

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

30 AUGUSTUS 2006

14:00-16:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.

1. Kandidate moet al die vrae beantwoord.
2. Die vrae mag in Afrikaans of Engels beantwoord word.
3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
4. Waar nodig, moet kandidate hulle eie feite versin.
5. Skryf asseblief slegs in pen op die regterkantse bladsye.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel drup.

ATTORNEYS' EXAMINATION

PART 2 ESTATES

30 AUGUST 2006

14:00-16:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. The questions may be answered in English or Afrikaans.
3. Candidates must remember that marks are awarded for good draftsmanship.
4. Candidates must invent their own facts wherever necessary.
5. Please write only in pen on the right-hand pages.
6. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1 [68]

Andre Horn, wat met Marcia Horn binne gemeenskap van goed getroud was, sterf op 30 Junie 2005. Hy word oorleef deur sy weduwee en sy mondige seun Pierre.

Die volgende bates vorm deel van die gesamentlike boedel:

1. Die plaas ERFENIS 501, distrik Parys, provinsie Vrystaat. Hierdie plaas het 'n markwaarde van R3 000 000,00 soos deur 'n taksateur bepaal. Die waarde soos deur 'n Landbankwaardeerder bepaal, bedra R2 000 000,00. Die plaas word aan Jan Nel verhuur teen 'n huurgeld van R200 000,00 per jaar, betaalbaar half-jaarliks vooruit op 1 Januarie en 1 Julie elke jaar. Die huurkontrak eindig op 31 Desember 2006.
2. Eenhonderd aandele in Cape Horn (Edms) Bpk, 'n ongenoteerde maatskappy. Hierdie aandele word in terme van 'n aandeelhouerdsoreenkoms verkoop aan John Cape, die ander aandeelhouer, vir R1 200 000,00. Die maatskappy se ouditeur waardeer die oorledene se aandeelhouing teen R1 500 000,00, welke waarde deur die Senior Inkomste-Inspekteur aanvaar word. Die koopprijs word gefinansier uit die opbrengs van 'n versekeringspolis vir R1 300 000,00 wat John Cape op die lewe van die oorledene by ABC Bpk. uitgeneem het. Die premies op hierdie polis is deur John Cape betaal.
3. 'n Polis by DEF Bpk. op die lewe van die oorledene. Die eksekuteur vorder die opbrengs van R800 000,00.
4. Die opbrengs van 'n lopende rekening by XYZ Bank: R200 000,00.

Die enigste eis teen die boedel is die finale inkomstebelastingaanslag vir R60 000,00.

QUESTION 1 [68]

Andre Horn, who was married in community of property to Marcia Horn, dies on 30 June 2005. He is survived by his widow and his major son Pierre.

The following assets form part of the joint estate:

1. The farm ERFENIS 501, district Parys, Free State Province. This farm has a market value of R3 000 000,00 as determined by an appraiser. The value as determined by a Land Bank appraiser is R2 000 000,00. The farm is let to Jan Nel at a rental of R200 000,00 per annum, payable half-yearly in advance on 1 January and 1 July each year. The lease terminates on 31 December 2006.
2. One hundred shares in Cape Horn (Pty) Ltd, an unlisted company. These shares are sold, in terms of a shareholders' agreement, to John Cape, the other shareholder of the said company, for R1 200 000,00. The company's auditor values the deceased's shareholding at R1 500 000,00, which value is accepted by the Senior Revenue Inspector. The purchase price is funded by the proceeds of an insurance policy with ABC Ltd for R1 300 000,00 taken out by John Cape on the life of the deceased. The premiums on this policy were paid by John Cape.
3. A policy with DEF Ltd on the life of the deceased. The executor collects the proceeds of R800 000,00.
4. The proceeds of a current account with XYZ Bank : R200 000,00.

The only claim against the estate is the final income tax assessment for R60 000,00.

Die eksekuteur kies Landbankwaardes vir boedelbelastingdoeleindes.

The executor chooses Land Bank values for estate duty purposes.

Die oorledene en sy nagelate eggenote smelt in hulle gesamentlike testament hulle afsonderlike boedels saamen laat die gehele saamgesmelte boedel aan hulle seun Pierre na, onderhewig aan die lewenslange vruggebruik van die langsliewende gade. Die nagelate eggenote repudieer egter die testament. Prokureurs JA Ing., wat vir BTW geregistreer is, word as die eksekuteurs benoem.

