QUESTION 1 [10]

While in law a client/principal may at any time terminate a mandate given to an attorney/agent the attorneys concerned are subject to further rules of conduct:-

- The "new" attorney should get from client a written termination of mandate to send to the "old" attorney;
- The "new" attorney should not act in the matter until the costs of the "old" attorney have been paid or secured;
- In law the "old" attorney has a right of retention/lien for his costs over documents drawn by him or on which he/she bestowed skill and labour;
- The "new" attorney should not use any documents unless costs are paid/secured;
- Neither attorney should insist on or be held to the rules if it would be "unconscionable" to the client.

In this case the reason for termination is clear and non-controversial. Usually it will be wise to speak informally to the first attorney in case there are factors which the client did not disclose.
QUESTION 2

An attorney who does not make arrangements regarding fees, is normally regarded as acting for a reasonable fee, which is assumed to be the applicable Magistrate's Court tariff. You cannot charge interim fees as in common law you are only entitled to your fee when your mandate has been executed. You will further have made it difficult for yourself to recover since in the event of dispute you may well have to tax your bill before issuing summons.

QUESTION 3

Dear A
On discovering that the claim of X had prescribed due to our negligence I called X in and informed him of the position. While not admitting liability I advised him to consult another attorney to assert his rights. As you know, we cannot continue to act in this matter (eg. by taking the chance that the defendant will not raise a plea of prescription). The client will no doubt get his new attorney to send us a letter of demand which I shall pass on to the Attorney Indemnity Insurance Fund. We are covered for amounts up to R1 million and should be out of pocket in the worst case by no more than the excess payment of R20 000. I understand that the AIIF normally instructs their own attorneys to handle such matters and to either defend or settle same as they may be advised in consultation with us. We need to discuss the R20 000,00.

QUESTION 4

An attorney should firstly research the authorities; then consult a senior colleague and finally ask the statutory law society for guidance.

QUESTION 5

DEED OF SURETYSHIP
We, the undersigned,

JAMES MODISE
Identity number
And

DEREK COETZEE
Identify number

(Hereinafter referred to as "the SURETIES") [1]

do hereby interpose and bind ourselves [1] as SURETIES for and CO-PRINCIPAL DEBTORS in solidum [1] with and on behalf of

ABC INVESTMENTS (PROPRIETARY) LIMITED

(Hereinafter referred to as "the PRINCIPAL DEBTOR") [1]

unto and in favour of

XYZ PROPERTY HOLDINGS (PROPRIETARY) LIMITED

(Hereinafter referred to as "the CREDITOR") [1]

for the due and punctual payment by the PRINCIPAL DEBTOR to the CREDITOR of all sums of money which the PRINCIPAL DEBTOR now owes or may from time to time hereafter owe to the CREDITOR [1], including damages for breach of contract or otherwise arising from a Deed of Lease entered into on (date) into between the CREDITOR and the PRINCIPAL DEBTOR in respect of premises, being Erf 1 Koster and any extensions or renewals thereof and the due and proper performance by the PRINCIPAL DEBTOR of the PRINCIPAL DEBTOR's obligations [1] which the PRINCIPAL DEBTOR may nor or in the future owe to the CREDITOR hereunder [1].

1. The SURETIES renounce the benefits of excussion, division, cession of action, no value received, non causa debiti and revision of accounts, with the meaning and effect whereof the SURETIES declare themselves to be fully acquainted. [1]

2. The SURETIES agree and acknowledge that this suretyship shall be in addition to any other suretyships, guarantees or purported suretyships or guarantees concluded by the SURETIES to the CREDITOR on behalf of the PRINCIPAL DEBTOR. [1]

3. Should any extension of time, lenience or other indulgence be granted to the PRINCIPAL DEBTOR for the fulfilment of any of its obligations, irrespective of whether or not the SURETIES have had notice of such extension of time or variation, the SURETIES declare that such extension of time or variation shall not release the Sureties from their liability in terms of these presents and shall not be regarded as a waiver or tacit renunciation of the CREDITOR's rights hereunder. [1]

4. The SURETIES consent in terms of Section 45 of Act 32 of 1944 or any amendment thereof, to the CREDITOR taking any legal proceedings for enforcement of any of its...
rights under this Suretyship for recovery of monies claimed under this Suretyship, if
the CREDITOR so elects, in the Magistrate’s Court in any district having jurisdiction in
respect of the CREDITOR by virtue of Section 28 of the aforesaid Act. Should the
CREDITOR not elect to take legal proceedings in the Magistrate’s Court, but in a High
Court, the SURETIES consent to the jurisdiction of the High Court of South Africa
(Witwatersrand Local Division) in respect of any action arising under this Suretyship.

