

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN  
COURT PROCEDURES / HOFPROSEDURES  
PART 1 / DEEL 1**

**17 AUGUST / AUGUSTUS 2004**

**ANSWERS / ANTWOORDE**

**NOTE TO EXAMINER:** This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

**QUESTION 1**

**[10]**

- 1.1 One which is an adjunct to the main action and which relates to the main action and which relates to procedural matters. (1)
- 1.2 Short form. (1)
- 1.3 A messenger/ member of staff of applicant's attorney. (1)
- 1.4 The respondent's attorney. (1)
- 1.5 Nil (1)
- 1.6 Notice of Motion (5)

Be pleased to take notice that application will be made to the above honourable court on the Tuesday the ....day of.... 2004 at 10 o'clock in the forenoon (10h00) or as soon thereafter as applicant's counsel may be heard for an order in the following terms:

1. Directing respondent to furnish a reply to applicants request for particulars in terms of rule 21 within 7 days of service of this order.
2. Costs of this application
3. Further and or alternative relief.

Be pleased to take notice that the affidavit of .... will be used in support of this application.

Kindly enrol the matter for hearing accordingly. (5)

Signed  
Attorney for Applicant

To Respondents Attorneys

And to the Registrar of the High Court.....

**QUESTION 2**

**[15]**

2.1 Give notice to the insurer in terms of rule 13/ third party procedure. (2)

2.2 ANNEXURE 1

1. Plaintiff is John Jones an adult male person resident at... and employed as... (1)
2. Defendant is Mr .... an adult male person presently resident at ... and employed as ... (1)

3. The third party is Ajax Insurance Company Limited a company registered in accordance with the Company Laws of the Republic of South Africa and doing business as a registered short term insurer with registered Head Office at 123 Commissioner Street Johannesburg, Gauteng (1)

4. The plaintiff has instituted action against the defendant for payment of the sum of R250 000 in respect of damages allegedly sustained by the plaintiff in a motor vehicle collision in which the defendant was the driver of the other vehicle involved in that collision. A copy of the plaintiff's particulars of claim in this action is annexed hereto and marked Annexure A1. (1)

5. Defendant has given notice of his intention to defend the action instituted by the plaintiff against him and will in due course file a plea to plaintiff's particulars of claim in terms of a draft of defendant's plea appended hereto and marked Annexure A2. (1)

**(Note to examiner:** If candidate does not mention that defendant's plea is annexed he/she should not be penalised)

6. At all relevant times and more specifically on the date of the collision as set out herein before, there was in force a written agreement of insurance concluded between the defendant and the third party in terms of which the third party undertook to hold the defendant blameless against any claims arising from the driving of a motor vehicle. A copy of the insurance policy setting out the relevant provisions of the agreement is appended hereto and is marked Annexure A3. (1)

7. Upon receipt of the summons defendant notified the third party in order for the third party to deal therewith as it was obliged to in terms of the contract of insurance. (1)

8. The third party has unlawfully repudiated its obligation towards the defendant to hold the defendant blameless and indemnify the defendant against claims arising from the driving of the said motor vehicle. (1)
9. The defendant has complied with all his obligations in terms of the contract of insurance by inter alia making the payment of the premiums payable in terms thereof. (1)
10. In the event of the above honourable court finding that the third party is obliged to hold the defendant blameless and indemnify the defendant for claims arising out of the driving of the said vehicle the third party will be liable to meet the claims instituted against the defendant by the plaintiff less an amount of Rx being the first amount payable by virtue of the provisions of clause .... of the said policy of insurance. (1)
11. Defendant relies upon an indemnity as is envisaged by virtue of the provisions of rule 13 as between the defendant and the third party. (1)

Wherefore defendant claims against the third party:

- a) An order that, in the event of Plaintiff succeeding against Defendant, the third party indemnify Defendant in such amount as Defendant is ordered to pay, less the first amount payable in terms of the policy, together with the costs of defending the action. (1)

[12]

- 2.3 Before close of pleadings. (1)

**QUESTION 3****[6]**

Please take notice that the Plaintiff excepts to the defendant's Plea on the grounds that it does not disclose a defence to the Plaintiff's claim. The grounds for such exception are that it is not a defence that the defendant was not a licensed driver at the time of the collision. Whether or not the defendant was a licensed driver has no bearing on the defendant's liability.

Dated at .....on this the.....day of 200.. .

