

ATTORNEYS' PRACTICE FREQUENTLY ASKED QUESTIONS to FEBRUARY 2018

The number in brackets represent the marks allocated for the question. The number in the last column represents the frequency of the question in the papers compared.

Q	ETHICAL QUESTIONS	
1.	Ethical / professional considerations applicable to attorneys when a firm is transferred to another attorney (10)	1
2.	How do you establish correct conduct to follow when uncertain of ethical position?(3) also asked for (2)	2
3.	Is it ethically correct for an experienced but unqualified person to perform the following functions (for example collections): <ol style="list-style-type: none"> 1. work independently on legal matters (3) 2. consult with clients and take instructions (2) 3. negotiate with debtors and arrange payment of debt in installments (2) 4. give legal advice in general (2) 5. handle elementary High court matters and to brief counsel (3) 6. sign trust cheques (2) 	3
4.	Name five authorities you would consult to establish whether conduct is ethical (5) Also asked for (3)	4
5.	Explain why it is ethically correct to enter a plea of not guilty where the accused admitted the facts on the charge sheet (5) Also asked for (4)	2

6.	What are the requirements a court will consider in an application for an attorney to be readmitted following being struck from the roll due to dishonesty? (5)	2
7.	Discuss your responsibilities when you obtain a new computer program which you do not know (6)	3
8.	May you act pro amico for staff of a financial institution which is your client (2)	2
9.	May you make your holiday apartment available free of charge to the senior management of your client who is a large financial institution (2)	2
10.	May you sponsor holes on a golf day for a client who is a large financial institution (3)	2
11.	May you agree with a financial institution to charge half the tariff of bond costs provided they pay your conveyancing fees? (3)	1
12.	May you agree to reduce your bond fees or pay a handling fee to bond originators in order to attract such applications? (3)	1
13.	Discuss how you should handle an offer by a client to lend you money where you are interested in such a loan (3) (3)	2
14.	List six examples of contempt in the face of the court (in facie curiae) (6) Also asked for (7) marks	2
15.	What is the legal relationship between an attorney and client? List four legal consequences arising from that relationship relating to e.g. reward, termination, commissions, accounting (5)	1
16.	List three duties of an instructed correspondent (3)	1
17.	What should an attorney do who finds out that he will have to testify in a civil trial in which he was to appear on behalf of a party? (3)	1

18.	May an attorney consult with his or her client whilst that client is being cross examined (3) (3)	2
19.	May an attorney under any circumstances divulge information given by his client in confidence (3) (3)	2
20.	May an attorney allow a secretary to consult with clients and take instructions during his or her absence? Discuss briefly (3)	1
21.	May you accept an instruction which you are not experienced in handling but which is not a complex legal matter? (8)	2
22.	Your large financial institution client wants to deposit a very large sum of money to your trust account which their client wants to pay them in cash and they want the amount paid to you so that you can give them a trust cheque. What duties does FICA impose? May you claim that client affairs are confidential? (8)	2
23.	In terms of the Attorneys' Act, what work may only be done by an attorney in the expectation of fee, gain or reward (6) Also asked for (7)	2
24.	Discuss briefly the right and duty of an attorney to withdraw from a mandate, the way the withdrawal should be implemented if it arises from lack of instructions from a client, right of retention and the professional duty of any new attorney (9) (3)	2
25.	On what grounds would an attorney be entitled to withdraw as attorney and terminate his client's mandate? (5)	2

26.	In a civil trial involving a motor collision the court finds that you client A suffered damage of R150 000 but was 40% negligent. The defendant B was 60% negligent and his damage was R160 000.00 what is the net effect? You contracted with A that your fee would be 20% of what he recovers. What is your fee? Show all calculations (4)	2
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	FIT AND PROPER TO PRACTICE AS ATTORNEY	
27.	What would the likely order of the High Court be when the Law Society applies to have you struck from the roll after being convicted of driving under the influence of liquor? Why would the court make such an order? How would this differ if you were found guilty of an offence which involved dishonesty? (3)	1
28.	Should the Court strike off an attorney who: <ul style="list-style-type: none"> 1. Makes a false affidavit; 2. Is convicted of driving under the influence; 3. Makes use of a forged driver's licence (6) 	1
29.	List the requirements for admission as an attorney and name the section and act in which it is stipulated (7)	1

