

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

29 AUGUST / 29 AUGUSTUS 2007

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

[9]

- 1.1 Both John Citizen and George Citizen have claims against the Road Accident Fund (1). In each instance their claim is limited to R25 000,00 (1) in respect of both special and general damages (1). (3)
- 1.2 John Citizen can claim the balance of R35 000,00 and his son can claim the sum of R5 000,00 from the taxi driver/owner. (1)
- 1.3 If the taxi did not have a valid road transportation permit, the claims of both John Citizen and his son are limited to R25 000,00 each in respect of special damages only. (2)
- 1.4 Both John Citizen and his son will be entitled to claim the full amount from the Road Accident Fund (1). The provisions of the Apportionment of Damages Act will not apply as they were not to blame for the collision – they were innocent claimants (1). (2)
- 1.5 He cannot claim damages from the Road Accident Fund, as these are not considered bodily damages (½). He must proceed against the owner/driver of the taxi (½). (1)

QUESTION 2

[2]

By virtue of the provisions of Rule 38 the Plaintiff can issue a *subpoena duces tecum* on the Station Commissioner (1) to produce the docket to the Registrar as soon as possible (½). Thereafter the parties may inspect such docket and make copies of statements that are contained in the docket (½).

QUESTION 3

[2]

The prescribed legal rate applicable from time to time (currently 15,5%) (1) from fourteen (14) days from the date of judgment to date of payment (1).

QUESTION 4**[2]**

The Road Accident Fund cannot request your client to submit to an interrogation and to swear to an affidavit once action has been instituted (1). An interrogation and the insistence upon an affidavit is only competent before action has been instituted (1).

QUESTION 5**[5]**

The letter must contain the following:

The employer must be advised that you are acting on behalf of their employee in regard to his claim for damages arising from the injuries he sustained in the motor accident (½).

Details of the time and place of the accident should be furnished (½).

The employer must be asked to furnish a certificate (½) confirming your client's employment with the company (½), the salary that your client earned over the 12 months preceding the accident (½), details of any "employment perks" he may have received, and the like (½) and details of the annual leave and sick leave which your client was entitled to (½).

The employer must be specifically asked whether your client was paid a salary whilst he was away from work recovering from his injuries (½). If he was paid a salary during either of these periods, the employer must be asked to state whether this payment arose out of his conditions of employment (basically whether he was entitled to sick leave pay) or whether the payment of salary was *ex gratia* (1).

QUESTION 6**[3]**

Prescription does not run against:

- 6.1 a minor; (1)
- 6.2 any person detained as a patient in terms of the provisions of any applicable health legislation; (1)
- 6.3 a person under curatorship. (1)

QUESTION 7**[2]**

- 7.1 No. Statements obtained by the Road Accident Fund for purposes of litigation are privileged and a claimant is not entitled to such statements. (1)

- 7.2 Yes. In terms of Section 22 of the Road Accident Fund Act of 1996 the Road Accident Fund shall furnish the third party or his agent with a copy of the information and statements which the owner or driver furnished in terms of Section 22(1) together with all statements which were or are obtained from witnesses to the accident. (1)

QUESTION 8

[12]

- 8.1 An ex parte application for the appointment of a curator ad litem and curator bonis. (2)
- 8.2 Any 10 of the following:
- 8.2.1 Notice of motion (ex parte application).
- 8.2.2 Applicant's affidavit must contain:
- 8.2.2.1 the grounds as to locus standi of applicants.
 - 8.2.2.2 grounds for jurisdiction of the court.
 - 8.2.2.3 The patient's age, sex, full particulars of means and information re general state of health.
 - 8.2.2.4 relationship between patient and applicant and duration and intimacy of their association (if any).
 - 8.2.2.5 facts and circumstances relied on to show patient of unsound mind and incapable of managing his affairs.
 - 8.2.2.6 Name, occupation, address of the respective persons suggested for appointment as curator a litem and subsequently curator bonis.
 - 8.2.2.7 Statement that these persons have been approached and have indicated their ability and willingness to act if so appointed.
 - 8.2.2.8 Affidavit by at least one person to whom patient is well known and containing such facts and information as are within deponent's own knowledge concerning patient's mental condition.
 - 8.2.2.9 If such person is related to the patient or has any personal interest in the terms of the order sought full details must be set forth in his affidavit.
 - 8.2.2.10 Attach two affidavits by medical practitioners of which one should preferably be a psychiatrist (alienist) who have recently examined the patient.
 - 8.2.2.11 Appointment of curator ad litem by court.

- 8.2.2.12 Report by curator ad litem.
- 8.2.2.13 Submission of documents to master.
- 8.2.2.14 Report by the master. (10)

QUESTION 9 **[3]**

- 9.1 The defendant is the Minister of Defence N.O. in the government of the Republic of South Africa with offices at Union Buildings, Arcadia, Pretoria (alternatively: c/o the State Attorney of address (where there is a State Attorney within area of jurisdiction) (1)
- 9.2 The defendant is A B, an adult male bank official, N.O. of Fintrust Executors carrying on business at 1 Park Towers, Malan Avenue, Bloemfontein, as executive of the estate late C, D (Master's reference number E10/07). (1)
- 9.3 The plaintiff is A, B, an adult female advocate of 1 Court Chambers, De Waal Street, Cape Town, N.O. as curatrix ad litem of C....., D....., a minor female of(address). (1)

QUESTION 10 **[10]**

(Note to examiner: Candidates should not be penalized for not mentioning or incorrect time limits)

- 1 Within 10 (ten) days after judgment and upon payment of a fee at R70.00 you may request the written judgment showing -
 - (a) the facts the magistrate found proved; and
 - (b) his reasons for judgment
- 2 The judgment must be provided within 15 (fifteen) days of the receipt of the request. (Please note that steps 1 and 2 are not obligatory but advisable).
- 3 Within 20 (twenty) days of the date of judgment or within 20 (twenty) days of having received the written judgment you must file a notice of appeal. The notice of appeal must be accompanied by security in the sum of R1,000,00. The notice of appeal must state:
 - (a) whether it is the whole of part of the judgment which is appealed against and if in part only, which part;
 - (b) the grounds of appeal specifying findings of fact of law appealed against.

- 4 Within 15 (fifteen) days of receipt of the notice of appeal the magistrate must respond showing:
- (a) the facts he found to be proved.
 - (b) the grounds upon which he arrived at the finding of fact specified in the notice of appeal.
 - (c) his reasons for any ruling of law or rejection of evidence specified in the notice of appeal.
- 5 Within 40 (forty) days of noting the appeal applicant shall apply to the registrar with notice to all other parties for a date of hearing of the appeal. The request for a date shall be accompanied by a complete copy of the pleadings and the record of evidence and all other documents forming part of the record together with a power of attorney from the appellant authorizing his attorney to prosecute the appeal.
(Note to examiner - Rule 51 of the High Court Rules also provides for 60 days with which to prosecute the appeal).
- 6 15 (fifteen) days before the date allocated for the hearing of the appeal the appellant will file his heads of argument.
- 7 10 (ten) days before the date allocated for the hearing of the appeal the respondent will file his heads of argument.

QUESTION 11**[5]**

Section 65 (2) of the CPA states that an appeal shall not lie in respect of new facts which arise or are discovered after the decision upon which the appeal is brought, unless such new facts are first placed before the Magistrate for his decision and consideration. I will accordingly consider whether the new facts have any relevance to the application for bail and if this is the case the appeal will be withdrawn and the new facts will be placed before the same Magistrate who heard the original bail application in the hope that he will be persuaded to grant bail taking into consideration the new facts. If, however, the new facts will not have a bearing on the Magistrate's original decision, the appeal is to be proceeded with. In this instance the new facts are very relevant and the appeal will accordingly be withdrawn and the facts placed before the Magistrate.

QUESTION 12**[3]**

In terms of sub-section 297 (5) (a) (b) of the CPA, the same court or any court of equal or superior jurisdiction may defer the payment of the fine to a later date if it appears that the accused is unable to pay the fine immediately. The legal representative can request the court who imposed the sentence to allow the accused to pay off the fine in instalments or defer the payment thereof to a later date when the accused will be in a position to pay. The accused or his representative must be able to provide the court with information which will convince it that, although the accused is unable to pay the fine at that stage, he will be able to pay it if he is allowed to pay it off over a period or before a specific date in future, which may not be more than five (5) years.

QUESTION 13**[3]**

Statement from the bar by legal representative. (1)

By means of evidence by the accused under oath (1)

By means of evidence of other persons. (1)

QUESTION 14**[2]**

By placing the medical report before the State Prosecutor and requesting that he admit the contents thereof. If he does same can be presented and handed to the court as evidence in the address in mitigation, advising the court that the contents are not in dispute.

QUESTION 15**[4]**

I, Zidane, do hereby declare that:

1. I am the accused in this matter and I understand the nature of the charge against me.
2. I hereby plead guilty to the charge of assault with the intent to do grievous bodily harm and admit that on the 2nd of July 2006 and at Johannesburg, I wrongfully and unlawfully assaulted ABC by butting him with my head on his chest.
3. I admit that my actions were wrongful, unlawful and intentional.
4. I confirm that I took this action after the deceased had uttered foul and abusive language about myself and female members of my family and I was duly provoked thereby.
5. I hereby apologise to the family of the deceased as well as the soccer loving public of South Africa as I brought the game into disrepute.

Dated at Pretoria

Date: 24 July 2006

Signed: Zidane

QUESTION 16**[5]**

- 16.1 I will first as a matter of courtesy address the issue with the Magistrate in the presence of the prosecutor in chambers. (i.e in his office) and if he refuses to recuse himself voluntarily after I shall have placed the facts to him I will then require time to prepare a proper notice of application requiring the Magistrate to recuse himself. This application will be served on the state and the Magistrate and on the date agreed I will argue the matter and refer to relevant case law. The application can also be made verbally. (2)

16.2 In my application I will allege that the founding affidavit deposed to by the Informer disclosed to the Magistrate the merits of the case against my client and that therefore he will not be objective in adjudicating my case. In authorising the search warrant he applied his mind as to the credibility of the issues raised in the affidavit. (2)

16.3 If the Magistrate refuses to recuse himself I will then file a review application in terms of Rule 53 in the High Court. (1)

QUESTION 17

[3]

As the legal representative of the accused I will insist that the charge be put to my client so that he can plead not guilty thereto. This will result in the State being obliged to call evidence if any and a probable acquittal of the accused.

However if the State refuses to put the charge to the accused the State will have to apply for a postponement to which I will object. The magistrate will probably refuse the postponement and the State will be obliged to withdraw the charge.

I will then ask the court to grant an order in terms of Section 342(A) of the CPA Act namely that the prosecution not be allowed to resume or be instituted against the accused without written consent of the Director of Public Prosecutions.

