

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

**16 AUGUST / 16 AUGUSTUS 2005**

**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**

**[12]**

- 1.1. 15 years, that is until deceased would have retired. (1)
- 1.2. 8, 10 and 12 years respectively,(1) that is up to 18 years of age plus 4 years at varsity. (1) (2)
- 1.3. The income of the deceased would be apportioned on the basis of two parts to the deceased, two parts to the surviving spouse and one part to each dependant child. (2)
- 1.4. By virtue of the provisions of Section 1(1) of the Assessment of Damages Act, No. 9 of 1969, no insurance money or pension benefit will be taken into account when calculating the loss of support. (1) In other words, insurance and pension benefits payable to dependants are not deductible from damages recoverable by a third party due to the death of the breadwinner. (1) (2)
- 1.5. The inheritance, which the widow will receive from the estate, will be taken into account when calculating her loss of support. This is considered as an accelerated benefit. (1)
- 1.6. On 24<sup>th</sup> June 2007. (1)
- 1.7. An actuary. (1)
- 1.8. A widow, claiming compensation for the loss of support consequent upon the death of her husband, is not required to mitigate her loss by finding employment and no allowance should be made in respect of her earnings or earning capacity. (1) What she has lost is a right – the right of support. She cannot be required to mitigate that loss by incurring the duty of supporting herself (1) see **(Peri Urban Areas Health Board versus Munarin 1965 Volume 3 AD 367)**.  
  
In the premises, the income that the widow earns will not be taken into account in assessing the claim for loss of support. (2)

## **QUESTION 2**

**[3]**

- 2.1 By registered post – see Section 24 (1)(b). (1)
- 2.2 On the day documents were dispatched by registered post. (1)
- 2.3 By producing the registered slip. (1)

## **QUESTION 3**

**[5]**

The first investigation is to ascertain when the kombi taxi had a valid permit issued to it by the Road Transportation Board. (1)

- 3.1 If the taxi had a valid permit, your client will be entitled to claim a maximum amount of R25 000,00 both in respect of special and general damages. (Special damages comprises past and future medical and hospital expenses and past and future loss of earnings). (1)

If the taxi did not have a permit, our client's claim is limited to R25 000,00 but only in respect of special damages. The Road Accident Fund will not pay any amount for general damages.(1) (3)

- 3.2 In both instances, irrespective of whether the taxi had a valid permit or not, your client will be able to claim the balance of whatever amount that he failed to recover from the Road Accident Fund from the driver/owner of the taxi.(½) For example, if the taxi had a permit and the claims for both special and general damages are in excess of R25 000,00, client could claim the excess from the driver/owner.(½)

If the taxi did not have a valid permit, your client will recover any special damages in excess of R25 000,00 and his general damages. (1) (2)

## **QUESTION 4**

**[1]**

An interrogation and the insistence of an affidavit is only competent before action has been instituted. The Road Accident Fund cannot request your client to submit to an interrogation and to swear to an affidavit once action has been instituted - (see **Sibisi vs MMF 1993 (2) 629 WLD**)

**QUESTION 5****[4]**

In **Du Plessis and Another versus The Road Accident Fund {2001(4) 0040 NPD}** the minor child duly assisted by his father and his father sued the then MMF Fund for loss and damage suffered by each of them in consequence of the injury sustained by the minor child. The minor child sued for general damages and the father lodged a claim for past medical and hospital expenses.

The Court held that each claimant is entitled to claim to a maximum amount of R25 000,00 against the Road Accident Fund.

In the present instance:-

- (i) the minor child duly assisted (1) can claim R25 000,00 for general damages; (1)
- (ii) the father in his capacity as father and natural guardian can claim for past medical and hospital expenses limited to R25 000,00. (2)

**QUESTION 6****[12]**

- 6.1 No [1]. An attorney has right of appearance only in the division in which he practises as an attorney and is enrolled as such. [1] (2)
- 6.2 No. This is an interlocutory application which does not finally dispose of any aspect in dispute between the parties. (2)
- 6.3 Defendant is Jeff Madebe *nomine officio* cited as such in his capacity as executor in the estate of the late Peter Bloom by virtue of an appointment made by the master of the High Court on the \_\_\_\_\_ of \_\_\_\_\_ 2005 a copy of same is appended hereto as annexure "A". (2)
- 6.4

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**SPECIAL PLEA**

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- 1. Plaintiff's claim against defendant arises from a written agreement entered into between the parties and annexed to plaintiff's particulars of claim as annexure "A".
- 2. Clause 10 of the agreement reads as follows:  
"-----"
- 3. By virtue of the aforementioned any dispute between the parties should be referred to arbitration and consequently the jurisdiction of the above Honourable Court has been excluded by agreement.

