



<b><u>FACULTY</u></b>	: LAW
<b><u>DEPARTMENT</u></b>	: MERCANTILE LAW
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: INSOLVENCY LAW INR 0011 / LIN41A0
<b><u>SEMESTER</u></b>	: 1
<b><u>EXAM</u></b>	: MAIN EXAM

<b><u>DATE</u></b>	: 4 JUNE 2020	<b><u>SESSION</u></b>	: 12:30- 15:30
<b><u>ASSESSOR(S)</u></b>	: PROF CALITZ		
<b><u>EXTERNAL MODERATOR</u></b>	: PROF BORAINÉ		
<b><u>DURATION</u></b>	: 3 HOURS	<b><u>MARKS</u></b>	: 45

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**NUMBER OF PAGES: 3**

**INSTRUCTIONS:**

- 1. Please note that it is a 2-hour exam and you will be allowed 3 hours to complete the 2 hour exam.*
- 2. You will be assessed on the class material (exam scope) and will not be given extra marks for reference to any other printed or online material. Please note that if you do make use of such other material, you will have to acknowledge the source - otherwise it will amount to plagiarism.*
- 3. Although this will be an open source exam, the answers must be all your own work. You are not allowed to interact with other students via cell phone, internet or any social media site or app. This also means not discussing the paper with any other person*

## INSOLVENCY LAW

*(friends, relatives, students of this or any other University) during the exam.*

4. *Severe penalties apply for misconduct, cheating, and ignoring instructions from the lecturer. Penalties may include failing the module and/or expulsion from the University.*

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### **QUESTION 1**

**[15]**

You have been appointed as a new journalist at NEWS2020. Your first assignment is to report on the regulation of the business rescue practitioners appointed in SA Express. Write a brief newspaper article with reference to the fee structure of business rescue practitioners as provided for in chapter 6 of Companies Act 2008, including the test to determine the business rescue practitioner's entitlement to reimbursement for expenses and disbursements as well as the ranking and nature of the practitioner's claim for remuneration in subsequent liquidation proceedings. (In your answer you should also refer to the current legislative provisions and relevant case law).

### **QUESTION 2**

**[10]**

"Although pyramid schemes are illegal and cannot be enforced between the parties to such an agreement, the illegality of such agreements is disregarded in order to give effect to the impeachable disposition provisions in the Insolvency Act." Evaluate this statement in view of the approach of our courts.

### **QUESTION 3**

**[10]**

Sarah was a poor woman who fell on hard times and was unemployed for a while. She entered into a written deed of sale with John in terms of which she purchased a house. She took occupation of the property and paid R50 000 as the full purchase price, which she borrowed from her current employer. Sarah never received transfer of the property and instructed Legal Aid to look into the matter. Six months later John's estate was sequestrated. How would you predict the outcome if Sarah was to approach the trustee of John's estate and demand transfer? Motivate your answer by referring to the relevant case law.

<b>ANSWER ONE OF THE FOLLOWING QUESTIONS:</b>
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### **QUESTION 4 A**

**[10]**

Assume that you have been appointed by the South African Law Reform Commission to investigate the possible amendment of the manner in which insolvency practitioners are being appointed in order to ensure that the appointment methods are constitutionally sound. Briefly set out what your findings would be. (In your answer you should also refer to the current legislative provisions; recent legal developments in this field as well as all relevant case law).

**OR**

**QUESTION 4 B**

**[10]**

“During a meeting on Tuesday between government and some of the unions represented at SAA, it was again made clear that SAA can no longer depend on financial support from government. Given the fact that the practitioners have no further funding, the practitioners have considered whether they can develop a business rescue plan which secures a better return for SAA's creditors than would result from its immediate liquidation.”FIN24 23/04/2020

The courts have differed on the issue whether business rescue proceedings may be used to secure a better return for creditors or shareholders where there is no clear prospect of the company continuing to operate on a solvent basis or being restored to solvency. Summarise the nature and goals of business rescue proceedings as set out in the definition of “business rescue” and then evaluate the different views expressed by our courts.

**Total: 45**

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