**QUESTION 4****[4]**

- 4.1 Goolam Ahmed and Miriam Motala (NNO) in their capacities as trustees of the Abdullah Ahmed Trust
- 4.2 Pumele Ngcobo in her capacity as executrix of the estate of the late Sanele Ngcobo
- 4.3 Peter Knife in his capacity as father and guardian of Jack Knife OR Jack Knife duly assisted by his father and guardian, Peter Knife
- 4.4 Joan Smith in her capacity as liquidator of XYZ (Pty) Limited (in liquidation)

**QUESTION 5****[8]**

- 5.1 The notices to be filed are dealt with in Rule 24(9)  
The first notice, given not less than 15 days before the hearing, gives the Defendant notice that you intend calling the medical specialist to give evidence as an expert

The second such notice, given not less than 10 days before the hearing, must contain a summary of the medical specialist's opinions and his reasons for such opinions. (3)

5.2 This is dealt with by Rule 24 (10) (a).

At least 10 days before the hearing you must give notice that you intend tendering the photographs in evidence and such notice shall invite the defendant to inspect the photographs and shall require him within five days of receipt of the notice to state whether he has any objection to the photographs being admitted in evidence without proof. (2)

5.3 This is dealt with by Rule 23.

#### NOTICE TO PRODUCE

Please take notice that at the trial of this action the defendant is required to produce the letter for demand sent to the defendant by an attorney demanding payment of a sum of money on behalf of his client arising out of an injury sustained by his client as a consequence of his being bitten by the defendant's dog and further that the Plaintiff requires to inspect and make copies of such document forthwith

DATED at.....This.....day of 200..... (3)

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#### QUESTION 6

[7]

This is governed by Rule 55 A.

6.1 The Defendant must file a notice addressed to the Plaintiff that he intends to amend his Plea and must give particulars of the amendment. If no objection is lodged, he must return the amended pages. (2)

- 6.2 Please take notice that the Plaintiff objects to the proposed amendment of Defendant's Plea. The grounds for the objection are that the effect of the amendment would be to withdraw the admission made by the Defendant in paragraph 3 of his Plea that Joe Bloggs was employed by the Defendant at the relevant time. (4)
- 6.3 I would apply orally at the hearing for leave to amend. (1)

### QUESTION 7

[25]

- 7.1
- She can claim for loss of support for herself and her minor children as the deceased, Mr. Cele was supporting them during his lifetime. (1)
  - She can also claim general damages (½) for her own injuries(½), medical and hospital expenses in the amount of R12 000.00 (½) and past and future loss of earnings. (½)
  - She can also claim in her personal and representative capacity as the natural mother and guardian of her minor child Ntombi who also sustained minor injuries in the said accident.(1) In her personal capacity she will claim Ntombi's hospital and medical expenses of R30 000.00(½) and in her representative capacity as the mother and guardian of her minor child, she can claim for general damages.(½)
- [5]
- 7.2 In the case of the widow up until the date her late husband would have retired.  
Until 18 years or after expiry of a reasonable period of time to complete their tertiary education in respect of the children
- [2]
- 7.3
- Deceased and Mrs. Cele's employers certificate detailing his earnings.
  - Death certificate.
  - Birth certificates of all five minor children.
  - Marriage certificate
  - Deceased and Mrs Cele's id documents
  - Liquidation and distribution account in Mr Cele's estate. (½each)
- [3]

- 7.4
- herself – 17 January 2004
  - Minor children – depending on their ages they will prescribe 3 years after attaining majority. [2]
- 7.5 Yes, the other driver was to blame. (1) Unlimited claim in respect of special and general damages. (1) [2]
- 7.6 Yes, the passengers have limited claims for R25 000 each in respect of special damages only. [1]
- 7.7 Lorraine cannot claim as deceased had no legal duty to maintain her. (1) The two children can claim as deceased was supporting them.(1) [2]
- 7.8 Yes. Her claims and those of the minor children will be limited however to R25 000 each in respect of special damages only (ie. Loss of support, medical and hospital expenses and loss of earnings) [2]
- 7.9 No. The payment is specifically excluded by the provisions of the Assessment of Damages Act. [2]
- 7.10 One allocates 2 parts of the deceased's income to himself, 2 parts to his widow and one part to each of the dependant children (ie. All five children) [2]
- 7.11 No. The Road Accident Fund cannot apply an apportionment in respect of the deceased's negligence in respect of the claim by the widow and the minor children. They are considered to be "innocent claimants". They only have to prove a degree of negligence on the part of the driver to succeed in full. (See Section 1 of the Apportionment of Damages Act No 34 of 1956. [2]