4. Wherefore defendant pleads for an order that
- 4.1. The present action between the parties be stayed until the arbitration has taken place. (been finalised)
- 4.2. That the costs be paid by the plaintiff (4)
- 6.5
- 6.5.1 The company (Resp) (1/2)
- 6.5.2 The receiver of revenue (1/2)
- 6.5.3 Employees of the respondent (union) (1/2)
- 6.5.4 The master of the High Court (1/2)

**[2 marks]**

**QUESTION 7**

**[13]**

- (a)
1. Plaintiff is AB, an adult male dental surgeon resident at 10 Gold Avenue, Morningside, Johannesburg, Gauteng and practising his profession at XYZ, Morningside, Johannesburg. (1/2)
2. Defendant is Sunshine Wash & Wax (Pty) Ltd, a company duly registered and incorporated according to the Company Law of the Republic of South Africa and with registered address at Ultra City Centre, Sandton, Johannesburg. (1/2)
3. The above Honourable Court has jurisdiction to entertain Plaintiff's claim as the Defendant's registered address falls / the agreement referred to herein after was concluded within the area of jurisdiction of the above Honourable Court. (1/2)
4. On or about the 5<sup>th</sup> of June 2004 and at Defendant's said premises Plaintiff, acting personally and Defendant, represented by one Eric Smith he being duly authorised thereto, entered into an oral agreement in terms of which inter alia: (1 1/2)
- a) Defendant undertook to attend to wash Plaintiff's 2001 model Mercedes Benz 230E motor vehicle; (1/2)
- b) Plaintiff undertook to pay to Defendant the amount of R50.00 being Defendant's usual charges on completion of the service to be rendered; (1/2)
5. Defendant would return the said vehicle to Plaintiff after it had been washed it was an express, alternatively tacit, alternatively implied term of the said agreement between the parties that Defendant would return Plaintiff's vehicle to him after it had been washed. (1)
6. Plaintiff deposited the said vehicle with Defendant on the said date. (1)

7. In breach of the said agreement Defendant has, despite demand, failed to return the vehicle to Plaintiff. (1)
  8. The fair and reasonable market value of the said vehicle at the time of conclusion of the said agreement amounted to R220 000.00. (1)
  9. Alternatively in the event of Defendant being unable to return to Plaintiff, Plaintiff's vehicle as aforesaid, Plaintiff has suffered damages in the sum of R220 000.00. (1)
  10. Wherefore Plaintiff prays for judgment against Defendant in the following terms: (1)
    - a) Payment of the sum of R220 000.00. (1)
    - b) Interest on the said sum at the prescribed rate *a tempora morae*. (1)
    - c) Costs of suit; (½)
    - d) Further of alternative relief;
- (b) WLD or TPD. (1)

## **QUESTION 8**

**[15]**

8.1

IN THE REGIONAL COURT FOR THE DISTRICT OF PRETORIA HELD AT PRETORIA

Case No.

In the matter between

MR JONES

Appellant

And

THE STATE

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## NOTICE OF APPEAL

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BE PLEASED TO TAKE NOTICE THAT the Appellant hereby notes an Appeal to the Eastern Cape Division of the High Court of South Africa against the sentence imposed upon him by the Regional Magistrate on the 23<sup>rd</sup> of January 1997.

The grounds of Appeal are as follows:

1. The sentence imposed upon the appellant induces a sense of shock;
2. The learned Magistrate failed to take into consideration the personal circumstances of the Appellant and in particular that he is a first offender, is married and supports a wife and three minor children and is in fixed employment;
3. The Magistrate erred in not taking into consideration the circumstances under which the offence was committed and in particular that the accident happened early in the morning on a deserted rural road and the degree of negligence was fairly slight.
4. The Court erred in not considering the imposition of one of the following sentences:
  - 4.1 A fine which the Appellant was well capable of paying;
  - 4.2 A period of imprisonment wholly suspended subject to conditions;
  - 4.3 The imposition of a fine coupled with a period of suspension, both suspended in their entirety;
  - 4.4 The imposition of periodical imprisonment;
  - 4.5 The imposition of correctional supervision in terms of Section 276(1)(h).

DATED at PRETORIA on this the 19 day of February 1997.

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Appellant's attorneys

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THE CLERK OF THE COURT  
PRETORIA

AND TO: THE HONOURABLE MAGISTRATE  
MR JACOBS  
c/o CLERK OF THE COURT  
PRETORIA

(10)

8.2 Power of Attorney (1)

8.3 Within fourteen (14) days of date of conviction and to be lodged with the Clerk of the Court. (2)

8.4 An application for condonation will have to be brought and an Affidavit filed by the Appellant and possibly by any other person who can assist (possibly an attorney acting on behalf of the Appellant). (2)

**QUESTION 9** **[5]**

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The prosecution will put the charge to the accused; the accused will plead; the prosecution will then present its case by the calling of witnesses until such time as all evidence has been presented and the case of the State is closed. The accused will be entitled to ask for the discharge in terms of Section 174, close his case or alternatively present his case by giving evidence himself and/or calling witnesses. After conclusion of the defence case, the prosecution and defence will be called upon to address the court. The Court will thereafter pronounce judgement. In the event of the accused being found guilty, the accused and prosecution will both be entitled to lead evidence, in mitigation and aggravation of sentence. Sentence will thereafter follow and possible appeal proceedings.