QUESTION 18

[12]

The errors are:

1. The plaintiff's attorney's address is not within 8 km of the Court house. (2)
2. The Magistrate's Court for the district of Durban does not have jurisdiction in that the defendant does not live or work in the Durban area, nor did the whole cause of the action take place in the Durban area. (2)
3. R110,000 is beyond the jurisdiction of the Magistrate's Court. (2)
4. The Defendant is not liable for work done at the instance of his minor son. (2)
5. Presumably the claim is prescribed, having been incurred in the year 2001. (2)
6. No justification is given for interest at 17% (if it is intended that this be payable in terms of the contract, the contract must be lodged, if not *mora* interest will be 15.5%). (2)

QUESTION 19

[11]

19.1 Application for spoliation order, supporting affidavit and the draft order. (3)

19.2 Applicant's supporting affidavit.

- 1 Applicant's details. (1/2)
- 2 The Respondent is the body corporate to the particular sectional title development and has its address [] (1/2)
- 3 The Applicant is the registered owner and occupier of the unit concerned. (1)
- 4 As part of the services supplied by the Respondent it supplied piped water to the Applicant's unit for household purposes. (1)
- 5 The water supply was undisturbed to the said unit until (date) when the Respondent caused it to be disconnected without the Applicant's consent and without lawful reason. (2)
- 6 A dispute exists between Applicant and Respondent whether the Applicant is in arrear with payment of levies in the respect of the unit. (1)
- 7 The disconnecting of the water supply to Applicant's unit by Respondent causes Applicant great inconvenience and is a health risk. (1)
- 8 I hereby request the above Honourable Court to grant me condonation for the short notice provided (Rule 9(14)) for this application. (1)

Wherefore I pray that the Court grant to me the order as prayed for in the notice of motion attached hereto.

QUESTION 20

[2]

The Sheriff must attach the summons to the outer or principal door or security gate of the residence.

TOTAL: [100]

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

27 FEBRUARY / 27 FEBRUARIE 2007

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

[59]

See answer to Question one on next page (page 2).

	R	R
<u>LIQUIDATION ACCOUNT</u>		
A <u>Immovable property awarded</u>		
The farm GOEDEHOOP 125, district Welkom, Free State Province; measuring 1 000 hectares; held by the deceased by virtue of		
3 Deed of Transfer T3065/1998	(1)	3 000 000,00
Awarded to the deceased's nephew ANDRE		
1 SMIT in terms of the will		
B <u>Movable property awarded</u>		
1 Livestock comprising 800 head of cattle and 1 000 sheep		
2	(2)	1 000 000,00
2 Vehicles and implements comprising 5 tractors, 5 ploughs, 1 combine harvester and a 1999 Isuzu bakkie		
2	(2)	<u>1 200 000,00</u>
The above movable property is awarded to the deceased's nephew ANDRE SMIT in terms of		
1 the will		2 200 000,00
C <u>Investment and assets realised</u>		
1 Proceeds of fixed deposit with ABC Bank:		
1 Capital	(3)	900 000,00
2 Accrued interest to date of death	(3)	22 500,00
2 Proceeds of Erf 207 Welkom which was sold to GEORGE BOTHA for		
2	(4)	<u>600 000,00</u>
TOTAL ASSETS		<u>1 522 500,00</u> <u>6 722 500,00</u>

		R	R
D	<u>Administration expenses</u>		
1	Notice to Creditors :		
1	Government Gazette	(5) 24,20	
1	Volksblad	(6) 300,05	
2	Advertisement of this account:		
1	Government Gazette	(7) 24,20	
1	Volksblad	(8) 300,05	
2 3	Master's fees (maximum)	600,00	
4	Executor's remuneration @		
2	3,5% on R6 722 500,00	235 287,50	
5	Spies & Plessis for transfer costs of the farm		
2	GOEDE HOOP	(9) 12 000,00	
6	Pierre Pienaar for valuation of the farm,		
2	livestock, vehicles and implements	(10) 3 000,00	
1 7	Provision for bank charges	364,00	
1 8	H Strydom (executor) for postages and petties	<u>100,00</u>	252 000,00
E	<u>Claims against the estate</u>		
1 1	Last Breath Undertakers for funeral costs	(11) 10 000,00	
1 2	SARS for final income tax assessment	(12) 15 000,00	
1 3	Estate duty	<u>609 100,00</u>	<u>634 100,00</u>
	TOTAL		886 100,00
	LIABILITIES		<u>5 836 400,00</u>
2 4	Balance for distribution		<u>6 722 500,00</u>

	R	R
<u>INCOME AND EXPENDITURE ACCOUNT</u>		
1 Interest paid on fixed deposit with ABC Bank on 30 September 2006 R45 000,00 (13) <u>LESS</u> amount accrued to		
3 date of death <u>R22 500,00</u>		22 500,00
2 Occupation rental paid by GEORGE BOTHA for October and November 2006 (14)		6 000,00
3 Paid municipality rates and taxes for the period 1 July 2006 to 30 November 2006 2 (5 months) (15)	3 500,00	
4 Paid municipality for water and light for the 1 period 1 July 2006 to 30 September 2006 (16)	2 000,00	
2 5 Executor's remuneration @ 6% on R28 500,00	1 710,00	
6 Balance awarded to ANDRE SMIT, the sole 2 heir in terms of the will	<u>21 290,00</u>	
	<u>28 500,00</u>	<u>28 500,00</u>
<u>ESTATE DUTY</u>		
<u>Property of the deceased</u>		
1 Assets per liquidation account		6 722 500,00
2 <u>LESS</u> 30% on value of farm		<u>900 000,00</u>
		5 822 500,00
<u>LESS deductions</u>		
1 Administration expenses	252 000,00	
1 Claims against the estate	<u>25 000,00</u>	<u>277 000,00</u>
		5 545 500,00
2 <u>LESS</u> section 4A deduction		<u>2 500 000,00</u>
NET VALUE		<u>3 045 500,00</u>
		<u>3 045 500,00</u>
		<u>609 100,00</u>
2 Estate duty on R3 045 500,00 @20%		

CERTIFICATE

I hereby declare that the above account is to the best of my knowledge and belief 1 a true and proper account of the liquidation and distribution of the estate

1 and that all the assets of the deceased

and income collected subsequent to the death of the deceased to date hereof... 2 have been disclosed

Dated at Welkom on 31 December 2006.

"J B JORDAAN"

1

EXECUTOR

[59]

QUESTION 2

[10]

1 The estate devolves in accordance with the law on intestate succession.

Mrs A receives a half share (R200 000,00) by virtue of her marriage in
2 community of property to the deceased.

Mrs A inherits, in terms of section 1(1)(c) of the Intestate Succession Act, a child's
share (R100 000,00) or R125 000,00, whichever is the greater. She
4 therefore inherits R125 000,00.

1 The child B inherits the balance of R75 000,00.

2 C inherits nothing because she is not a spouse or blood relation of the deceased.

1 **LAST WILL AND TESTAMENT**

1 This is the last will and testament of GEORGE BAKER, unmarried and
1 residing at Uitenhage.

1

2 I, the testator, hereby revoke all wills previously made by me.

2

I leave my entire estate to the children of my brother. 2
JAMES BAKER in equal shares.

2 Should any one or more of my heirs not yet have attained the age of 25 years at the
time of my death, I leave the share of such heir to my Trustee
2 in trust for such heir, subject to the following terms and conditions:

- (a) Powers of trustee (not asked)
- (b) My Trustee shall in his sole discretion apply the income of the Trust
after payment of legitimate debts due by the Trust, towards the
maintenance, education and general well-being of my heir.
3 Any income not expended on these purposes shall be capitalised.
- (c) The Trust shall terminate upon my heir attaining the age of 25 years.
My Trustee shall then be obliged to pay and deliver the heir's
2 inheritance to him or her.

AS WITNESSES:

1 _____

PETER KOK In the presence of
the Testator and by his direction

2 _____

THABO MOHAPI
COMMISSIONER OF OATHS

2

3

1 As Executor of this my will and as Trustee of the Trust created in paragraph 2 above, I nominate my brother JAMES BAKER.

2 I grant unto my Executor and Trustee all such powers as are allowed by law, including the power of assumption, and I direct that it shall not be necessary for my Executor and Trustee to furnish security for the due performance of his functions.

4

2 No benefit accruing to any person in terms of this my will shall form part of the joint estate or the accrual of any marriage of the beneficiary and any present or future spouse of his or hers.

1 Signed at Bloemfontein on 15 January 2007 by PETER KOK by the Testator's direction and in the Testator's presence and in the presence of the undersigned witnesses.

AS WITNESSES:

1 _____

2 _____

1 _____
PETER KOK in the presence of the Testator and by his direction

I hereby certify that I have satisfied myself as to the identity of GEORGE BAKER and that the above will, signed by PETER KOK on his behalf, is the will of GEORGE BAKER.

5 _____
**THABO MOHAPI
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
20 VOORTREKKER STREET
BLOEMFONTEIN**

QUESTION 4

[4]

B is entitled to her inheritance in terms of the will, because A died after 3 months since the divorce. If he had died within 3 months of the divorce, B could not inherit - section 2B of the Wills Act.

TOTAL: [100]

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

29 AUGUSTUS 2007

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% of meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 2 ESTATES

29 AUGUST 2007

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 [61]

Peter Solomon, 'n wewenaar, sterf intestaat op 14 November 2006. Hy word oorleef deur sy enigste seun Joseph wat op 13 Januarie 1970 gebore is.

- A. Die ondergemelde bates word in sy boedel gevind:
1. Die huis waarin hulle woon en wat op sy naam geregistreer is, word vir R500 000,00 gewaardeer.
 2. Liberty Life versekeringspolis op sy lewe wat aan sy boedel betaalbaar is, met 'n afkoopwaarde van R190 000,00 en 'n doodsdkking van R325 000,00.
 3. Sanlam lewenspolis op sy lewe betaalbaar aan Joseph as die benoemde begunstigde, met 'n doodsdkking van R50 000,00.
 4. Ou Mutual polis op Joseph se lewe met 'n doodsdkking van R450 000,00. Die eksekuteur koop hierdie polis af vir R150 000,00.
 5. Huisraad met 'n waarde van R 160 000,00.
 6. 'n Motorvoertuig met 'n waarde van R 240 000,00.
 7. Kontant van R50 000,00 in 'n spaarrekening by Nedbank.
 8. Aandele in GIANT (Edms) Bpk met 'n markwaarde op sterfdatum van R250 000,00. Hierdie aandele word in die loop van die beredderingsproses vir R275 000,00 verkoop.
 9. 'n Verband is oor die huis ten gunste van Absa Bank geregistreer. Die uitstaande bedrag aan die bank verskuldig, beloop R50 000,00.

QUESTION 1 [61]

Peter Solomon, a widower, died intestate on 14 November 2006. He was survived by his only son Joseph, who was born on 13 January 1970.

