NOTE TO EXAMINER: This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

QUESTION 1

1.1 X, a minor herein assisted as necessary by B his mother and natural guardian. (1)

1.2 X, a major acting herein with the consent of Y his/her spouse. (1)

1.3 X duly authorised under a written power of attorney granted to him by Y at day of 2012. on the (1)

1.4 X acting herein as agent for a private profit company to be incorporated. (1)

QUESTION 2

The undersigned,

B

("the debtor")

agrees to indemnify

A and X

("the sureties")

against any payments which the sureties may be required to make, and any losses which they may incur, arising out of their giving the suretyship undertaking annexed marked "A" ("the suretyship") in respect of the debtor's indebtedness to C ("the creditor"). (2)
1. PRIOR PAYMENT OF CLAIM UNNECESSARY

If a claim is at any time made against the sureties under the suretyship, the debtor shall, subject to 2, pay to the sureties the amount claimed from them. It will not be necessary for the sureties first to pay the claim.

2. PROCEDURE IN RESPECT OF DISPUTED CLAIM

2.1. On receipt of a claim against either or both of the sureties, such surety/sureties shall notify the debtor in writing of the claim.

2.2. Within three (3) days after such notice, the debtor shall give the sureties full details in writing of any defence to the claim.

2.3. If such details are given within the three (3) days, the sureties may defend the claim at the debtor’s expense or, failing this, must give the debtor an opportunity of doing so.

2.4. If the sureties at any time wish to withdraw their defence or to compromise the claim or pay it in full or in part, they must give the debtor prior notice in writing thereof. The debtor may, within 3 days of date of receipt of such notice, take over the defence as far as this may be possible. No action by the debtor or failure to act will prejudice the rights of the sureties to settle the claim as they see fit.

2.5. The debtor shall, on request, furnish the sureties with a bank guarantee for the amount of the claim together with any costs that the sureties may incur or have awarded against them.

2.6. The defence of a matter for the purpose of this clause will, if the sureties so decide or the debtor so requests, include appeal and review proceedings.

2.7. If the debtor does not give details of any defence in accordance with 2.2, or if the defences fail in whole or in part or if the sureties decide not to raise the defences and the debtor also does not do so, the debtor may not contest the sureties claim for indemnification on the ground that the creditor’s claim against them was not enforceable.

3. AMENDMENT OR NOVATION OF SURETYSHIP

If the suretyship is amended or novated, the debtor will remain bound by this indemnity except to the extent that it has not consented to and may be prejudiced by the amendment or novation.
4. INTEREST

4.1 If the sureties discharge a claim before the debtor pays them, the debtor shall pay interest on the amount paid at two (2) percentage points above the annual prime overdraft rate of XYZ Bank Ltd published from time to time. (1)

4.2 The interest referred to in 4.1. must be compounded monthly in arrear and will accrue from the date of payment by the sureties to the date of payment by the debtor to them. (1)

SIGNED at ............... on .......... of ............ 19................. etc.

QUESTION 3

3.1 (a) The landlord is XYZ (Pty) Limited Reg. No. (97/6666/07) herein represented by John Smith, a director duly authorised hereto by a resolution of the directors, a copy whereof is annexed hereto (or dated 7/12/98).

(b) The tenant is A and B trading in partnership as Easy Finance herein represented by X (or Y) who warrants he is duly authorised hereto (or represented by X and Y). (4)

3.2 The rental payable by the tenant to the landlord throughout the period of this lease shall be as follows:

3.2.1 R2 000 p.m. for the first year of the lease;

3.2.2 on the first anniversary and thereafter on each subsequent anniversary the rental shall escalate by an amount equivalent to 10% of the rental payable during the month immediately preceding the anniversary date.

NOTE TO EXAMINER: Candidate may specify and calculate rental over 5 years as well

The rental shall be payable monthly in advance, without deduction or set off by not later than the 7th day of each month. (5)

3.3 The tenant shall be entitled to renew this lease for a further period of 5 years provided

(a) the tenant has faithfully complied with the terms and conditions of this lease.

