



INSOL
INTERNATIONAL



**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

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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

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 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.

(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.

(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.

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**:

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.

(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. [16]

QUESTION 2

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

[The debts become due to the insolvent estate and thus become vested in the trustee. ✓ Hence they must be paid directly to the trustee or must be collected by the trustee. ✓ In the event that they are paid directly to the insolvent, the debt will not be discharged unless the debtor can prove that he was an innocent third party. The provisions is section 22 find application in this regard. ✓[3]]

QUESTION 3

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

[In voluntary sequestration the test applied is based on the prospect that some pecuniary benefit will result to the creditors, which is too remote as opposed to a likelihood. Hence the requirement is more stringent, and the burden of proof is heavier compared to the compulsory sequestration where the applicant needs only to prove a reason to believe that there will be a benefit to creditors. The burden of proof in compulsory sequestration must be a reason to believe ✓[1] that it is to the benefit of creditors.]

Commented [CJ1]: Positive proof may be to advantage.

QUESTION 4

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

[By way of a summon in terms of section 64(2)]

Commented [CJ2]: Discuss the procedure in which a 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)

[1. identify whether the winding up must be applied by a separate act which governs such a corporation; ✓ 2. consult the provisions of the provisions of the companies act or close

3. corporation to determine whether or not there is not already a provision in the companies act or close corporation act dealing with the subject. v[2] Reference: (DA Burdette, *The Application of the Law of Insolvency to the Winding up of Insolvent Companies and Close Corporations* 2003, pages 592-594

QUESTION 6

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

[The insolvency Act treats the estates of the partnership and its partners as separate and as such a partnership is treated as a separate entity with an estate that may be separated individually. vSection 13 however indicated that the sequestration of the partnership has an effect of simultaneous sequestration of the estates v[2] of the individual partners, except those for the partner *en comandite* and special partner. The exception is however that in the event that a partner commits to pay for the debts of the partnership within a period given by the court and provides security to that effect, his or her estate will not be sequestrated]- Reference: *Section 13 Insolvency Act (24 of 1936)*

QUESTION 7

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

[The property of the estate may no longer be sold in execution v; the Master may appoint a curator bonis to temporarily control the estate. vThe publication of the notice of surrender has an effect of the debtor committing an act of insolvency if the debtor does not continue with the application and fails to lodge a statement of affairs or lodged an incomplete or incorrect statement of affairs v[3].]

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)

[The pension will not form part of the estate in terms of the provisions of the section 23(7) v of the Act. Had the monies been paid prior to sequestration, the position would change v[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)**

[The protection of the life insurance happens in two ways; while the person is alive and after their death. Section 63 of the Long-term Insurance Act protects the whole sum of life insurance ✓ on the grounds that the life assured, or his spouse is the protected person, the policy has been in force for at least 3 years ✓ and it does not serve as security for a debt. ✓ The policy will not be liable to be attached during his lifetime or subjected to execution under a judgement of a court or form part of his or her insolvent estate or upon his death he has a surviving spouse, child or parent, will not be available for the purpose of payment ✓. One will therefore note that the protection of this policy is only available if they devolve upon a beneficiary in the categories mentioned above in the event of the insolvent's demise.

The protection is limited to assets acquired solely with the policy benefits for a period of 5 years ✓ from date of provision of policy benefits and those acquired to an aggregate of N\$50 000,00. The remainder of it will form part of the insolvent estate.] - *Saripa Course handbook*, page

Commented [CJ3]: Discuss the relevant case law? Pieterse v Shrosbee. See memo.

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)**

[The execution of a judgement is stayed as soon as the Sheriff or his deputy is becomes aware of the sequestration in terms of the provisions of section 20(1). ✓ The court may however direct otherwise should it be expedient and necessary and if it is not prejudicial to the general body of creditors. ✓ In the event of movable property subject to attachment are sold, or immovable property transferred, the proceeds thereof vest in the trustee. ✓ Civil proceedings instituted by the insolvent or against the insolvent are stayed until a trustee is appointed. There are exceptions to this however in terms of section 23 of the Act. ✓ In terms of section 75 of the Act, civil proceedings instituted before sequestration shall lapse three weeks after the first meeting of creditors, ✓ unless the person who instituted the proceeding gives notice to the trustee of his intention to continue with the proceedings and after three weeks from the notice, prosecuted the proceedings within a reasonable time the court may however permit the continuation of the proceedings on such conditions as it may deem necessary, provided that the notice has been provided, ✓ it in its opinion the court deems it necessary. in terms of section 98 (2) attachment in execution of judgement does not confer any preference after sequestration except for costs on those proceedings ✓ [6].]

