



PROGRAMME : LLB
MODULE : INSOLVENCY LAW
CODE : INR 0011 / LIN41A0
DATE : MAY 2019
 Examination
DURATION : 8:30-10:30
TOTAL MARKS : 80

EXAMINER : PROF J CALITZ
MODERATOR : PROF A BORAINÉ
NUMBER OF PAGES : 4 (including this one)

INSTRUCTIONS:

1. Answer all the questions in your script.
2. Write clearly and legibly.
3. Leave a line open between each answer (for example, between questions 1.1 and 1.2).
4. Ensure the correct use of grammar and spelling.
5. PLEASE INCLUDE NAME ON QUESTION PAPER.



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW
EXAMINATION 2019

SUBJECT NAME: INSOLVENCY LAW
SUBJECT CODE: INR 0011 / LIN41A0

DURATION: 2 HOURS
MARKS: 80

EXAMINERS: PROF JC CALITZ
EXTERNAL EXAMINER: PROF A BORAINÉ

THIS PAPER RUNS TO 3 PAGES.

QUESTION 1:

BRIEFLY explain or discuss the legal principles/concepts:

- 1.1 Section 339 of the Companies Act 61 of 1973. (3)
 - 1.2 "Independent creditor" in terms of section 128 of chapter 6 of Companies Act 71 of 2008. (3)
 - 1.3 "Financially distressed" in relation to a company and business rescue in terms of chapter 6 of Companies Act 71 of 2008. (4)
- [10]**

QUESTION 2:

Anne Gordon is the sole owner of a Beauty and Skin Care Clinic. Anne stood in as surety for her son who blundered with a business decision. She was forced to surrender her estate and her estate was sequestrated on 5 July 2018. Before sequestration Anne sold her house to Mark Mvuni in order to raise funds for her son. The house was sold in two instalments with the price being paid over a period of six months. The house has not yet been transferred to Mark. Anne also owns a flat that she is renting to a lessee, Peter, on a monthly basis. There is a mortgage bond registered over the flat in favour of We Give Loans Bank. The bond was registered prior to the lease.

- 2.1 What advice would you give to Mark Mvuni with regard to the uncompleted contract? (5)
 - 2.2 What options will be available to the trustee if Peter, the lessee, insists on renting the flat after sequestration? (3)
- [8]**

QUESTION 3:

A witness is being interrogated at a section 417 of the Insolvency Act 24 of 1936 (Insolvency Act) enquiry. He indicates to the Presiding Officer that should he answer the relevant question he would incriminate himself. Discuss the implications of this scenario. (5)

QUESTION 4:

“The Companies Act 71 of 2008 (‘the new Act’) repealed most of the Companies Act 61 of 1973 (‘the previous Act’). The notable exception is chapter 14 of the previous Act, which continues to apply with respect to the winding-up and liquidation of companies (item 9(1) of Schedule 5 of the new Act).” Write a note on the meaning of ‘solvent’ for purposes of liquidation in terms of the Companies Act 71 of 2008 with reference to the necessary case law. [6]

QUESTION 5:

On the 3rd of April 2017 RE Rentals brought an urgent application for an order evicting the GOOD Coffee House (the company in business rescue) on the ground that the lease agreement between the parties had been cancelled, alternatively, had expired. GOOD Coffee House had failed to pay rental since October 2016 but remained in occupation of the premises. In January 2017 after receiving breach notices from the landlord the members of GOOD Coffee House voluntarily resolved to place the company into business rescue. A business rescue practitioner was subsequently appointed. With reference to the mentioned facts and relevant case law, advise the landlord as well as the business rescue practitioner on their rights regarding the lease agreement. [6]

QUESTION 6:

“The point of contention in this case was whether the illegality of the business of the scheme was a relevant consideration in determining whether the pay-outs were made in the ordinary course of business of the scheme.” Write a note on the court’s approach to the setting aside of transactions from pyramid schemes as impeachable dispositions under the South African insolvency legislation. [10]

QUESTION 7:

“It would be fair to state that the appointment of insolvency practitioners in insolvent estates in South Africa is a controversial subject to deal with. This is not due to the complexity of the legislative provisions or their practical application, but due to the continuous allegations of the irregularities that accompany such appointments.” Assume that you have been appointed to investigate the possible amendment of the manner in which practitioners have been 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). [15]

QUESTION 8:

JJ Bricks (Pty) Ltd is a construction company specialising in the building of vacation homes and has three directors. Roger and his son Fred are two of the directors and also the majority shareholders of the company. As a result of the declining economy, JJ Bricks has not been getting much work and is barely able to pay its debts as they fall due.

James, also a director, believes that if the company is placed under business rescue it can be rescued and returned to a successful concern. He is particularly anxious that the company should not be liquidated because he is also a director or advisor of several other construction companies and fears that his reputation will be harmed if the company fails.

8.1 “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.” Discuss the nature and goals of business rescue proceedings as set out in the definition of “business rescue” as well as the different views echoed by the court. (10)

8.2 Two of the company’s creditors have threatened to immediately apply for the liquidation of JJ Bricks (Pty) Ltd if James makes any attempt to have the company placed under business rescue. Explain whether application for business rescue can be made after final order of liquidation. Refer to the necessary case law. (10)

[20]

TOTAL: [80]

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