	FIDELITY FUND	
30.	What requirements have to be met for an attorney to obtain a first Fidelity Fund certificate to practice for own account? Are there any further conditions? (7)	1
31.	What are the effects of failing to renew a Fidelity Fund Certificate? (3)	1
32.	Discuss briefly:	1

	<p>1. payment by the Attorneys Fidelity Fund:</p> <p>1.1. for the direct benefit of individual practices (3)</p> <p>for the benefit of the profession generally (3)</p>	
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	LAW SOCIETY	
33.	What will happen if you fail to pay your membership to the Law society (2)	2

	PRIVILEGE	
34.	Explain the difference between the attorney's duty keep the affairs of a client confidential and attorney-and-client privilege (5)	1
35.	What information and or documents obtained by an attorney is not subject to attorney-client privilege? (6) (also asked for (5))	3
36.	Write a letter to an institution requesting privileged information relating to a client explaining when confidentiality applies and to what it applies (12)	2

	FEE QUESTIONS	
37.	Consequences of failure to arrange fee structure with client(5)	1
38.	What arrangements can you make regarding contingency fees with clients and what are the formalities (8) (9)	2
39.	May you reduce bond registration fees when you act for a client who will provide you with bulk instructions (4) Also asked for (3)	2

40.	Your large financial institution client offers you 20 % of the executor's fee for each estate you refer to them to be administered by them. May you do it (3)	1
41.	May you make your services available for less than your opposition's fees to gain a larger portion of fees (4)	1
42.	May a practitioner: <ul style="list-style-type: none"> 1. Share fees with his candidate attorney (1) 2. Pay the candidate attorney commission based on fees which the candidate attorney generates (1) 3. Share fees with council (1) 	2
43.	Draft your account on a contingency fee agreement of 15 % where the court apportioned damages and you were awarded 80 % damages (4)	2
44.	Draft your account for the drafting of an agreement for the sale of a business (10)	1

	COST QUESTIONS	
45.	Against whom can a cost order be awarded de boniis propriis and why (3)	1
46.	The court apportions damage in a motor vehicle collision case to 50 % to each party. A suffered damage to the amount of R100 000.00 and B suffered damage to the amount of R90 000.00. what is the net effect and what cost order will be made (5) also asked for (4)	2

	RIGHTS OF A CLIENT WHERE TRUST MONEY WAS STOLEN	
47.	Draft a letter to a client explaining his rights and how to exercise them when his money was stolen which was held on trust by an attorneys firm (8)	2

	PRESCRIPTION	
48.	A client insists you issue summons in a case where the claim prescribed. Explain the situation to your client (6) (6)	2
49.	Write letter to attorney in whose hands a claim prescribed from whom you bought a firm (8) (10)	3
50.	What is the effect of prescription? What should you advise a client whose claim you negligently allowed to prescribe and what can you do with regards to your own position (9) Also asked for (3)	2
51.	What questions will you ask a client to establish if a claim for damages has prescribed? Explain the effects of prescription, whether you may proceed to claim, the risk involved and the best practical approach (10)	1
52.	What steps must be taken to protect your interests if you allowed a claim to prescribe? (4) What steps must be taken to protect your client's interests if you allowed a claim to prescribe? (4)	1

	GENERAL DRAFTING QUESTIONS	
53.	List five / six contracts which must be in writing to be valid (5) (also asked for (6))	4
54.	Cite the following parties to a contract: <ul style="list-style-type: none"> 1. A person aged 16; 2. A spouse in a customary marriage; 3. A person acting on behalf of another; 4. A person acting on behalf of a company to be incorporated. (4) 	1
55.	Cite a company with limited liability in an agreement and Cite a partnership in an agreement (4)	1
56.	Draft a short breach agreement for the use in any commercial agreement (5)	1
57.	Cite the purchaser in an agreement where an agent acts on behalf of a company which is to be incorporated (1) and Draft a clause dealing with the failure by such company to ratify the agreement (4)	1
58.	Why would you advise your client to draft a will (3) also asked for (2)	2
59.	Write short notes on: <ul style="list-style-type: none"> 1. Pre-incorporation agreements under the Companies Act, 2008 (11) 2. The capacity of a spouse married in community of property to contract under the Matrimonial Property Control Act, 1984 (9) 3. Claims against insolvent estates (5) 	1

