

**GAUTENG DEPARTMENT OF EDUCATION  
SENIOR CERTIFICATE EXAMINATION**

**MERCANTILE LAW SG**

## **POSSIBLE ANSWERS SUPP 2007**

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### **QUESTION 1**

- 1.1.1 Partnership through conduct
- 1.1.2 Representational capacity
- 1.1.3 Partnership policy
- 1.1.4 Limited
- 1.1.5 Company limited by guarantee
- 1.1.6 Memorandum of Association and Articles of Association
- 1.1.7 Table A
- 1.1.8 Certificate of Incorporation
- 1.1.9 Prospectus
- 1.1.10 Members' register
- 1.1.11 Prima facie
- 1.1.12 Founding Statement
- 1.1.13 Reasonable rent
- 1.1.14 Delegatus non potest delegare
- 1.1.15 Factor
- 1.1.16 Estate agent
- 1.1.17 Surety for surety
- 1.1.18 Beneficium excussionis
- 1.1.19 Mortgage bond
- 1.1.20 Sequestration
- 1.1.21 Statement of affairs
- 1.1.22 Curator
- 1.1.23 Executor
- 1.1.24 Intestate
- 1.1.25 Cheque

25x2=(50)

### **QUESTION 2 PARTNERSHIPS / NEGOTIABLE DOCUMENTS**

- 2.1
- 2.1.1 K. Cook (2)
- 2.1.2 J. Nel (2)
- 2.1.3 Golden Bank (2)
- 2.1.4 Bearer cheque (2)
- 2.1.5 Special crossing (2)
- 2.1.6 No
- ? Not signed
- ? Amounts in words and figures do not correlate / correspond. (6)
- Postdated

2.2

2.2.1 True üü 2.2.3 Falseüü -- Ordinary partnerü

2.2.2 False üü --- not entitled to remunerationü 2.2.4 True üü (10)  
only if agreed upon beforehand.

2.3

2.3.1 Anonymous (2)

2.3.2 **THE RIGHTS OF THE PARTNERS**

- \* The right to share in the profit
  - \* The right to control
  - \* The right to remuneration / compensation
  - \* The right to share in the distribution of assets at dissolution
  - \* The right to inspect the books
- 4x2=(8)

2.3.3 **GROUND / REASONS FOR THE DISSOLUTION OF PARTNERSHIPS**

- Mutual Agreement - The partners can agree that the partnership must be dissolved.
  - Lapse of the period - e.g. two years
  - Conclusion of business - e.g. the building of a bridge
  - Change of membership - e.g. retirement or entrance of a new partner
  - Sequestration of the partnership estate or the private estate of one of the partners has the result that the partnership dissolves.
  - A partnership can be dissolved by one partner giving **notice** to the other partners that he is retiring.
  - Outbreak of war - If a partner becomes an enemy as a result of circumstances of war and he finds himself in an enemy territory, the partnership will automatically dissolve.
  - Exceeding the maximum permissible membership of twenty
  - Court order
- 3x2=(6)

2.3.4 **A written partnership agreement makes provision for:**

- \* Name of the partnership
  - \* The nature of the business / partnership
  - \* Contribution of each partner
  - \* The period for which it is entered into
  - \* Who is allowed to sign cheques
  - \* Authorised withdrawals
  - \* Interest on capital and withdrawals
  - \* Division of profits and losses
  - \* Procedure at death or retirement
  - \* Settlement of disputes between partners
  - \* The control and authority of partners
  - \* Salaries and bonuses to partners
- 4x2=(8)

**[50]**

### QUESTION 3 COMPANIES ACT

3.1

3.1.1 C

3.1.2 B

3.1.3 B

3x2=(6)

3.2

PUBLIC COMPANY		PRIVATE COMPANY	
1.	Seven to number of shareholders determined by the issued capitalÜ	1.	One to fifty members Ü
2.	Shares for sale to the public Ü	2.	Shares not for sale to the public – members only P
3.	Issues a prospectus P	3.	Doesn't issue a prospectus P
4.	Last word "limited"	4.	Last words "proprietary limited"
5.	Shares freely transferable	5.	Transfer of shares limited by Articles of Association
6.	Two directors	6.	One director