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)

[The Business rescue practitioner is entitled to charge a fee to the company (in business rescue for remuneration and expenses as per the prescribed tariffs of the Companies Act 2008.] Section 143(2) allows a practitioner to elect to propose an additional fee to be calculated on the basis of contingency related to the adoption of the business rescue plan at all or within a particular time or the inclusion of any matter in the plan; or the attainment of any particular result. this must however be done by way of an agreement concluded at a meeting convened for the consideration of the agreement. In a nutshell the agreements were termed as success fee or contingency agreement which received a lot of attack on the grounds of public policy and legality. In the case of *Cararco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA (SCA)* the supreme court held that "the so called success fee agreements concluded between business rescue practitioners and third parties (including creditors) outside the ambit of section 143 are neither prohibited, illegal nor contrary to public policy". Reference: *Saripa Notes on page 403 [6]*

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)

[This topic is regulated by the provisions of section 21 of the Insolvency Act wherein it states that the estate of the solvent partner will also vest in the Master and subsequently in the Trustee as if the solvent partner were also sequestrated. Hence the property of the spouse whose estate has not been sequestrated will be treated as though they were property of the sequestrated estate. Where the estate of a partner is sequestrated, the partnership is automatically dissolved and thus comes to an end.]

Commented [CJ4]: Discuss the outcome of the judgment? Answer too short. Be guided by mark allocation.

Commented [CJ5]: S 21 not applicable see memo.

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 immovable property will form part of the insolvent estate, as though Mr Y was sequestrated. ✓ This is due to the fact that the definition of spouse in the Act includes a civil union partner which is the case with Mr. X and Mr. Y. ✓

In addition to this, the Civil Union Act legalized civil unions between same sex partners which has the same consequences of any marriage in any other law. ✓ Mr. Y can however successfully claim a release of the immovable property from the trustee in terms of section 21 ✓ of the Act if he can prove that this property was acquired during the civil union by a title valid against creditors ✓ Hence, the transaction in terms of which the solvent spouse acquired the property was not aimed at or intended to disadvantage the rights of creditors and is therefore valid. It is also important to note that donations between spouses are legal therefore there is nothing in law invalidating the acquisition of the property by Mr. Y and this will afford him a valid title against the creditors. ✓

The Land Rover Defender will also form part of the insolvent estate. ✓ The donation of the Land Rover defender two months before Mr. X's sequestration constitutes a disposition without gain in terms of section 26 and can thus not be released by the Trustee. The donation of the Land Rover Defender is not a valid or bona fide donation ✓ and may be set aside by the Trustee as a voidable transaction.]- Reference: Saripa Course Notes read with the statutes mentioned in the text. [8]

Commented [CJ6]: S 22 of Matrimonial Property Act?

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)**

[Mr. Y will be regarded as a spouse because he has entered into a civil union partnership with Mr. X, which is regarded as a marriage. ✓ The term spouse also includes a civil union partner. In addition to that, same sex union have also been legalized by the Civil Union Act. ✓ The civil unions entered into by same sex partners now have the same legal consequences marriages in any other law. [2]

Commented [CJ7]: Discuss s 21 (13) definition as well

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)

[Thabo's contract will immediately be suspended from the date of the winding up order being 3 May 2022. Insolvency thus suspends but not terminate the employment contract. As a result, Thabo will have an unliquidated concurrent claim for damages against the estate due to damages. Upon appointment of a final liquidator, the contracts can be terminated upon consultations with the relevant unions or forums. Should there however not be no agreement of continuation of employment with Thabo and the Liquidator, the contract is terminated 45 days after the appointment of the final liquidator or conclusion of the first meeting] [4]

Commented [CJ8]: See memo. Discuss s 38.

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)

[Thabo will have a statutory preferent claim against the insolvent estate and shall be entitled to payment of 3 months of his salary limited to N\$12 000,00 or salary due prior to date 3 May 2022 as well as severance pay not exceeding N\$12 000.00.] [2]

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)

[though it is only necessary to prove the effect of the disposition that all creditors were not treated the same in the distribution of the assets, the Trustee will have difficulties proving his claim because section 26 and 29 specifically require that there must be proof that immediately after making the disposition, the liabilities of the debtor's estate exceeded the value of the assets. This is because the debtor gained a generator which was more valuable

Commented [CJ9]: Either s 26 or 29? See different requirements. Refer to memo.

than the amount he paid thereby increasing the value of his estate. The Act also requires that the disposition was made in the ordinary course of business and no intention existed to prefer one creditor over others. It is therefore my view that this requirement was met as the payment of N\$45 000 was made as a result of a loan agreement that existed between the debtor and Joe and the resulting effect of the payment was the return of the generator. In any event, had the debtor not settled the amount owed to Joe, Joe would have had security for his claim by virtue of the generator which would have entitled the trustee to pay him the balance due to him by virtue of the security he had. v[2]

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.