	DEFINITIONS	
60.	<p>Define or describe without using examples:</p> <ol style="list-style-type: none"> 1. fit and proper to be an attorney (1) 2. a conflict of interest (1) 3. overreaching as opposed to overcharging (1) 4. the documents subject to an attorney's lien/hypothec for fees (1) 5. the purpose of the Attorneys Fidelity Fund (2) <p>also asked for (3) marks</p> <ol style="list-style-type: none"> 6. legal professional privilege (2) 7. the circumstances under which an attorney has to decline a mandate (3) 	2
61.	Define conflict of interest and give three examples (5)	1
62.	<p>What do you understand of the following:</p> <ol style="list-style-type: none"> 1. acting pro amico (2) 2. party and party costs (3) 3. costs de bonis propriis (3) 4. costs to be costs in the cause (2) 5. attorney and own client fees (2) 6. Acting pro bono (2) 7. Acting on a contingency basis (5) 	2

	STANDARD CLAUSES	
63.	Draft standard clauses for: <ol style="list-style-type: none"> 1. whole agreement; (5) (5) 2. variation; (5) (5) 3. jurisdiction of the district courts (5) (5) 4. severability of provisions (5) (5) 	2

	SURETY	
64.	Draft a deed of suretyship (20)	2
65.	A and X have bound themselves as sureties for debts owing by B to C. Draft and indemnity by B in favour of A and X. Omit the general clauses such as domicile, notices, variation, etc (17)	1

	DOMICILIUM CITANDI ET EXECUTANDI	
66.	Draft a domicillium citandi et executandi clause with use of fax (12) (10) Same question which includes electronic service (16 twice)	4

	DRAFTING OF SALE AGREEMENTS	
67.	Draft an option to purchase, give only essentials and may refer to annexures for standard terms and conditions (12) (also asked for (5))	3
68.	Draft a letter to client whose option expires in 2 days. You and client are in Cape Town and the grantor is in Durban. Deal with how and when the option	1

	has to be exercised (bear in mind distance and constraints) and attach the document which is required to exercise the option. Use imaginary facts (13)	
69.	<p>Draft the following clauses in a deed of sale where the sale is subject to the purchaser obtaining a bond for 80 % of the purchase price:</p> <ol style="list-style-type: none"> 1. which makes the operation of the agreement dependent on the bond being obtained (5) (5) (5) 2. terminating the agreement upon the bond being refused (5) (5) (5) 	4
70.	<p>Draft a clause in an agreement for the sale of a business which suspends the agreement pending the conclusion of a lease agreement between the new owner and the landlord. The clause should allow for:</p> <ol style="list-style-type: none"> 1. cession and delegation of the rights and obligations in terms of the existing lease from seller to the purchaser with consent of the landlord; and (5) also asked for (6) marks 2. the conclusion of a new lease agreement between the purchaser and the landlord together with cancellation of the previous lease (5) also asked for (6) marks 	4
71.	List all the clauses in a sale of business agreement as a going concern (10)	1
72.	Draft an acceleration clause where the Purchaser pays in installments and fails to make payment (3)	1
73.	<p>A private company sells its main business to a business trust.</p> <ol style="list-style-type: none"> 1. Describe the parties, signatories and their authority (4) 	1

	2. Draft the agreement of sale with special reference to legal requirements. Omit clauses relating to payment and those not specifically related to the sale of a business e.g. domicile, notice, non-variation, etc. but include a breach clause (26)	
74.	Draft the warranties in a deed of sale of shares in a private company (6)	1
75.	Draft a clause in the sale of a business dealing with the stock, stock taking and the purchase price of the stock (5)	1
76.	Draft a restraint of trade clause in the sale of a business agreement (5) (7)	2
77.	What will you advise your client regarding the publication of a sale of his business in terms of the Insolvency Act? (5)	1
78.	Draft a clause for the sale of a business as a going concern which will not be liable for transfer duty or VAT (15) (5)	2