(6)

3.3

**SIMILARITIES – COMPANY + NATURAL PERSON**

- \* Legal capacity, i.e. the capacity to be bearer of rights and duties
- \* Contractual capacity – the capacity to perform legal acts, such as the concluding of a contract or the making of a will
- \* Acquire and dispose of property
- \* Can sue or be sued

2x2=(4)

3.4

**PROMOTERS ARE RESPONSIBLE FOR**

- Preparation of the Memorandum and Articles of Association
- Preparation of any other legal documents
- Nomination of directors
- Procuring of capital
- Issuing of a prospectus (public company)
- Acquisition of a business or property for the company

3x2=(6)

3.5

**DOCUMENTS AT REGISTRATION**

- \* The original Memorandum of Association in a prescribed format
- \* The original Articles of Association in a prescribed format
- \* A notice of the registered office and postal address of the company
- \* The signatories to the memorandum in favour of the person who lodges the documents
- \* If an auditor has already been appointed, his written consent to serve as auditor
- \* Written consent to act as director
- \* Proof of payment of registration money
- \* Proof of payment of annual subscription

4x2=(8)

3.6

3.6.1 **FORMAL REQUIREMENTS (RESTRICTIONS) AS TO THE NAME**

- The name may not be undesirable in the opinion of the Registrar.
- The name may not possibly mislead the public as to the nature of the company's activities.
- The Act requires that certain last words be added to the name of the company, for example, "Limited", in the case of a public company with a share capital, and "Pty Ltd" in the case of a private company.
- Registrar can forbid a company to do business with a name which, for example, is offensive or blasphemous or immoral in nature.
- A company can also register for itself an official recognised translated and abbreviated form of its name.
- Words such as "Government, State" may not be used without the permission of the State President.
- The word "Bank" may not be used without the consent of the Minister of Finance.
- May not be the same as that of an already registered company
- Must consist of at least 3 letters of the alphabet plus words describing the main business.
- Must be registered
- Word "Hotel" is not allowed, unless it is registered for that purpose. 4x2=(8)

3.6.2 **RESERVATION OF NAME**

- Before the incorporation of a company the proposed name of the company must be reserved.
- A reservation is valid for two months and can be extended for a period of one month at a time.
- Upon written application and payment of the prescribed fee. 2x2=(4)

3.6.3 **DISPLAY**

- The Act requires that every company exhibits its name in easily legible letters at an obvious place outside every office or place where it does business.
- Further, the company name together with the registration number must clearly be given on all notices, official publications, letters, invoices, etc. 2x2=(4)

3.7 **CONSEQUENCES OF UNTRUE STATEMENTS IN THE PROSPECTUS**

- \* Where a prospectus contains an untrue statement each of the following persons is guilty:
  - every promoter of the company
  - every person who has given permission for the issue of the prospectus
  - all the directors of the company
- \* A person who has bought shares, may hold the company responsible for the cancellation of the agreement and;
- \* for the repayment of monies paid for the shares. (Any) 2x2=(4)

**[50]**

## QUESTION 4

### CLOSED CORPORATIONS / LIENS

4.1

4.1.1 Debtor-creditor

4.1.3 Salvage

4.1.2 Debtor-creditor

4.1.4 Improvement

4x2=(8)

4.2

**THE HOLDER DOES NOT LOSE HIS LIEN IN THE FOLLOWING CASES:**

- If physical control of the object of lien was lost as a result of force, fraud or any other unlawful action, it is revived as soon as effective control is recovered.
- If the trustee of an insolvent estate claims the property, or if it is an order of the court.
- If property serves as evidence in the court.

3x2=(6)

4.3

4.3.1 Yes Ü --- key is sufficient proof of possession of the lienÜ

4.3.2 Yes Ü--- Yard is fenced P

4.3.3 NoÜ--- Parted with the property voluntarily P

3x2=(6)

4.4

**LEGAL CONSEQUENCES**

- A lien is merely a form of security for a claim, since it is a right to retain property until the claim is paid.
- The lien itself does not confer a right of action for the claim, but only affords a ground to defence.
- If the amount of expenses claimed by the holder of the lien is disputed by an owner claiming his property, legal proceedings will be necessary to determine what sum is due.
- The Court will order the return of the goods by the lien holder on condition that the owner compensates the creditor for expenses he had on the goods.