- A. The undermentioned assets were found in his estate:
1. The house in which they reside and registered in his name is valued at R500 000,00.
 2. Liberty Life Insurance Policy on his life payable to his estate with a surrender value of R190 000,00 and a maturity value of R325 000,00.
 3. Sanlam Life Insurance Policy on his life payable to Joseph as the nominated beneficiary with a maturity value of R50 000,00.
 4. An Old Mutual Life Insurance Policy on Joseph's life with a maturity value of R450 000,00. The executor surrenders this policy for R150 000,00.
 5. Furniture valued at R 160 000,00.
 6. A motor vehicle valued at R 240 000,00.
 7. Cash in the sum of R50 000,00 in a savings account at Nedbank.
 8. Shares in GIANT (Pty) Ltd, whose market value as at the date of death was R250 000,00. These shares were sold in the course of liquidation for R275 000,00.
 9. There is a mortgage bond registered over the house in favour of Absa Bank with an outstanding balance owing to the bank in the amount of R50 000,00.

10. 'n Bedrag van R45 000,00 is nog aan WESBANK vir die finansiering van die motorvoertuig verskuldig.
- B. Die oorledene se vader, George Solomon, wat op 3 April 1999 oorlede is, het in sy testament die plaas Rooibos aan die oorledene bemaak, onderworpe aan die voorwaarde dat dit na die oorledene se dood George se kleinseun Joseph toekom. Die plaas, wat die oorledene aan sy seun verhuur het, is op 14 November 2006 vir R900 000,00 gewaardeer. Die waardasiekoste van hierdie plaas beloop R1 500,00, en die oordragkoste R7 000,00.
- C. Sy laste, insluitende begrafniskoste en administrasiekoste, beloop R200 000,00 in totaal. Die eksekuteur is vir BTW geregistreer.

Stel die likwidasië- en distribusierekening op met weglating van die opskrif, distribusierekening, inkomste- en uitgawerekening en die eksekutiese sertifikaat. Spesifiseer die nodige uitgawes. Tabelle vir die berekening van beperkte belange word aangeheg.

VRAAG 2 [12]

Themba Zungu sterf intestaat en word oorleef deur sy twee vrouens Thandaza en Dudu met wie hy volgens gewoontereg getroud was. Dudu is agt maande swanger met haar eerste kind. Themba word ook deur die volgende persone oorleef:

- (i) sy meerderjarige dogter Phindile gebore uit sy huwelik met Thandaza. Phindile doen afstand van haar reg om te erf.
- (ii) sy vader Ngombane.
- (iii) sy broer Siphoh.

Sy netto boedel bedra R400 000,00 (vier honderd duisend rand) bestaande slegs uit kontant.

10. R45 000,00 is still owing to WESBANK for the financing of the motor vehicle.
- B. The father of the deceased, George Solomon, who died on the 3rd of April 1999, bequeathed in his Will the Farm Rooibos to the deceased subject to the provision that it should after his (Peter Solomon's) death go to his (George Solomon's) grand son Joseph Solomon. The Farm, which the deceased had leased to his son, was valued on 14 November 2006 for R900 000,00. The valuation costs for this farm amounted to R1 500,00 and the transfer costs to R7 000,00.
- C. His total liabilities (including funeral expenses, and administration costs) amount to R200 000,00. The executor is a registered VAT vendor.

Draft the Liquidation and Distribution Account excluding the heading, distribution account, income and expenditure account and the executor's certificate. Specify the necessary expenses. Tables for calculating the value of limited interests are attached.

QUESTION 2 [12]

Themba Zungu dies intestate and is survived by his two wives Thandaza and Dudu to whom he was married according to customary law. Dudu is eight months pregnant with her first child. Themba is also survived by the following people:

- (i) his major daughter Phindile by his marriage to Thandaza. Phindile renounced her rights to inherit.
- (ii) his father Ngombane.
- (iii) his brother Siphoh.

His net estate is worth R400 000,00 (four hundred thousand rand) consisting of cash only.

Adviseer die Zungu-familie aangaande wie Themba se erfgename is en welke bedrag iedereen sal erf. Maak verduidelikende aantekeninge waar nodig.

Advise the Zungu family as to who are Themba's heirs and what amount each will inherit. Make explanatory remarks where necessary.

VRAAG 3

[19]

QUESTION 3

[19]

Adam Gouws sterf kinderloos op 1 Junie 2006. Hy word oorleef deur sy eggenote Ruth Gouws met wie hy buite gemeenskap van goed getroud was. Ruth word in sy testament tot eksekutrise benoem en sy stel vir u as haar agent aan om die boedel te beredder. Sy deel u mee dat sy nie by die sterfbed teenwoordig was en het ook nie die oorledene se lyk na sy dood uitgeken nie. Geen boedelbelasting is betaalbaar nie.

Adam Gouws died on the 1st of June 2006. He died childless and was survived by his spouse Ruth Gouws to whom he was married out of community of property. Ruth was nominated as the executrix in his Will and she approaches you to act as her agent in the administration of his estate. She informs you that she was not present at his deathbed and she did not identify his body after his death. No estate duty is payable.

Met betrekking tot die bereddering van sy boedel:

With regard to the administration of his estate:

- (a) Welke dokumente moet u by die Meester indien om hom in staat te stel om die Eksekuteursbrief uit te reik? (5)
- (b) Aan welke statutêre vereistes moet u dan voldoen voordat die likwidasië- en distribusierekening by die Meester ingedien word? (3)
- (c) 'n Eis teen die boedel word by die eksekutrise ingedien, maar sy twyfel oor die juistheid daarvan. Welke stappe kan die eksekutrise neem in 'n poging om die aangeleentheid op te los? (4)
- (d) U kan die likwidasië- en distribusierekening nie betyds indien nie. Skryf aan die Meester van die Hooggeregshof en versoek uitstel vir indiening van die rekening. (7)

- (a) Which documents do you need to lodge with the Master in order to enable him to issue Letters of Executorship? (5)
- (b) Which statutory duties must you then comply with before lodging the liquidation and distribution account with the Master? (3)
- (c) A claim against the estate is lodged with the Executrix but she doubts whether the claim should be allowed. Which steps could the Executrix take in order to resolve the matter? (4)
- (d) You are unable to lodge the liquidation and distribution account in time. Write to the Master of the High Court requesting an extension of time within which to lodge the account. (7)

VRAAG 4

[8]

Hans en Irene wat met mekaar binne gemeenskap van goed getroud is, verly 'n gesamentlike testament waarin hulle hul hele gesamentlike boedel aan hulle seun Daniel nalaat, onderhewig daaraan dat hy 'n bedrag van R10 000,00 jaarliks aan sy moeder vir die res van haar lewe sal betaal.

Hans kom te sterwe en Irene kies om die testament te repudieer.

Stel Irene se repudiasiesertifikaat op wat vir die Meester aanvaarbaar sal wees.

QUESTION 4

[8]

Hans and Irene who are married to each other in community of property, execute a joint Will in which they leave their entire joint estate to their son Daniel, subject to his paying his mother the sum of R10 000,00 per year for the rest of her life.

Hans dies and Irene elects to repudiate the Will.

Draft Irene's repudiation certificate which will be acceptable to the Master.

DIE EINDE

THE END

APPENDIX 5

EXPECTATION OF LIFE AND PRESENT VALUE TABLES

(Promulgated under GN No R1942 dated 23 September 1977)

If the deceased died on or after 1 April 1977:

TABLE A

THE EXPECTATION OF LIFE AND THE PRESENT VALUE OF R1 PER ANNUM FOR LIFE CAPITALIZED AT 12 PER CENT OVER THE EXPECTATION OF LIFE OF MALES AND FEMALES OF VARIOUS AGES.

Age	Expectation of life		Present value of R1 per annum for life		Age
	Male	Females	Male	Females	
0	64.74	72.36	8,327 91	8,331 05	0
1	65.37	72.74	8,328 28	8,331 14	1
2	64.50	71.87	8,327 76	8,330 91	2
3	63.57	70.93	8,327 14	8,330 64	3
4	62.63	69.97	8,326 44	8,330 33	4
5	61.69	69.02	8,325 67	8,329 99	5
6	60.74	68.06	8,324 80	8,329 61	6
7	59.78	67.09	8,323 81	8,329 18	7
8	58.81	66.11	8,322 71	8,328 69	8
9	57.83	65.14	8,321 46	8,328 15	9
10	56.85	64.15	8,320 07	8,327 53	10
11	55.86	63.16	8,318 49	8,326 84	11
12	54.87	62.18	8,316 73	8,326 08	12
13	53.90	61.19	8,314 80	8,325 23	13
14	52.93	60.21	8,312 65	8,324 27	14
15	51.98	59.23	8,310 29	8,323 20	15
16	51.04	58.26	8,307 70	8,322 03	16
17	50.12	57.29	8,304 89	8,320 71	17
18	49.21	56.33	8,301 80	8,319 26	18
19	48.31	55.37	8,298 41	8,317 64	19
20	47.42	54.41	8,294 71	8,315 84	20
21	46.53	53.45	8,290 61	8,313 83	21
22	45.65	52.50	8,286 13	8,311 61	22
23	44.77	51.54	8,281 17	8,309 12	23
24	43.88	50.58	8,275 64	8,306 33	24
25	43.00	49.63	8,269 59	8,303 26	25
26	42.10	48.67	8,262 74	8,299 81	26
27	41.20	47.71	8,255 16	8,295 95	27
28	40.30	46.76	8,246 77	8,291 71	28
29	39.39	45.81	8,237 57	8,286 97	29
30	38.48	44.86	8,226 94	8,281 78	30
31	37.57	43.91	8,215 38	8,275 83	31
32	36.66	42.96	8,202 57	8,269 30	32
33	35.75	42.02	8,188 36	8,262 10	33
34	34.84	41.07	8,172 62	8,254 00	34
35	33.94	40.13	8,155 36	8,245 09	35
36	33.05	39.19	8,136 47	8,235 17	36
37	32.16	38.26	8,115 58	8,224 26	37
38	31.28	37.32	8,092 74	8,211 99	38
39	30.41	36.40	8,067 81	8,198 66	39
40	29.54	35.48	8,040 30	8,183 86	40
41	28.69	34.57	8,010 67	8,167 62	41
42	27.85	33.67	7,978 44	8,149 83	42
43	27.02	32.77	7,943 44	8,130 12	43
44	26.20	31.89	7,905 47	8,108 81	44
45	25.38	31.01	7,863 80	8,085 27	45

