INSTRUCTIONS:

STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY

1. This paper consists of four (4) pages. Please ensure that you have all of the pages.

2. You are required to answer ALL the questions. Please note the allocation of marks to particular parts of some of the questions. Where no such allocation is indicated, the question or part of the question will be marked as a whole.

3. This is a closed book examination. No reference materials of any kind may be brought into the examination room or consulted during the examination.
QUESTION ONE

1.1 List five types of persons who are disqualified from occupying the position of trustee.

(5 marks)

1.2 What is the effect of a creditor choosing to rely solely on the proceeds of the asset which he holds as security for satisfaction of his claim against an insolvent estate?

(5 marks)

1.3 What is the effect of sequestration of an employer’s estate on the employment contracts of the insolvent’s employees in terms of section 38 of the Insolvency Act No. 24 of 1936 as well as section 197A of the Labour Relations Act.

(5 marks)

1.4 The creditors of an insolvent estate make decisions by way of resolutions which they vote on at meetings of creditors. Identify and explain the manner in which the creditors elect a trustee, and explain why it is important that the trustee be elected in this manner.

(5 marks)

[TOTAL FOR Q1: 20 MARKS]
QUESTION TWO

2.1 List any two acts of insolvency in terms of the Insolvency Act No. 24 of 1936. (5 marks)

2.2 Alice’s estate was placed under sequestration on the 5th of February 2014. The assets in the insolvent estate are insufficient to pay all of her creditors in full. She has been told by one of her friends, Peggy, that she can “get her creditors to agree” to accept payments which are less than the full value of their claims, and if she does this then she can be “freed of her insolvency”. Alice now approaches you for legal advice.

   a) What are the legal requirements for Alice to arrange with her creditors to accept payment of amounts less than what they are actually owed?

   b) Describe the steps necessary for Alice to successfully apply to court to be declared rehabilitated. (15 marks)

[TOTAL FOR Q2: 20 MARKS]
QUESTION THREE

An ante-nuptial contract, which purports to keep the estates of each of the spouses separate for the duration of the marriage, provides the parties with some protection in the event of one of the spouses being declared insolvent. Discuss this statement with reference to case law and the relevant sections of the Insolvency Act No. 24 of 1936.

(20 marks)

[TOTAL FOR Q3: 20 MARKS]

(TOTAL FOR PAPER: 60 MARKS)