2x2=(4)

4.5

**DISTINCTIVE CHARACTERISTICS OF A CLOSE CORPORATION**

- \* The close corporation is suitable for a small- to medium-size undertaking.
- \* A close corporation has members and not shareholders as in a company.
- \* The membership varies from one to ten members.
- \* The name of the close corporation ends with letters "CC".
- \* The close corporation has an unlimited existence. It remains as such irrespective of changes in membership.
- \* A Founding Statement is registered with the Registrar of close corporations at establishment.
- \* The internal relationship between members can be defined in the co-operation agreement.
- \* Members have an "interest" in the close corporation and not shares as in a company. The combined interest of the members adds up to 100 per cent.
- \* CC is a legal entity.
- \* A company cannot have an interest in a CC.
- \* Financial statements need not be audited.
- \* Tax is levied at the same rate as that of companies.

(Any) 4x2=(8)

4.6 **RIGHTS OF MEMBERS**

- Unless otherwise stipulated, in the Agreement of Co-operation, the Act specifies that every member is entitled to:
- Participate in the carrying out of the business.
- Participate in the management of the business.
- Remuneration from the CC for expenses incurred.
- The number of votes (at a meeting) which are according to his interest in the CC.
- An interest in the CC expressed as a percentage of the total interest (100%).
- Each member is issued with a certificate, stating the current percentage of such member's interest in the Close Corporation.

3x2=(6)

4.7 **DISSOLUTION OF CLOSE CORPORATIONS**\* *DEREGISTRATION*

The deregistration of a CC means the cancellation of the registration of the Founding Statement.

Deregistration may take place in the following cases:

- If the registrar has reasonable grounds to believe that:
  - the corporation is not in business, or
  - the corporation does not work.
- If the members apply at a registrar for deregistration because:
  - the corporation has ceased business, or
  - the corporation has no assets or liabilities

\* *LIQUIDATION OF A CLOSE CORPORATION*

Liquidation takes place if the assets of the CC have been sold on an auction under the supervision of the Master with a view to paying creditors.

6x2=(12)  
[50]

## QUESTION 5

### LEAS OF IMMOVABLE PROPERTY

## 5.1

5.1.1 False -- Landlord doesn't have to be the owner.

5.1.2 True

5.1.3 False Urban property

5.1.4 True

(10)

5.2 **REQUIREMENTS FOR THE EXISTENCE OF A LEASE CONTRACT**

- Specified immovable property
- Period of time e.g. 1 year
- Specified amount of rent

3x2=(6)

### 5.3 WHERE THE LANDLORD FAILS TO EFFECT THE NECESSARY REPAIRS

The tenant may resort to the following **legal remedies**:

- The tenant may have the necessary repairs **effected** and **deduct** the costs involved from the rent, **provided** he has informed the landlord in advance of his intention to do so.
- The tenant may claim a **reduction in rent**.
- If the property becomes unsuitable for the purposes for which it has been hired, the tenant may **vacate** the property without being liable for further rent.

3x2=(6)

### 5.4

#### 5.4.1 FORFEITURE CLAUSE

- A forfeiture clause is a stipulation in which the landlord obtains the right to terminate the lease if the tenant fails to pay his rent on due date' After notice has been given to him to pay.
- The court enforces such a clause even if it is unfair to the tenant.
- Venter vs Venter  
The landlord forfeits his right to terminate the contract when he receives the rent or when he/she claims it after the date of expiry.

2x2=(4)

#### 5.4.2 RENT CONTROL ACT / Rent Tribunal

- To keep rent within limits
- To provide stability of occupation

2x2=(4)

#### 5.4.3 STATUTORY TENANT

- It is important to note that the tenant only becomes a **statutory tenant** if the lease contract is terminated as a result of passage of time without notice by the landlord
- and the tenant continues to occupy the property in person.
- and still pays the rent as agreed and complies to all conditions of the agreement.