	LEASE AGREEMENTS	
79.	Draft a prohibition of sub-letting clause (6) (5)	4
80.	Draft a clause for the option of renewal of a lease agreement (10) also asked Also asked for (4) and (5) marks	3
81.	Draft a clause in a lease agreement for the payment of rent, including escalation thereof during an initial lease agreement (5)	1
82.	Draft an option to renew a lease agreement without fixed escalation of rental during the option period (7) (also asked for (4))	3
83.	Draft an option to purchase leased premises (5)	1

84.	When and how may a landlord cancel a lease agreement and which remedies will he have should a dispute arise between the parties (12)	1
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	CESSION	
85.	Draft a clause for the cession of book debt as security (20)	1
86.	Draft a complete out-and-out cession of book debt from A to B in the form of an agreement. Use your own facts (21)	1

	PARTNERSHIPS	
87.	Drafting of partnership agreement clauses: <ul style="list-style-type: none"> 1. drawings of partners and the division of profit and loss (4) 2. contribution of each partner (2) 3. dissolution of the partnership (8) 	2
88.	List the essentialia on which parties must agree in order to create a valid partnership (5)	1

	AGENT'S COMMISSION	
89.	Draft a clause in a deed of sale for immovable property dealing with agent's commission (12) Also asked for (10)	2
90.	May you pay the commission due to an estate agent prior to transfer of the property (4)	1

TRUSTS		
91.	With whom do you register a Trust (1)	2
92.	What documents need to be lodged to register a trust (3)	2
93.	What information, will you submit to the relevant authorities when registering a trust (3)	2
94.	When will beneficiaries of a trust become entitled to their benefits (6)	1
95.	The previous three questions has been asked in one question (8)	2
96.	What stamp duty will you pay when registering a trust (1)	1
97.	What are the essential characteristics of a discretionary trust (2)	1
98.	Where and how does one register a trust (5)	1
99.	List the persons involved in a trust (3)	1

SECTION 34 INSOLVENCY ACT REQUIREMENT		
100	Explain the requirements, reasons for and the effects of advertisement in terms of Section 34 of the Insolvency Act to a client who wishes to sell a business (20) (20)	2
101	Draft the notice which has to be published in a newspaper in terms of Section 34 of the Insolvency Act in regard to the sale of the business (5)	1

102 ALTERNATIVE DISPUTE RESOLUTION CLAUSES		
103	Draft an extensive arbitration clause for use in a commercial agreement (20)	1
104	Draft an alternative dispute resolution clause in a business agreement (10)	1

	EXPLAIN DIFFERENCE BETWEEN SUSPENSIVE AND RESOLUTIVE CONDITION	
105	Explain the difference between a suspensive condition and resolutive condition in a contract (5) (5)	2

	POWER OF ATTORNEY	
106	Draft a power of attorney to register a new company (15) (8)	3
107	Draft a power of attorney to sign a Deed of Sale on behalf of a Seller (10)	1

	COMPANIES	
108	Provide reasons why conducting a business as a legal entity is preferable to doing so as a sole proprietor or partnership (5) Also asked for (15) – draft a memo giving guidance whether to conduct business as a private company or partnership	2
109	What types of companies can be incorporated under the New Companies Act 71 of 2008? (5) (5)	2
110	Draft a pre-incorporation agreement (11)	1
111	List the documents which has to be signed by a person authorizing another person to effect the incorporation of a private company with CIPC on his behalf (3)	1
112	List the forms of profit companies that can be formed and incorporate in terms of the Companies Act (4)	1

113	What steps need to be taken to give effect to agreements entered into prior to the registration of a company? (3)	1
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	CLAIM AGAINST INSOLVENT ESTATE	
114	Write a letter to your client who has a claim against an insolvent estate, advising him how to prove a claim for goods sold and delivered and the considerations whether he should file a claim at all (9)	1

