, ✓  
Creditors could bring an application within 14 days from the publication of surrender for sequestration.] [3]*

**Commented [CJ5]:** Appoint curator bonis.

## QUESTION 8

Mrs A was an employee of the Vaal University. On 1 September 2022 her estate was sequestrated. A month later she took early retirement and became entitled to an amount of R2 million as pension in return for the services she provided to the University. **Advise** Mrs A, who approaches you for legal advice. She wants to know whether the pension she became entitled to will fall into her insolvent estate. **(2)**

*[-In terms of sec 23(7) Insolvency act ✓, Insolvent may recover for her own benefits any pension found to which she is entitled for her service. ✓  
Pension benefits of Mrs A WILL NOT FORM PART OF HER INSOLVENT ESTSTE. ✓  
If pension benefits was paid before sequestration of her estate, pension benefit will form part of her estate.*

-Sec 37B pension funds act, provides that ,if the estate of any person entitled to benefits in terms of register funds ,is sequestrated such benefits shall not form part of The insolvent estate.] [2]

### QUESTION 9

Section 63 of the Long-Term Insurance Act 1998 affords protection of policy benefits under life insurance policies where the protected person's estate is sequestrated. **Write an essay** in which you analyse the relevant provision. Also refer to relevant case law. **(10)**

*Sec 63 Long term insurance act*, affords policy-holder protection to policy benefits under certain long term insurance, to afford this protection so called protected person must;

1. registered insurer , assistance life disability or health policy .  
2. licensed insurer, risk, found risk, credit life, funeral, life annuity.individual investment, class of life insurance, Table 1 of Schedule 2 of Insurance Act.

The insurer or the spouse is is the life insured policy is older then 3 year ,other then for payments secured by policy, be protected as follows ;

A. Policy benefits will not form part of insolvent estate during the persons life time  
B. Upon his or her death benefits devolve on spouse, child, stepchild , parent. will not be available for the purpose of his or her debts

All above protection applies to policy benefits and assets acquired with policy benefits for 5 years from the date of benefits provided.

In the case of Pieterse appellat , unrehabilitated insolvent ,he was nominated beneficiary and didn't afford protection , if the benefits devolve upon him ,

Policy benefits will be protected, will not fall in the estate. ] [7]

**Commented [CJ6]:** When answering the essay type questions be clear on the structure of your answer.

### QUESTION 10

With reference to the relevant provisions of the Insolvency Act, **write an essay** in which you discuss the effect of sequestration on the execution of judgments and other civil proceedings. **(6)**

[In terms of Insolvency Act sec 20(1) (c) provides that the execution of judgement is stayed as soon as the sheriff is aware of sequestration order, court may direct to continue if that execution will not be to prejudice to the body of creditors,

Sec 20(1) (b) Insolvency act , provides that, any civil proceedings instituted by or against insolvent are stayed until trustee is appointed, except to proceedings that do not affect insolvent estate.

All civil legal proceedings before sequestration shall lapse 3week after first meeting, unless person give's notice within period to the trustee or master, court may permit to continue.]

[3]

**Commented [CJ7]:** See memo. S 23 NB.

### QUESTION 11

**Write an essay** on the remuneration of business rescue practitioners, making specific reference to the issue of remuneration agreements (sometimes referred to as “success fee” or “contingency fee” agreements) concluded between business rescue practitioners and third parties, and provide insight, with reference to case law, as to whether such agreements are prohibited or contrary to public policy. **(10)**

*Sec 143 Companies Act 2008 provides a BRP remuneration* ✓

*Sec 135(3) of this act provides ,that first in ranking to be paid in a business rescue proceedings is a BRP and the expenses arising from proceedings.*

*Sec 143(2)BRP may propose an agreement with the company for future remuneration in addition to the sec 143 ; ✓*

*For adoption of business rescue plan in particular time frame, agreement must be proved by creditors on vote.*

*Success fee agreement conclude between BRP and third party and creditors, outside of sec 143 were prohibited , void ,*

*Contrary to public policy. ✓ Supreme Court of appeal held that sec143 only applies to remuneration of BRP and not dealing with fee arrangements. Upon not success business rescue ✓*

*But on success business rescue plan a practitioner is entitles for success fee if agreed and approve by creditor on vote. ] ✓[5]*

Commented [CJ8]: Not applicable to question,

Commented [CJ9]: Not clear? When answering a essay question write clear and concise sentences and be very clear to which provision you are referring to.

Commented [CJ10]: Caratco judgment?

## QUESTION 12

**Write a brief note** on what happens to the solvent partners’ estates and the partnership estate where the estate of a partner is sequestrated?

*Insolvency of one of the partners desolves the partnership , all assets are divided amongst partners in terms of agreement or common law.x*

*All assets of insolvent partner vest in the trustee of insolvent estate. ] 0*

Commented [CJ11]: See memo. Nb if estate of partner sequestrated not necessary also the partnership pr other partners.

## QUESTION 13

In 2010, Mr X and Mr Y entered into a civil partnership in terms of the Civil Union Act 2006. On 1 March 2011, Mr X donated certain immovable property to Mr Y. Soon thereafter, the property was registered in Mr Y’s name in the Deeds Office. On 1 February 2022, Mr X’s estate was finally sequestrated. Two months before his sequestration, Mr X donated his Land Rover Defender to Mr Y. Mr Y approaches you for advice.