2x2=(4)

### 5.5 "HIRE GOES BEFORE SALE" (Huur gaat voor koop)

- If the landlord of a property sells that property before the lease has expired, the tenant may **not be prejudiced**.
- The **purchaser takes the place of the landlord** from the date on which he becomes the owner of the property.
- In the case of a **long-term lease** the rule applies for the first ten years of the contract. (It must be **registered**.)
- In the case of a **short-term** lease the rule applies as long as the tenant is in **possession** of the property.

5x2=(10)

## 5.6 COURT MAY GRANT AN EVICTION ORDER:

- \* Where the tenant has **damaged** or is damaging the property
- \* Where the tenant is guilty of conduct which is **scandalous** for residents of neighbouring properties
- \* Where a local authority needs the property in connection with a **town improvement** scheme and the tenant has received the prescribed written notice
- \* Where the landlord needs the property for **residence or use by himself** or his parent or child and he has given the tenant three months' written notice
- \* Where the landlord reasonably needs the property for purposes of a **reconstruction** or rebuilding scheme and the prescribed written notice has been given
- \* Where the landlord needs the property **for an employee** and the tenant was an employee whose services were terminated
- \* In any other case where, in the opinion of the court, there is **sufficient reason** to grant an eviction order

3x2=(6)  
[50]

### QUESTION 6 AGENCY/SURETY

## 6.1 CONTRACTS MAY BE FORMED IN THE FOLLOWING FOUR WAYS:

- \* by express agreement
- \* by operation of the law
- \* by conduct
- \* by ratification

3x2=(6)

## 6.2 WRITTEN AUTHORITY IS A REQUIREMENT:

1. To **buy or sell** land
2. A conveyancer must be in possession of a power of attorney if he wishes to effect the **transfer of land** from one person to another.
3. A conveyancer must also be in possession of a power of attorney if he intends **passing a bond**.
4. A legal representative who wishes to institute or defend or appeal against or oppose an **action** on behalf of someone in the **supreme court**.

3x2=(6)

## 6.3 NEGOTIORUM GESTOR

## 6.3.1 DEFINITION

- Is a person who, without being instructed,
- acts on behalf of an absent person,
- in order to safeguard that property against destruction.

2x2=(4)

## 6.3.2 REMUNERATION

- The negotiorum gestor may demand no commission (remuneration). Because he wasn't appointed as an agent, there is no agreement
- He may claim repayment of the actual expenses.

2x2=(4)

## 6.4

## 6.4.1 Broker

(2)

## 6.4.2 Del credere agent

(2)



**6.5 DUTY OF GOOD FAITH**

1. This means that an agent must at all times act in the exclusive interest of his principal.
2. An agent may not act in such a way that his own interests clash with those of the principal.
3. An agent may not make any secret profit from the execution of his authority. He only has a right to remuneration as agreed upon.
4. If such profits are indeed made without the knowledge or consent of the principal, the agent must hand over the profits to his principal.
5. An agent may not accept bribes in the execution of his instruction.
6. An agent may not disclose secret information, which he obtained during the execution of his authority, to third parties.
7. The agent must keep his property apart from that of his principal (where the agent allows).

4x2=(8)

**6.6**

6.6.1 creditor

6.6.2 principal debt

6.6.3 strengthens

6.6.4 writing

6.6.5 unconditional

6.6.6 cession of action

6x1=(6)

**6.7 CANNOT CLAIM BENEFICIUM EXCUSSIONIS:**

- Where the debtor is absent from the country and has left nothing behind
- Where the debtor's estate has been finally sequestrated / is insolvent
- Where the debtor is a minor
- Expressly or tacitly renouncing his right

3x2=(6)

**6.8 TERMINATION**

1. When the principal obligations are terminated, for example, by the settlement of the principal debt, novation or prescription.
2. The expiration of time, if the surety had only rendered himself liable for a specified period
3. Where the contract makes provision for the surety to terminate the suretyship by means of due notice
4. Where the debtor offers payment, but the creditor refuses it and the debtor then becomes insolvent