	LETTERS WRITTEN WITHOUT PREJUDICE	
115	Discuss the admissibility as evidence of a letter written without prejudice by one attorney to another. Would a defamatory statement be a cause of action in a defamation action (10)	3
116	What are the requirements for a letter to be “without prejudice” and what is its effect (5)	1
117	Discuss briefly correspondence between attorneys “without prejudice” (8)	1

	PROPRIETARY CONSEQUENCES OF MARRIAGE	
118	Write a letter to your client, Mrs. Smith, whose husband has recently been sequestered, explaining the potential risks and how she can protect her interests. They are married out of community of property (10) (5) Same question for (5) marks	4
119	Which of the following would be included in the calculation of a claim based on the accrual between spouses:	2

	<ol style="list-style-type: none"> 1. large income earned by the husband while his wife managed the household; (1) 2. money earned by the wife by making dresses part-time (1) 3. inheritance from one of the parties' parents (1) 4. payment following a claim for general damages arising from an accident (1) 5. payment by the RAF for medical expenses (1) 	
120	<p>How can marriages be contracted and what are the possible marital regimes? Briefly explain the proprietary effects (5) (3)</p> <p>Also asked for (10) – how do you go about achieving the various marital regimes and which one would you recommend for parties who wish to start a business</p> <p>Also asked for (25) – Write a letter to a couple intending to marry. Set out each regime and explain the effect of the regime on their estates during and after the dissolution of the marriage either by death or divorce.</p>	4
121	<p>Do spouses who were married in community of property remain liable for each other's liabilities (incurred during the marriage) after divorce? (5)</p>	1
122	<p>Explain the general principals relating to the rights of spouses married in community of property to deal with assets of the joint estate.</p> <ol style="list-style-type: none"> a. Explain the general principles (4) b. Name at least six exceptions (6) 	1

123	How will parties change their marital regime from in community of property to out of community of property (6)	1
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	LETTERS OF DEMAND	
124	Draft a clause in a letter of demand to comply with NCA requirements (4)	1
125	Write a letter of demand to a purchaser of immovable property who failed to pay the deposit as agreed upon. Allege the breach and place him on terms (5)	1

	ACKNOWLEDGMENT OF DEBT	
	Draft an acknowledgement of debt, fabricating such additional facts and provisions you may deem necessary (14)	2

	RELEVANT FORUM	
126	At which forum would you seek relief for: <ul style="list-style-type: none"> 1. claim for damages for R20 000.00 (1) 2. an order that a provision is unconstitutional which provision affects R100 000.00 (2) (also asked for the amount of R250 000.00) 3. a claim for reinstatement after unfair dismissal (2) 4. unfair calculation of pension benefits by a pension fund (1) 5. the interrogation of an insolvent who hides assets (2) 6. the amendment or enforcement of a High Court maintenance order (2) 7. an excessive fee charged by an attorney in a criminal trial (2) 	3

	8. trust money apparently stolen by an attorney (3)	
	9. loss due to professional negligence of a colleague (2)	

	COMMISSIONER OF OATHS	
127	May you administer the oath in an affidavit which your partner drafted on behalf of his client? How would this differ if this was a conveyancing matter and why? (4) (4)	2
128	How should a commissioner of oaths administer an oath to a deponent deposing of an affidavit (12)	1

	RECUSAL	
129	How would you apply the applicable rules of conduct to request a magistrate to recuse and what would you do if you are unsuccessful (5) (5)	2

	MAINTENANCE	
130	What factors does a court take into consideration when determining the amount of maintenance to be paid to the non-custodian parent (6)	1
131	Your client has a High Court divorce order granting maintenance. He can no longer afford the amount. How can he go about reducing the amount and which forum may he approach (4)	1

	CONSUMER PROTECTION ACT	
132	<p>Your client bought a vehicle from a national car dealer. After three months the gearbox gives problems and it is established that the defect existed prior to the sale. Advise client regarding his rights and remedies with specific reference to legislation (12)</p> <p>Would your advice differ if the dealer and your client had a voetstoots clause (3)</p>	1