



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

<u>DATE</u>	: June 2022	<u>SESSION</u>	:12:30-14:30
<u>ASSESSOR(S)</u>	: PROF CALITZ		
<u>EXTERNAL MODERATOR</u>	: PROF BORAINÉ (UP)		
<u>DURATION</u>	: 2 HOURS	<u>MARKS</u>	: 50

NUMBER OF PAGES: 2

INSTRUCTIONS:

- 1. Normal examination rules apply to the writing of this examination. Students who communicate with each other, or who are found to be in possession of illegal material, will be expelled from the examination and subjected to further legal sanction;*
 - 2. Please ensure that you have answered all the questions, as mistakes of this nature cannot be corrected after you have handed your answer book to the invigilator;*
 - 3. Please refer to all relevant case law where necessary.*
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QUESTION 1

[7]

In July 2020 JJ Advisory Services (Pty) Ltd was wound -up by the High Court. The liquidator of the estate holds an interrogation in order to determine what happened to his assets since it appears that the company owned quite a substantial number of assets approximately a year prior to liquidation. At the time of liquidation, the company owned nearly no assets at all. John Neville one of the company's directors has been subpoenaed to give evidence at the interrogation regarding his possible role in the alienation of the assets.

At the interrogation which is held before the Magistrate in Johannesburg, John refuses to answer any questions put to him on the basis that he has a constitutional right not to incriminate himself. Explain what statutory powers the presiding officer has in order to deal with this situation. Refer to all relevant authority when answering the question.

QUESTION 2

[8]

"The office of the insolvency practitioner is one of the few unregulated professions in South Africa." Discuss this statement with specific reference to the case of *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* 2018 (5) SA 349 (CC).

QUESTION 3

[20]

One of the burning issues currently in the context of successful business rescues is the regulation of business rescue practitioners. Write a note on the role of the business rescue practitioner. Include in your essay the following:

- Qualifications of a practitioner
- General powers and duties of practitioners
- Fee structure of practitioners including the test to determine the business rescue practitioner's entitlement to reimbursement for expenses and disbursements (with reference to case law)
- The ranking and nature of practitioners claim for remuneration in a subsequent liquidation proceedings (with reference to case law)

QUESTION 4

[5]

Discuss how the case of *Sarrahwitz v Maritz* 2015 4 SA 491 (CC) amended the law pertaining to executory contracts in insolvency law.

QUESTION 5

[10]

Write a legal opinion on the interpretation of the courts regarding whether or not payments made with regard to illegal pyramid schemes qualify as payments made in the 'ordinary course of business' in terms of section 29 of the Act.

TOTAL 50