3x2=(6)  
[50]

**QUESTION 7**  
**PLEDGES AND MORTGAGES**

**7.1**

PLEDGES	MORTGAGES
1. Movable propertyü	1. Immovable propertyü
2. Delivered P	2. Registered P
3. Expires after 6 months	3. Expires after 25 or 30 years

4x1=(4)

## 7.2 FORMALITIES PLEDGES

- **No formalities** are required for the formation of a contract of pledge.
- The agreement can be in **writing or oral** (verbal contract), or can even be inferred from the **conduct** of the parties.
- **Delivery** is essential for the formation of a pledge.
- The goods delivered shall be held as **security for a debt**.
- If the article to be pledged is already in the hands of the creditor, it must have been the **intention** to give and to keep that object as a pledge.
- The pledgee must indicate the goods concerned and has to **separate** them from his own. 3x2=(6)

## 7.3 RIGHTS OF PLEDGEE (creditor)

- It has already been said that the pledgee obtains a limited real right over the debtor's property by means of delivery to him.
- The property serves as security. If the debtor does not pay his debt, the pledgee is entitled to sell the property and to take his share from the money received.
- The pledgee has a right over the goods given to him as security as well as over the appendages of the goods, e.g. such as lambs born to bonded sheep. 2x2=(4)

## 7.4 SPECIAL BOND ON IMMOVABLE PROPERTY

- \* A special document, called a mortgage bond, must be drawn up by an attorney.
- \* This bond must be registered against the ownership of the property.
- \* Will contain the following information:
  - The name and address of the property
  - The interest to be paid
  - The date and the manner of the repayment of the capital
  - The rights of the mortgagee in the event of non-payment
- \* The bond must be signed by the owner in the presence of the Registrar of Deeds.
- \* As soon as the Registrar of Deeds has signed and validated the mortgage bond with the official seal, the bond is registered.
- \* The mortgage bond must be submitted for registration within two months after the debt has been incurred. 5x2=(10)

## 7.5 KUSTINGSBRIEF

- A Kustingsbrief is a bond granted by a buyer of immovable property, if he does not possess sufficient capital.
- In favour of the seller or a third person who has advanced the money to the buyer to enable him to pay the seller.
- Is given for the amount or price of immovable property OR the part of the price which wasn't paid in cash.
- A Kustingsbrief must be in writing and registered in the presence of the Registrar of Deeds.
- It must be registered simultaneously with the registration of transfer in the name of the purchaser.
- The holder of a Kustingsbrief enjoys preference in the case where a person becomes insolvent. 5x2=(10)

7.6

7.6.1 Covering bond

7.6.2 interest

foreclosure

7.6.3 Legal mortgages

4x1=(4)

7.7

**TERMINATION OF MORTGAGES AND PLEDGES**

- Discharge of principal debt -
  - \* When the debt together with all interest due is paid.
- Renunciation
  - \* When the creditor expressly or by implication renounces his rights under a bond. Expressly - when the creditor agrees to the cancellation of the bond, or returns the pledged goods.
- Destruction of mortgaged property
  - \* A bond or pledge is terminated by the total destruction of the goods. If the goods are only partly destroyed, the pledge or bond continues to be in operation on that portion which remains undamaged.
- Novation
  - \* The replacement of the original by a new debt or new agreement debt.
- Merger
  - \* This is when the person becomes owner of the mortgaged property or goods, e.g. person inherits the property or goods.
- Alienation of pledged property
  - \* Pledged property in the possession of the creditor may be transferred only with the consent of the pledgee.
- Prescription
  - \* This is when a mortgagor pays no interest for 30 years, or has redeemed any amount. Six months in the case of pledges.
- Order of court
  - \* The mortgage / pledge may be set aside by an order of court on the grounds of fraud, or by misrepresentation.
- Alienation of mortgaged property in terms of a judgement of court.
  - \* Where the trustee sells it on the debtor's insolvency.