8.1

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PORT  
ELIZABETH HELD AT PORT ELIZABETH**

Case No. 336/03

In the matter between

**MR Z**

and

**THE STATE**

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**STATEMENT IN TERMS OF SECTION 112 (2)**

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I, MR Z,

do hereby admit that:

1. I am the accused in this matter and understand the nature of the charges against me.
2. I intend pleading guilty to both charges.
3. **CHARGE 1**
  1. I admit that on the 1st of June 2002 and on Cape Road, Port Elizabeth, I drove motor vehicle with registration letters and number BPX 101 EC.
  2. I admit that at the said time of driving the vehicle collided with a pedestrian, Mr Y.
  3. I admit that as a consequence of the injuries sustained by Mr Y in the aforesaid collision he died and I confirm and admit the contents of the post-mortem medical report of Dr Z relating to the post-mortem carried out on the deceased on the 2nd of June 2002.

4. I admit that I drove my vehicle in a negligent manner in that I failed to avoid a collision with a pedestrian when I could reasonably have done so and that I also failed to keep a proper lookout.

4. **CHARGE 2**

I admit that:

- 4.1 At the time of driving the said vehicle the alcohol contents of my blood, expressed in grams per 100ml of blood, exceeded, ,05%.
- 4.2 I admit that at all reasonable times I was aware of the fact that one may not drive a motor vehicle whilst the alcohol contents of one's blood exceeds ,05%.
- 4.3 I admit that at the time of the driving the alcohol contents of my blood was ,08% and that a blood sample was taken from my body within two hours of the collision, correctly and accurately analyzed at the relevant laboratory and found to be ,08%.
- 4.4 I accordingly plead guilty to both charges as set out above.

DATED at PORT ELIZABETH on this the      day of      2003.

---

Accused

(8)

8.2 **STATEMENT IN TERMS OF SECTION 115**

I, MR Z, do hereby declare that:

1. I am the accused in this matter and I understand the nature of the charges against me.
2. I plead not guilty to both charges.
3. I deny that I was the driver of a motor vehicle which allegedly collided with the deceased and put the State to the proof thereof.

DATED at PORT ELIZABETH on this the      day of      2003

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Accused

(4)

- 8.3 I will advise the Public Prosecutor of my instructions and either draft an Affidavit or call the accused to give evidence as to the reason for his erroneous plea of guilty in respect of culpable homicide. Thereafter the Court will be requested to change the plea in respect of culpable homicide from guilty to not guilty. The alcohol-related charge will naturally stand. (4)

**QUESTION 9**

**[9]**

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- 9.1 An accused who is in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2 may, before his or her first appearance in a lower Court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with investigation, if the accused pays at the police station the sum of money determined by such police official. (2)
- 9.2 Vide Section 60 (4)(a),(b),(c) and (d) (4)
- 9.3 The onus is upon the accused to adduce evidence to satisfy the Court that "exceptional circumstances" exist which permit his release. (2)
- 9.4 Appeal. (1)

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN  
ESTATES / BOEDELS  
PART 2 / DEEL 2**

**17 AUGUST / AUGUSTUS 2004**

**ANSWERS / ANTWOORDE**

**NOTE TO EXAMINER:** This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

**QUESTION 1**

**[65]**

FIRST AND FINAL LIQUIDATION AND DISTRIBUTION ACCOUNT IN THE ESTATE OF THE LATE **JOHN SITHOLE** WHO DIED ON 16 AUGUST 2003, IDENTITY NUMBER 600615 6432 078, AND WHO WAS UNMARRIED AT THE TIME OF HIS DEATH.

