Question 1

Jones’ estate has been placed under sequestration and a trustee has been appointed to administer it. Outline the legal position in the following cases:

a) Jones tells you that a few months before he was declared insolvent, he recovered damages from one of his creditors, Tom, for calling him a ‘dirty rotten thief’ in front of customers at his shop. Jones wants to know whether he is obliged to pay over these damages to his trustee for inclusion in his insolvent estate.

b) Seven years prior to sequestration, Jones took out a life insurance policy on his own life and nominated his wife as the beneficiary. He wants to know whether this policy will form part of his insolvent estate.
c) Three weeks after his estate is placed under sequestration, Jones’ mother dies, leaving a will in which she bequeathed her entire estate to Jones. Her will contains a proviso that, should Jones be insolvent at the time of her death, the estate is to be held in trust until his rehabilitation. The trustee wants to know whether this proviso is valid.

d) Jones is presently employed by a construction firm and receives a monthly salary of R12 000, of which he uses R8 000 to support himself and his family. He wants to know whether he can continue working and receiving and retaining this remuneration in full.

e) A year before sequestration of his estate, Jones worked as a law lecturer at the local university and, upon resigning from this post, received pension monies which he used to buy a sports car. His trustee wants to know whether he can sell the sports car for the benefit of Jones’ creditors.

(15 marks)

Question 2

Montana Max’s estate has been sequestrated on application by his creditors. A trustee has been appointed. Montana Max runs an exotic dance club and has a number of employees. The employees are concerned that their employment contracts will be terminated. Advise them as to the legal position regarding their employment contracts.

(10 marks)
Question 3
Calvin’s estate has been placed under sequestration and his wife, Judith, to whom he is married out of community of property, has been summoned to attend an interrogation to be held in terms of section 65 of the Insolvency Act, 1936. Judith is concerned that her privacy will be invaded, and that she will be required to answer questions relating to Calvin’s business matters, about which she knows very little. She approaches you for advice as to what she can expect at the interrogation. She does not want to make things worse for him, but she has heard that, if she refuses to answer questions put to her, she may be committed to prison.

Explain the legal position to Judith. Your answer must include a discussion of what Judith can expect at the interrogation.

(15 marks)

Question 4
Superman returns from a long and arduous journey to the planet Argon. In a flaming orb he crash lands on the lawn of the law school building. He seems delirious, and as you approach he shouts, “Tell me the differences between an undue preference and a voidable preference...if you don’t, planet Earth will be destroyed!”

You have always fancied yourself a hero. Write a note in which you explain to Superman, the differences between a voidable preference and an undue preference.

(10 marks)
Question 5

Explain how the courts have interpreted the expression ‘advantage to creditors’, and how this requirement differs between voluntary surrender and compulsory sequestration.

(10 marks)