



<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]

Write a brief note on whether section 65(2A) of the Insolvency Act 1936 applies to an interrogation held under section 415 of the Companies Act with specific reference to whether a witness could refuse to answer a question on the ground that it would tend to incriminate him.

QUESTION 2

[6]

Briefly discuss the differences between the trustee's powers under section 29 (voidable preference) and section 30 (undue preference) of the Insolvency Act.

QUESTION 3

[20]

"The business rescue plan is the central feature of business rescue proceedings because it sets out the practitioner's blueprint for rescuing the company."

- A. Briefly discuss the business rescue plan with reference to consultation with all relevant stakeholders and publication as well as the implementation of the plan. (10)
- B. Critically discuss whether a business rescue practitioner has the power to unilaterally amend the business rescue plan. Substantiate your answer by referring to all relevant and applicable case law. (10)

QUESTION 4

[7]

Critically discuss the case of *Sarrahwitz v Maritz* 2015 4 SA 491 (CC). You do not need to refer to the facts of the case.

QUESTION 5

[10]

"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 as a member of a Ministerial Task Team to investigate the possible amendment to the regulatory framework of appointment of trustees or liquidators. Briefly set out what your findings would be. (In your answer you should also refer to the current legislative provisions and relevant case law surrounding the appointment of insolvency practitioners).

TOTAL 50
