

MEMORANDUM

(OCTOBER EXAM – 26 OCTOBER 2021)

ANSWER TO QUESTION 1

- 1.1 Contract of employment. **(2 marks)**
- 1.2 Contract of Employment.
1. **THE PARTIES (2 marks for each party)**
 2. **EMPLOYMENT CLAUSE (1 mark)**
 3. **CONSIDERATION CLAUSE (1 mark)**
 4. **METHOD OF PAYMENT CLAUSE (2 marks)**
(If a student uses bank payment as a method of payment, banking details must be provided).
 5. **WORKINGS HOURS CLAUSE (3 marks)**
 6. **BREACH CLAUSE (1 mark)**
 7. **DOMICILIUM CLAUSE (1 mark)**
 8. **NON-VARIATION CLAUSE (1 mark)**

Thus done and signed in JOHANNESBURG on this 26th day of February 2021.

The Employer

The Employee

As witnesses :

1. _____

2. _____ **(2 marks for the ending)**

**(16 marks + 2 marks for
format/layout)**

ANSWER TO QUESTION 2

- 2.1
- (a) comply with internal disciplinary procedures **(1 mark)**
 - (b) refer to CCMA within 30 calendar days **(2 marks)**
 - (c) use referral form 7.11 **(1 mark)**
 - (d) unfair dismissal **(1 mark)**
- 2.2 Time frame for referral has lapsed **1 mark)**
Apply for condonation in terms of rule 31. **(1 mark)**

Affidavit in support of application must deal with :

- reason of lateness
- degree of lateness
- prejudice suffered
- prospect of success
- any other relevant factors **(1 mark for any 3)**

2.3 Information for the completion of the 7.11 forms. **(10 marks)**

1. Contact details of Mr. Pillay – party referring the dispute.
2. Contact details of Mr. Tibane- other party.
3. Date and place of dispute.
4. Nature of dispute.
5. Date of dismissal.
6. What outcome he requires.
7. Interpreter.
8. Details of dispute procedures followed (internal grievance / complaint lodged).
9. Commencement date of work with employer.
10. Any other additional information.

ANSWER TO QUESTION 3.1

1. Statement incorrect. **(1 mark)**
2. Attorneys practise is a business **(1)**, employs people **(1)**, generates an income **(1)** and make a profit **(1)**.
3. **If state they must charge reasonable fees, award a mark as well.**

ANSWER TO QUESTION 3.2

Identify the purpose of a trust account and when monies can be transferred **(1)**

Identifies the applicable legislation **(1/2 mark for each section identified)**

- LPA – 34(2)b
- S 84 fid fund
- S 86 trust account
- S 88
- S53 Fid fund
- S 63(1)g

Identifies and discuss Fourie v Van der Spuy case **(3 marks)**

Must also refer to - Fuhri v Geyser case **(1 mark)**

- Margalit case **(1 mark)**
- Lubbe case **(1 mark)**
- Aersop case **(1 mark)**
- Wypkema case **(1)**

Must mention the

- Fiduciary duty of attorney towards client **(1)**
- Nature of relationship that attorney has with client (contract of mandate) **(1 mark)**
- Attorney must take pre-emptive measures to avoid risks related to trust fund monies (cybercrime) **(1 mark)**

ANSWERT TO QUESTION 4

ADVOCATES – Without Fidelity Fund Certificate (FFC) (1)

S24 – High Court admission application is required to be admitted to practice **(1)**

S30 – Application must be made to the Legal Practice Council to be enrolled **(1)**

S25 – Appearance: any court **(1)**

S34(2)(a)(ii) and 34(2)(b) Instructions must be taken from attorneys and “Justice Centres” (LASA); these advocates do not have a trust account or FFC **(1)** which makes it easier for them to practice **(1)**

But, this is also negative when compared to the advocate with an FFC who may take instructions directly from the public **(1)**

S34(6) May practice:

For own account only/alone **(1)**

No fee sharing with anybody or entity is allowed **(1)**

Or at a:

Law Clinic

LASA

State Attorney / SAHRC **(1)**

ADVOCATES (with FFC)

The positive for these advocates are that in terms of S34(2)(a)(i) and 34(2)(b) they May take instructions directly from the public **(1)** and “Justice Centres”; but the negative is that they must have a trust account and FFC **(1)**

The rest of the requirements are the same as for the Non-FFC advocate.

ATTORNEYS

S24 – High Court admission application is required to be admitted to practice **(1)**

S30 – Application must be made to the Legal Practice Council to be enrolled **(1)**

S25 – Appearance: any court but a certificate is required for HC, SCA and CC **(1)** which is a negative extra requirement.

S34(1) – Instructions may be taken directly from public; must have a trust account and FFC **(1)**

S34 (5) May practice:

For own account or as a member of Legal entity **(1)** which is a positive as fee sharing with other attorneys is allowed **(1)**

They may also, like advocates practice at a Law Clinic, LASA or the State Attorney/SAHRC **(1)**

Attorneys can qualify as conveyancers and notaries **(1)**