

UNIVERSITY OF FORT HARE
NELSON MANDELA SCHOOL OF LAW
(East London)

Law of Insolvency
LOI 411E

DEGREE EXAMINATIONS

June 2023

Time: 3 hours
Subject: Law of Insolvency
Marks: 100

This paper consists of (3) pages including the cover
page

Internal Examiner: Adv S Muthugulu-Ugoda

External Examiner: Dr T Kondo (UWC)

INSTRUCTIONS

1. Answer all questions.
2. You may start with any question. But number the questions correctly.
3. Refer to case law and other authorities where applicable.
4. Write legibly.

Question 1**[25 Marks]**

The provisions of section 21 of the Insolvency Act 24 of 1936 may cause inconvenience, potential prejudice and embarrassment to a solvent spouse. It may also have drastic consequences to a solvent spouse. Do you think there is a rational differentiation between solvent spouses and other persons in section 21 and the legislation purpose of the section to prevent collusion between spouses to the disadvantage of the creditors of the insolvent spouse? This differentiation amounts to "discrimination", but is the discrimination "fair discrimination"?

Analyse with reference to the *Harksen v Lane* 1998 (1) SA 300 (CC) and other relevant cases.

Question 2**[16 marks]**

Ben Abrahams is a motor mechanic by trade. He is married out of community of property without accrual and has two children aged four and seven. Ben's estate is sequestrated by order of the Cape High Court on 1 March 2006. According to the statement of affairs lodged by Ben, he has the following assets:

- (i) Furniture, fully paid for (value R2,000)
- (ii) 1983 Volkswagen Passat, fully paid for (value R2,000)
- (iii) Tools used by him in his trade, fully paid for (value R18,000)
- (iv) Acer computer, subject to an installment sale transaction, used by him in his trade (value R25,000 - the balance owing on the purchase price R13,000)
- (v) Clothing and bedding such as linen, blankets, etc (value R500)
- (vi) Fixed property, subject to a mortgage bond in favour of Greedy Bank Ltd (value R500, 000 - the balance owing on the bond is R25,000)
- (vii) Insurance policy on his own life with Sanlam (cash value is indicated as R2,500, and the policy has only been in operation for one year)
- (viii) Ben is employed as a motor mechanic at the local garage and has indicated that he earns a salary of R8, 000 per month.

(a) Indicate which of the assets in (i) to (viii) will not form part of Ben's insolvent estate; also provide reasons for your answer. **[08]**

(b) Indicate which of the assets in (i) to (viii) above will form part of Ben's insolvent estate. In each case you must also indicate which of the assets will fall into the free residue of his estate and which of them will be dealt with in an encumbered assets account (in other words, which of the assets will be subject to the rights of secured creditors). **[08]**

Question 3**[13 Marks]**

Provide a critical opinion on the common problems associated with the application of section 8 (g) of the Insolvency Act 24 of 1936.

Question 4**[21 marks]**

- (a) Name the various impeachable transactions which may be set aside in terms of the Insolvency Act. [7]
- (b) What has to be proved in each instance and who bears the onus of proof? [7]
- (c) Who initiates the proceedings to set aside an improper disposition and what form do the proceedings take? [7]

Question 5**[25 Marks]**

Your client is Mr Spier, a Stellenbosch wine farmer with 20 persons in his employ. He tells you that he is facing financial ruin because his entire Cabernet Sauvignon crop has been wiped out for the last two successive years due to an epidemic of phylloxera in his vineyards. He says he had no option but to surrender his estate and take up a job as a wine maker on someone else's farm.

His assets and liabilities are as follows:

| ASSETS: | | LIABILITIES | |
|------------------------------|-------------|------------------------|--------------------|
| Farm (Land and farmhouse) | R10 Million | Bond on farm | R12 Million |
| Beach House in Hermanus | R500 000 00 | Bank overdraft | R450 000 00 |
| Motor vehicle (bought on HP) | R120 000 00 | Bankfin ISA | R50 000 00 |
| Investment and cash savings | R100 000 00 | SARS | R70 000 00 |
| | | Credit Card | R30 000 00 |
| | | Trade Creditors | R250 000 00 |

What is the information that you require to draft an application for voluntary surrender?

TOTAL: 100