



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.

INTRUCTIONS

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.
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 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

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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

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:

- (1) Immovable property situated in the Republic of South Africa.
- (2) Movable property situated in the Republic of South Africa.
- (3) Immovable property situated outside the Republic of South Africa.
- (4) Movable property situated outside the Republic of South Africa.
- (5) The contingent right of a fideicommissary heir or legatee.

Select the correct answer:

- (a) (1) and (2) are correct. ✓
- (b) (1), (2), (3), (4) and (5) are correct.
- (c) (1), (3) and (4) are correct.
- (d) (1), (2), (3) and (4) are correct.

Question 1.2

Select the correct answer:

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

- (a) 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.

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(b) 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. ✓

(c) the debtor is divested of his estate which estate will vest in the Master until the final liquidation and distribution account has been approved.

(d) 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 -

(a) forms part of the trustee's insolvent estate.

(b) does not form part of the trustee's personal estate.

(c) does not form part of the trustee's personal estate, save as far as the trustee is also a trust beneficiary. ✓

(d) 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:

(1) The family home.

(2) Clothing and bedding of the insolvent.

(3) Household furniture.

(4) Antique furniture.

(5) Property of third parties.

(6) Tools and other means of subsistence as the creditors or the Master determine.

Select the correct answer:

(a) (1), (2), (3), (4) and (6) are correct. x

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(b) (2), (3), (5) and (6) are correct.

(c) (1), and (4) are correct.

(d) (1), (4) and (5) are correct.

Question 1.5

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

(a) The insolvent estate of a deceased person.

(b) The estate of an individual incapable of handling their own affairs;

(c) A partnership.

(d) A company. ✓

Question 1.6

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

(a) A Magistrate's Court.

(b) A Small Claims Court.

(c) A High Court. ✓

(d) A Criminal Court.

Question 1.7

Indicate the **incorrect** statement:

(a) A provisional sequestration order may not be appealed.

(b) A provisional sequestration order may not be rescinded. ✓

(c) An order refusing acceptance of a voluntary surrender of an estate may not be appealed.

(d) There is no provision for the suspension of a provisional sequestration order by the court.

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Question 1.8

Indicate the **correct** statement:

- (a) The grounds for setting aside a sequestration order or a winding-up order are found in the common law.
- (b) 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.
- (c) 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.
- (d) 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-

- (a) Be liquid.
- (b) Be proved before the estate can be finally distributed.
- (c) Be secured claims
- (d) Only be proved at the first meeting of creditors.
- (e) Both (a) and (b) are correct.
- (f) Both (c) and (d) are correct.

Question 1.10

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

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

(a) True ✓

(b) False

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.

(a) True

(b) 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:

- (a) The statement is correct, since sections 26 to 31 of the insolvency Act prescribe this requirement in all instances.
- (b) The statement is correct since the requirement is limited to only one preferred creditor.
- (c) 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.
- (d) 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:

- (a) 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.
- (b) The statement is not correct since the court may only order the return of the disposed property.
- (c) 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.
- (d) 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:

- (a) 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. ✓
- (b) 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.
- (c) The statement is correct since case law has confirmed that the solvent party may claim specific performance in these circumstances.
- (d) 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:

- (a) W may reclaim the car if he has not been paid in full.
- (b) W has lost ownership of the car since it is a credit sale in terms of the common law. ✓
- (c) W enjoys a tacit hypothec that secures the balance of this claim.
- (d) 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?

- (a) 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
- (b) 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
- (c) During a company's business rescue proceedings, all employment contracts that existed immediately before the beginning of those proceedings are automatically suspended

(d) 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) 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.
- (b) Section 155 does not apply where a company is under business rescue proceedings.
- (c) A liquidator, where a company is being wound up, may propose an arrangement or a compromise of the company's financial obligations.
- (d) 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?

- (a) 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.
- (b) To provide a better return for the financially distressed company's creditors or shareholders than would result from the immediate liquidation of the company.
- (c) Both statements (a) and (b) are correct. ✓
- (d) None of the above statements are correct.

Question 1.19

Select the **correct** answer:

- (a) Only the provisions of the Companies Act 2008 apply to the liquidation of solvent companies.
- (b) Only the provisions of the Companies Act 2008 and the Companies Act 1973 apply to the liquidation of solvent companies. x

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(c) Some provisions of the Insolvency Act also apply to the liquidation of solvent companies.