5. The SURETIES choose domicilium citandi et executandi for all purposes hereunder at:

JAMES MODISE:

DEREK COETZEE: [1]

6. The SURETIES acknowledge that this is the entire agreement between the
SURETIES and the CREDITOR and no alteration or amendment shall be valid
unless reduced to writing and signed by the CREDITOR and the SURETIES. [1]

7. In the event of any dispute arising out of any breach by the SURETIES of their
obligations under this Agreement, the SURETIES agree to pay the CREDITOR’S
costs on the attorney and own client scale. [1]

8. The costs of drawing this Suretyship and all charges incidental thereto shall be borne
by the SURETIES. [1]

SIGNED by the SURETIES at this day of 2003

AS WITNESSES:

1. ____________________________________________

J MODISE

2. ____________________________________________

D COETZEE [1]

QUESTION 6 [15]

........... on my behalf as my attorney and agent [2] to subscribe for one share in a company
to be registered with a name XYZ (Proprietary) Limited [2] and to sign the following
documents required for the registration of the company and to obtain a certificate to
commence business for it [1]

1. The Memorandum and Articles of Association [1]

LEGAL EDUCATION AND DEVELOPMENT [L.E.A.D]
2. The Application for a Certificate to Commence Business (CM46) [1]
3. The Notice stating the registered office (CM22) [1]
4. The consent to act as Director (CM27) [1]
5. The return of Director and Auditor (CM29) [1]
6. The statement re the adequacy of capital (CM47) [1]

To lodge the above documents with the Registrar of Companies for registration [1]
To make any amendments thereto which may be required by the Registrar [1] and to uplift
the Certificate of Incorporation and Memorandum and Articles of Association once
registration has been effected [1] and generally to do everything that may be necessary on
my behalf to effect registration of the company and to obtain a certificate to commence
business therefor [1]

**NOTE TO EXAMINER:**

In setting out the forms which must be signed the candidate may either state the
number of the form or describe its purpose.

**QUESTION 7**

7.1 **NOTICES AND DOMICILIUM**

1. For the purpose of the giving of notices and the serving of legal process in terms of
this agreement the tenant chooses as its *domicilium citandi et executandi* (domicilium)
the following:
   (physical address)
   (post box)
   (fax number)

2. The tenant may at any time, by notice in writing to the Landlord/Lessor change its
domicilium to any other address in the Republic of South Africa which is not a post box
or poste restante.
3. Any notice given in terms of this agreement shall, save where a particular form of notice is stipulated, be:
   3.1 delivered by hand; or
   3.2 sent by prepaid registered post; or
   3.3 sent by courier; or
   3.4 sent by telegram; or
   3.5 sent by telefax;
   to the domicilium address as selected by tenant

4. A notice given as set out above shall be deemed to have been duly given:
   4.1 if delivered by hand, on the date of delivery; or
   4.2 if sent by prepaid registered post, on the 7th day after posting; or
   4.3 if sent by courier, on the date of delivery by the courier concerned; or
   4.4 if sent by telegram, on the day following the day on which the text of the notice is given to the post office for transmission; or
   4.5 if sent by telefax, on the expiration of 24 hours after the time of transmission.

7.2 OPTION TO PURCHASE

The Lessor grants to the Lessee for the duration of the lease period an option to purchase the premises on the following terms and conditions, viz:

1. The purchase price shall be the amount of R500 000 payable against registration of transfer which payment Lessee shall secure by delivery to Lessor or its nominee of a bank guarantee in customary form within 14 days of exercising the option.

2. Lessee may exercise the option by delivering to Lessor a written notice to that effect at Lessor’s domicilium.
3. The sale arising from the exercise of the option shall further be subject to the terms and conditions set forth in Annexure A hereunto annexed, including the obligation of Lessee/purchaser to pay all costs of transfer.

7.3 CESSION AND SUBLETTING

The Lessee shall not, except with the prior written consent of the Lessor:

1. cede all or any of its rights under this lease;
2. sublet the premises or any part thereof;
3. give up possession of the premises or any part thereof to any third party; provided that if the Lessee is a juristic person the transfer of a controlling interest in Lessee shall be deemed to be a cession;
and provided further that the Lessor shall not withhold its consent unreasonably.

QUESTION 8

8.1 Kindly note that in terms of Section 129(1)(a) of the National Credit Act, Act no 34 of 2005, you may refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date.

8.2 An accused is always entitled to plead guilty. The onus of proof is on the prosecution. By pleading not guilty you are not necessarily denying the acts alleged but putting the State to the proof thereof. The presiding officer and prosecution understand this and are not “misled” unless you call evidence or make submissions in conflict with the version the accused gave you.

- THE END -