Age	Expectation of life		Present value of R1 per annum for life		Age
	Male	Female	Male	Female	
46	24.58	30.14	7,819 24	8,059 56	46
47	23.79	29.27	7,771 09	8,031 19	47
48	23.00	28.41	7,718 43	8,000 26	48
49	22.23	27.55	7,662 36	7,966 17	49
50	21.47	26.71	7,602 01	7,929 50	50
51	20.72	25.88	7,537 13	7,889 67	51
52	19.98	25.06	7,467 48	7,846 46	52
53	19.26	24.25	7,393 87	7,799 65	53
54	18.56	23.44	7,316 31	7,748 34	54
55	17.86	22.65	7,232 34	7,693 55	55
56	17.18	21.86	7,144 14	7,633 63	56
57	16.52	21.08	7,051 78	7,568 96	57
58	15.86	20.31	6,952 25	7,499 27	58
59	15.23	19.54	6,850 04	7,423 21	59
60	14.61	18.78	6,742 06	7,341 35	60
61	14.01	18.04	6,630 10	7,254 57	61
62	13.42	17.30	6,512 32	7,160 20	62
63	12.86	16.58	6,393 01	7,060 46	63
64	12.31	15.88	6,268 22	6,955 37	64
65	11.77	15.18	6,137 89	6,841 61	65
66	11.26	14.51	6,007 26	6,723 93	66
67	10.76	13.85	5,871 65	6,598 93	67
68	10.28	13.20	5,734 03	6,466 35	68
69	9.81	12.57	5,591 82	6,328 18	69
70	9.37	11.96	5,451 65	6,184 66	70
71	8.94	11.37	5,307 75	6,036 07	71
72	8.54	10.80	5,167 44	5,882 78	72
73	8.15	10.24	5,024 37	5,722 22	73
74	7.77	9.70	4,878 76	5,557 43	74
75	7.41	9.18	4,734 90	5,388 93	75
76	7.07	8.68	4,593 54	5,217 27	76
77	6.73	8.21	4,446 63	5,046 79	77
78	6.41	7.75	4,303 09	4,870 92	78
79	6.10	7.31	4,158 98	4,693 89	79
80	5.82	6.89	4,024 40	4,516 47	80
81	5.55	6.50	3,890 51	4,343 99	81
82	5.31	6.13	3,768 02	4,173 15	82
83	5.09	5.78	3,652 76	4,004 82	83
84	4.89	5.45	3,548 46	3,839 88	84
85	4.72	5.14	3,452 32	3,679 21	85
86	4.57	4.85	3,368 64	3,523 71	86
87	4.45	4.55	3,300 66	3,374 26	87
88	4.36	4.33	3,249 07	3,231 75	88
89	4.32	4.11	3,225 97	3,102 96	89
90*	4.30	3.92	3,214 38	2,989 12	90*

N.B.—The age is to be taken as at the next birthday after the date when the right was required.

Example—Find the present value of an annuity or usufruct of R100 per annum for life of (A) a female who becomes entitled thereto at the age of 42 years 3 months, or (B) a male who becomes entitled thereto at the age of 63 years 9 months.

	(A)	(B)
Age when acquired	42 years 3 months	63 years 9 months
Age next birthday	43 years	64 years
Present value of R1 per annum for life	R8,130 12	R6,007 26

Therefore present value of R100 per annum for life equals R813,011 R600,731
 *{Ages over 90 are treated on the same basis as age 90.}

TABLE B
PRESENT VALUE OF R.1 PER ANNUM CAPITALISED AT 12 PER CENT
OVER FIXED PERIODS

Years	Amount	Years	Amount	Years	Amount	Years	Amount
	R		R		R		R
1	0,892 9	26	7,895 7	51	8,307 6	76	8,331 8
2	1,690 0	27	7,942 6	52	8,310 4	77	8,332 0
3	2,401 8	28	7,984 4	53	8,312 8	78	8,332 1
4	3,037 4	29	8,021 8	54	8,315 0	79	8,332 3
5	3,604 8	30	8,055 2	55	8,317 0	80	8,332 4
6	4,111 4	31	8,085 0	56	8,318 7	81	8,332 5
7	4,563 8	32	8,111 6	57	8,320 3	82	8,332 6
8	4,967 6	33	8,135 4	58	8,321 7	83	8,332 6
9	5,328 2	34	8,156 6	59	8,322 9	84	8,332 7
10	5,650 2	35	8,175 5	60	8,324 0	85	8,332 8
11	5,937 7	36	8,192 4	61	8,325 0	86	8,332 8
12	6,194 4	37	8,207 5	62	8,325 9	87	8,332 9
13	6,423 6	38	8,221 0	63	8,326 7	88	8,333 0
14	6,628 2	39	8,233 0	64	8,327 4	89	8,333 0
15	6,810 9	40	8,243 8	65	8,328 1	90	8,333 0
16	6,974 0	41	8,253 4	66	8,328 6	91	8,333 1
17	7,119 6	42	8,261 9	67	8,329 1	92	8,333 1
18	7,249 7	43	8,269 6	68	8,329 6	93	8,333 1
19	7,365 8	44	8,276 4	69	8,330 0	94	8,333 1
20	7,469 4	45	8,282 5	70	8,330 3	95	8,333 2
21	7,562 0	46	8,288 0	71	8,330 7	96	8,333 2
22	7,644 6	47	8,292 8	72	8,331 0	97	8,333 2
23	7,718 4	48	8,297 2	73	8,331 2	98	8,333 2
24	7,784 3	49	8,301 0	74	8,331 4	99	8,333 2
25	7,843 1	50	8,304 5	75	8,331 6	100	8,333 2

N.B.—Fractions of a year are to be disregarded when using this table.

Example—Testator, who died on 1 April 1977 left to (A) an annuity or usufruct value R.100 per annum, to terminate when (A) attains majority, which will occur, say at 30 September 1987. This period is found to be 10 years 6 months, but is taken as 10 years.

Present value of R.1 per annum for 10 years = R5,650 2
 Therefore present value of R.100 per annum for 10 years = R565,02

TABEL A

DIE VERWAGTE LEWENSDUUR EN DIE TEENSWOORDIGE WAARDE VAN R1 PER JAAR VIR LEWENSDUUR, GEKAPITALISEER TEEN 12 PERSENT OOR DIE VERWAGTE LEWENSDUUR VAN MANS EN VROUENS VAN VERSKILLENDE OUDERDOMME.

Ouderdom	Verwagte lewensduur		Teenswoordige waarde van R1 per jaar vir lewensduur		Ouderdom
	Man	Vrou	Man	Vrou	
0	64,74	72,36	8,327 91	8,331 05	0
1	63,37	72,74	8,328 28	8,331 14	1
2	64,50	71,87	8,327 76	8,330 91	2
3	63,57	70,93	8,327 14	8,330 64	3
4	62,63	69,97	8,326 44	8,330 33	4
5	61,69	69,02	8,325 67	8,329 99	5
6	60,74	68,06	8,324 80	8,329 61	6
7	59,78	67,09	8,323 81	8,329 18	7
8	58,81	66,11	8,322 71	8,328 69	8
9	57,83	65,14	8,321 48	8,328 15	9
10	56,85	64,15	8,320 07	8,327 53	10
11	55,86	63,16	8,318 49	8,326 84	11
12	54,87	62,18	8,316 73	8,326 08	12
13	53,90	61,19	8,314 80	8,325 22	13
14	52,93	60,21	8,312 65	8,324 27	14
15	51,98	59,23	8,310 29	8,323 20	15
16	51,04	58,26	8,307 70	8,322 03	16
17	50,12	57,29	8,304 89	8,320 71	17
18	49,21	56,33	8,301 80	8,319 26	18
19	48,31	55,37	8,298 41	8,317 64	19
20	47,42	54,41	8,294 71	8,315 84	20
21	46,53	53,45	8,290 61	8,313 83	21
22	45,65	52,50	8,286 13	8,311 61	22
23	44,77	51,54	8,281 17	8,309 12	23
24	43,88	50,58	8,275 64	8,306 33	24
25	43,00	49,63	8,269 59	8,303 26	25
26	42,10	48,67	8,262 74	8,299 81	26
27	41,20	47,71	8,255 16	8,295 95	27
28	40,30	46,76	8,246 77	8,291 71	28
29	39,39	45,81	8,237 37	8,286 97	29
30	38,48	44,86	8,226 94	8,281 70	30
31	37,57	43,91	8,215 38	8,275 83	31
32	36,66	42,96	8,202 57	8,269 30	32
33	35,75	42,02	8,188 36	8,262 10	33
34	34,84	41,07	8,172 62	8,254 00	34
35	33,94	40,13	8,155 36	8,245 09	35
36	33,05	39,19	8,136 47	8,235 17	36
37	32,16	38,26	8,115 58	8,224 26	37
38	31,28	37,32	8,092 74	8,211 99	38
39	30,41	36,40	8,067 81	8,198 66	39
40	29,54	35,48	8,040 30	8,183 86	40
41	28,69	34,57	8,010 67	8,167 62	41
42	27,85	33,67	7,978 44	8,149 83	42
43	27,02	32,77	7,943 44	8,130 12	43
44	26,20	31,89	7,905 47	8,108 81	44
45	25,38	31,01	7,863 80	8,085 27	45
46	24,58	30,14	7,819 24	8,059 56	46
47	23,79	29,27	7,771 09	8,031 19	47
48	23,00	28,41	7,718 43	8,000 26	48
49	22,23	27,55	7,662 36	7,966 17	49
50	21,47	26,71	7,602 01	7,929 50	50
51	20,72	25,88	7,537 13	7,889 67	51
52	19,98	25,06	7,467 48	7,846 46	52
53	19,26	24,25	7,393 87	7,799 65	53
54	18,56	23,44	7,316 31	7,748 34	54
55	17,86	22,63	7,232 34	7,692 55	55

Ouderdom	Verwagte lewensduur		Teenswoordige waarde van R1 per jaar vir lewensduur		Ouderdom
	Man	Vrou	Man	Vrou	
56	17,16	21,86	7,144 14	7,623 63	56
57	16,32	21,08	7,051 71	7,568 96	57
58	15,48	20,31	6,952 21	7,499 37	58
59	14,63	19,54	6,850 04	7,423 71	59
60	13,81	18,78	6,742 06	7,341 33	60
61	13,01	18,04	6,630 10	7,254 57	61
62	12,22	17,30	6,513 32	7,163 30	62
63	11,46	16,58	6,393 01	7,068 46	63
64	10,71	15,88	6,268 22	6,971 37	64
65	10,00	15,18	6,137 09	6,841 61	65
66	9,32	14,51	6,007 26	6,723 93	66
67	8,68	13,83	5,878 65	6,598 93	67
68	8,08	13,20	5,751 01	6,466 33	68
69	7,51	12,57	5,625 22	6,323 11	69
70	6,97	11,96	5,501 63	6,184 66	70
71	6,46	11,37	5,379 73	6,046 07	71
72	5,98	10,80	5,259 64	5,882 78	72
73	5,53	10,24	5,141 07	5,722 33	73
74	5,10	9,70	5,024 34	5,557 43	74
75	4,69	9,18	4,909 00	5,388 93	75
76	4,30	8,68	4,795 34	5,217 27	76
77	3,93	8,21	4,683 43	5,046 79	77
78	3,58	7,75	4,573 09	4,878 93	78
79	3,25	7,31	4,464 00	4,709 89	79
80	2,93	6,89	4,356 40	4,516 47	80
81	2,63	6,50	4,250 31	4,343 99	81
82	2,34	6,13	4,146 66	4,173 13	82
83	2,07	5,78	4,045 26	4,004 82	83
84	1,82	5,45	3,946 44	3,839 88	84
85	1,58	5,14	3,850 33	3,679 21	85
86	1,36	4,83	3,756 44	3,523 71	86
87	1,15	4,53	3,664 66	3,374 36	87
88	0,96	4,23	3,574 07	3,231 73	88
89	0,78	3,93	3,485 97	3,102 96	89
90	0,62	3,62	3,400 34	2,989 12	90