Answer the questions below.

### Question 13.1

What is the legal position in regard to the immovable property and the Land Rover Defender? Will the assets fall into X’s insolvent estate? Refer to the relevant provisions of the Insolvency Act and other relevant legislation in your answer. **(10)**



[The effect of sequestration of the separate estate of one of two spouse shall vest in the trustee all property of the spouse whose estate is not sequestrated ,as if where property of sequestrated estate. Sec 21(1) trustee shall release any property of solvent spouse as provided in sec 21(2). ✓

This transaction of immovable property in terms of which solvent spouse acquired the property's not to defeat the right of creditors , was over 11 years back, and registered , ownership pass on registration. 1/2

In regards to Land Rover was donated 2 months before sequestration.

Donations between spouses is legalised by sec 22 of matrimonial property act, ✓

However donation shortly before sequestration clearly does not constitutes a real donation ,and may be set aside by trustee as voidable transaction in terms of insolvency act. Type your answer here] ✓ [4 ½}

Commented [CJ12]: Be clear in your answer. Does it form part of estate or not?

### Question 13.2

Advise Mr Y regarding the question as to whether he will be regarded as a "spouse" in terms of the Insolvency Act. (4)

[Terms spouse has an extended meaning , and includes a wife or husband married according to any law or customs ,also persons living together as husband and wife , though not legally married . ✓

The civil unions between same sex partners which now has the same legal consequences as any marriage in any other law, including common law. the term spouse includes civil union partner in terms of civil union act. ✓

Fr the wording in the section 21(13) insolvency act] ✓ [3]

Commented [CJ13]: ??

### QUESTION 14

Generators Africa (Pty) Ltd, a company that manufactures generators for the lucrative South African market, is placed in liquidation by an order of the High Court on 3 May 2022. One of the company's employees, Thabo Kekana, approaches you for advice on the effect that the liquidation of the company will have on his contract of employment. Thabo has not been paid since the end of January 2022, his salary being an amount of R10,000 per month. In addition, he has R3,500 leave pay owing to him for the preceding year.

Advise Thabo Kekana regarding the questions below.

#### Question 14.1

What effect will the liquidation of the company have on Thabo's contract of employment? (5)

[Effect of liquidation of the company ,all contracts of service (employee) are suspended from the date of winding-up order. ✓

During suspension of contract employee's are not required to tender their service, no remuneration or employment benefits ,they are entitled to UIF. ✓

Liquidator may terminate they contract, all suspended contracts for service are terminated in 45 days after appointment of liquidator. ] ✓[3]

Commented [CJ14]: See LRA?

### Question 14.2

What possible claims does Thabo have against the insolvent company? Thabo also wants you to explain to him what the nature of these claims will be. (3)

Sec 98A insolvency act , an employee is entitled;

1. Any salary wages for period not exceeded 3 moths max 12000.00

2. Any payment in respect of leave or holiday max 4000.00

3. Payment in respect of any form of absence max 4000.00

4. Any severance or retrenchment max 12000.00

Salary has referent claim, Thabo will have a preference claim for 12000.00 salary , leave 3500.00

The balance of the salary is a concurrent claim of 28000.00

Sec 38(5) provides that trustee may terminate the contract and Thabo preferment claim ✓for retrenchment thereafter.[1]

Commented [CJ15]: Nature of the claims?

### QUESTION 15

Joe Bond made a loan of R50,000 to his friend, John Jack. As security, John put up his generator (worth approximately R70,000) as a pledge. The generator was delivered to Joe who kept it on his premises. A few months later, John repaid the remaining balance of the loan (being R45,000) and Joe handed back the generator, the loan now having been settled. However, John's estate was sequestrated 20 days after he settled the loan with Joe. The trustee appointed in John's estate now claims the payment of R45,000 back from Joe as a voidable disposition.

Indicate whether the trustee will succeed with his claim against Joe. (8)

[ Sec 29 insolvency act ✓ provides that every disposition of property made by debtor not more than 6 months before sequestration of his estate, which had the effect of preferring one

✓creditor above others ,may be set aside by court, if immediately ✓

Of such disposition the liabilities of debtor exceeded the value of his assets. ✓

Unless the person in whose favour the disposition was made proves that disposition was made in the ordinary course of business, ✓ not intended thereby to prefer one creditor above another.] ✓[5]

**TOTAL MARKS: [100]**

**\*\*\* End of assessment \*\*\*. s. 202122-675**

GENERAL FEEDBACK:

202122-675.Paper1Formative

- ESSAY QUESTIONS:
  - Is my answer too long or too short? Be guided by the mark allocation and at least ensure that if you have a 10-mark allocation you mention 10-15 facts in your answer.
  - Structure your answer: A clear and specific thesis sentence stated up top will help you to organize and tie together the various parts of your answer. The content of your answer should be integrated to form a logically cohesive whole. Eg Introduction → discuss SA law eg case law and provisions in the Act → conclusion.
  - When answering an essay type question - the essay should properly describe key legal principles. Read question and identify the key legal principles and then discuss the relevant case law and provisions in the Act connected to the principles.
- QUESTION 4- “different manners” refers to the procedural law regarding the *manner in which a subpoena is issued*. A witness is compelled to attend an enquiry subject to procedural requirements being met.