

MRL3701
MRL301M

May/June 2011
Mei/June 2011

INSOLVENCY LAW (MERCANTILE LAW)
INSOLVENSIEREG (HANDELSREG)

100 Marks
100 Punte

Duration . 2 Hours
Tydsduur 2 Uur

EXAMINERS / EKSAMINATORE :
FIRST / EERSTE MS/ME C CHURR
SECOND / TWEEDE PROF RG EVANS

This paper consists of 15 pages
Hierdie vraestel bestaan uit 15 bladsye.

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- (1) Answer ALL the questions.
Beantwoord AL die vrae.
- (2) Answer each question in the space provided in this examination paper
Beantwoord elke vraag in die ruimte wat in hierdie eksamenvraestel voorsien is.
- (3) We advise you not to spend more than approximately 30 minutes on Question 1. Good luck with the examination
U word aangeraai om nie meer as ongeveer 30 minute aan Vraag 1 te bestee nie. Baie sterkte met die eksamen.

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[BLAAI OM]

QUESTION 1

VRAAG 1

Fill in the missing words

Vul die ontbrekende woorde in:

- (a) The _____ of insolvency is however whether the debtor's liabilities, fairly estimated, exceed his assets, fairly valued (2)
- (a) **Die _____ vir insolvensie is egter of die skuldenaar se billik berekende laste sy billik gewaardeerde bates oorskry.** (2)
- (b) That portion of the insolvent estate which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention, is also known as _____ (2)
- (b) **Daardie deel van die insolvente boedel wat nie aan 'n preferente reg onderhewig is nie op grond van 'n spesiale verband, stilswyende hipoteek, pand of retensiereg, staan ook bekend as _____.** (2)
- (c) The application for the voluntary surrender of a debtor's estate is brought by way of a _____ supported by an affidavit (2)
- (c) **Die aansoek om vrywillige boedeloorgawe van 'n skuldenaar se boedel word gerig deur middel van 'n _____ wat deur 'n beëdigde verklaring gestaaf word.** (2)
- (d) There are _____ acts of insolvency. (2)
- (d) **Daar is _____ dade van insolvensie.** (2)
- (e) Although the insolvent is, by and large, divested of his estate, he retains a _____ in it and, accordingly, may litigate to ensure that it is properly administered (2)
- (e) **Hoewel die insolvent in die algemeen van sy boedel ontnem word, behou hy _____ daarin en kan hy gevolglik litigeer om te verseker dat dit behoorlik beredder word.** (2)
- (f) Because of the principle of _____, the trustee cannot, as a rule, repudiate a lease of immovable property concluded by the insolvent as lessor and must realize the property subject to the lease (2)
- (f) **As gevolg van die _____ -beginsel, kan die kurator gewoonlik nie die huurkontrak ten opsigte van onroerende goed wat deur die insolvent as verhuurder aangegaan is, verwerp nie en moet hy die goed onderhewig aan die huurkontrak te gelde maak.** (2)

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- (g) In everyday language, an instalment agreement is also known as a _____ (2)
- (g) In die omgangstaal staan 'n afbetalingsooreenkoms ('instalment agreement') ook bekend as 'n _____.** (2)
- (h) On the receipt of a final sequestration order, the Master is obliged to convene immediately, by notice in the _____, a first meeting of creditors of the estate (2)
- (h) By die ontvangs van die finale sekwestrasiebevel is die Meester verplig om onmiddellik by wyse van kennisgewing in die _____, 'n eerste vergadering van skuldeisers van die boedel te belê.** (2)
- (i) _____ in section 26 of the Insolvency Act means a benefit received or promised as a *quid pro quo*, either by the recipient of the disposition or by someone else (2)
- (i) _____ in artikel 26 van die Insolvensiewet beteken 'n voordeel wat as 'n *quid pro quo* ontvang of belowe is, hetsy deur die ontvanger van die vervreemding self of deur iemand anders.** (2)
- (j) The common-law remedy which is used with regard to the disposition in fraud of creditors is also known as the *actio* _____ (2)
- (j) Die gemeenregtelike regs middel wat gebruik word by vervreemdings wat bedrieglik teenoor skuleisters is, staan ook bekend as die *actio* _____.** (2)
- (k) Broadly speaking, a party (Ben), has a right of _____ over specific property belonging to another if he (Ben) has expended labour or incurred expenses in respect of the property. (2)
- (k) Gewoonlik het 'n party (Ben) 'n _____ op spesifieke goed wat aan iemand anders behoort as hy (Ben) arbeid of uitgawes ten opsigte van die goed aangeaan het.** (2)
- (l) If the insolvent can show that neither the trustee nor his creditors lay claim to an asset in his estate, he may, on applying for rehabilitation, or thereafter, ask for an _____ declaring that he is entitled to the asset (2)
- (l) As die insolvent kan aantoon dat nóg die kurator, nóg sy skuldeisers aanspraak op 'n bate in sy boedel gemaak het, kan hy, wanneer hy aansoek doen om rehabilitasie, of daarna, aansoek doen om _____ wat verklaar dat hy op die bate geregtig is.** (2)
- (m) The court may wind up a company if ___ % of its issued share capital has been lost or become useless for its business (2)
- (m) Die hof kan 'n maatskappy likwiedeër as ___ % van die maatskappy se uitgereikte aandelekapitaal verlore is of vir die besigheid van die maatskappy onbruikbaar geword het.** (2)
- (n) A private company has a name that must end with the words _____ (2)
- (n) 'n Private maatskappy het 'n naam wat met die woorde _____ moet eindig.** (2)

