QUESTION 1

1.1 The difference between a suspensive condition and a resolutive condition is that a suspensive condition suspends the operation of the obligations flowing from the contract until the occurrence of a future uncertain event, whereas a resolutive condition terminates the obligations flowing from the contract upon the happening of a future uncertain event. (5)

1.2

1.2.1 This agreement is conditional upon the purchaser obtaining a bond for 80% of the purchase price from a financial institution, within 30 days from date hereof. If the bond is not obtained this agreement shall be null and void and neither party shall have any claim against the other arising herefrom. (5)

1.2.2 Should the purchaser be advised in writing that his application for a bond for 80% of the purchase price has been unsuccessful or should the purchaser not be successful in obtaining the said bond within 21 days from date of signature hereof this agreement shall terminate and each party shall, in so far as any terms of this agreement have been implemented, be obliged to restore the other into the same position as he would have been had the agreement never been concluded. (5)
QUESTION 2

The issue involved in this question is the indemnity of the seller by the purchaser. If the seller has employed agents and is likely to be responsible towards them for commission he must be sure that the purchaser who approaches him directly has not in fact been introduced by an agent. In addition, it is likely that if the seller sells directly, he will have discussed a reduction in the purchase price because he will be relieved of paying commission. These factors must be taken into consideration. I suggest, therefore, an answer along these lines:

2.1 The purchaser confirms that this contract was entered into without the purchaser having been introduced to the seller directly or indirectly by any estate agent or that any agent was the effective cause for the conclusion of this contract of sale.

2.2 As a result of the sale by the seller to the purchaser on these grounds the purchase price has been reduced by an amount equal to the expected agent’s commission.

2.3 The purchaser consequently indemnifies the seller against any legitimate claim which may be brought against the seller for agent’s commission arising from this sale. The seller shall call upon the purchaser to assist the seller in any actual or threatened litigation arising from any claim for commission and shall put the seller in funds to do so. The seller shall however be free to decide on the best manner of settlement of any such action. Any costs or charges including legal fees on all scales and any capital sum payable shall be recoverable from the purchaser as liquidated damages.

QUESTION 3

3.1 The Trust will be registered with the Master of the High Court in the area in which your client resides. (1)

3.2 1. Two copies of the Deed of Trust.
    2. Letter from an Auditor.
    3. Acceptance of Trust by the trustees. (3)

3.3 1. The name of the bank at which the Trust will operate its account.
    2. The name and address of the person who will keep and maintain the records of the trust.
    3. Occupation of the trustees.
    4. Motivation for the standard provision in Trust deeds whereby trustees are exempt from providing security for their administration of the Trust, in the form prescribed by the Master. (4)

3.4 Nil. (1)

3.5 The trustees have a discretion regarding the benefits that beneficiaries will receive, if at all. (1)
QUESTION 4

On my behalf as my attorney and agent to subscribe for one share in a company to be registered with a name XYZ (Pty) Ltd and on my behalf to sign the following documents required for the registration of the company and to obtain a certificate to commence business for it.

1. The Memorandum and Articles of Association
2. The Application for a certificate to Commence Business (CM46)
3. The Notice stating the registered office (CM22)
4. The consent to act as Director (CM27)
5. The return of Director and Auditor (CM29)
6. The statement re the adequacy of capital (CM47)

To lodge the above documents with the Registrar of Companies for registration. To make any amendments thereto which may be required by the Registrar and to uplift the Certificate of Incorporation and Memorandum and Articles of Association once registration has been effected 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.

NOTE TO EXAMINER: In setting out the forms which must be signed the candidate may be given half the mark for giving the number of the form instead of its title or purpose.

QUESTION 5

5.1 Attorneys may legitimately negotiate fees with clients provided such negotiation does not constitute either overreaching or touting. Owing to the volume of work a reduction in charges may be justified and may be appropriate. (4)

5.2 Acting pro amico for staff members in general who by implication are unknown to the attorney would not be permitted. This would constitute some form of indirect touting. (2)

5.3 The same argument in 2 above about indirect touting would apply and so making an apartment available free of charge would be unacceptable. (2)

5.4 An attorney may well be regarded as touting by making such payment. However, if it is a genuine transaction the payment is made at the attorney's risk. It must be done out of his own funds. The deposit may not be utilised for this purpose. (4)

5.5 Clearly the intention of the new attorney in reducing fees is to attract more work and is not based on the attorney's financial structure which would permit reduction in fees. This could be construed as touting and such conduct is consequently improper. (4)
QUESTION 6

Statements which are made expressly (1) or impliedly (1) without prejudice in the course of bona fide negotiations for the settlement of a dispute cannot (1) be disclosed in evidence without the consent (1) of both parties. A letter written by one attorney to another with the object of settling a dispute is not admissible (1) in evidence. It is considered public policy (1) to allow people to try to settle their disputes without the fear that what they may have said will be held against them if the negotiations should break down. A statement to be privileged must form part of the negotiations, and is not privileged merely by having been written in a letter containing the words "without prejudice" at the top.

The reply to such a letter is likewise not admissible in evidence (1). If, however, statements are made in such a letter which are not relevant to the dispute, such statements may well be admissible in evidence (1). Thus, if a letter contains a defamatory statement which is irrelevant with regard to the dispute, such statement will be actionable (1) and an acknowledgement of inability to pay debts is an act of insolvency even if it is made without prejudice. When the settlement offer contained in a letter written without prejudice is in fact accepted by the other side and the dispute is then settled on that basis both letters will become admissible in evidence (1).

QUESTION 7

Dear X

On discovering that the claim of A had prescribed due to our negligence I called A 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 (e.g. 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 Fund. We are covered for amounts in excess of R200 000,00 and should be out of pocket in the worst case by no more than the excess payment of R20 000,00. I understand that the AIIF normally instructs their own attorneys to handle the matter and either to defend or settle same as they may be advised in consultation with us.

QUESTION 8

To fees for arranging the appointment, consultation with you and the purchaser (1), perusal of your memorandum with particulars about the transaction (1), preparing the first draft, copies for you and the purchaser, delivery or faxing thereof (1), telephone consultation with you about proposed changes to the contract (1), discussions with purchaser's attorney about amendments to the contract (1), preparation of second draft, copies thereof, delivery to yourself and to purchaser's attorney (1), receipt of telephonic instruction to finalise the contract, final amendments and draft final draft (1), telephone calls between you, the purchaser and his attorney to make arrangements for the signing of the contract (1), attendance at signing (1), correspondence, other telephone calls as well as postage and sundry expenses (1). (There are a host of possibilities. Examiners are requested to use their own discretion).

LEGAL EDUCATION AND DEVELOPMENT [L.E.A.D]
QUESTION 9

A’s claim  80/100 X 60 000  =  48 000
B’s nett claim  20 000/1 X 20/100  =  4 000
Award to A  =  44 000

15% fee:  44 000/100 X 15/1  =  R6600.00

TOTAL:  100