MASTER'S REFERENCE NUMBER: 37482/03

**[4]**

<b>LIQUIDATION ACCOUNT</b>			
<b>ASSETS</b>			
<b>IMMOVABLE PROPERTY</b>			
Remainder of portion 16 of the farm Silent Valley no 13 situate in the district of Musina measuring 618 hectares			
Held under deed of transfer T1234/84	(1)	1 800 000,00	(2)
(To be transferred to the trustees of the Sithole Family Trust in terms of clause 4 of the will)			
<b>MOVABLE ASSETS</b>			
45 Frisian cows (in milk)	(2)	450 000,00	(1)
2001 Mercedes Benz 5 ton truck	(3)	200 000,00	(1)
Safim Haymaker	(4)	180 000,00	(1)

2002 Toyota 1 ton diesel bakkie	(5)		250 000,00	(1)
2000 Mrs Fergusson tractor	(6)		610 000,00	(1)
(Items (2) – (6) awarded to the trustees of the Sithole Family Trust in terms of clause 5 of the will)				(1)
<b>Cash and Investments reduced to cash</b>				<b>[3]</b>
Credit balance on current account at ABC Bank, Musina Branch, account number 416 462 057	(7)		12 400,00	(1)
Fixed deposit at DEF Bank certificate number 375-308		R800 000,00		
Interest accrued to date of death		<u>R 65 000,00</u>	865 000,00	(2)
(Realized by the executor and paid into the estate bank account)	(8)			
<b>Insurance policies</b>				<b>[1]</b>
Proceeds of policy no 04362X with Phoenix Assurance Company on the life of the deceased	(9)		850 000,00	(1)
<b>LIABILITIES</b>				
<b>ADMINISTRATION COSTS</b>				<b>[14]</b>
<b>Advertisements</b>				
Section 29: creditors				
The Star	(10)	118,00		(1)
Government Gazette		20,00		(1)
Section 35: account for inspection				
The Star	(11)	118,00		(1)
Government Gazette		20,00		(1)
Master's fees		600,00		(2)
Executors remuneration: 3,5% on R5 217 400,00		182 609,00		(2)
Transfer costs: immovable property to beneficiary	(12)	22 000,00		(1)
Provision for bank charges	(13)	100,00		(1)
Postages and petties		50,00		(1)
<b>Valuation costs</b>				
P. Smith and Associates: valuation of immovable property		4 000,00		(1)

Johnson Auctioneers: valuation of Frisian cows	(15)	2 000,00		(1)
Protea Enterprises: valuation of items (3) – (6)	(16)	1 800,00		(1)
<b>Claims against the estate</b>				<b>[8]</b>
Agricultural Bank of South Africa: amount owing under mortgage bond no 4376/96				
Capital .....		R680 000,00		(1)
Interest till date of death .....	(17)	<u>R 72 000,00</u>	752 000,00	(1)
Condolences Funeral Parlour:				
Burial charges	(18)	6 000,00		(1)
Dr. P. Patel	(19)	500,00		(1)
Medicross Hospital	(20)	2 000,00		(1)
Hire Purchase Bank:				
amount owing on tractor	(21)	200 000,00		(1)
<b>TOTAL ASSETS</b>			<b>5 217 400,00</b>	
<b>TOTAL LIABILITIES</b>		<b>1 173 935,00</b>		
<b>PLUS: ESTATE DUTY PAYABLE BY ESTATE</b>		<b>565 767,60</b>		(1)
<b>BALANCE FOR DISTRIBUTION</b>			<b>3 477 697,40</b>	(1)

<b>RECAPITULATION STATEMENT</b>			<b>[6]</b>
Total cash in estate as per items (7) – (9)		1 727 400,00	(1)
Liabilities (R1 173 935,00 less debt in respect of tractor taken over by Trust viz R200 000,00)	973 935,00		(3)
Estate duty	565 767,60		(1)
CASH AVAILABLE FOR DISTRIBUTION	187 697,40		(1)
	<b>1 727 400,00</b>	<b>1 727 400,00</b>	

<b>DISTRIBUTION ACCOUNT</b>			<b>[8]</b>
Balance for distribution		3 477 697,40	(1)
<b>Distributed as follows:</b>			
1. To the trustees of the Sithole Family Trust, to be administered by them in terms of the will:			(2)
item (1)	1 800 000,00		
item (2)	450 000,00		
item (3)	200 000,00		
item (4)	180 000,00		(3)
item (5)	250 000,00		
item (6) less debt on tractor taken over by Trust	410 000,00		
	3 290 000,00		
2. To Jemima Sithole, widow, as residuary heir: cash	187 697,40		(1)
	<b>3 477 697,40</b>	<b>3 477 697,40</b>	(1)