TABEL B

TEENSWOORDIGE WAARDE VAN RI PER JAAR GEKAPITALISEER-
TEEN 12 PERSENT OOR VASGESTELDE TYDPERKE

Jare	Bedrag	Jare	Bedrag	Jare	Bedrag	Jare	Bedrag
	R		R		R		R
1	0,892 9	26	7,895 7	51	8,307 6	76	8,331 8
2	1,690 0	27	7,942 6	52	8,310 4	77	8,332 0
3	2,401 8	28	7,984 4	53	8,312 8	78	8,332 1
4	3,037 4	29	8,021 8	54	8,315 0	79	8,332 3
5	3,604 8	30	8,055 2	55	8,317 0	80	8,332 4
6	4,111 4	31	8,085 0	56	8,318 7	81	8,332 5
7	4,563 8	32	8,111 6	57	8,320 3	82	8,332 6
8	4,967 6	33	8,135 4	58	8,321 7	83	8,332 6
9	5,328 2	34	8,156 6	59	8,322 9	84	8,332 7
10	5,650 2	35	8,175 5	60	8,324 0	85	8,332 8
11	5,937 7	36	8,192 4	61	8,325 0	86	8,332 8
12	6,194 4	37	8,207 5	62	8,325 9	87	8,332 9
13	6,423 6	38	8,221 0	63	8,326 7	88	8,333 0
14	6,628 2	39	8,233 0	64	8,327 4	89	8,333 0
15	6,810 9	40	8,243 8	65	8,328 1	90	8,333 0
16	6,974 0	41	8,253 4	66	8,328 6	91	8,333 1
17	7,119 6	42	8,261 9	67	8,329 1	92	8,333 1
18	7,249 7	43	8,269 6	68	8,329 6	93	8,333 1
19	7,365 8	44	8,276 4	69	8,330 0	94	8,333 1
20	7,469 4	45	8,282 5	70	8,330 3	95	8,333 2
21	7,562 0	46	8,288 0	71	8,330 7	96	8,333 2
22	7,644 6	47	8,292 8	72	8,331 0	97	8,333 2
23	7,718 4	48	8,297 2	73	8,331 2	98	8,333 2
24	7,784 3	49	8,301 0	74	8,331 4	99	8,333 2
25	7,843 1	50	8,304 5	75	8,331 6	100	8,333 2

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

29 AUGUST / 29 AUGUSTUS 2007

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

[61]

See answer to Question 1 (one) on next page (PAGE 2).

<u>LIQUIDATION ACCOUNT</u>			
<u>Assets:</u>			
<u>Immovable property</u>			
Erf 15 Gezina Township Registration Division JR, Province of Gauteng Measuring 1200m ² . Held by Deed of Transfer No. T346/93 [1] Valued at	1		500 000.00[1]
(Awarded to Joseph, his major son as sole heir i.t.o. section 1(1)(b) of the Intestate Succession Act) [1]			
<u>Movable property</u>			
Furniture and Fittings Valued at	2		160 000.00[1]
A motor vehicle Valued at	3		240 000.00[1]
(Awarded to Joseph, his major son as sole heir i.t.o. section 1(1)(b) of the Intestate Succession Act) [1]			
<u>Cash and Assets reduced to cash</u>			
Liberty Life Insurance Policy No.137345X8 Proceeds of Policy	4		325 000.00[1]
Old Mutual Life Insurance Policy No.OM345Y At surrender value	5		150 000.00[1]
Shares in GIANT (Pty) Ltd Sold at	6		275 000.00[1]
Nedbank – Savings account No. 34268	7		50 000. 00[1]
Total Assets			<u>1 700 000.00[1]</u>
<u>Liabilities</u>			
<u>Administration Costs</u>			

Advertising for Debtors and Creditors			
Government Gazette		9	24.20[1]
The Volksblad	[1]		210.00
Advertising Account for inspection			
Government Gazette		10	24.20[1]
The Volksblad	[1]		210.00
Master's fees (maximum)		11	600.00[1]
Executor's fees at 3.5% on R1 700 000.00			59 500.00[1]
VAT@ 14% on (R59 500.00)		12	8 330.00[1]
P Smith – Valuation costs –house	[1]	13	1 200.00
R Chetty – Valuation costs movable property	[1]	14	1 060.00
Wapen Attorneys – Transfer costs -house	[1]	15	28 341.60
Bank charges	[1]	16	50.00
Postage and petties	[1]	17	50.00
<u>Claims against the estate</u>			
PEACE – funeral expenses	[1]	18	5 400.00
WESBANK – loan for financing motor vehicle		19	45 000.00[1]
Absa bank – bond over house		20	50 000.00[1]
Total Liabilities			200000.00[1]
Estate Duty			Nil
Balance for distribution			1500000.00[1]

<u>Recapitulation Statement</u>			
Cash and assets reduced to cash			800 000.00[1]
<u>Less:</u>			
Liabilities		200 000.00[1]	
Cash Legacies		Nil	
Estate Duty		Nil	
Cash surplus		<u>600 000.00[1]</u>	
		<u>800 000.00</u>	<u>800 000.00</u>
<u>Fiduciary Assets Account</u>			
<u>Assets:</u>			
Farm 543 Rooibos			
Registration Division IR, Province of Limpopo:			
Measuring: 1 000h			
Held under Deed of Transfer No 723/66 and			
Registered on 1 May 1966 [1]			
Valued at			900 000.00[1]
(Awarded and to be transferred to Joseph	21		
Solomon major grandson i.t.o. clause 3 of the Will			
of George Solomon whose estate			
was administered at the Pretoria Master's office			
No 628/99) [2]			
<u>Liabilities:</u>			
Valuation costs [1]		1 500.00	
P Nel-transfer costs [1]		7 000.00	
Executor's fees at 3,5% on R900 000.00		31 500.00[1]	
VAT @ 14% on R31 500.00	22	4 410.00[1]	
Balance for distribution	23	<u>855 590.00[1]</u>	
		<u>900 000.00</u>	<u>900 000.00</u>
<u>Distribution Account</u>			
Balance for distribution			855 590.00
Awarded to Joseph Solomon in terms of the Will			
of his late grandfather, George Solomon		855 590.00	
The Award consists of: [1]			
The Farm Rooibos 900 000.00 [1]			
Less: Administration Costs			
to be paid in by Joseph 44 410.00 [1]			
		<u>855 590.00</u>	

<u>ESTATE DUTY ADDENDUM</u>		
<u>Property of the deceased</u>	[1]	
Assets as per liquidation account		1700000.00[1]
<u>Less</u> : Liberty Life Policy payable to estate		325 000.00[1]
		<u>1375000.00</u>
<u>Less</u> : Difference in value of private shares		25 000.00[1]
		<u>1350000.00</u>
<u>Value of Ceasing Fideicommissum</u>	[1]	
Age of Joseph which follows on 14/11/06=37yrs	[1]	
900 000.00 x 12% x 8.11558	[1]	<u>876 482.64[1]</u>
		2226482.64
<u>Property Deemed to be Property</u>	[1]	
<u>Add</u> : Liberty Life Policy payable to estate		325 000.00[1]
Sanlam Life Insurance Policy		50 000.00[1]
		<u>375 000.00</u>
Gross value of the estate		2601482.64
<u>Deductions – Sect 4</u>	[1]	
Costs of Administration and claims		200 000.00[1]
Net value of the estate		<u>2401482.64[2]</u>
<u>Less</u> : Primary Rebate – Sect 4A		<u>2500000.00[2]</u>
Dutiable Amount		0.00[1]
Estate Duty at 20% on R0.00		0.00

QUESTION 2

[12]

Themba's estate will devolve as follows:

If Dudu's unborn child is born alive then Thandaza, Phindile, Dudu and the unborn child (nasciturus fiction) are the intestate heirs [2].

Thandaza inherits either a child's share or R125 000.00, whichever is the greater (Section 1(1)(c) of the Intestate Succession Act read together with the Bhe decision). [1]

A child's share is $R400\ 000.00 \div 4 = R100\ 000.00$ [1]

Thandaza therefore inherits R125 000.00 [1]

Dudu inherits either a child's share or R125 000.00, whichever is the greater (Section 1(1)(c) of the Intestate Succession Act read together with the Bhe decision).

A child's share is $R400\,000.00 \div 4 = R100\,000.00$

Dudu therefore inherits R125 000.00 [1]

Phindile and the unborn child inherit the remainder thereof in the amount of R75 000.00 each because they are the descendants in terms of Section 1(1)(c) of the Intestate Succession Act [1]

As Phindile has renounced her rights to inherit, her share will accrue to the surviving spouses [1] Thandaza and Dudu in the amount of R37500.00 each.(Section 1(6)) [1]

Therefore Thandaza will receive $R\,125\,000.00 + R37\,500.00 = R162\,500.00$ and Dudu will receive $R\,125\,000.00 + R37\,500.00 = R162\,500.00$ [1]

However, if the unborn child is not born alive, then Thandaza and Dudu will each receive R200 000.00 [2]

QUESTION 3

[19]

- (a) Death Notice [1], Death Certificate [1], Inventory [1], original Will [1] and Acceptance of Trust as Executor in duplicate [1].
- (b) Take custody of assets-Sect 26 [1]; Open an estate banking account- Sect 28 [1], if there is more than R1000.00 cash on hand; Place a Sect 29 notice [1]
- (c) The executor may require the claimant to lodge an affidavit to support his/her claim [1]. The executor may then also require the claimant, with the consent of the Master, to appear before the Master or Magistrate nominated by the Master to be questioned under oath in connection with the claim [1]. The Master or Magistrate keeps a record of the proceedings and the executor makes a decision based on the evidence submitted [1]. If he rejects the claim, he notifies the claimant in writing by registered post giving reasons [1].

(d) ON THE FIRM'S LETTERHEAD

The Master of the High Court [1]

Dear Sir

RE: ESTATE LATE ADAM GOUWS NO.967/06 [1]

We refer to the above matter and request an extension of four months [1] within which to lodge the Liquidation and Distribution Account in the above estate, which account is due on the 31st December 2006. We advise as follows:

1. We are waiting on the Receiver of Revenue to provide us with an income tax assessment, which is needed as the deceased was employed at the time of death.[1]
2. All assets have been valued, all cash collected and all creditors paid.[1]
3. At present we are holding R9 000.00 in the estate bank account and R55 000.00 in the estate's saving account. These funds will be needed to meet the tax liability.[1]
4. The estate is solvent.[1]

We look forward to hearing from you in due course.