**QUESTION 10** **[1]**

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No.

**QUESTION 11****[4]**

In terms of Section 113 a court is, at any stage of the proceedings and before sentence is passed, entitled to change a plea from guilty to not guilty. This will occur if the court is in doubt whether the accused is in law guilty of the offence or if it appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any allegation or that the accused has a valid defence to the charge. (Vide Section 113).

In these circumstances, the accused's representative will advise the court that the accused has in turn advised the representative as to the circumstances under which the accused pleaded guilty and in particular that the accused failed to advise to the Court as to his true defence. It may be necessary to call the accused to give evidence in these circumstances. The accused is merely required to give an explanation and there is no onus on him to convince the Court of the truth of his explanation. Even though his explanation be improbable the Court is not entitled to refuse the application unless it is satisfied that beyond reasonable doubt it is false.

**QUESTION 12****[3]**

- a) Yes. (1)
- b) Yes. (1)
- c) No, (damages). (1)

**QUESTION 13****[7]**

1. The Plaintiff is the lessor of the property at West Street, Durban, which is leased to the Defendant under a written agreement, a copy of which is attached marked "A".
2. Defendant has failed to pay its rental for the months of May and June 2005 in the sum of R30 000,00.
3. Clause 17 of the lease provides that if the Defendant fails to pay rent on due date the Plaintiff may cancel the lease and eject the Defendant.
4. On 30 June 2005 the Plaintiff cancelled the lease by reason of such default in rent.



WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AGAINST THE DEFENDANT FOR:

- i) An Order for the ejection of the Defendant from the premises at 2 West Street, Durban;
- ii) Rent in the sum of R30 000,00;
- iii) Interest at the rate of 15.5% per annum from such date of such rent till date of payment.
- iv) Damages for wrongful holding over of the premises calculated at the rate of R15 000,00 per month from 1 July 2005;
- v) Costs.

***(NOTE THIS IS NOT RESIDENTIAL PROPERTY SO THE TENANT ENJOYS NO PROTECTION)***

**QUESTION 14** **[5]**

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- i) Serve a notice of intention to amend. (1)
- ii) Serve a notice that he opposes the amendment setting out the basis of his opposition. (3)
- iii) Serve the amended pages of the summons. (1)

**QUESTION 15** **[4]**

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- |      |     |       |
|------|-----|-------|
| 15.1 | No  | (1/2) |
| 15.2 | Yes | (1/2) |
| 15.3 | Yes | (1/2) |
| 15.4 | No  | (1/2) |
| 15.5 | No  | (1/2) |
| 15.6 | Yes | (1/2) |
| 15.7 | No  | (1/2) |
| 15.8 | No  | (1/2) |

**QUESTION 16** **[2]**

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- 16.1 Serve a notice to plead / notice of bar. (1)
- 16.2 Apply for default judgment. (1)

**QUESTION 17****[3]**

Application for arrest *tamquam suspectus de fuga*. (1)

Affidavit. (1)

Draft Order of Court. (1)

**QUESTION 18****[1]**

Interpleader.

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN**  
**ESTATES / BOEDELS**  
**PART 2 / DEEL 2**  
**16 AUGUST 2005 / 16 AUGUSTUS 2005**

**ANSWERS/ANTWOORDE**

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**QUESTION 1**

**[56]**

<b>LIQUIDATION ACCOUNT</b>				
<b>ASSETS</b>				
<b>IMMOVABLE PROPERTY</b>				
Farm 188 Mariko, Registration Division JR, Province Gauteng, Measuring 2000h, Held by Deed of Transfer No T869.1970 Valued at	1		1 400 000,00	[1]
[Awarded and transferred to the surviving spouse in terms of and subject to the provisions of clause 4 of the will]				[1]
<b>MOVABLE PROPERTY</b>				
<u>Furniture and Fittings</u> Valued at	2		90 000,00	
<u>Tractors</u> Valued at			110 000,00	[1]
[Awarded to the surviving spouse in terms of clause 3 of the will]	3			[1]
<u>Policy</u> Proceeds of Sanlam policy No. 159345X8	4		200 000,00	[2]
<u>Cash</u> FNB - Fixed Deposit No. 34268	5			
Capital		90 000,00		[1]
Interest to date of death		<u>6 000,00</u>	<u>96 000,00</u>	[1]
Total Assets			<u>1 896 000,00</u>	

