

**MRL3701**October/November 2011  
Oktober/November 2011**INSOLVENCY LAW (MERCANTILE LAW)  
INSOLVENSIEREG (HANDELSREG)**Duration 2 Hours  
Tydsduur 2 Uur100 Marks  
100 Punte**EXAMINERS / EKSAMINATORE :**FIRST / EERSTE MS/ME C CHURR  
SECOND / TWEEDE PROF RG EVANS

This paper consists of 16 pages.  
**Hierdie vraestel bestaan uit 16 bladsye.**

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**Hierdie eksamenvraestel bly die eiendom van die Universiteit van Suid-Afrika en mag nie uit die eksamenlokaal verwyder word nie.**

- (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.**

[TURN OVER]  
[BLAAI OM]

QUESTION 1  
VRAAG 1

Fill in the missing words:

**Vul die ontbrekende woorde in:**

(a) Insolvency law provides a procedure for dealing fairly with the claims that the unpaid \_\_\_\_\_ of the insolvent person have against the insolvent estate. Insolvency law also protects the debtor from being harassed by his or her creditors (2)

(a) **Insolvensiereg verskaf 'n prosedure om die eise billik te hanteer wat die onbetaalde \_\_\_\_\_ van die insolvente persoon teen die insolvente boedel het. Insolvensiereg beskerm ook die skuldenaar teen teistering deur sy of haar skuldeisers. (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 the \_\_\_\_\_ (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 die \_\_\_\_\_ (2)**

(c) The court may accept the surrender of a debtor's estate only if it is satisfied that the debtor's estate is in fact insolvent, that the debtor owns realizable property of sufficient value to defray all the costs of the sequestration which will, in terms of the act be payable out of the free residue of his estate. It must also be shown that sequestration will be to the \_\_\_\_\_ of creditors. (2)

(c) **Die hof kan die oorgawe van 'n skuldenaar se boedel aanvaar slegs indien hy oortuig is dat die skuldenaar se boedel inderdaad insolvent is, en dat die skuldenaar voldoende realiseerbare goed besit om alle sekwestrasiekoste wat ingevolge die Wet uit die vrye oorskot van sy boedel betaalbaar sal wees, te delg. Sekwestrasie moet ook tot die \_\_\_\_\_ van die skuldeisers wees. (2)**

(d) There are \_\_\_\_\_ acts of insolvency. (2)

(d) **Daar is \_\_\_\_\_ dade van insolvensie. (2)**

[TURN OVER]  
[BLAAI OM]

(e) The sequestrating creditor has to approach the court twice; once to obtain a provisional order and the second time to have the provisional order \_\_\_\_\_ and made final. (2)

**(e) Die sekwestrerende skuldeiser moet die hof twee keer nader; die eerste keer om 'n voorlopige sekwestrasiebevel te verkry, en 'n tweede keer om die voorlopige bevel te \_\_\_\_\_ en te finaliseer. (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)**

(g) Only a \_\_\_\_\_ has jurisdiction to wind up a company. (2)

**(g) Slegs 'n \_\_\_\_\_ het jurisdiksie om 'n maatskappy te likwideer. (2)**

(h) On the receipt of a final sequestration order, the Master is obliged to convene immediately, by notice in the Gazette, a \_\_\_\_\_ 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 Staatskoerant, 'n \_\_\_\_\_ van skuldeisers van die boedel te belê. (2)**

(i) Tenza sells his car to Bobby. The parties do not specifically agree on when the purchase price is to be paid. Tenza delivers the car to Bobby, and Bobby hands Tenza a cheque for the purchase price. Bobby's estate is sequestrated two days later. The bank refuses to pay the cheque, because there is not enough money in Bobby's bank account. Suppose that in the above example of the sale of the car you are the seller, Tenza, and the buyer is Bobby. The sale and delivery took place on 14 August in Bloemfontein in the Free State. The purchase price was R1 000, and Bobby handed you a cheque as payment. The cheque remains unpaid, because of lack of funds in Bobby's account. You have photocopied the details of the car sold from your records. Bobby's estate was sequestrated on 16 August.