ESTATE DUTY			[12]
<b>Property in terms of section 3(2)</b>			
Total assets as per liquidation account		5 217 400,00	(1)
<b>Less:</b> proceeds Phoenix Assurance Co	850 000,00		(1)
<b>Property deemed to be property in terms of section 3(3)</b>			
Proceeds of all domestic policies on life of the deceased:			
Phoenix Insurance Company		850 000,00	(1)
AJAX Life Assurance Corporation		950 000,00	(1)
<b>GROSS VALUE OF ESTATE</b>		6 167 400,00	
<b>Deductions in terms of section 4</b>			
Sections 4(a) – 4(d)	1 173 935,00		(1)
<b>NETT VALUE OF ESTATE</b>		4 993 465,00	(1)
<b>LESS:</b> Rebate in terms of section 4A	1 500 000,00		(1)
<b>DUTIABLE ESTATE</b>		3 493 465,00	(1)
Estate duty: 20% on dutiable amount	<b>698 693,00</b>		(1)
<b>Apportionment of estate duty:</b>			
Total estate duty payable		698 693,00	(2)
Payable by Jemima Sithole			
<u>950 000</u> x 698 693,00	132 925,40		
Payable by estate	565 767,60		(1)
	<b>698 693,00</b>	<b>698 693,00</b>	



**DEED OF ELECTION**

**[12]**

**ESTATE LATE HERMAN WOLF (NO 14/2002)**

I, the undersigned,

**SUSAN WOLF**

surviving spouse of the late HERMAN WOLF, to whom I was married in community of property, hereby declare as follows:

- 1 It was the intention of the deceased and I in our joint will dated 20 December 2000 to mass our respective half shares in our joint estate and to dispose of the whole massed estate upon the death of the first-dying in the manner set out in our said joint will. (1)
- 2 I am aware of the fact that I may either adiate or repudiate the said will, with the following consequences:
  - 2.1 If I adiate, I forfeit any claim to a half-share of the joint estate, but will be entitled to all the benefits in my favour in terms of the said will. (2)
  - 2.2 If I repudiate, I will be entitled to claim my half share of the joint estate, but will forfeit all benefits left to me in terms of the said joint will. (2)
- 3 I hereby elect to repudiate the said joint will. (1)
- 4 The legal consequences of adiation and repudiation have been explained to me, and I understand the said consequences. (2)
- 5 I understand that my election is binding on me and irrevocable. (1)

Signed at Bloemfontein on this the 23<sup>rd</sup> day of July 2003.

As witnesses:

1 \_\_\_\_\_

\_\_\_\_\_  
SURVIVING SPOUSE

2 \_\_\_\_\_

**CERTIFICATE**

I, the undersigned,

SAREL CILLIERS

hereby certify that SUSAN WOLF signed the above Deed of Election in my presence after I had explained to her the legal implications thereof, and she acknowledged that she understands same. (2)

Signed at Bloemfontein on this the 23<sup>rd</sup> day of July 2003.

\_\_\_\_\_  
COMMISSIONER OF OATHS  
SAREL CILLIERS  
PRACTISING ATTORNEY RSA  
96 CHARLES STREET  
BLOEMFONTEIN (1)

**DISTRIBUTION ACCOUNT****[11]**

1. Balance for distribution	(1)		500 000,00
2. One half awarded to SUSAN WOLF, surviving spouse, in terms of her marriage in community of property to the deceased	(2)	250 000,00	
The award comprises:			
½ share of house		R200 000,00	
Cash		<u>R 50 000,00</u>	
		<u>R250 000,00</u>	
3. Awarded to PIERRE WOLF, major son of the deceased, in terms of the will	(2)	200 000,00	
The award comprises a half share of the house			
	(1)		
4. Awarded to SUSAN WOLF, surviving spouse, the residue in terms of section 1 (1) (c) of the Intestate Succession Act, No 81 of 1987		50 000,00	
The award comprises cash	(3)		
		<u>500 000,00</u>	<u>500 000,00</u>

**QUESTION 3****[7]**

If a descendant of the deceased renounces his right to inherit, his descendants inherit *per stirpes* (§ 2 C.(2) of the Wills Act, No 7 of 1953).

(2)

If a descendant dies before the deceased or renounces his rights after the death of the deceased, leaving no descendants, his inheritance devolves upon his co-heir(s) in terms of the *jus accrescendi*.

(3)

Thus, if Y, Y<sub>1</sub>, Y<sub>2</sub> and Z renounce their inheritances, X inherits the whole estate.