<b>LIABILITIES</b>				
<u>Administration costs</u>	6			
<u>Advertising for Debtors and Creditors</u>				
Government Gazette		22,00	228,00	[1]
Volksblad		<u>206,00</u>		[1]
<u>Advertising Account for Inspection</u>	7			
Government Gazette		22,00	228,00	[1]
Volksblad		<u>206,00</u>		
Master's fees [maximum]	8		600,00	[1]
Executor's fees at 3,5% on R1 896 000,00	9		66 360,00	[1]
VAT @ 14% on (R66 360,00)			9 290,40	[2]
P Brown - Valuation costs - farm	10		1 400,00	[1]
K Bam - Valuation costs movable property	11		1 040,00	[1]
T Bald - Valuation costs Land Bank Valuation	12		1 000,00	[1]
S Naidoo - Transfer costs farm	13		54 953,60	[1]
Bond cancellation costs			1 500,00	[1]
Bank charges	14		50,00	[1]
Postages and petties	15		50,00	[1]
			<b>136 700,00</b>	
<b>CLAIMS AGAINST THE ESTATE</b>				
Saffas Funeral expenses	16		5 400,00	[1]
Receiver of Revenue - final assessment	17		1 000,00	[1]
Sanlam - loan against policy	18		20 000,00	[1]
African Bank - bond	19		40 000,00	[1]
<b>TOTAL LIABILITIES</b>		<b>203 100,00</b>		
<b>ESTATE DUTY</b>			<b>Nil</b>	
<b>BALANCE FOR DISTRIBUTION</b>		<b>1 692 900,00</b>		<b>[1]</b>
		<b>1 896 000,00</b>		

<b>RECAPITULATION STATEMENT</b>			
Cash as per items 4 and 5		296 000,00	[1]
<b>LESS:</b>			
Liabilities	203 100,00		[1]
Cash Legacies	25 000,00		[1]
Estate Duty	Nil		
Cash Surplus	67 900,00		[1]
	<b>296 000,00</b>	<b>296 000,00</b>	
<b>DISTRIBUTION ACCOUNT</b>			
Balance for distribution		1 692 900,00	[1]
Awarded to: Sophie Steyn, surviving spouse, in terms of clauses 3 and 4 of the Will	1 610 000,00		[1]
Award consists of:			
Immovable property	R1 400 000,00		[1]
Movable property	R 200 000,00		[1]
Cash	<u>R 10 000,00</u>		[1]
Awarded to: Tshwane Municipality, a cash legacy in terms of clause 5 of the Will	5 000,00		[1]
Awarded to: Oxford University, a cash legacy in terms of clause 5 of the Will	10 000,00		[1]
Awarded to: David Steyn, major son, the residue in terms of clause 6 of the Will	67 900,00		[1]
Awards consists of:			
Cash	<u>R67 900,00</u>		[1]
	<u>1 692 900,00</u>	<u>1 692 900,00</u>	

<b>INCOME AND EXPENDITURE ACCOUNT</b>				
Interest - FNB			4 000,00	[1]
<b>EXPENDITURES</b>				
Executor's fees at 6% on R4 000		240,00		[1]
VAT on Executor's fees (14% on R240,00)		33,60		[1]
Balance for distribution		3 726,40		
		<u>4 000,00</u>	<u>4 000,00</u>	
<b>DISTRIBUTION ACCOUNT</b>				
Balance for distribution			3 726.40	
Awarded to:				
David Steyn, major son as residuary heir		3 726.40		[1]
		<u>3 726.40</u>	<u>3 726.40</u>	
<b>FIDUCIARY ASSETS ACCOUNT</b>				
None			Nil	[1]
<b>ESTATE DUTY ADDENDUM</b>				
<u>Property of the deceased</u>				
Assets as per liquidation account			1 896 000,00	[1]
<u>Less:</u> Difference in Land Bank valuation		200 000,00		[1]
<u>Less:</u> Policy payable to estate		200 000,00		[1]
<u>Property Deemed to be Property</u>				
Policy payable to estate			200 000,00	[1]
Gross value of the estate			1 696 000,00	

<u>Deductions - Section 4</u>				
Costs of Administration and Claims		203 100,00		[1]
Bequest to Municipality		5 000,00		[1]
Benefits to Surviving Spouse - Section 4(q)				
Bequest in terms of the Will (R1 610 000,00 less R200 000,00 - adjustment to value of farm)		1 410 000,00	<u>1 618 100,00</u>	[2]
Net value of the estate			<u>77 900,00</u>	[1]
Less: Primary Rebate - Section 4A			1 500 000,00	[1]
Dutiable Amount			Nil	[1]
Estate Duty at 20% on R0,00			Nil	

**QUESTION 2**

**[25]**

**JOINT WILL**

We, the undersigned,

HERMAN AND WILMA JOHNSON,

spouses married to each other out of community of property and residing at Bloemfontein, declare this document to be and contain the last will of both of us. [2]

1.