You have 10 days from the date of delivery (14 Aug), not 10 days from the date of the \_\_\_\_\_ of Bobby's estate (16 Aug) to reclaim the property. (2)

(i) **Tenza verkoop sy kar aan Bobby. Die partye kom nie spesifiek ooreen wanneer die koopprys betaal moet word nie. Tenza lewer die kar aan Bobby en Bobby oorhandig 'n tjek vir die koopprys aan Tenza. Bobby se boedel word twee dae later gesekwestreer. Die bank weier om die tjek te betaal, omdat daar nie genoeg geld in Bobby se bankrekening is nie. Veronderstel dat u in bogenoemde voorbeeld van die verkoop van die motor die verkoper, Tenza, is en dat die koper Bobby is. Die koop en lewering vind in Bloemfontein in die Vrystaat op 14 Augustus plaas. Die koopprys was R1 000 en Bobby het 'n tjek aan u as betaling oorhandig. Die tjek is nie betaal nie, weens 'n gebrek aan fondse in Bobby se rekening. U het 'n fotokopie van die besonderhede van die motor wat verkoop is in u dokumente. Bobby se boedel is op 16 Augustus gesekwestreer.**

**U het 10 dae vanaf lewering (14 Augustus), nie 10 dae vanaf die datum van die \_\_\_\_\_ van Bobby se boedel (16 Augustus) om die eiendom terug te eis nie. (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 skuldeisers 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) There may be various reasons why an interested person wishes to apply for an order that automatic rehabilitation should not take place after the lapse of 10 years. It may, for example, happen that only just before the completion of the 10-year period the trustee becomes aware of some possible \_\_\_\_\_ dispositions. (2)

(l) **Daar kan verskeie redes wees waarom 'n belanghebbende persoon aansoek wil doen dat outomatiese rehabilitasie nie na verloop van 10 jaar moet plaasvind nie. Dit kan byvoorbeeld gebeur dat die kurator eers kort voor afloop van die periode van 10 jaar uitvind dat daar moontlike \_\_\_\_\_ vervreemdings was waarvan hy nie bewus was nie. (2)**

(m) The court considered the aspect of "declaratory orders" in the case of \_\_\_\_\_ (2)

(m) Die hof het die posisie met betrekking tot verklarende bevel in die beslissing van \_\_\_\_\_ oorweeg. (2)

(n) The company itself may apply for its own winding-up. When the general meeting of members, by means of a \_\_\_\_\_ resolution, has resolved that the company be wound up by the court, such resolution is a ground for winding-up as well as an authority to the directors to make the application. (2)

(n) Die maatskappy self kan aansoek kan doen om sy eie likwidasie. Wanneer die lede tydens 'n algemene vergadering by wyse van 'n \_\_\_\_\_ besluit, besluit het dat die maatskappy deur die hof gelikwider moet word, is sodanige besluit 'n grond vir likwidasie sowel as 'n magtiging aan die direkteure om die aansoek te doen. (2)

(o) *Estate Wege v Strauss* 1932 AD 76 dealt amongst others with the issue of dispositions without \_\_\_\_\_ (2)

(o) *Estate Wege v Strauss* 1932 AD 76 het onder andere gehandel met die kwessie van vervreemdings sonder \_\_\_\_\_ (2)

(p) In *Hendriks NO v Swanepoel* 1962 (4) SA 338 (A) the legal position in respect of \_\_\_\_\_ was considered. (2)

(p) In *Hendriks NO v Swanepoel* 1962 (4) SA 338 (A) is die regs aspekte van \_\_\_\_\_ behandel. (2)

(q) The \_\_\_\_\_ of insolvency is whether the debtor's liabilities, fairly estimated, exceed his assets, fairly valued. (2)

(q) Die \_\_\_\_\_ vir insolvensie is egter of die skuldenaar se billik berekende laste sy billik gewaardeerde bates oorskry. (2)

(r) The extent of the debtor's assets and liabilities is generally determined by reference to the \_\_\_\_\_ which he is required to prepare and file, but the court is not bound by the valuations. (2)

(r) Die omvang van die skuldenaar se bates en laste word gewoonlik vasgestel met verwysing na die \_\_\_\_\_ wat hy moet opstel en indien, maar die hof is nie gebonde aan die waardasies nie. (2)

(s) One of the questions considered in *Ensor NO v Rensco Motors (Pty) (Ltd)* 1981 (1) SA 815 (A) was whether or not the alienation of certain goods by an insolvent company just before its liquidation was " \_\_\_\_\_ " of the company within the meaning of that phrase in \_\_\_\_\_ of the Insolvency Act 24 of 1936. (4)

(s) Een van die vrae in *Ensor NO v Rensco Motors (Pty) (Ltd)* 1981 (1) SA 815 (A) was of 'n insolvente maatskappy se vervreemding van sekere goedere kort voor sy likwidasie " \_\_\_\_\_ " soos beoog in \_\_\_\_\_ van die Insolvensiewet 24 van 1936 plaasgevind het al dan nie. (4)

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TOTAL QUESTION 1 / TOTAAL VRAAG 1: 40



[TURN OVER]  
[BLAAI OM]

