INSTRUCTIONS

1. This paper consists of THREE (3) pages. Please make sure you have them all.

2. The paper consists of ONE (1) question divided into SEVEN (7) parts.

3. You are required to answer ALL SEVEN (7) parts of the question.

4. Students are requested, in their own interests, to write legibly

5. Please ensure that you write your student number and seat number on the front of your answer book.

6. Students may use calculators.
Question One

Sbu, a builder who trades as a sole proprietor, consults you and gives you the following information.

- He built a house for John and demanded payment of R50 000 as the balance of the contract price for the completed house. John refused to pay, saying the workmanship was of a poor standard. John subsequently claimed R100 000 from Sbu to rectify the problems. Sbu denies that the workmanship is bad and feels he is entitled to payment of the R50 000. John has told Sbu that his attorney will soon issue summons and that he plans to attach all of Sbu’s property to settle his claim.

- Sbu bought building materials on credit from his good friend Rajesh. Sbu owes Rajesh R25 000 in terms of this credit agreement. He has spoken to Rajesh and told him that he cannot pay him at the moment “because of cash flow issues”.

- Sbu owes each of his two employees a month’s wages (R3 000 each).

- At the end of the month Sbu will also have to buy prepaid electricity for use in his house (R2 500).

- Sbu owns an old bakkie and a few tools worth about R15 000 in total.

- Sbu lives in a house which he and his wife, Sally, own in equal shares. He and Sally are married out of community of property. He and she recently bought the house and Sally, who works for the government, is paying the bond registered in favour of FNB. The house has good quality antique furniture, a flat screen TV and a free–standing Jacuzzi. Sally is the owner of these items.

Based on the information provided above, answer the following questions.

1.1 List the assets and liabilities in Sbu’s estate. Highlight the assets which could be realised by the trustee in the event of the estate being sequestrated and those which would be excluded from the insolvent estate. (7 marks)
1.2 Identify one party that would qualify as a secured creditor in the event of Sbu's estate being sequestrated. Indicate which asset(s) that creditor would have a claim against. Also identify one preferent creditor and one concurrent creditor in the estate. Would these creditors have claims against specific assets? Explain. (6 marks)

1.3 Is Sbu actually insolvent? Justify your answer referring to the case law. (5 marks)

1.4 Does Rajesh have grounds to sequestrate Sbu? Explain fully. (5 marks)

1.5 You subsequently learn that Sbu gave Sally the flat screen TV and Jacuzzi for her birthday even though these were his favourite possessions and her birthday was still three months away at that time. What is the significance of this information? Would it change your answer to 1.4 and, if so, how? (7 marks)

1.6 Based on all the information provided, explain what the role, powers and duties of a trustee will be if Sbu is finally sequestrated and what the trustee can do to maximise the amount paid to creditors. Refer to relevant case law to support your answer. (20 marks)

1.7 If Rajesh were to sequestrate Sbu, would this qualify as a ‘friendly sequestration’? Explain what the term ‘friendly sequestration’ means and how the courts deal with such matters. Refer to the decided cases in your answer. (10 marks)

(TOTAL FOR PAPER: 60 MARKS)