Question 1.20

Select the correct answer:

- (a) A voluntary winding-up by the company is possible only if the company has no unpaid debts.
- (b) In a solvent voluntary winding-up by the company, the shareholders have the right to appoint the liquidator.
- (c) From the moment of commencement of a solvent voluntary winding-up by the company, the company stops being a juristic person.
- (d) A company can be put into insolvent liquidation even if its assets exceed its liabilities. [13]

QUESTION 2

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

After the sequestration, the debtor's estate vests in the Master of the High Court until a Trustee is appointed. The estate then vests in the appointed Trustee. Therefore, any debts that were due to the insolvent debtor become payable to the trustee. Consequently, if any payment towards the debt is made to the insolvent, the debtor's obligation is not terminated unless the debtor can prove that they acted in good faith and/or had no knowledge of the sequestration. [3]

QUESTION 3

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

Voluntary surrender requires the applicant to prove an "advantage to creditors" as a group. Furthermore, a single creditor's own assertion without relying on proof and/or any authority would not be decisive, therefore positive proof would also need to be provided by the applicant. The Test applied and placed before the court is whether a reasonable prospect

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exists that the voluntary surrender will benefit the general body of creditors and whether sufficient proof has been placed before the court.

Whereas, with compulsory Sequestration only a reasonable prospect **v**that the sequestration will be an advantage to creditors is required. The applicant is not required to provide positive proof of the advantage. [2]

Therefore, the burden of proof in respect of the "advantage to creditors" is the main difference.

QUESTION 4

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

Section 152 of the Insolvency Act authorizes that that the Master of the High Court and/or the presiding officer to summon the insolvent party, Trustee or any other relevant person to appear to give information pertaining to the insolvent party, the insolvent estate, the administration of the estate and/or any claim against the estate.

In the event that a summoned person, fails to produce documents requested or answer questions lawfully put and satisfactorily, the presiding officer(who is a magistrate) at the interrogation is authorised in terms of Section 66(3) to commit the recalcitrant witness to prison.

Commented [CJ1]: See procedures re the manners in which witness may be subpoenaed.

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)

The three-part test should be applied as follows:

- a. Determine whether the provision is applicable to the liquidation. **v**Example, provisions dealing with rehabilitation and exclusion of assets would not apply to a company liquidation
- b. Determine whether the matter is specifically provided for by the companies Act**v**
- c. Determine whether the provision applies to the mode of liquidation in question. If the Companies Act does not specifically provide for the matter but the company in question is unable to pay its debts as and when they become due and/or payable, the provisions of the Insolvency Act would apply**v**[3]

QUESTION 6

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

From an Insolvency law perspective, the estate of a partnership is separate to the estate of individual partners. ✓

Commented [CJ2]: Sequestrated simultaneously but separate from partnership

Section 13(1) provides that if court sequestrates the estate of a partnership, it must also sequester the personal estate of each individual member of the partnership. ✓ However, this excludes partners who are not liable to debtors of the partnership in their personal capacity, or those who have made an undertaking to pay the debts owing by the partnership and have provided security for the payment. [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)

- a. All sales in execution are stayed. ✓ The sheriff may not pay any proceeds from such sales to the judgement creditors. Where the estate has been sequestrated, the proceeds from the sale or the property must be handed over to the Trustee. However, under circumstances the Master (value of goods is less than R5000) or the Court (value of goods exceeds R5000) may authorise the sheriff to proceed with the sale in execution.
- b. The Master has the discretion to appoint a curator bonis to temporarily control the estate. ✓ [2]

Commented [CJ3]: Act of insolvency ?

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 Section 3 of the general Pensions Act 1979, any benefit received under any pension law by any person after their estate is sequestrated, such benefit does not form part of the assets in the insolvent estate. ✓

Therefore, because Mrs. A received her benefit after she was sequestrated, the pension money due to her shall be deemed not to form part of assets 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)

Under Section 63 of the Long Term Insurance Act 1998, ✓ life insurance benefits are excluded from forming part of the insolvent estate and thus do not vest with the trustee and are available for the payment of the debts of the insolvent. ✓ This exclusion diverts property from the insolvent estate, and consequently the creditors who could benefit from the property [2]

Commented [CJ4]: Discuss relevant case law as well as provisions in the Act

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 Section 20, the estate of the insolvent, including property which has been attached in execution, vests in the Trustee of the insolvent estate. ✓

Section 20(1)(b) provides that sequestration of the estate of an insolvent stays all civil proceedings instituted by and against the insolvent. However, this excludes proceedings in terms of Section 23 ✓ which are instituted by the insolvent for their own benefit and/or against them. Therefore, all civil proceedings are stayed until a Trustee is appointed ✓

Furthermore, Section 20(1)(c) ✓ provides that the execution of a judgment is stayed as soon as the relevant sheriff becomes aware of the sequestration unless the Court has ordered that execution be continued provided that it is necessary and will not be prejudicial to the general body of creditors. ✓[4]

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)

Section 143(6) provides that business rescue practitioners are entitled to charge the company an amount for remuneration and expenses in accordance with the tariff. ✓
Furthermore, in terms of Section 143(2) the business rescue practitioner may propose an agreement with the company for further remuneration. ✓ However, section 143(3) required that the agreement for further remuneration be approved ✓ "at a meeting called for purpose to approve the agreement", without approval from the meeting, any further remuneration is deemed invalid. ✓