**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. Mr and Mrs Jones were married in community of property in 1999, and are now insolvent. Only Mr Jones has to apply for the voluntary surrender of the joint estate. (2)
1. **Mnr en Mev Jones is in 1999 binne gemeenskap van goed getroud, en is nou insolvent. Slegs Mnr Jones moet aansoek doen om die vrywillige oorgawe van hulle gesamentlike boedel.** (2)

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2. The debtor must apply for voluntary surrender within the period of 10 days after the advertised date. (2)
2. **Die skuldenaar moet aansoek om vrywillige boedeloorgawe doen binne die tydperk van 10 dae na die geadverteerde dag.** (2)

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3. In an application for compulsory sequestration, it is possible to infer that the debtor is insolvent merely because he asked the creditor for time to pay the debt. (2)
3. **In 'n aansoek om verpligte sekwestrasie is dit moontlik om die afleiding te maak dat die skuldenaar insolvent is bloot omdat hy die skuldeiser gevra het vir tyd om sy skuld te betaal.** (2)

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4. A liquidated claim is a claim for money, the amount of which is fixed by agreement, judgment, or otherwise. (2)
4. **'n Gelikwideerde eis is 'n eis vir geld waarvan die bedrag by wyse van ooreenkoms, vonnis of op 'n ander wyse vasgestel is.** (2)

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5. The sequestration of an employer's estate does not suspend the employment contract between him and his employee. (2)
5. **Die sekwestrasie van 'n werkgewer se boedel skort nie die dienskontrak tussen hom en sy werknemer op nie.** (2)

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[TURN OVER]  
[BLAAI OM]

6. The Master or creditors representing one-quarter of the value of all claims proved against the insolvent estate may require the trustee to call a general meeting. (2)
6. **Die Meester of skuldeisers wat een-kwart verteenwoordig van die waarde van alle vorderings wat teen die insolvente boedel bewys is, mag vereis dat die kurator 'n algemene vergadering belê.** (2)
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7. The Master must accept as trustee the person whom the creditors have elected. (2)
7. **Die Meester moet die persoon wat die skuldeisers gekies het as kurator aanvaar.** (2)
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8. A 'disposition' includes a contract providing for the alienation or abandonment of rights to property. (2)
8. **'n 'Vervreemding' omvat 'n kontrak wat voorsiening maak vir die vervreemding of afstanddoening van regte op goed.** (2)
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9. A concurrent creditor enjoys advantage over other creditors of the insolvent. (2)
9. **'n Konkurrente skuldeiser geniet voordeel bo ander skuldeisers van die insolvent.** (2)
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10. A valid pledge is constituted where there is delivery of immovable property to a creditor on the understanding that it will be retained by him/her until the claim has been satisfied. (2)
10. **'n Geldige pand kom tot stand waar onroerende goed aan 'n skuldeiser gelever word met die verstandhouding dat dit deur hom/haar behou sal word totdat daar aan die vordering voldoen is.** (2)
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11. In *Prinsloo en 'n ander v Van Zyl* NO 1967 (1) SA 581 (T), the offer of composition was accepted only by a majority in value, and so there was no valid acceptance, and thus no valid composition. (2)
11. **In *Prinsloo en 'n ander v Van Zyl* NO 1967 (1) SA 581 (T), is die aanbod van akkoord slegs deur 'n gewone meerderheid in waarde aanvaar; gevolglik was daar geen geldige aanname nie, en dus ook geen geldige akkoord nie.** (2)
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- 12 The sequestration of a partner's estate does not terminate the partnership (2)
12. **Die sekwestrasie van 'n vennoot se boedel beeindig nie die vennotskap nie.** (2)
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13. A private company must have at least one member, but not more than 30 members. (2)
13. **'n Private maatskappy moet ten minste een lid, maar nie meer as 30 lede hê nie.** (2)
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14. A person who has been convicted of fraud and been sentenced for it to a R100 fine is disqualified from being appointed as a liquidator. (2)
14. **'n Persoon wat skuldig bevind is aan bedrog en ten opsigte daarvan gevonnissen is tot 'n boete van R100, is onbevoeg om as 'n likwidateur aangestel te word.** (2)
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15. Only a magistrate's court has jurisdiction to wind up a close corporation. (2)
15. **Slegs 'n landdroshof het jurisdiksie om 'n beslote korporasie te likwideer.** (2)
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TOTAL QUESTION 2 / TOTAAL VRAAG 2: 30



[TURN OVER]  
[BLAAI OM]

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. (10)

- (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 to 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.**

(10)

Column A Kolom A	Column B Kolom B	
(i) The above facts are those in the case of: (i) <b>Bogenoemde feite is die wat voorkom in die saak van:</b>	<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)	