We hereby revoke all wills previously made by us, whether jointly or separately. [2]

2.

We appoint the survivor of us to be the sole heir of the first-dying, subject to the provisions of paragraph 3 below. [1]

**AS WITNESSES:**

1. ....

.....  
TESTATOR

2. ....

.....  
TESTATRIX

3.

Should we die simultaneously, or within 21 days of each other without the survivor of us having made a further will apart from this our will, we leave the estates of both of us to our son, Peter, or to our children should further children be born to us. [3]

4.

Should any child not yet have attained the age of 25 years at the time of our death, the share of such child is left to our Trustee in trust for such child, upon the following terms and conditions: [3]

(a) The income (and, if necessary, the capital) of the trust shall, in the absolute discretion of our Trustee, be applied towards the maintenance, education (including post-matriculation education) and general advancement in life of our child. [2]

(b) The trust shall terminate upon our child attaining the age of 25 years, whereupon the trust capital plus accumulated income shall be paid over and delivered to the child. [2]

5.

We nominate as our executor and as trustee of the trust(s) referred to in paragraph 3 above, our attorney HONEST JOE. We grant unto our executor and trustee all such powers as are allowed by law, including the power of assumption, and we direct that no executor or trustee shall be obliged to furnish security for the due and faithful performance of his or her functions. [4]

6.

No benefit accruing to any person by virtue of the provisions of this our will, shall form part of the joint estate of the beneficiary and any present or future spouse of his or hers. Such benefit shall also be excluded from the accrual of any present or future marriage of the beneficiary which may be subject to the accrual system. [3]

Thus done and signed at Bloemfontein on this 19<sup>th</sup> day of July 2004 by the Testator, the Testatrix and the undersigned witnesses, all being present at the same time. [2]

**AS WITNESSES:**

.....

.....  
TESTATOR

.....

..... [1]  
TESTATRIX



**QUESTION 3**

**[7]**

The Testator attempted to amend his will, and in terms of Section 2(1)(b) of the Wills Act (1), he and two competent witnesses should sign at the amendment (1). Because no witnesses signed, the amendment is invalid (1) and Anna will inherit (1).

Elsie can approach the High Court (1) and if she can prove to the Court that it was the intention of the testator to effect the amendment (1), the Court can order the amendment to be accepted even if it was not formally correct (Section 2(3)) (1).

**QUESTION 4**

**[7]**

In view of the fact that Simon died within three months after he was divorced, section 2(B) of the Wills Act will be applicable (2).

Susan is considered to have died before the dissolution of the marriage (1) and she will therefore not benefit under the Will (1), and the estate devolves according to the law on intestate succession (1).

As Simon has died without leaving children, his new wife, Mary, will be the sole beneficiary in terms of the Succession Act of 1987. (2)

**QUESTION 5**

**[5]**

Mrs A receives one half of the joint estate by virtue of the marriage in community of property : R300 000,00.

**[2]**

The deceased's half share devolves as follows:

Daughter B	cash bequest of	R100 000,00	<b>[2]</b>
Son C	balance of	R200 000,00	<b>[1]</b>

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

**17 AUGUST / 17 AUGUSTUS 2005**

**ANSWERS/ANTWOORDE**

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**QUESTION 1**

**[30]**

- 1.1 It is the duty of the seller's attorney to advise the seller that he is not bound and is not obliged to sign the agreement. The seller's attorney must fulfil this duty even though his client's moral attitude displeases him. (8)
- 1.2 The attorney must take into consideration the following factors:
1. The complexity of the matter
  2. The importance of the matter to the client
  3. The time spent in doing the work
  4. The knowledge and expertise required
  5. The time and place at which the work was done including consultations
  6. The urgency of the matter
  7. The amount of money involved
  8. The seniority of the practitioner
  9. The extent of perusal, and consideration of documents
  10. The extent of work done by you and by other non qualified staff.
- (5)
- 1.3 The purchaser must be advised that the amount may be invested in purchaser's name in a Section 78(2A) account. Either the Deed of Sale or a separate written authority signed by both parties must authorise the investment spelling out what must happen to the interest and capital, either specifying the bank or giving you discretion to select the bank. (3)

1.4 The promise of future work means that the attorney will be regarded as touting by making such payment. Even if it were a genuine transaction the payment is made at the attorney's risk. It must be done out of his own funds. The deposit may not be utilised for this purpose. (4)

1.5 The seller (A) may not in either case alienate the property without the written consent of his wife. (4)

#### 1.6 DOMICILIUM CITANDI ET EXECUTANDI

The parties choose domicilium citandi et executandi ("domicilium") for the purpose of giving any notice, paying any sum, serving any process, or for any other purpose arising from this agreement, as follows: (6)

SELLER at:.....  
Fax: .....

PURCHASER at:.....  
Fax:.....