4x2=(8)

7.8

**BY OPERATION OF LAW    EXAMPLES**

- Liens
- The landlord's hypothec for arrears rent
- Instalment sales hypothec
- Preferences

2x2=(4)

**[50]**

## QUESTION 8 INSOLVENCY

8.1

8.1.1 **A person (company) is insolvent when he:**

- # Is no longer in a position to pay his debts, or to pay them in full;
- # His liabilities exceed his assets. 2x2=(4)

8.1.2 **Sequestration**

- # Is the process whereby, on the order of the *Supreme Court*, all the insolvent's assets are taken away from him and placed under the control of a trustee. 2x2=(4)

8.1.3 **Liquidation**

- # Where the insolvent's assets are sold by auction in order to pay the creditors. 2x2=(4)

8.2 **ACTS OF INSOLVENCY**

- If the debtor leaves the country, with the intent to evade the payment of his debts.
- If there is a judgement against the debtor and the debtor fails to satisfy it, upon demand of the officer whose duty it is to execute that judgement,
- or if he fails to indicate to the officer disposable property, sufficient to execute the judgement.
- If the debtor disposes of or makes attempts to dispose of his property, with the intention of harming his creditors.
- If the debtor removes or attempts to remove any of his property with the intention of harming his creditors.
- If the debtor makes an arrangement with any of his creditors for releasing him wholly or partially from his debts. Example - to offer 50c in the rand.
- If the debtor, after publication of a notice of surrender, fails to lodge a statement of his affairs with the Master.
- If the debtor gives notice in writing to any one of his creditors that he is unable to pay any of his debts.
- In the case of a trader, by giving notice in the Government Gazette of his intention to sell his business, whereafter he will not be in a position to pay all his debts. 2x2=(4)

8.3 **FINAL ORDER OF SEQUESTRATION**

- Proof of the liquidated claim
- The debtor has committed an act of insolvency or is actually insolvent.
- The sequestration will be to the advantage of the creditors. 3x2=(6)

8.4 **SEND A COPY OF THE PROVISIONAL SEQUESTRATION ORDER TO:**

- The deputy sheriff of every district in which the insolvent lives.
- Every registrar of deeds.
- Every messenger of the court who has taken possession of goods belonging to the insolvent estate.
- Every official supervising a ship's register at a port of registration of any ship belonging to the insolvent estate.
- The final order is served on the insolvent debtor and, where he is married in community of property, also on the debtor's wife.

2x2=(4)

8.5 **THE SEPARATE ESTATE OF THE INSOLVENT'S SPOUSE**

- If the insolvent is married in community of property, the estate of the solvent spouse (wife, husband), also vests in the Master.
- **Exception** - in the case where people are married out of community of property (antenuptial contract). The creditors may not claim the property of the solvent spouse.  
The trustee must return all the property of the solvent spouse where it is proved:
  - \* That an antenuptial contract exists
  - \* That it was obtained by the spouse in terms of a marriage contract.
  - \* That it is property which is protected by the Insurance Act.
  - \* That it was obtained during the marriage in terms of a title which is enforceable on the creditors of the insolvent.
 If the solvent spouse is carrying on business as a trader apart from the insolvent, or if it appears that the immediate vesting of her/his property in the Master or trustee will be seriously harmful to her/him, the court may exclude the results of a sequestration order on such assets.

5x2=(10)

8.6 **PERSONS WHO ARE DISQUALIFIED FROM ACTING AS TRUSTEE**

- \* An insolvent
- \* A minor
- \* Any person who does not reside in South Africa
- \* A corporate body
- \* Any person related to the insolvent by blood
- \* Any person who acted as bookkeeper, accountant or auditor of the insolvent person
- \* Any person who has at any time been convicted of theft, fraud, forgery

3x2=(6)

## 8.7

8.7.1 FalseÜÜ – free residueÜ

8.7.2 True ÜÜ

8.7.3 FalseÜÜ – rehabilitation

(8)  
[50]

## QUESTION 9 WILLS

### 9.1 JOINT WILL

- # This is a will made by two or more persons, they need not necessarily be spouses, for example partners.
- # It may take the form of two separate wills, which for the sake of convenience, are contained in one document.
- # Testators may change any clauses, without knowledge of co-testator. 1x2=(2)

