INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of THREE (3) pages. Please see that you have them all.
3. This paper consists of 6 questions.
4. Students must answer all questions.
QUESTION 1
A court may accept the voluntary surrender of a debtor’s estate if it (the court) is satisfied that certain requirements are satisfied and that certain preliminary formalities have been fulfilled. What are these requirements and formalities?

[Total Q1: 10 marks]

QUESTION 2
Describe whether an act of insolvency has been committed in each of the following cases:

(a) The debtor writes to the creditor: ‘I am reluctant to settle your account immediately, because this would land me in financial difficulty. I would be grateful if you could give me an extension of a few months to allow me to consolidate my position.’

(b) The debtor writes to the creditor: “I do not intend to dispute liability in this matter; however I am only prepared to offer you half of what you are claiming. This offer is made in full settlement of your claim.”

(c) The debtor has moved from Johannesburg to Cape Town for six months, without informing any of his creditors. In addition, he has cancelled the lease on the flat he was occupying in Johannesburg prior to his departure.

(d) A return of service on a warrant of execution issued against the debtor states that the sheriff has, after a diligent search, failed to find sufficient disposable property belonging to the debtor to satisfy the judgment against him.

(e) The debtor, who has received a letter of demand from the creditor, writes to the latter saying that she is unable to comply with the demand because her assets have vested in the trustee of her husband’s insolvent estate.

[Total Q2: 10 marks]
QUESTION 3

Explain when an insolvent may apply to court for his rehabilitation. Discuss the factors that the court will take into account when adjudicating on the application and the various possible orders that it may make. Are there any circumstances in which an application to court is unnecessary?

[Total Q3: 10 marks]

QUESTION 4

Malcolm’s estate has been sequestrated and his wife, Wendy, to whom he is married out of community of property, has been summoned to attend an interrogation in terms of sections 64 and 65 of the Insolvency Act, 1936. Wendy is concerned that her privacy will be invaded and that she will be required to answer questions related to Malcolm’s business matters, about which she knows very little. She does not want to make things worse for Malcolm, but she has heard that if she refuses to answer questions put to her, she may be committed to prison. Explain the legal position.

[Total Q4: 5 marks]

QUESTION 5

Explain and distinguish between voidable preferences and undue preferences.

[Total Q5: 10 marks]

QUESTION 6

Section 26 of the Constitution states that:

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Critically discuss the right of an insolvent to adequate housing, as compared to this right as enjoyed by a pre-insolvent debtor.

[Total Q6: 15 marks]