Yours faithfully

QUESTION 4

[8]

REPUDIATION CERTIFICATE

I the undersigned

Irene Kruger

In my capacity as the surviving spouse of the late Hans Kruger to whom I was married in community of property, do hereby declare as follows: [1]

I am aware of the terms and conditions of the joint Will and Testament of the deceased and myself, dated 24 July 2006 which constitutes a massing of our separate estates. [1]

I am aware that I have the right to either accept or reject the terms of the said Will and that the consequences of both acceptance and rejection have been explained to me.[1] Under the circumstances I have decided to repudiate the terms of the Will [1] which will have the effect that I will retain my half share of the joint estate [1] and will not be entitled to receive any benefit in terms of the said Will [1].

Surviving Spouse

I the undersigned

Charles Vonk

an Attorney duly sworn and admitted as such do hereby certify that I have explained to the said Irene Kruger the consequences of either accepting or rejecting the terms of the joint Will of herself and the deceased, that she fully understands the consequences of either accepting or rejecting the Will, and that she has after due consideration elected to reject the Will [2].

ATTORNEY

TOTAL: [100]

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

28 FEBRUARY / 28 FEBRUARIE 2007

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.*

This is an answer guide only and examiners are advised to use their own knowledge and expertise in assessing the candidates' answers.

QUESTION 1

[14]

- 1.1 The appointment of such a person is normal practice. However the practitioner must supervise the work and remains ultimately responsible for whatever is done. [3]
- 1.2 Clients may be seen and new matters accepted only in the field of expertise of the non-professional. [2]
- 1.3 These activities fall within the normal duties of a collection assistant but the practitioner must supervise the results and give guidance on what should be done. [2]
- 1.4 Legal advice is a professional activity and may not be given by support staff. [2]
- 1.5 High Court matters are always specialised and professional work and must be attended to by professionals. [3]
- 1.6 No. This entails abandoning control of trust funds. At most he/she can be a co-signatory. [2]

QUESTION 2

[6]

It is normal that the attorney will not be familiar with accounting systems or computer programmes. This does not mean that trust books must be written up by hand if that is what the attorney knows. Attorneys must find out enough to ensure that the computer systems entail compliance with the Act and Rules and must be able to check that the system is adhered to.

QUESTION 3**[12]**

Candidates must show insight into the applicable Law Society's rules on marketing as opposed to touting.

- 3.1 It is acceptable to reduce fees in the case of large volumes of work. The fee must still be reasonable. [3]
- 3.2 Attorneys may not share fees with non-professionals. Paying for mandates is an extreme form of touting. [3]
- 3.3 Supporting a client is in order if it is done in good taste. Neither the publicity, nor the prizes may be excessive or extravagant. [3]
- 3.4 Accepting secret commissions is against common law rules and could also constitute touting and sharing of fees. Declare commission. [3]

QUESTION 4**[15]**

The practitioner should feel free to accept the mandate. It is a fairly routine matter and will assist in gaining experience. It is in order to consult an experienced colleague. It is not wrong to seek help from an experienced colleague and to ask for precedents but own research is essential. Inform the client that you wish to study the legal position and procedure.

Firstly study a text book on the topic and available authority (e.g. previous judgements) which clarify the rules. If you experience problems, use further assistance in a good library such as a noter-up. As guide to the drafting of the relevant documents consult practice guides (Forms and Precedents, etc). The most important requirement is that the documents are thoroughly and carefully drafted and that the attorney properly prepares and qualifies himself. Be careful of negligence.

QUESTION 5**[12]**

The introduction of FICA impinges upon the traditional role and independence of the attorneys' profession and upon the confidentiality of all communications between attorneys and their clients. Apart from having the duty to establish and verify the identity of clients and of their authority, they are obliged to keep detailed records of clients, business relationships, and of transactions for a specified period; they are also under an obligation:

- 5.1 to make such records available to the Financial Intelligence Centre on the strength of a warrant;
- 5.2 to inform the centre on request of the existence of a current or past mandate;
- 5.3 to report cash transactions above a prescribed amount to the Centre; and;
- 5.4 to report to the Centre the conveyance in terms of a transaction with a client of cash above a prescribed amount to or through a specified account or institution.

QUESTION 6**[26]**

There will be a number of ways of answering this question. You must allocate up to 20 marks for correct legal issues at the rate of 2 marks each. The appended list is not necessarily comprehensive. There may also be others that are raised and may be accepted. The additional 5 marks go for style, clarity, comprehension and presentation.

6.1 Why a CC rather than a company?

- Cost of procedure
- Simplicity to arrange
- Quicker to establish
- Ease of future management and administration
- Less outside administration in future
- Less expense in future administration
- Easy to make contributions in kind and value
- Simplicity of changing membership interest or agreement

[15]**6.2 Why not a partnership?**

All of the above (1 – 8) are relevant to a greater or lesser degree.
The following are essential elements:

Separate personality which means

- Possible non personal liability and
- Continued existence after death of member
- Something about insolvency / liquidation
- more flexible tax position

[11]**QUESTION 7****[15]**

Legal professional privilege applies to communications between you and your client:

- 7.1 where the communication relates to your professional or intended professional relationship;
- 7.2 made for the dominant purpose of seeking or giving legal advice or for use in existing or anticipated legal proceedings;
- 7.3 whether written or oral and even;
- 7.4 where the client confesses to you the commission of a prior crime or fraud.

Bear in mind that it is information that is protected by privilege. If such information is contained in a document, the document is privileged. If, however, the document is contained in a file containing a number of documents, the entire file does not become immune to protection.

Professional privilege does not apply to

- documents which are not otherwise privileged. They do not become privileged merely because your client hands them to you;
- communications made for the purpose of facilitating a crime or fraud, Harksen v Attorney-General Cape and Others 1999(1) SA 718(C), Waste Products Utilisation (Pty) Ltd v Wilkes and Anther 2003 (2) SA 515 (W).
- the name of your client – you can be compelled to disclose it;
- facts learned by you with your own senses and;
- where a statute expressly or by implication provides that the privilege is inapplicable.

TOTAL: [100]

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

30 AUGUSTUS 2007

09:00-11:15

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 3 ATTORNEY'S PRACTICE

30 AUGUST 2007

09:00-11:15

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 [20]

ABC Properties (Edms) Bpk is die verhuurder van sekere eiendomme. 'n Huurkontrak word met XYZ Investments (Edms) Bpk as huurder aangegaan om die eiendom vir 'n tydperk van vyf jaar teen 'n huurgeld van R10 000,00 per maand te verhuur. Eskalasië teen 8% per jaar vir vyf jaar saamgestel is verder van toepassing.

Dit is 'n voorwaarde van die ooreenkoms dat die twee direkteure van XYZ Investments (Edms) Bpk 'n borgstellingsooreenkoms ten opsigte van die verpligtings van XYZ Investments (Edms) Bpk voortspruitende uit die huurkontrak ten gunste van ABC Properties (Edms) Bpk moet teken. Die eiendom is te Erf 1234 Durban geleë.

Stel 'n omvattende borgstellingsooreenkoms op en gebruik u eie feite waar nodig.

VRAAG 2 [20]

U word geraadpleeg deur 'n kliënt X wat u vertel dat hy homself verbind het aan ABC Bank as borg vir die verpligtinge van Y teenoor die Bank. Hy vertel u verder dat daar 2 (Twee) medeborge C en D is wat gesamentlik en afsonderlik met hom verantwoordelik was vir Y se skuld aan die Bank. Hy deel u verder mee dat Y versuim het om sy skuld aan die Bank te betaal en dat die Bank hom gedagvaar het. Hy het toe met die wete van Y die skuld betaal. U kliënt vra u om hom te voorsien van 'n skriftelike mening waarin u uiteensit wat sy regte, indien enige, is teenoor Y en die medeborge.

Stel die mening op.

VRAAG 3 [16]

A verkoop sy 100% aandele in 'n maatskappy ABC (Edms) Bpk aan X. Die koopprys is R100 000,00 en is betaalbaar binne 6 (Ses) maande vanaf datum van die verkoping. A en X

QUESTION 1 [20]

ABC Properties (Pty) Limited is the landlord of certain premises. A lease is concluded with XYZ Investments (Pty) Limited as tenant to hire the premises for a period of five years at a rental of R10 000,00 per month escalating by 8% per annum compounded over the five year period.

It is a condition of the lease that the two directors of XYZ Investments (Pty) Limited must sign a deed of suretyship for the obligations of XYZ Investments (Pty) Limited to ABC Properties (Pty) Limited in terms of the lease. The premises are situated at Erf 1234 Durban.

Draft a comprehensive deed of suretyship using your own facts if necessary.

QUESTION 2 [20]

You are consulted by a client X who tells you that he has bound himself as a surety for Y's indebtedness to ABC Bank. He tells you that there are 2 (Two) other sureties for the debt namely C and D who are jointly and severally liable with him. He tells you further that Y failed to pay what he owed the Bank which sued your client for the amount owing which he has paid with Y's knowledge. Your client asks you to give him a written opinion setting out what his rights, if any, are against the principal debtor and his co-sureties.

Draw the opinion.

QUESTION 3 [16]

A sells his 100% shareholding in a company ABC (Pty) Ltd to X. The purchase price is R100 000,00 and is payable within 6 (Six) months from the date of sale. A and X agree that

kom ooreen dat X, A 'n promesse sal gee betaalbaar 6 (Ses) maande in die toekoms ten opsigte van die koopprys en hulle kom ook ooreen dat X die aandele wat hy gekoop het aan A sal verpand as sekuriteit vir die behoorlike betaling van die koopprys.

Stel die nodige promesse op wat 'n pand van die aandele ten gunste van A as koleterale sekuriteit moet bevat.

VRAAG 4 [20]

4.1 U word genader deur 'n kliënt wat u versoek om sekere werk vir hom te doen. Voordat u egter die mandaat aanvaar, nader 'n ander kliënt u met 'n opdrag wat baie meer winsgewend vir u gaan wees as die eerste opdrag. Vanweë werkdrukke kan u nie altwee opdragte aanvaar nie. **Moet u die eerste mandaat aanvaar of staan dit u vry om enige een van die twee mandate te aanvaar? Verskaf redes.**

(5)

4.2 U is 'n gekwalifiseerde prokureur en u word 'n vennootskap in 'n kruideniersbesigheid in u tuisdorp aangebied wat u wil aanvaar. **Mag u die aanbod aanvaar en nogtans voortgaan om u regspraktyk te bedryf? Gee redes vir u antwoord.** (5)

4.3 U is 'n jong ambisieuse prokureur. U skoonvader is die eienaar van 'n wildsplas waar hy dikwels gaste vir jagdoeleindes ontvang. Onthaal is luuks en duur. U skoonvader stel voor dat u die wildsplas kan gebruik om u praktyk in u tuisdorp te bevorder deur potensiële kliënte vir 'n jagnaweek uit te nooi. **Met inagneming die noodsaaklikheid om u firma te bemark, sal sodanige optrede aanvaarbaar wees? Bespreek kortliks.**

(5)

X will give A a promissory note undertaking to pay the purchase price 6 (Six) months in the future and they also agree that X will pledge the shares which he has purchased to A as security for due payment of the purchase price.