In the Caratco case, ✓ the Supreme Court of Appeal had to determine whether the payment of special fees, or so called "success-fees" agreements by creditors to Practitioners is prohibited, void ✓ for illegality or otherwise contrary to public policy. ✓

The following findings were made :

- a. Section 143 of the Companies Act only applies to the remuneration of practitioners by the company under business rescue and does not deal with fee arrangements between practitioners and third parties. The Court found that the section does not penalize the conclusion of such agreements, not does it contain language which may draw such an inference.
- b. That there was no merit to the submission that success fees were contrary to public policy. Furthermore, in this instance the success fee agreement was one that was not prejudicial to the general body of creditors

In the Judgment delivered by Chachaila AJ, the SCA found that the special fee agreement was not invalid, illegal, or otherwise contrary to public policy. However, this was not found to be a blanket authorization of "success-fees" paid to practitioners by creditors as the findings were based on circumstances and facts of the case. Therefore, a different court may come to a different finding depending on the facts and circumstances of that particular case. ✓

Therefore, it is imperative that practitioners act with the utmost good faith to ensure that the acceptance of a "success-fee" does not impact their ability to act independently and impartially as this would result in the a breach of the practitioners responsibilities and duties. ✓ Thus, in such an instance the agreement would be prohibited, void and contrary to public policy. [8]

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? (4)

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If the personal estate of a partner is sequestrated, it does not automatically result in the partnership, or the estate of the other partners being sequestrated. ✓
However, it would result in the dissolution of the partnership subsequent to the withdrawal of such partner's share. ✓
Therefore, each partner would need to consider the impact of the dissolution of the partnership. ✓[4]

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)

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)

The term "Spouse" has an extended meaning and includes wife or husband married in terms of any law or custom and also includes persons living together as husband and wife, although not legally married. ✓

The Civil Union Act legalized civil unions between same-sex partners, which now bares the same consequence as a civil or customary marriage. ✓

Therefore, Mr.Y would be regarded as a spouse in terms of the Insolvency Act as a civil union partner is included in that definition. ✓[4]

QUESTION 14

Generators Africa (Pty) Ltd, a company that manufactures generators for the lucrative South

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Commented [CJ5]: S 21?

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)

In terms of Section 38 of the Insolvency Act, the contract of employment is suspended from date of granting of a liquidation order i.e provisional or final liquidation order.

During suspension of employment the employee does not have to render services but is also not entitled to remuneration but is entitled to unemployment benefits from date of suspension.

Furthermore, the liquidator is entitled to enter into short-term employment contracts with the employees and proceed to pay them salaries or wages. This will usually be the case where the liquidator continues to trade in the estate. If there is no agreement between the trustee or and the employee(s) regarding continued employment, all suspended contracts will terminate 45 days after the appointment of the final liquidator.

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)

The Basic Conditions of Employment Act provides for a preferent claim for severance benefits for an employee whose contract of service has been terminated while the Insolvency Act also provides in terms of Section 38 for an unliquidated concurrent claim by the employee against the estate for damages suffered due to the suspension of the contract or the termination thereof before its expiration.

Furthermore, he is entitled to unemployment benefits in terms of Unemployment insurance Act.

Employees have the following preferential claims against an estate,

1. A maximum of R12,000.00 for salaries or wages which does not exceed three months' salary or wages that is due to the employee before the date of sequestration/liquidation;
2. A maximum of R4,000.00 in respect of leave which is due to the employee and has accrued to him/her either in the year of insolvency or the previous year;
3. A maximum of R4,000.00 in respect of any other form of leave of absence, for example sick leave, which does not exceed three months before sequestration/liquidation;
4. A maximum of R12,000.00 in respect of severance or retrenchment pay which is calculated as one week's salary/wage for every completed year of service.

Any amounts claimed that exceeds the above limits are concurrent claims.

Therefore, Thabo is entitled to claim R12 000 for wages. The balance of R28 000.00(R40 000-R12 000) is a concurrent claim. $\frac{1}{2}$
He would also be able to claim R3500 for leave pay. Therefore, Thabo can claim a total of R15 500.00 as a preferential claim. $\frac{1}{2}$ [3]

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)**

The Trustee would need to prove the following :

- a. The disposition was made by the insolvent within 6 months prior to the sequestration. In this instance it was made 20 days prior ✓
- b. The effect of the disposition was to prefer one creditor above the other. That creditors were not treated equally i.e Joe being being paid before other creditors ✓
- c. That immediately after making such disposition, the debtor's liabilities exceeded the value of his assets ✓

If the Trustee can prove the above requirements and that the disposition was not made in the ordinary course of business, his claim against Joe would be successful. ✓[4]

Commented [CJ6]: Discuss and mention provision in Act. S 29....

TOTAL MARKS: [100]

*** End of assessment ***

GENERAL FEEDBACK:

- 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.