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- (o) The law of insolvency exists primarily for the benefit of the _____ . (2)
- (o) **Die insolvensiereg bestaan hoofsaaklik vir die voordeel van die _____ . (2)**
- (p) Name the two types of liens. (2)
- (p) **Noem die twee tipes retensieregte. (2)**

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- (q) Name the FOUR circumstances in which rehabilitation may be sought. (4)
- (q) **Noem die VIER omstandighede waarin om rehabilitasie aansoek gedoen kan word. (4)**

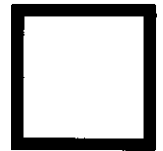
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- (r) On which grounds may a close corporation be wound up by the court? (4)
- (r) **Op watter gronde kan 'n beslote korporasie deur die hof gelikwideer word? (4)**

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TOTAL QUESTION 1 / TOTAAL VRAAG 1: 40



QUESTION 2

VRAAG 2

Indicate whether the following statements are true or false. DO NOT give a written explanation: use only the letters T or F.

Dui aan welke van die volgende stellings waar of vals is. MOENIE skriftelik verduidelik nie: gebruik slegs die letters W of V.

1. An estate is usually conceived of as a collection of assets and liabilities. (2)
1. 'n Boedel word gewoonlik as 'n versameling bates en laste beskou. (2)

.....

2. Only debtors aggrieved by a final order of compulsory sequestration, or by an order setting aside an order of provisional sequestration, may appeal against the order. (2)
2. Slegs skuldenaars wat verontreg voel deur 'n finale sekwestrasiebevel, of deur 'n bevel wat 'n voorlopige sekwestrasiebevel tersyde stel, mag teen die bevel appelleer. (2)

.....

3. In terms of section 23(7) of the Insolvency Act 24 of 1936 the insolvent may recover for his own benefit any pension to which he may be entitled for services rendered by him. (2)
3. Ingevolge artikel 23(7) van die Insolvensiewet 24 van 1936 kan die insolvent tot sy eie voordeel 'n pensioen wat tot sy eie voordeel mag wees weens dienste deur hom gelewer invorder. (2)

.....

4. The fact that a person is insolvent precludes him from being a party to legal proceedings. (2)
4. Die feit dat 'n persoon insolvent is, verhinder hom om 'n party by geregtelike verrigtinge te wees. (2)

.....

5. Wearing apparel and bedding form part of the insolvent estate. (2)
5. Klere en beddegoed vorm deel van die insolvente boedel. (2)

.....

6. In view of the fact that various property does not vest in the trustee, it is clear that the insolvent may, during the period of his insolvency, acquire a new estate and hold it with a title adverse to his trustee. (2)
6. In die lig van die feit dat verskeie goed nie op die kurator oorgaan nie, is dit duidelik dat die insolvent tydens die termyn van sy insolvensie 'n nuwe boedel mag verkry en dit, vry van enige aanspraak van die kurator, kan behou. (2)