Draw the appropriate promissory note which contains a pledge of the shares purchased by X as collateral security.

QUESTION 4 [20]

4.1 You are approached by a client who requests you to do some work for him. Before you accept the mandate, however, another client approaches you with instructions which will produce a larger profit for you than the work first offered to you by the other client. Because of time constraints you cannot accept both mandates. **Must you accept the first mandate or are you free to choose either of the two mandates? Give reasons.** (5)

4.2 You are a qualified attorney and you are offered a partnership in a grocery business in your home town which you wish to accept. **May you accept the offer and nevertheless continue to conduct your legal practice? Give reasons.** (5)

4.3 You are a young ambitious attorney. Your father-in-law is the owner of a game farm at which he regularly entertains guests for hunting purposes. Entertainment is lavish and expensive. Your father-in-law suggests that you might like to utilize the game farm to promote your practice in your home town by inviting prospective clients for a weekend of hunting. **Bearing in mind your need to market your firm would such conduct be acceptable? Discuss briefly.** (5)

4.4 U is van mening dat die omvang van 'n rekening van 'n kollega vir die opstel van 'n huurkontrak, welke koste u kliënt as huurder moet betaal, buitensporig hoog is. **Bespreek kortliks hoe u as prokureur in dié omstandighede sal optree.**

(5)

VRAAG 5

[14]

5.1 **Bespreek die omstandighede waaronder 'n prokureur sy opdrag mag beëindig.**

(5)

5.2 U het 'n gewaardeerde kliënt wat 'n verklaring moet beëdig. Hy stuur 'n getekende dokument aan u om te beëdig. **Mag dit gedoen word? Motiveer u antwoord.**

(3)

5.3 **Waarom is kliëntelokkery onprofessioneel?**

(3)

5.4 **Mag 'n prokureur 'n onderhoud voer met 'n getuie deur die teenkant gedagvaar in 'n siviele saak indien hy glo dat die getuie in besit is van getuienis wat relevant is tot sy kliënt se saak? Watter prosedure sou u volg?**

(3)

VRAAG 6

[10]

U tree op vir 'n kliënt in 'n arbitrasie-aangeleentheid. 'n Paar weke voor die verhoordatum ontstaan daar 'n misverstand tussen u en die kliënt as gevolg waarvan hy u mandaat beëindig en u versoek om u leër aan 'n ander prokureur te oorhandig. U het nog nie sy rekening tot op datum gedebiteer nie en hy skuld u geld ten opsigte van u dienste.

Skryf 'n brief aan u voormalige kliënt en verduidelik aan hom wat moet gebeur voordat u die leër kan oorhandig.

4.4 You are of the opinion that the account of a colleague for the drafting of a lease, the cost of which your client as the tenant, will have to pay, is excessively high. **Discuss briefly how you, as an attorney, should act in these circumstances.**

(5)

QUESTION 5

[14]

5.1 **Discuss under which circumstances an attorney may terminate his mandate?**

(5)

5.2 You have a valued client who has to make an affidavit. He sends the signed document to you to attest. **May you do this? Motivate your answer.**

(3)

5.3 **Why is touting for work unprofessional?**

(3)

5.4 **May an attorney interview a witness who has been subpoenaed in a civil matter by the other side where he believes the witness is in possession of evidence relevant to his client's case? What procedure would you follow?**

(3)

QUESTION 6

[10]

You act for a client in an arbitration matter. A few weeks before the trial date a misunderstanding arises between you and your client as a result of which he terminates your mandate and requests you to deliver your file to another attorney. You have not debited his account up to date and he still owes you money in respect of your services.

Write a letter to your erstwhile client and explain to him what must happen before the file can be handed over.

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

30 AUGUST / 30 AUGUSTUS 2007

ANSWERS/ANTWOORDE

NOTE TO EXAMINER: *This model answer is a guide to the examiners and they are advised to use their own knowledge and expertise in assessing the candidates' answers.*

QUESTION 1

[20]

DEED OF SURETYSHIP

We, the undersigned,

DIRECTOR ONE

and

DIRECTOR TWO

(hereinafter referred to as "the SURETIES")

do hereby interpose and bind ourselves as SURETIES for and CO-PRINCIPAL DEBTORS jointly and severally with and on behalf of

XYZ INVESTMENTS (PROPRIETARY) LIMITED

(hereinafter referred to as "the PRINCIPAL DEBTOR")

unto and in favour of

ABC PROPERTIES (PROPRIETARY) LIMITED

(hereinafter referred to as "the CREDITOR")

for the due and punctual payment by the PRINCIPAL DEBTOR to the CREDITOR of all sums of money which the PRINCIPAL DEBTOR now owes or may from time to time hereafter owe to the CREDITOR, including damages for breach of contract or otherwise arising from a Deed of Lease entered into or to be entered into between the CREDITOR and the PRINCIPAL DEBTOR in respect of premises, being Erf 1234 Durban and any extensions or renewals thereof and the due and proper performance by the PRINCIPAL DEBTOR of the PRINCIPAL DEBTOR'S obligations which the PRINCIPAL DEBTOR may now or in the future owe to the CREDITOR thereunder.

1. The SURETIES renounce the benefits of excussion, division, cession of action, no value received, non causa debiti and revision of accounts, the meaning and effect whereof the SURETIES declare themselves to be fully acquainted.
2. The SURETIES agree and acknowledge that this suretyship shall be in addition to any other suretyship, guarantees or purported suretyships or guarantees concluded by the SURETIES to the CREDITOR on behalf of the PRINCIPAL DEBTOR.
3. Should any extension of time, lenience or other indulgence be granted to the PRINCIPAL DEBTOR for the fulfilment of any of its obligations, irrespective of whether or not the SURETIES have had notice of such extension of time or variation, the SURETIES declare that such extension of time or variation shall not release the SURETIES from their liability in terms of these presents and shall not be regarded as a waiver or tacit renunciation of the CREDITOR'S rights hereunder.
4. The SURETIES consent in terms of Section 45 of Act 32 of 1944 or any amendment thereof, to the CREDITOR taking any legal proceedings for enforcement of any of its rights under this Suretyship for recovery of monies claimed under this Suretyship, if the CREDITOR so elects, in the Magistrate's Court in any district having jurisdiction in respect of the CREDITOR by virtue of Section 28 of the aforesaid Act.
5. The SURETIES choose *domicilium citandi et executandi* for all purposes hereunder at:

DIRECTOR ONE
I.D. NO

DIRECTOR TWO
I.D. NO
6. The SURETIES acknowledge that this is the entire agreement between the SURETIES and the CREDITOR and no alteration or amendment shall be valid unless reduced to writing and signed by the CREDITOR and the SURETIES.
7. In the event of any dispute arising out of any breach by the SURETIES of its obligations under this agreement, the SURETIES agree to pay the CREDITOR'S costs on the attorney and own client scale.
8. The costs of drawing this Suretyship and all changes incidental thereto including any stamp duty shall be borne by the SURETIES.

SIGNED BY THE SURETIES this day of 2007.

AS WITNESSES:

1.		DIRECTOR ONE
2.		DIRECTOR TWO

SIGNED BY THE PRINCIPAL DEBTOR this _____ day of _____ 2007.

AS WITNESSES:

1. _____ For and on behalf of –
XYZ INVESTMENTS (PTY) LIMITED

2. _____

SIGNED BY THE CREDITOR this _____ day of _____ 2007.

1. _____ For and on behalf of –
ABC PROPERTIES (PTY) LIMITED

2. _____

QUESTION 2

[20]

The opinion should state:

1. re The principal debt:

1.1 That X who has paid the whole principal debt has a right of recourse by operation of law and without a cession against the principal debtor, not only for the debt which he has paid but also for any loss that he has suffered or expenses that he has reasonably incurred as the result of the principal debtor's refusal or failure to pay;

1.2 That the requirements for a right of recourse against the principal debtor are:

1.2.1 X must have discharged the principal debt and by doing so he must have procured the release of the principal debtor;

1.2.2 X must not negligently have failed to raise a valid defence to the creditor's claim which the principal debtor could have raised;

1.2.3 X must not have negligently failed to inform the principal debtor that he has paid the claim and the principal debtor has also paid it.

2. re the co-sureties:

2.1 X will have a claim for a contribution in respect of what he has paid the principal debtor from his co-sureties. These claims arise by operation of law and not from any contract or agreement. Your client will be entitled to claim 1/3 of what he paid the creditor plus any costs incurred in enforcing the contribution from each co-surety even if such co-sureties have renounced the benefit of division.

2.2 There are 3 (Three) requirements which must be fulfilled before X can enforce his rights to a contribution against his co-sureties:

- (a) X must have discharged the principal debt and by doing so must have procured the release of the co-sureties;
- (b) X must not have failed to raise a valid defence against the creditor's claim;
- (c) If X discharges the debt and obtains some benefit from the creditor in doing so which is not available to his co-sureties, he cannot enforce a contribution until the value of such benefit has been determined unless he puts up security to his co-sureties for repayment of the difference between their contribution and the value of such benefit.

QUESTION 3

[16]

I, X hereby promise to pay A the sum of R100 000.00 being the purchase price of 100 ordinary shares in ABC (Pty) Ltd on the 1st day of December 2006. I hereby pledge to A as collateral security for the due payment of the sum of R100 000.00 the 100 shares in ABC (Pty) Ltd which I purchased from him.

In order to complete the pledge I hereby agree and undertake to deliver the share certificates in respect of the said shares together with share transfer forms in respect thereof signed in blank to the company's auditor on signature hereof to be held by them in trust upon the following conditions:

1. Should I default in making payment of the sum of R100 000.00 on due date, I authorise A to sell the pledged shares by auction or by private treaty or to otherwise dispose thereof and to re-imburse himself out of the proceeds up to an amount of R100 000.00 and;
2. To pay to me any surplus which may remain from such sale of disposal and;
3. If the proceeds of the sale or disposal of the said shares is less than R100 000.00, I acknowledge that I will remain liable to A in respect of the balance.

DATED AT ON THIS THE DAY OF 2007.