(b) the landlord should have been given 3 months written notice of the tenant’s intention to renew the lease.

(c) The terms of the lease shall apply mutatis mutandis during the renewal period. (4)

3.4 (a) and (b) as above
(c) the terms of the lease shall apply mutatis mutandis during the renewal period except for the rental which shall be determined as follows:

(i) The parties shall meet within a reasonable period prior to the expiration of the initial lease period and endeavour to agree upon the rental payable during option period, failing which

(ii) The rental shall be determined by objective criteria which must be stated.

Note to Examiner: Candidate may use any number of possibilities

QUESTION 4

4.1 Complete the prescribed application (AnnA) (1) disclosing: name of firm (1); contact details; names of partner/s (1); commencement date (1); trust banking account details (1). The Act requires a course in Practice Management training; in due course Societies require an “opening certificate” by an accountant that a proper bookkeeping system is in use (2).

4.2 An attorney may not practise without a FF Certificate (S41) (1). One who does act in contravention may not take fees for any work done (1). It is also a criminal offence under S83(10) (1).

QUESTION 5

5.1 As soon as it appears that the attorney of record will have to give evidence he/she should withdraw. A partner may appear.

5.2 The privilege does not apply to information:

(a) not given for the purpose of legal advice or representation;

(b) in documents not otherwise privileged;

(c) given for purposes of committing a crime;

(d) name of client;

(e) facts learned by practitioner’s own senses.

(f) excluded by statute.

QUESTION 6

You enquire whether the debtor has acknowledged liability (1), has been overseas (1) or creditor has been in a position which interrupts or stays prescription (2). You explain that while payments may be received (1), legal action can be resisted by a special plea (1). If creditor proceeds and the plea is not raised, the presiding officer may not do so mero motu (2). It is often well worth proceeding with letter of demand and summons (1). If the plea is raised creditor can withdraw while costs are still limited (1).
QUESTION 7

7.1
- A written contract into by a person who is acting on behalf of a company that does not as yet exist; (1)
- With the intention that once the company comes into existence the company will be bound by the contract; (1)
- Once the company is incorporated the board of directors may, within 3 months after the date of incorporation (1), completely, partially or conditionally ratify or reject any pre-incorporation contract (1); (2)
- When this 3 month period expires the company will be deemed to have ratified the agreement; (1)
- But: all persons who enter into a pre-incorporation contract will be jointly and severally liable for liabilities created if: (1)
  - the company is not incorporated or (1)
  - once incorporated, the company rejects any part of the agreement (1)
- Unless the company enters into an agreement on the same terms as, or in substitution for the agreement entered into prior to its incorporation. (1)
- If the agreement is rejected, the person who will incur liability in terms of the agreement will be permitted to recover from the company any benefit that the company has received in terms of the agreement. (2)

7.2 In terms of Section 15 a spouse married in community of property may perform any juristic act with regard to the joint estate but the consent of the other spouse is required:

(a) in writing in respect of alienation of immovable property, investments, credit agreements, suretyships etc.
(b) verbally in respect of sale of household effects, receipt of income, damages, inheritances of that other spouse and donations. (9)

7.3 Creditors who claim against an insolvent estate run the risk of being held liable for a contribution to costs pro rata to other concurrent creditors. To claim submit resolution, affidavit, invoice and power of attorney. (5)

QUESTION 8

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage A</td>
<td>R100 000</td>
</tr>
<tr>
<td>50% thereof</td>
<td>R50 000</td>
</tr>
<tr>
<td>Damage B</td>
<td>R90 000</td>
</tr>
<tr>
<td>50% thereof</td>
<td>R45 000</td>
</tr>
<tr>
<td>Net award to A</td>
<td>R5 000</td>
</tr>
</tbody>
</table>

Costs awarded to A but probably on scale C.

TOTAL: [100]