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7. An unrehabilitated insolvent can be appointed as a trustee in an insolvent estate. (2)
7. 'n Ongerehabiliteerde insolvent mag as 'n kurator van 'n insolvente boedel aangestel word. (2)
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8. Until a disposition is set aside by the court, it remains valid and binding. (2)
8. 'n Vervreemding bly geldig en bindend totdat dit deur die hof tersyde gestel is. (2)
-
9. A debtor who is in financial difficulty or whose estate has been provisionally sequestrated can avoid insolvency by entering into a compromise with his creditors. (2)
9. 'n Skuldenaar wat finansiële probleme ondervind of wie se boedel voorlopig gesekwestreer is, kan insolvensie verhoed deur 'n skikking met sy skuldeisers aan te gaan. (2)
-
10. The master may remove a trustee from office on the ground that the majority of creditors have requested in writing that he be removed. (2)
10. Die meester kan 'n kurator uit sy amp onthef op grond daarvan dat die meerderheid skuldeisers skriftelik versoek het dat hy onthef moet word. (2)
-
11. A corporate body may be a trustee in any estate. (2)
11. 'n Regspersoon mag 'n kurator in enige boedel wees. (2)
-
12. An undue preference may be set aside irrespective of when, before sequestration, it was made, whereas a voidable preference can only be set aside if it was made not more than one month before sequestration or the insolvent's death (as the case may be). (2)
12. 'n Onbehoorlike voorkeur kan ongeag hoe lank dit voor sekwestrasie gedoen is, tersyde gestel word, terwyl 'n vernietigbare voorkeur slegs tersyde gestel kan word indien dit nie meer as een maand voor sekwestrasie of die insolvent se dood, na gelang van die geval, gedoen is nie. (2)
-
13. If the trustee elects to carry on and complete a contract which the insolvent has not performed by the time of sequestration, he 'steps into the shoes' of the insolvent (2)
13. Indien die kurator besluit om 'n kontrak wat nog nie deur die insolvent uitgevoer is nie, voort te sit en te voltooi, 'staan hy in die skoene' van die insolvent. (2)
-

- 14 A company may be placed under judicial management, but the onus is on the respondent(s) to establish a proper basis for judicial management (2)
14. 'n Maatskappy kan onder geregtelike bestuur geplaas word, maar die bewyslas rus op die respondent(e) om 'n behoorlike grondslag vir geregtelike bestuur te lê. (2)
-
- 15 As a partnership is *ipso facto* terminated on sequestration of its estate, a partnership estate can never be rehabilitated (2)
15. Aangesien 'n vennootskap outomaties by die sekwestrasie van sy boedel beëindig word, kan 'n vennootskap nooit gerehabiliteer word nie. (2)
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TOTAL QUESTION 2 / TOTAAL VRAAG 2: 30



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QUESTION 3

VRAAG 3

- (a) Mrs Modiba, the applicant, has applied for the sequestration of the estate of her son, Ben, the respondent in this matter. The act of insolvency being relied upon is the respondent's notification that he is unable to repay his mother a loan of R 6000, that he cannot raise any moneys to pay his debts and is:

"... hopelessly insolvent and desperate because several creditors have threatened to have me committed to goal by issuing court process against me for the non-payment of these debts"

Regarding the above facts, look at the questions in column A, and mark with a cross only one of the answers in column B which is correct (5)

- (a) **Mev Modiba, die applikant, het aansoek gedoen vir die sekwestrasie van haar seun, Ben, se boedel. Ben is die respondent in hierdie aangeleentheid. Die daad van insolvensie waarop daar gesteun word is die respondent se kennisgewing van sy onvermoë om 'n lening van R 6 000 aan sy ma terug te betaal, dat hy nie voldoende geld bymekaar kan maak om sy skulde te betaal nie en is:**

"... hopelessly insolvent and desperate because several creditors have threatened to have me committed to goal by issuing court process against me for the non-payment of these debts".

Kyk na die vrae in kolom A met betrekking tot bogenoemde feite, en merk met 'n kruis slegs een korrekte antwoorde in kolom B. (5)

Column A Kolom A	Column B Kolom B
(i) The above facts are those in the case of, (i) Bogenoemde feite is die wat voorkom in die saak van;	<i>Estate Wege v Strause</i> 1932 AD 76 <i>Estate Wege v Strause</i> 1932 AD 76
	<i>Ensor NO v Rensco Motors (Pty) Ltd</i> 1981 (1)815 (A) <i>Ensor NO v Rensco Motors (Pty) Ltd</i> 1981 (1)815 (A)
	<i>Epstein v Epstein</i> 1987 (4) SA 606 (C) <i>Epstein v Epstein</i> 1987 (4) SA 606 (C)
	<i>Hendriks NO v Swanepoel</i> 1962 (4) SA 338 (A) <i>Hendriks NO v Swanepoel</i> 1962 (4) SA 338 (A)