Either party to this agreement, may from time to time, by written notice to the other, change his domicilium to any other address in South Africa which is not a post office box or poste restante.

## QUESTION 2

[18]

### Acknowledgement of Debt

I, the undersigned,

(Full names & ID number of Debtor) (1)

of (address) which address I choose as *domicilium citandi et executandi* for purposes hereof (1)

(hereinafter referred to as "the Debtor")

do hereby admit that I am liable, and hold myself bound to (1)

(Full Names name of Creditor)

(hereinafter referred to as "the Creditor") (1)

for the due and proper payment of the amount of R30 000,00 (Thirty Thousand Rand) by reason of money actually lent and advanced to me by the Creditor (hereafter referred to as "the Principal Debt") and furthermore I declare that I am bound by the following conditions: (1)

1. The Principal Debt shall bear interest at the rate of 10% (Ten Percent) per annum, the amount of which shall be calculated monthly in arrear on the outstanding balance due on the first day of each calendar month and shall be so calculated and capitalised on the same day of each and every month until the total amount due in terms hereof shall have been paid. (1)
2. The Principal Debt, together with interest calculated as set out in clause 1 above, shall be paid in 36 (thirty six) monthly instalments, the first of which shall be made on the first day of the month following the month in which this document is signed, and thereafter on the first day of every succeeding month until the Principal debt together with interest shall have been paid in full. (1)
3. Should any payment due in terms hereof not be made in full on due date the Creditor may regard the balance of the Principal Debt and interest owing in terms hereof as due and payable immediately, and may issue summons therefor in any competent court without further notice or demand to the Debtor. (1)
4. The Debtor hereby expressly renounces the benefits of the legal exceptions *non causa debiti, errore calculi*, the revision of accounts and no value received. (1)
5. The Debtor agrees to the jurisdiction of the Magistrate's Court in terms of section 45 of Magistrates' Court Act 32 of 1944 for the recovery of any amount due in terms hereof. (1)
6. The Principal Debt shall become due and payable immediately in the event of the insolvency of the Debtor, or if the Debtor commits an act of insolvency. (1)
7. The Debtor shall pay the costs hereof as well as the stamp duty on demand. Costs shall include the costs of drawing and registering any security required by the Creditor as well as the stamp duty payable on any document required as security for the due and proper payment of the Principal Debt and interest payable to the Creditor. (1)
8. Should the Creditor incur costs in the collection of the Principal Debt, the Debtor shall pay such costs on the attorney-and-client scale as well as collection costs calculated at 10% (ten percent) of each and every payment made in reduction of the Principal Debt, interest and costs. (1)
9. The Creditor shall be entitled to cede or pledge his interests herein or to trade therewith at his own discretion without the consent of the Debtor. (1)
10. The Creditor may allocate any payment to capital, interest, costs or any other item as he deems fit despite any allocation made or deemed to be made by the Debtor. (1)

11. Any certificate issued under the signature of the Creditor or his duly authorised agent that purports to certify the amount due hereunder shall be accepted as *prima facie* proof of such indebtedness and shall have sufficient probative value to enable the Creditor to obtain summary judgment or provisional sentence against the Debtor in any competent court for the amount stated in such certificate, and the Debtor accepts the onus of disproving the amount so stated as not being the amount owing. (1)
12. The debtor shall not be entitled for any reason whatsoever to withhold or defer payment stipulated for in this acknowledgement of debt. (1)
13. The Debtor shall be at liberty to pay any portion of the Principal Debt and finance charges before the due date thereof without derogating from any right he may have in terms hereof. (1)

SIGNED at (place) on this (day, month, year) in the presence of the undersigned witnesses.

Witnesses:

1.		Debtor
2.		Creditor

**QUESTION 3**

**[5]**

An attorney is not a judge of his client's case. An attorney has however, a duty to advise his client properly with regard to the merits of his case and to give a considered view as to the client's prospects of success. It notwithstanding the attorneys advice to the contrary the client insists that a summons should be issued the attorney may carry out the instruction provided the attorney is sure that to do so would not be an abuse of the court process or that he will not be able to do justice to the client's case. In the latter events he should refuse to accept the instruction. The attorney should, if he accepts the instruction, ensure that the client understands all the implications. The attorney should therefore write the client a letter setting out his negative opinion and confirming that notwithstanding this the client has instructed him to proceed.

**QUESTION 4****[6]**

An attorney may borrow money from a client. However, in such a situation there is a conflict of interests. The client will want to lend at the best rate of interest whilst the attorney will want to get the most favourable terms. The attorney should remember that the client's interests are paramount and should therefore advise the client to refer the agreement of loan which he will draw up to an independent attorney for objective advice or of his right to be independently represented.

The fact that an attorney has borrowed money from a client will not preclude him from acting for that client in the future.