(2)

**NOTE:** The answer would be different if X, Y and Z were appointed heirs in equal shares.

The second wife **B** is entitled to half the joint estate by virtue of her marriage in community of property to the deceased. (2)

If **H** had died within three months of his divorce, his first wife **A** would not have inherited —section 2 B of the Wills Act. Having died more than three months after his divorce, and not having changed his will, **A** inherits the remaining half share of the joint estate in terms of the will. (3)

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN  
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK  
PART 3 / DEEL 3**

**18 AUGUST / AUGUSTUS 2004**

**ANSWERS / ANTWOORDE**

**NOTE TO EXAMINER:** This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

**QUESTION 1**

**[10]**

Dear Mrs Smith

I would like to inform you that as a result of the insolvency of your husband legal consequences in regard to your estate do ensue.

Section 24 of the Insolvency Act (No 24 of 1936) provides that where the spouse of an insolvent person is in possession of any property, such property may be claimed by the insolvent's trustee and in this event the property is deemed to be the property of the insolvent and could therefore form an asset in his insolvent estate.

If your husband is in possession of any of your assets you would have to take steps to recover those assets. You would have to lodge a claim, normally by way of an affidavit, with the trustee for release of your property. You will have to furnish the trustee with proof establishing your ownership.

If the trustee refuses to release the goods, it will be necessary to obtain a court order in order to compel him to do so. If this step becomes necessary I shall advise you further at a later stage of what such action entails.

Yours faithfully

**QUESTION 2****[5]**

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VAT is payable

- (a) on the supply by a registered vendor of goods or services supplied by him in the course or furtherance of any enterprise carried on by him;
- (b) on the importation of any goods into the RSA by any person; and
- (c) on the supply of any imported services by any person.

See Section 7 of the VAT Act no 89 of 1991.

**QUESTION 3****[19]**

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- 3.1 The issue whether there is a danger of a contribution being payable by your client. A contribution is payable when there are not enough funds in the estate to defray the necessary costs of liquidation and realization of assets in which event a contribution becomes payable by those (concurrent) creditors which proved claims, on a pro rata basis. (5)
- 3.2
- a) Resolution by your client
  - b) Special power of attorney
  - c) Affidavit
  - d) Statement of account and/or other documentary proof of the claim
- (4)
- 3.3 "We confirm that the claim forms have now been submitted to the Liquidator who will see to it that the claim will be proved at the next meeting of creditors.

After the second meeting of creditors, and provided no special meetings are held, the Liquidator has to draw his account and submit same to the Master of the High Court who will inspect same, prepare a

list of queries or approve the account and allow the liquidator to advertise the fact that the account will be confirmed. Thereafter, the liquidator will make a distribution in terms of the account and will pay dividends to the proved creditors insofar as they have not been paid earlier."

(10)

**QUESTION 4**

**[12]**

The issue involved in this question is the indemnity of the seller by the purchaser. If the seller has employed agents and is likely to be responsible towards them for commission he must be sure that the purchaser who approaches him directly has not in fact been introduced by an agent. In addition, it is likely that if the seller sells directly, he will have discussed a reduction in the purchase price because he will be relieved of paying commission. These factors must be taken into consideration. I suggest, therefore, an answer along these lines:

- 4.1 The purchaser confirms that this contract was entered into without the purchaser having been introduced to the seller directly or indirectly by any estate agent or that any agent was the effective cause for the conclusion of this contract of sale.
- 4.2 As a result of the sale by the seller to the purchaser on these grounds the purchase price has been reduced by an amount equal to the expected agent's commission.
- 4.3 The purchaser consequently indemnifies the seller against any legitimate claim which may be brought against the seller for agent's commission arising from this sale. The seller shall call upon the purchaser to assist the seller in any actual or threatened litigation arising from any claim for commission and shall put the seller in funds to do so. The seller shall however be free to decide on the best manner of settlement of any such action. Any costs or charges including legal fees on all scales and any capital sum payable shall be recoverable from the purchaser as liquidated damages.

**QUESTION 5****[15]**

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The reference to the date is important as it happened after 1 November 1984 when the Matrimonial Property Act came into force.

I would advise the husband, your client, that although the Accrual System applies in respect of his marriage out of community of property (because it was not expressly excluded) see Section 2 of the Matrimonial Property Act 88 of 1984) nevertheless inheritances, legacies or donations or assets which are acquired from inheritances, legacies or donations do not form part of the accrual of his estate unless otherwise agreed in the Antenuptial Contract. As the Antenuptial Contract which was concluded is silent, the inheritance is excluded.