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(ii) The above facts relate to; (ii) Bogenoemde feite het betrekking op;	Dispositions without value Beskikking van goed sonder teenwaarde
	Applications for the voluntary surrender of a debtor's estate Aansoeke vir vrywillige boedeloorgawe van 'n skuldenaar se boedel
	Failure to satisfy a judgment Nie voldoening aan 'n vonnis
	Friendly sequestrations Vriendelike sekwestrasies
(iii) The above facts also relate to one of the following acts of insolvency in terms of the Insolvency Act 24 of 1936; (iii) Bogenoemde feite het ook betrekking op een van die volgende dade van insolvensie ingevolge die Insolvensiewet 24 van 1936;	Section 10(a) Artikel 10(a)
	Section 10 (c) Artikel 10(c)
	Section 8(e) Artikel 8(e)
	Section 8(g) Artikel 8(g)
(iv) The above facts also relate to; (iv) Bogenoemde feite het ook betrekking op;	Advantage to creditors in insolvency proceedings Voordeel van skuldeisers in insolvensie verrigtinge
	Release of the property of the solvent spouse in terms of section 21 of the Insolvency Act 24 of 1936 Die vrystel van eiendom van die solvent gade ingevolge artikel 21 van die Insolvensiewet 24 van 1936
	The trustee's onus in respect of impeachable dispositions Die Kurator se bewyslas ten aansien van vernietigbare regshandeling

	Property that is included in the insolvent estate Eiendom wat deel uitmaak van die insolvente boedel.
(v) Which one of the following cases relates to the same principles as those discussed in the facts above?	<i>Craggs v Dedekind, Baartman v Baartman & another, Van Jaarsveld v Roebuck, Van Aardt v Borrett</i> 1996 (1) SA 935 (C)
(v) Watter een van die volgende sake het ook betrekking op die beginsels in bogenoemde feite bespreek?	<i>Craggs v Dedekind; Baartman v Baartman & another; Van Jaarsveld v Roebuck; Van Aardt v Borrett</i> 1996 (1) SA 935 (C)
	<i>Amod v Kahn</i> 1947 (2) SA 432 (N) <i>Amod v Kahn</i> 1947 (2) SA 432 (N)
	<i>Ex parte Henning</i> 1981 (3) SA 843 (O) <i>Ex parte Henning</i> 1981 (3) SA 843 (O)
	<i>Pretorius' Trustee v Van Blommenstein</i> 1949 (1) SA 267 (O) <i>Pretorius' Trustee v Van Blommenstein</i> 1949 (1) SA 267 (O)

(b) Read both question b(i) and question b(ii) before answering the questions below:

(b) Lees beide vraag b(i) en vraag b(ii) hieronder voordat u hierdie vrae beantwoord:

(i) Jack is an insolvent. He applies to the court for his rehabilitation. In the application he applies for an order declaring that he is entitled to property inherited from his late father. Jack inherited this property during his insolvency. Explain what is understood by a declaratory order regarding property and state the requirements that must be met to obtain such an order. (10)

(i) Jack is 'n insolvent. Hy doen by die hof aansoek vir sy rehabilitasie. In sy aansoek vra hy vir 'n verklarende bevel dat hy op 'n erfenis van sy pa geregtig is. Jack het die erfenis ontvang tydens sy sekwestrasie. Verduidelik wat bedoel is met 'n verklarende bevel en meld die vereistes waaraan voldoen moet word om 'n verklarende bevel te bekom. (10)

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- (c) During 2002 Tenza and Cindy were married out of community of property. Prior to the marriage Cindy owned a **house** to the value of R 2 000 000. In the antenuptial settlement entered into by Tenza and Cindy, Tenza donated an expensive **antique dining room suite** to Cindy. In 2004 Cindy used her earnings from her profession as an estate agent and bought **diamonds** to the value of R 50 000. During 2009 Cindy sold half of the **diamonds** for R25 000 and used that money to purchase a **racing bicycle** for herself. In 2010 Tenza suffered financial difficulties and his estate was consequently finally sequestrated during November 2010.

Briefly state what effect section 21 of the Insolvency Act 24 of 1936 will have on Cindy's property which is indicated in **bold print** above. Also mention in point form what property **in bold above** must be released by the trustee of Tenza's estate in terms of section 21, and why each item of property must be released (5)

- (c) **In 2002 is Tenza en Cindy buite gemeenskap van goed getroud. Cindy besit 'n huis terwaarde van R 2 00 000 wat sy voor die huwelik aangekoop het. In hulle voorhuwelikse ooreenkoms het Tenza 'n duur eetkamerstel aan Cindy geskenk. In 2004 het Cindy haar inkomste wat sy as eiendomsagent verdien het gebruik om diamante terwaarde van R50 000 te koop. In 2009 het Cindy helfde van die diamante vir R 25 000 verkoop en daardie opbrengs gebruik om vir haar 'n resiesfiets te koop.**

Meld kortliks watter gevolge artikel 21 van die Insolvensiewet 24 van 1936 sal hê op Cindy se eiendom wat hierbo onderstreep is. Meld ook puntsgewys aan watter eiendom deur die kurator van Tenza se insolvente boedel volgens artikel 21 vrygestel moet word, en hoekom dit vrygestel moet word. (5)

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TOTAL QUESTION 3/TOTAAL VRAAG 3: [30]

TOTAL / TOTAAL: [100]