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

This agreement is subject to the suspensive condition that the purchaser, within 10 (Ten) days from signature hereof enters into a written agreement of lease with the owner of the premises in which the business is conducted for a period of not less than 5 years from (date) at a rental not higher and on terms and conditions not more onerous than the seller's existing lease. The purchaser shall immediately approach the Lessee for such a lease.

In the event of the purchaser not entering into the envisaged lease with the Lessor within the said period the Deed of Sale shall be of no force and effect and neither party shall have any claim against the other arising here from.

**QUESTION 6****[18]**

- 6.1 You are advised to lay a charge with the maintenance officer of the magistrates Court for the district in which you and the children reside. You must hand the existing court order to the officer together with an affidavit by you dealing with the surrounding circumstances. This leads to criminal action against X in terms of the maintenance Act and X will be ordered by the maintenance court to pay the arrears. An alternative is to have a writ of execution issued against X in terms of the existing court order in the High Court. (7)
- 6.2 You can apply to the maintenance officer for an increase in the maintenance or you can apply to the High Court by way of a substantive application for an order amending the divorce order by increasing the amount of maintenance payable. If application is made to the maintenance court an enquiry will be held in order to determine whether an increase is justified. If application is made to the High Court, this will be done on affidavits and the Court after hearing argument will decide whether or not to grant an increase. The Magistrates procedure is the cheaper option. (7)

- 6.3 X's attitude in stopping maintenance payments because he is refused access to the children is not valid in law. He is obliged to pay maintenance even though his rights of access maybe refused. X however, has a remedy in that if you refuse access he can approach the Court for your committal to prison for your contempt of the Court order. (4)

**QUESTION 7**

**[15]**

1. Easier to establish.
2. Costs less.
3. Membership restricted to 10. Your client is anyhow in business on his own.
4. Share capital is not necessary for a CC. Only a members' interest in money or property or services must be established.
5. Management and control of a CC is usually simpler.
6. No annual audit is required resulting in a saving.
7. The CC may extend security to allow a member to obtain an interest subject to certain provisions.
8. More privacy is possible in that any association agreement is not open to inspection by outsiders.
9. In general the CC and its members are not subject to strict restrictions and stipulations as in the case with a company and its directors. The CC however remains a legal person.

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

**17 AUGUST / 17 AUGUSTUS 2005**

**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**

**[15]**

**SUPPLEMENTARY BUSINESS CASH BOOK FOR JUNE 2004**

Electronic transfer	5 700	Balance	30 000
Deposit adjustment	545	R D Cheque	6 000
Balance	36 455	Bank charges	600
		Interest on overdraft	3 400
		Stop order	2 700
	42700		42700



**BANK RECONCILIATION STATEMENT AT 30 JUNE 2004**

Balance as per cash book	36 455		OD
Bank errors :	5 000		
	16 000	<u>21 000</u>	
		57 455	
Outstanding cheques		<u>8 000</u>	
<b>Balance as per bank statement</b>		<u><b>49 455</b></u>	OD

OR

**BANK RECONCILIATION STATEMENT AT 30 JUNE 2004**

	DT	KT
Balance as per Cash Book	36 455	
Less: Bank Error: 5 000		
16 000	21 000	
Add: Outstanding cheques		8 000
Balance as per bank statements		49 455
	57 455	57 455

## TRUST CASH BOOK – SEPTEMBER 2003

6	Debtor - Smith	1000-00	7	ABSA - Investment	50000-00
7	Black	50000-00	15	Counsel	285-00
10	Black	8420-00	16	RD – Green-Smith	500-00
11	Green-Smith	500-00	30	Smith-Black	150000-00
27	Guarantee-Black	100000-00		Black	780-00
	ABSA - Investment	50780-00		Business A/C	399-00
				Smith	316-00
				Business A/C	8420-00
		<u>210,700-00</u>			<u>210,700-00</u>

## BUSINESS CASH BOOK – SEPTEMBER 2003

30	Trust	399-00	8	SARS – Transfer	5000-00
	A/C			Duty	
	Trust	8420-00			
	A/C				
		<u>8819-00</u>			

**Suggested marking:**

2 marks for each journal entry

½ mark for each ledger and cash book entry.

4 marks for accounting statements

Examiners should consider penalising candidates who do not indicate transaction dates.