**QUESTION 6****[10]**

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6.1 It is agreed that ownership in the vehicle shall remain vested in the seller until such time as the purchase price is paid in full notwithstanding delivery thereof to the purchaser. In the event of the Purchaser's default in making any payment in respect of the purchase price the seller shall be entitled to cancel this agreement forthwith and to take possession of the vehicle.

(5)

6.2 Until such time as the purchase price is settled in full the purchaser shall keep the vehicle insured at his cost with an insurance company approved by the seller. The purchaser shall also ensure that the seller's interest in the vehicle is endorsed against the insurance policy and shall furnish the seller with proof of such insurance and endorsement.

(5)



**7.1 DRAWINGS AND DIVISION OF PROFIT AND LOSS:**

7.1.1 The partners shall share equally in all profit and loss;

7.1.2 The partners shall be entitled to draw an agreed monthly amount as remuneration for their services, which amount shall be determined from time to time;

7.1.3 Profits remaining after payment of monthly drawings as determined by the auditors of the partnership shall accrue to partners every six months.

(4)

**7.2 CONTRIBUTIONS BY PARTNERS**

The first and second partner shall each contribute R25 000 in cash to the capital of the partnership, payable within seven days of the signing of the agreement.

(2)

**7.3 DISSOLUTION**

7.3.1 The partnership shall automatically be dissolved on:

7.3.1.1 the death of a partner;

7.3.1.2 the voluntary or compulsory sequestration of a partner's estate.

7.3.2 Each partner shall be entitled to dissolve the partnership by giving three months written notice of termination to the other party without stating any reasons;

7.3.3 Either partner can summarily terminate the partnership in the event of:

- 7.3.3.1 breach of a material term of this agreement by the other partner; or
- 7.3.3.2 misconduct by the other party which breaches the utmost good faith between partners; or
- 7.3.3.3 conviction of the other party of theft, fraud, forging or uttering; or
- 7.3.3.4 mental or physical incapacity of the other party to perform his duties.

(8)

**QUESTION 8**

**[15]**

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To on my behalf as my attorney and agent subscribe for one share in a company to be registered with a name XYZ (Pty) Ltd and to on my behalf sign the following documents required for the registration of the company and to obtain a certificate to commence business for it .

1. The Memorandum and Articles of Association
2. The Application for a certificate to Commence Business (CM46)
3. The Notice stating the registered office (CM22)
4. The consent to act as Director (CM27)
5. The return of Director and Auditor (CM29)
6. The statement re the adequacy of capital (CM47)

To lodge the above documents with the Registrar of Companies for registration.

To make any amendments thereto which may be required by the Registrar and to uplift the Certificate of Incorporation and Memorandum and Articles of Association once registration has been effected and generally to do everything that may be necessary on my behalf to effect registration of the company and to obtain a certificate to commence business therefore.

**NOTE TO EXAMINER**

In setting out the forms which must be signed the candidate may either state the number of the form or describe its purpose.

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN  
BOOKKEEPING / BOEKHOUD  
PART 4 / DEEL 4**

**18 AUGUST / AUGUSTUS 2004**

**ANSWERS / ANTWOORDE**

**NOTE TO EXAMINER:** This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

**QUESTION 1**

**[10]**

1. VAT charged by Attorney for services (1)  
VAT paid by Attorney for goods acquired (1)
2. To record all fee debits (1)
3. Yes (1)
4. To reconcile the Trust Cash book Balance with the total of all the Trust Creditors (1)
5. Investment for client's benefit [78(2)(a)] and investment for Fidelity Fund's benefit (2)
6. Credit the incorrect ledger account and debit the correct ledger account (1)
7. No (1)
8. No (1)

**QUESTION 2****[20]****SUPPLEMENTARY CASH BOOK – June 2002**

Deposit	10 000	Overdraft	65 000
Overdraft balance	58 500	Interest	1 000
		R/D Cheque	500
		Stop order	2 000
	68 500		68 500

**BANK RECONCILIATION STATEMENT AT 30 JUNE 2002**

Overdraft as per bank statement	47 000
ADD outstanding cheques	9 000
	56 000
LESS outstanding deposit	5 000
	51 000
LESS error (trust cheque)	1 500
	49 500
ADD error (trust deposit)	9 000
Overdraft as per Cash Book	58 500