#### **RECIPROCAL WILL** – reciprocally benefited.

- # A reciprocal will is a joint will in which the testators benefit one another.
- # In practice, married persons make use of this type of will.
- # The person who receives the advantage may not revoke or amend the will. 1x2=(2)

### 9.2 PERSONS LEGALLY CAPABLE OF DRAWING UP A WILL

- Persons who are sixteen years of age or older, AND of full mental power, may make a will.
- Persons, who are intellectually incompetent to understand the nature and effect of their action, may not make a will.
- Anybody who alleges that a person is incapable of making a valid will, will have to prove his allegation.
- Persons under the age of 16 years are legally incapable of signing a will.
- Their incapacity is not removed by marriage or emancipation.
- Testators under the age of 16 years may validate their will when they attain the age of 16 years.
- Persons who are mentally unstable or under the influence of drugs or liquor and not capable of understanding their actions are incapable of making a will.
- Such persons, however, may make a will when in command of their full senses. 4x2=(8)

### 9.3 PERSONS WHO MAY NOT BE BENEFICIARIES IN TERMS OF A WILL

- Someone who attests and signs a will as witness and that person's spouse
- The person who signs on behalf of and on instruction from the testator and that person's(nominee) spouse
- Any beneficiaries of the witnesses and their spouses
- "Bloodhand" / An unworthy person, a person who causes the death of a testator, will, for example, be considered unworthy to inherit from the testator. 2x2=(4)

### 9.4 REVOCATION OF A WILL

#### 9.4.1 DESCRIPTION

- Revocation is the only way in which an initially valid will can be nullified. 1x2=(2)

#### 9.4.2 IN TWO CASES A PERSON MAY NOT REVOKE HIS WILL

- This will be the case if the surviving spouse accepted a benefit in terms of a joint will.
- If a testamentary bequeathal in favour of the surviving spouse is contained in an antenuptial contract, then one of the spouses cannot revoke that will by executing a new will.

2x2=(4)

#### 9.4.3 METHODS OF REVOCATION

- \* Where the testator did something with the will which clearly indicates his intention to revoke, e.g. where he tore up the will; or wrote cancelled on it.
- \* Where the testator drew up a later will OR codicil, in which his intention to revoke is clear.

2x2=(4)

#### 9.5

9.5.1	Will/ Testator	9.5.6	two witnesses	
9.5.2	Executor's letter	9.5.7	codicil	
9.5.3	Master	9.5.8	voluntary	
9.5.4	Revoked		unilateral	
9.5.5	14 years	9.5.9	administration	10x1=(10)

#### 9.6 FORMALITIES WHEN DRAWING UP A WILL

- Every will must be in writing. It may be written by hand, typed or printed.
- The will must be signed at the end thereof. As near as possible to the last provision of the will.
- The signing must be done personally by the testator.
- The testator must sign the will in the presence of two competent witnesses who are simultaneously present.
- Thereafter the two witnesses must attest and sign the will in the presence of the testator and each other.
- If the will consists of more than one page, only the last page must be signed by the two witnesses.
- If the testator signs the will by making a mark, a commissioner of oaths must certify that he has satisfied himself of the identity of the testator.

3x2=(6)

#### 9.7 DUTIES OF THE EXECUTOR

1. The executor must report the estate by lodging the death notice, inventory, original will and the acceptance of executorship with the Master.
2. He must place a notice in the Government Gazette and a newspaper in which creditors are informed that they must lodge their claims.
3. The debtors of the estate are informed in the same notice to pay their debts to the estate.
4. An income tax return must be lodged so that the estate's tax liability can be determined.
5. He must render an inventory to the Master.
6. The executor must take into custody all goods, documents, etc.
7. Must open a banking account in the name of the estate.
8. Must ascertain whether estate is insolvent. If insolvent he must inform each creditor and the Master.
9. If solvent, he goes ahead with the planning for the liquidation. The estate must be reduced to money in accordance with legal requirements.

4x2=(8)

**TOTAL: 300**