AS WITNESSES:

1. _____

2. _____

SIGNATURE

QUESTION 4**[20]**

- 4.1 The general rule is that a practitioner is entitled to accept or refuse any work offered to him unless for special reasons there is some obligation to accept or refuse work. The attorney enjoys a *delictus personae* respecting the client or clients. The attorney is accordingly free to choose either of the two mandates. (5)
- 4.2 There is nothing to prevent a practitioner from engaging, apart from his legal practice in any other lawful business whether as proprietor or partner or as director of a company conducting the business or as agent of the business. (5)
- 4.3 In the course of his practice and his social life, an attorney meets many persons who, or whose enterprises would prove valuable as clients. The attorney should in his entertainment of these persons avoid giving the impression that his intentions are designed to touting his practice. Clearly a campaign of promotions by lavish entertainment and attention is unprofessional. It is a question of degree. Clearly the proposed activity is exaggerated and amounts to touting. (5)
- 4.4 You should advise your client to request the Law Society to have the fee determined (taxed) by a Assessment panel in order to establish is reasonable. Nothing prevents you from negotiating a fee with your colleague that you consider to be reasonable. (5)

QUESTION 5**[14]**

- 5.1 He may only terminate his mandate on good cause. For example, failure by the client to provide him with funds, being asked to do something dishonourable or being hindered by the client or prevented from conducting the case or failure to furnish instructions. (5)
- 5.2 You should insist that he comes to you and signs in your presence or you go to his office and have him sign in front of you. In either instance the document must be properly attested. The reasons for this is that the regulations in terms of the Justices of The Peace and Commissioner of Oath Act require that the oath must be taken in the presence of the Commissioner of Oath who must administer the prescribed oath. (3)
- 5.3 It detracts from the dignity of the profession. It could lead to dishonesty. It gives an unfair advantage to the unscrupulous. This also causes problems and the public expect discounts. (3)
- 5.4 Yes, if he is believed to be in possession of relevant information to assist the attorney's client. The attorney should notify the practitioner representing the other client.
Note – it is not necessary to obtain his consent. (3)

NOTE TO EXAMINER: The following answer is based on the legal position as it exists in Kwazulu Natal where a debtor/creditor and enrichment lien is recognised. This appears to be correct statement of the law. There may be variations in the answers indicating that the lien does not extend to our client's own papers. The examiner must use own discretion.

We refer to your fax of yesterday when you advised that our mandate is terminated and requested us to transfer our file in the matter to attorneys Grant & Partners.

We are not in a position to do so forthwith as we have not yet debited your account for services rendered to you. Until such time as the account has been drawn by us and settled by you, we are not obliged to transfer the content of the file.

We shall let you have an estimate of our fees and disbursements within the next day or two. If you find same acceptable, we require payment thereof immediately. On receipt of payment we shall let you have the file. If you do not find same acceptable we will have to arrange for taxation thereof and until that has happened we will retain your file. We are however prepared at your expense to make Photostats of the entire file for your use in view of the urgency of the matter.

TOTAL: [100]

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

30 AUGUST / 30 AUGUSTUS 2007

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

[30]

Client	Amount transferable	Closing balances	
		Trust	Business
Canon Office Supplies	- ✓	- ✓	(20 000) ✓
Zulu	14 729 ✓	20 000 ✓	1 754 ✓
John	15 238 ✓	104 762 ✓	- ✓
Mary	2 387 ✓	6 412 ✓	- ✓
Martha	- ✓	- ✓	6 843 ✓
Lilian	- ✓	82 247 ✓	- ✓
Kennedy	24 689 ✓	- ✓	16 749 ✓
Lazarus	(3 600) ✓	- ✓	6 300 ✓
	53 443 ✓	213 421 ½	51 646 ½

(26)

Note: each ✓ = 1 mark

Transfer journal:

(2)

Various clients' trust accounts Dr

Various clients' business accounts Cr

Lazarus business account Dr

Lazarus trust account Cr

Cash book entries:

(2)

Credit the trust cash book and debit the business cash book with R53 443.

Trust cash book

1/7 Debtor (Green)	5 000	9/7 Nedbank	150 000
8/7 Black	150 000	14/7 Counsel	570
10/7 Black	61 400	16/7 R/D (Green)	3 000
11/7 Green	3 000	27/7 Green	750 000
16/7 T/F	570	Black	5 000
27/7 Nedbank	155 000	T/F (Black)	61 400
FNB	600 000	T/F (Green)	1 197
		Green	3 803

Business cash book

27/7 T/F	61 400	9/7 SARS	50 000
T/F	1 197	16/7 Transfer (Green)	570

Black (trust ledger) - Transfer

27/7 Cash	750 000	8/7 Cash	150 000
T/F	61 400	10/7 Cash	61 400
		27/7 Cash	600 000
	<u>811 400</u>		<u>811 400</u>

Sect 78(2)(A) Nedbank (Black)

Cash	150 000	Cash	155 000
Cash	5 000		
	<u>155 000</u>		<u>155 000</u>

Green (trust ledger) Collection

27/7 T/F	1 197	1/7 Cash	5 000
Cash	3 803		
	<u>5 000</u>		<u>5 000</u>

Green (trust ledger) Divorce

14/7 Counsel	570	11/7 Cash	3 000
16/7 Cash	3 000	16/7 T/F	570
	<u>3 570</u>		<u>3 570</u>

BUSINESS LEDGER

Green			
Fees	57	27/7	T/F 1 197
Fees	342		
Cash	570		
Cash	228		
	<u>1 197</u>		<u>1 197</u>

Fees	
Green	50
Green	300
Green	200
Black	10 000

Black			
9/7 Cash	50 000	27/7	T/F 61 400
Fees	11 400		
	<u>61 400</u>		<u>61 400</u>

VAT	
Green	7
Green	42
Green	28
Black	1 400

(1 mark each = 50 marks)

FEE JOURNAL

Green	57	
Fees		50
VAT		7
Green	228	
Fees		200
VAT		28
Black	11 400	
Fees		10 000
VAT		1 400

Green	342	
Fees		300
VAT		42

(½ mark each = 6 marks)

Statement of account to Green

Property

Purchase price Black		750 000
Paid you	750 000	

Collection

Fees Letter of Demand	57	
Cash Debtor		5 000
Collection commission	342	

Divorce

Cheque for		3 000
Paid Counsel	570	
R/D cheque	3 000	
Fees	228	
Cheque herewith	3 803	
	<u>758 000</u>	<u>758 000</u>

(4 marks)

QUESTION 3

[10]

- Incoming mail from post office to be opened by two persons.
- Cheques/cash/money orders to be entered in a mail register.
- Purpose printed receipt books to be purchased.
- Receipt book register to be kept under lock and key.
- Receipts to be issued for all moneys received including electronic and direct transfers/deposits.
- All moneys received to be deposited intact on the first banking day following receipt.
- No cashing of cheques from accumulated trust monies.
- Management / Senior officials to review mail register, receipt and deposit books regularly.
- Cashier to sign and accept responsibility for receipt book issued.
- Cashier money to be kept under lock and key and management to perform surprise cash counts.

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

28 FEBRUARY / 28 FEBRUARIE 2007

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]**

1. Balance the cash book at the end of the month.
2. On receipt of the Bank Statement, compare the entries in the Bank Statement with the entries in the Cash Book.
3. Tick off the common entries.
4. Open a Supplementary Cash Book.
5. Enter all the entries that appear in the Bank Statement but not in the Cash Book in a Supplementary Cash Book.
6. Balance the Supplementary Cash Book.
7. Proceed with the Bank Reconciliation Statement with the Balance as per Bank Statement.
8. Adjust the Bank Balance by either adding or subtracting entries that appear in the Cash Book but not in a Bank Statement.
9. Also add/subtract errors that have been made by the Bank.
10. The final adjusted balance reconciles with the Supplementary Cash Book Balance.

QUESTION 2 **[35]**

TRUST CASH BOOK

White Attorney	9 139	Transfer	1 140
		Black	7 999

BUSINESS CASH BOOK

Transfer	1 140		
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WHITE ATTORNEYS TRUST

Black	12 000	Cash	9 139
Transfer	1 140	Black	4 001

WHITE ATTORNEYS BUSINESS

Fees	<u>1 140</u>	Transfer	<u>1 140</u>
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BLACK TRUST

White	4 001	White	12 000
Cash	<u>7 999</u>		

FEEES

		White	1 000
--	--	-------	-------

VAT

		Green	140
--	--	-------	-----

JOURNAL (T)

Black (Fees & disbursements)	4 001	
White Attorneys		4 001
Being summons fee, disbursements and collection commission		
White Attorneys	12 000	
Black		12 000
Being amount received from debtor		

JOURNAL – BUSINESS

White Attorneys	1 140	
Fees		1 000
VAT		140
Being allowance		

TRANSFER JOURNAL

White Attorneys	1 140	
White Trust		1 140
Being transfer		

(1 mark for each entry; 4 marks for each entry for R4191)

QUESTION 3**[20]**

- a) Cash book (Trust) Cash Book (Business)
 Journal (Trust) Journal (Business)
 Ledger (Trust) Ledger (Business) (3)
- b) 1) Cash Book to record all cash received and paid out
 2) Journals to record all non cash transactions
 3) Ledger to record all the transactions of individual clients, debtors and creditors. (3)
- c) Trust account to record ALL transactions in respect of client's affairs.
 Business account to record all transactions of the practice.
 Each account to be identified as "Trust Account" or "Business Account". (4)
- d) i) Debit Trust Cash Book (Trust account) (1)
 ii) Debit Trust Cash Book (Trust account) (1)
 iii) Deposit in the Estate Banking account (2)
 iv) Debit Trust Cash Book (Trust account) (1)
 Credit Business Cash Book (Business Account) (4)
 Transfer from Trust to Business (1)
 v) Debit Trust Cash Book (Trust account) (1)

QUESTION 4**[30]****TRUST CASH BOOK**

Chetty	100 000	Albert	80 000
Van Rensburg	200 000	Nedbank	100 000
Ndlovu	90 000	FNB	200 000
Kennedy	50 000	Chetty	4 000
Msomu	80 000	Fidelity Fund	9 000
Nedbank	104 000	Balance	440 000
FNB	209 000		
	<u>833 000</u>		<u>833 000</u>

Section 78(2)(A) Nedbank (Chetty)

Cash	100 000	Cash	104 000
Cash	4 000		
	<u>104 000</u>		<u>104 000</u>

Section 78(2)(a) FNB (Fidelity Fund)

Cash	200 000	Cash	209 000
Cash	9 000		
	<hr/>		<hr/>

CHETTY

		Cash	100 000
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VAN RENSBURG

		Cash	200 000
--	--	------	---------

NDLOVU

		Cash	90 000
--	--	------	--------

KENNEDY

		Cash	50 000
--	--	------	--------

ALBERT

Cash	80 000	Cash	80 000
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1 mark each

TRUST RECONCILIATION

Cash Book balance 440 000

Trust Creditors

Chetty	100 000
Van Rensburg	200 000
Ndlovu	90 000
Kennedy	50 000

<hr/>	<hr/>
440 000	440 000
<hr/>	<hr/>

5 marks