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	<i>Hendriks NO v Swanepoel 1962 (4) SA 338 (A)</i> <i>Hendriks NO v Swanepoel 1962 (4) SA 338 (A)</i>	
(ii) The above facts relate to: (ii) <b>Bogenoemde feite het betrekking op:</b>	Dispositions without value <b>Beskikking van goed sonder teenwaarde</b>	
	Applications for the voluntary surrender of a debtor's estate <b>Aansoeke vir vrywillige boedeloorgawe van 'n skuldenaar se boedel</b>	
	Failure to satisfy a judgment <b>Nie voldoening aan 'n vonnis</b>	
	Friendly sequestrations <b>Vriendelike sekwestrasies</b>	
(iii) The above facts also relate to one of the following acts of insolvency in terms of the Insolvency Act 24 of 1936: (iii) <b>Bogenoemde feite het ook betrekking op een van die volgende dade van insolvensie ingevolge die Insolvensiewet 24 van 1936:</b>	Section 10(a) <b>Artikel 10(a)</b>	
	Section 10 (c) <b>Artikel 10(g)</b>	
	Section 8(e) <b>Artikel 8(e)</b>	
	Section 8(g) <b>Artikel 8(g)</b>	
(iv) The above facts also relate to. (iv) <b>Bogenoemde feite het ook betrekking op:</b>	Advantage to creditors in insolvency proceedings <b>Voordeel van skuldeisers in insolvensie verrigtinge</b>	
	Release of the property of the solvent spouse in terms of section 21 of the Insolvency Act 24 of 1936 <b>Die vrystel van eiendom van die solvent gade ingevolge artikel 21 van die Insolvensiewet 24 van 1936</b>	

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

- (b) Tenza is married to Mpho out of community of property and of profit and loss. Tenza is an avid collector of antique furniture and possesses various exceptionally valuable pieces. Tenza's estate is sequestrated. Explain whether the antique furniture forms part of Tenza's insolvent estate (5)
- (b) **Tenza en Mpho is buite gemeenskap van goed en van wins en verlies getroud. Tenza is 'n ywerige versamelaar van antieke meubels en besit verskeie uiters waardevolle stukke. Tenza se boedel word gesekwestreer. Verduidelik of die antieke meubels deel van Tenza se insolvente boedel vorm.** (5)

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- (c) Name the five instances in which the solvent spouse may apply to have property released in terms of section 21(2). (5)
- (c) Noem die vyf gevalle waar 'n solvente gade ingevolge artikel 21(2) aansoek kan doen om die vrystelling van eiendom. (5)

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- (d) Tenza owns a shop which sells furniture and electrical appliances. Because the business is not doing very well, especially as far as the sale of furniture is concerned, Tenza decides to sell only electrical appliances in future. On 2 June he concludes a contract with furniture dealer Helen, in terms of which Helen buys all the furniture which Tenza has in stock. The furniture is delivered to Helen on 20 June. But reducing the business still does not have the desired effect, and on 10 December Tenza's estate is sequestrated. Advise the trustee of Tenza's estate on the possibility of recovering the furniture. (5)
- (d) Tenza is die eienaar van 'n winkel wat meubels en elektriese ware verkoop. Aangesien dit nie te goed gaan met die besigheid nie, veral wat meubelverkope betref, besluit Tenza om voortaan slegs elektriese ware te verkoop. Hy sluit op 2 Junie 'n kontrak met meubelhandelaar Helen ingevolge waarvan Helen al die meubels koop wat Tenza in voorraad het. Die meubels word op 20 Junie aan Helen gelewer. Die verkleining van sy besigheid het egter steeds nie die gewenste uitwerking nie en op 10 Desember word Tenza se boedel gesekwestreer. Adviseer die kurator van Tenza se boedel oor die moontlikheid om die meubels terug te vorder. (5)**

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- (e) Some dispositions are voidable in terms of the Insolvency Act and some may be set aside in terms of the common law. Complete the following table and specify which dispositions are voidable in terms of the Insolvency Act and which dispositions may be set aside in terms of the common law. (5)
  
- (e) **Sommige vervreemdings is ingevolge die Insolvensiewet vernietigbaar en sommige vervreemdings kan ingevolge die gemenerereg tersyde gestel word. Voltooi die volgende tabel en dui aan watter vervreemdings is vernietigbaar ingevolge die Insolvensiewet en watter vervreemdings kan ingevolge die gemenerereg tersyde gestel word.** (5)

Dispositions set aside under the Insolvency Act: <b>Vervreemdings vernietigbaar ingevolge die Insolvensiewet:</b>	Dispositions set aside under the common law: <b>Vervreemdings wat tersyde gestel kan word ingevolge die gemenereg:</b>

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**TOTAL QUESTION 3/TOTAAL VRAAG 3: [30]**



**TOTAL/TOTAAL:[100]**