SMITH (TRUST)

2003				2003			
Sept	15	Counsel	285-00	Sept	1	Cash - Debtor	1000-00
	16	RD	500-00		11	Green	500-00
	30	Transfer to business	399-00				
		Cash - Self	316-00				
			1500-00				1500-00

BLACK (TRUST)

2003				2003			
Sept	30	Smith	150000-00	Sept	7	Cash	50000-00
		Cash - Self	780-00		10	Cash	8420-00
		Transfer to business	8420-00		27	Guarantee	100000-00
						Interest	780-00
			159,200-00				159,200-00

TRUST INVESTMENT SEC. 78 (2A) - BLACK

2003				2003			
Sept	7	ABSA	50000-00	Sept	27	ABSA	50000-00

SMITH (BUSINESS)

2003				2003			
Sept	1	Letter of demand	57-00	Sept	30	Transfer	
		Collection fees	114-00			from Trust	399-00
	29	Divorce fees	228-00				
			399-00				399-00

**FEEES**

2003				
	Sept	1	Smith	50-00
		1	Smith	100-00
		27	Black	3000-00
		29	Smith	200-00
				3350-00

**OUTPUT VAT**

2003				
	Sept	1	Smith	7-00
		1	Smith	14-00
		27	Black	420-00
		29	Smith	28-00
				469-00

**BLACK (BUSINESS)**

2003				2003			
Sept	8	SARS – Transfer Duty	5000-00	Sept	30	Transfer	
	27	Transfer fees	3420-00			from Trust	8420-00
			8420-00				8420-00

**BUSINESS / FEES JOURNAL**

2003				
Sept	1	Smith Fees VAT - Output Demand fees	57-00	50-00 7-00
		Smith Fees VAT - Output Collection commission	114-00	100-00 14-00
	27	Black Fees VAT - Output Property transfer fees	3420-00	3000-00 420-00
	29	Smith Fees VAT - Output Divorce fees	228-00	200-00 28-00
		<u>Transfer Journal</u>		
	30	Smith (T) Smith (B) Transfer of fees	399-00	399-00
		Black (T) Black (B) Transfer – fees & disb.	8420-00	8420-00

**ACCOUNT TO SMITH**

**RE: COLLECTION**

To Fee demand	R50-00	
To fee collection comm.	R100-00	
To VAT	R21-00	
By cash debtor		R1000-00

**RE: DIVORCE**

To pay counsel	R285-00	
By cheque		R500-00
To R/D Cheque	R500-00	
To Fees	R200-00	
To VAT	R28-00	

**RE: TRANSFER**

To purchase price		R150 000-00
To paid you	R150 000-00	
To cheque herewith	R316-00	
	<hr/>	
	R151 500-00	R151 500-00
	<hr/>	

**ACCOUNT TO BLACK**

By deposit received		R50 000-00
By guarantee		R100 000-00
To investment ABSA	R50 000-00	
By ABSA		R50 780-00
To paid purchase price	R150 000-00	
To paid transfer duty	R5 000-00	
To Fees	R3 420-00	
By cash you		R8 420-00
To cheque herewith	R780-00	
	<u>R209 200-00</u>	<u>R209 200-00</u>

**QUESTION 3**

**[45]**

**Trust Cash Book**

Cash (Costs)	12 000,00	Transfer	2400,00
		Correspondence	9600,00

**Business Cash Book**

Correspondence	11 450,00	Stamp	50,00
Transfer	2 400,00	Counsel	450,00
		Sheriff	50,00
		Counsel	300,00
		Counsel	3 300,00
		Counsel	2 200,00
		Witness	3 500,00

**Correspondent (T)**

Transfer	2 400,00	Cash	12 000,00
Cash	9 600,00		
	<u>12 000,00</u>		<u>12 000,00</u>

Correspondent (B)			
Cash – stamp	50,00	Fees	800,00
Cash – Counsel	450,00	Cash	11 450,00
Cash – Sheriff	50,00	Fees	1 200,00
Cash – Counsel	300,00	Transfer	2 400,00
Cash – Counsel	3 300,00		
Cash – Counsel	2 200,00		
Cash – Witness	3 500,00		
Fees	2 400,00		
Fees	3 600,00		
	<u>15 850,00</u>		<u>15 850,00</u>

Fees (B)			
Correspondent	800,00	Correspondent	2 400,00
Correspondent	1 200,00	Correspondent	3 600,00

1 mark each (32)

### BUSINESS JOURNAL

Correspondent R2400,00

Fees R2400,00

Being fees

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Fees R800,00

Correspondent R800,00

Being allowance

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Correspondent R3 600,00

Fees R3 600,00

Being Fees

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Fees	R1 200,00	
Correspondent		R1 200,00
Being allowance		

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1 mark each (8)

### STATEMENT OF ACCOUNT

#### RE: CLIENT

To paid stamp	R50,00	
To paid counsel	R450,00	
To paid sheriff	R50,00	
To paid counsel	R300,00	
To paid counsel	R3 300,00	
To paid counsel	R2 200,00	
To paid expert	R3 500,00	
To our fee (interim)	R2 400,00	
By your allowance		R800,00
To our final fee	R3 600,00	
By your allowance		R1 200,00
By cash you		R11 450,00
By cash recovered costs		R12 000,00
To cheque herewith	R 9 600,00	
	<u>R25 450,00</u>	<u>R25 450,00</u>

(5 Marks)