The deceased and his surviving spouse in their joint will mass their respective estates and leave the entire massed estate to their son Pierre, subject to the lifelong usufruct of the surviving spouse. However, the surviving spouse repudiates the will. Attorneys JA Inc., who are registered VAT vendors, are nominated as executors.

Stel die hele likwidasië- en distribusierekening soos op 1 Desember 2005 op. Spesifiseer die administrasiekoste, wat 'n totale bedrag van R223 000,00 beloop. Gebruik denkbeeldige inligting waar nodig. Aanvaar dat die Minister van Landbou die nodige goedkeuring kragtens Wet 70 van 1970 verleen het.

Draw the entire liquidation and distribution account as at 1 December 2005. Specify the administration expenses which amount to R223 000,00 in total. Use imaginary information where necessary. Assume that the Minister of Agriculture has granted the necessary permission in terms of Act 70 of 1970.

VRAAG 2 [10]

QUESTION 2 [10]

Peter sterf intestaat op 22 Desember 2005. Hy laat 'n verdeelbare boedel ter waarde van R1 800 000,00 na.

Peter died intestate on 22 December 2005. He has left a distributable estate worth R1 800 000,00.

Daar word vasgestel dat hy deur die volgende familieledede oorleef word:

You establish that he is survived by the following family members:

- a) Sy ouers Eric en Jane;
- b) Sy vrou, Sarah, met wie hy binne gemeenskap van goed getroud was en wat 7 maande swangers is met hulle eerste kind;
- c) Sy seun Daniel uit 'n vorige huwelik;
- d) Sy vrou se dogter, Layla Jones, uit 'n vorige huwelik.

- a) His parents, Eric and Jane;
- b) His wife, Sarah, to whom he was married in community of property, and who is 7 months pregnant with their first child;
- c) His son, Daniel, from a previous marriage;
- d) His wife's daughter, Layla Jones, from a previous marriage.

Wie is Peter se intestate erfgename en watter bedrag sal iedereen erf?

Who are Peter's intestate heirs, and what amount will they each inherit?

VRAAG 3

[22]

U word deur Sam en Jane Sithole geraadpleeg in verband met hulle testament. Hulle is 'n jong egpaar met twee kinders, 'n seun van 12 jaar en 'n dogter van 8 jaar. Sam en Jane is albei werksaam by 'n in- en uitvoermaatskappy wat in Suid-Afrika gesetel is en hulle moet dikwels saam oorsee reis in die uitvoering van hulle pligte. Hulle is buite gemeenskap van goed getroud en wil hê dat die langsliewende die enigste erfgenaam van die eerssterwende moet wees. Hulle is egter bekommerd oor die moontlikheid dat hulle albei iets mag oorkom terwyl hulle saam op reis is. In so 'n geval wil hulle onderskeie boedels in gelyke dele aan hulle twee kinders nalaat. Hulle aanvaar u advies dat hulle by wyse van 'n testamentêre trust vir sodanige gebeurlikheid voorsiening behoort te maak en vra dat u hulle testament dienoooreenkomstig opstel.

Gevra:

Stel die testament vir u kliënte op. U hoef nie al die administratiewe pligte en bevoegdhede van die trustees en die klousules met betrekking tot die verdeling van die trustinkomste uiteen te sit nie, maar u moet seker maak dat al die ander belangrike aspekte wat in die praktyk vir testamentêre trusts toepaslik is, behoorlik uiteengesit word.

QUESTION 3

[22]

You are consulted by Sam and Jane Sithole in connection with their will. They are a young married couple with two children, a son of 12 years and a daughter of 8 years. Sam and Jane are both employed by an import and export company based in South Africa and they must often travel overseas together in the course of their duties. They are married out of community of property and want the survivor of them to be the sole heir of the first-dying. They are, however, concerned about the possibility that something untoward might happen to both of them whilst travelling together, in which event they wish their respective estates to devolve upon their children in equal shares. They accept your advice to create a testamentary trust to cover this contingency and instruct you to draw their will.

Required:

Draw the will for your clients, omitting the clauses setting out the powers of the trustees and the clauses dealing with the distribution of trust income. You must ensure however that all the other relevant aspects which should in practice be dealt with in wills of this nature, are properly set out.

DIE EINDE

THE END