**QUESTION 3****[30]**

3.1

**TRUST CASH BOOK**

Solly	100 000	Second Bank – Solly	100 000
Second Bank	25 000	Counsel	15 000
Dorothy	250 000	Third Bank – Dorothy	200 000
Various clients	350 000	First Bank	300 000
Dorothy	25 000	Receiver of Revenue	20 000
		Transfer duty	
First Bank	202 400	Law Society	2 400
Martin	50 000	Stock Broker	29 600
Stock Broker	34 800	Balance	370 200
	1 037 200		1 037 200

**SOLLY TRUST ACCOUNT**

Counsel	15 000	Bank	100 000
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**TRUST INVESTMENT 78(2)(a) – SOLLY**

Second Bank	100 000	Second Bank	25 000
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**DOROTHY – TRUST ACCOUNT**

Receiver of Revenue	20 000	Bank – Deposit	250 000
		Bank – Costs	25 000

**TRUST INVESTMENT 78(2)(a) – DOROTHY**

Third Bank	200 000		
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**VARIOUS CLIENTS – TRUST ACCOUNTS**

		Bank	350 000
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**SECTION 78(2)(a) TRUST INVESTMENT**

First Bank	300 000	First Bank	200 000
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**FIDELITY FUND**

Law Society	2 400	First Bank	2 400
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**MARTIN TRUST ACCOUNT**

Purchase of shares	29 600	Bank	50 000
		Sale of shares	34 800

3.2

**List of Trust Creditors**

Solly	85 000
Dorothy	255 000
Sundry clients	350 000
Martin	55 200
<b>Total trust liabilities</b>	<b>745 200</b>

3.3

**Trust funds available**

As per trust cash book	370 200
Section 78(2A)	
Solly	75 000
Dorothy	200 000
Section 78(2)(a)	100 000
	<b>745 200</b>

**NOTE TO EXAMINER:**

**½ mark for each entry**

**½ mark for title headings on trust investments**

**2½ marks discretionary**

**1 mark for each entry and totals of 3.2 and 3.3**

**QUESTION 4****[40]****TRUST CASH BOOK**

Correspondent	1 048-40	Transfer to Business Account Beauty	820-80 227-60
	1 048-40		1 048-40

**CORRESPONDENT TRUST ACCOUNT**

Beauty transferred	3 300-00	Bank – self	1 048-40
Transfer to Business	820-80	Beauty F&D	1 184-40
		- vs Beart	1 888-00
		- divorce	
	4 120-80		4 120-80

**BEAUTY TRUST ACCOUNT**

Correspondent F&D		Correspondent - Beart	3 300-00
- vs Beart	1 184-40		
- divorce	1 888-00		
Bank self	227-60		
	3 300-00		3 300-00

**CORRESPONDENT BUSINESS ACCOUNT**

1/3 Allowance due	820-80	Transfer from Trust	820-80
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**FEES**

		Correspondent 1/3 allowance	720-00
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**OUTPUT VAT**

		Correspondent 1/3 allowance	100-80
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**BUSINESS CASH BOOK**

Transfer from Trust	820-80		
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### TRUST JOURNAL

Correspondent Trust Account Beauty Trust Account <i>Transfer cash collected from debtor</i>	3 300-00	3 300-00
Beauty Trust Account Correspondent Trust Account <i>Correspondent's fees and disbursements vs Beart</i>	1 184-40	1 184-40
Beauty Trust Account Correspondent Trust Account <i>Correspondent's fees and disbursements – divorce</i>	1 888-00	1 888-00

### FEES JOURNAL

Correspondent Business Account Fees Output VAT <i>1/3 Allowance due</i>	820-80	720-00 100-80
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### TRANSFER JOURNAL

Correspondent Trust Account Correspondent Business Account <i>Transfer 1/3 Allowance</i>	820-80	820-80
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### ACCOUNTING STATEMENT TO BEAUTY

<u>Self vs Beast</u>		
Paid correspondent's - fees	960-00	
disbursements	90-00	
VAT	134-40	
Cash collected from Beast		3 300-00
<u>Divorce</u>		
Paid to correspondent's - fees	1 200-00	
disbursements	520-00	
VAT	168-00	
Cheque herewith	227-60	
	3 300-00	3 300-00