

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

20 AUGUSTUS 2008

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

20 AUGUST 2008

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

[65]

John en Mary is buite gemeenskap van goed met mekaar getroud met uitsluiting van die aanwasbedeling. Hulle het twee minderjarige kinders. Hulle huis is in albei van hulle se naam as gelyke mede-eienaars geregistreer. Hulle het gedurende 2001 'n gesamentlike testament verlywat bepaal dat indien John eerste sou sterf, hulle onderskeie aandele in die huis saamgesmelt moet word en aan 'n *inter vivos* trust bemaak word wat John in 2000 vir Mary en die kinders opgerig het, tesame met 'n kontantlegaat van een miljoen rand en alle aandele wat by John se afsterwe in sy boedel gevind mag word. Die restant van John se boedel word aan Mary nagelaat.

Die langsliewende word in die testament benoem as die eksekuteur van die eerssterwende se boedel.

John sterf op 31 Julie 2007 en word oorleef deur Mary en die twee kinders.

U word deur Mary geraadpleeg en sy gee u opdrag om die beredding van John se boedel namens haar te behartig. U stel vas dat John se sake soos volg daar uitsien:

1. Die billike markwaarde van die huis is R2 500 000.00 en Mary deel u mee dat sy tevrede is met die bemaking van die huis ten gunste van die trust, omdat sy 'n inkomstebegunstigde in terme van die trustakte is.

'n Tuinwoonstel op die eiendom word aan 'n jonggetroude egpaar verhuur vir R2000.00 per maand, betaalbaar voor of op die sewende dag van elke maand. Die huurgeld vir Augustus 2007 is op 7 Augustus 2007 aan Mary oorhandig.

2. John se bates bestaan uit:

QUESTION 1

OCP = A

[65]

^{Wade}
John and Mary are married to each other out of community of property with exclusion of the accrual system. They have two minor children. The house in which the family resides is registered in both their names in equal shares. They executed a joint will in 2001 which provides that if John dies first, their respective shares in the house are to be massed and devolve upon an *inter vivos* trust which John had established in 2000 for the benefit of Mary and the children, together with a cash legacy of one million rand and all shares found in his estate at the date of his death. The residue of John's estate is left to Mary.

The will nominates the survivor as the executor of the estate of the first dying.

John dies on 31 July 2007 and is survived by Mary and the two children.

You are consulted by Mary who instructs you to attend to the winding-up of John's estate on her behalf, and you establish the following:

1. The fair market value of the house amounts to R2 500 000.00 and Mary informs you that she has no objection to the bequest thereof in favour of the trust, in view of the fact that she is an income beneficiary in terms of the trust deed.

A garden flat on the property is let to a young married couple for R2000.00 per month, payable on or before the 7th day of each month. The rental for August 2007 was handed to Mary in cash on 7 August 2007. *14E income after death*

2. John owned the following assets:

15700000
540
PO228A
TRUST
CASH

LA TRUST

AGENT
TRUST

2.1 'n Mercedes Benz motorkar ter waarde van R280 000.00.

2.2 'n Haelgeweer wat John vir kleiduif-kompetisies gebruik het en wat hy gedurende sy leeftyd vir R2000.00 gekoop het. Mary deel u mee dat sy nie die geweer wil erf nie en nie 'n koper daarvoor kan kry nie. Sy gee u opdrag om die wapen aan die SAPD af te staan.

2.3 'n Kredietbalans van R18 000.00 op sy tjekrekening by ABSA Bank.

2.4 'n Geldmarkrekening by African Bank in die bedrag van R802 000.00.

2.5 2000 aandele in 'n genoteerde maatskappy, wat vir R180 000.00 gewaardeer is.

2.6 'n Lewenspolis met 'n uitkeerwaarde van R1 500 000.00, betaalbaar aan sy boedel.

2.7 Daar is 'n verdere lewenspolis op sy eie lewemet 'n uitkeerwaarde van R650 000.00, betaalbaar aan Mary as genomineerde begunstigde.

2.8 John was 'n lid van sy werkgewer se pensioenskema, wat voorsiening maak vir 'n enkelbedragvoordeel ter waarde van R900 000.00 wat by sy dood aan Mary betaalbaar is, asook vir 'n jaargeld ter waarde van R100 000.00 per jaar aan Mary tot by haar afsterwe.

3. John se laste is soos volg:

3.1 Hy het pas voor sy dood 'n veiligheidsheining en 'n alarmstelsel by die huis laat installeer teen 'n koste van R45 000.00, welke bedrag nog nie aan die kontrakteur betaal is nie.

2.1 A Mercedes Benz motor car worth R280 000.00. M - LF - mkr

2.2 A shotgun used by John for clay pigeon shooting which he bought during his lifetime for R2000.00. Mary informs you that she is not interested in inheriting the gun and that she cannot find a buyer therefor. She instructs you to surrender the firearm to the SAPS.

2.3 A credit balance of R18 000 on his cheque account with ABSA Bank. CIFE

2.4 A money market account with African Bank in the amount of R802 000.00. CIFE

2.5 2000 shares in a listed company, valued at R180 000.00. - Max. TRUST

2.6 A life insurance policy with a maturity value of R1 500 000.00 payable to his estate. CIFE def into EBP

2.7 There is a further life insurance policy on his own life with a maturity value of R650 000.00, payable to Mary as nominated beneficiary.

2.8 He was a member of his employer's pension fund, which provides for a lump sum of R900 000.00 payable to Mary upon his death and an annuity of R100 000.00 per year payable to Mary until her death. PD2BP

3. John's liabilities are as follows:

3.1 He had a security fence and a burglar alarm system installed for the house a few weeks before his death at a cost of R45 000.00, which amount is still owing to the contractors. CIFE.

3.2 Aanvaar dat 'n bedrag van R53 500.00 aan die Suid-Afrikaanse Inkomstediens ten opsigte van inkomstebelasting betaalbaar is en dat John se rekenmeester se professionele fooi vir die voltooiing en indiening van die inkomstebelasting opgawes, R1 500.00 beloop.

4. John se begrafnis het R10 000.00 gekos.

5. Aanvaar verder dat:

5.1 die waarde van die bates soos aangedui in 2.1 en 2.5 hierbo die billike markwaarde daarvan verteenwoordig;

5.2 die totale laste R322 844.00 beloop. Maak voorsiening vir en bereken al die nodige administrasiekoste waarvoor daar nie reeds in die feitestel voorsiening gemaak is nie.

Gevra:

Stel die volgende onderafdelings van die boedelrekening op:

- Die opskrif [8]
- Die likwidasierekening [28]
- Die rekapitulatie-opgawe [4]
- Die distribusierekening [10]
- Die boedelbelastingaddendum [15]

VRAAG 2 [11]

H en W is binne gemeenskap van goed met mekaar getroud. H sterf sonder om 'n testament na te laat en die netto waarde van die gemeenskaplike boedel beloop R800 000.00. H word oorleef deur W en vier kinders, A, B, C en D. C doen afstand van sy erfenis.

Hoe moet die gemeenskaplike boedel verdeel word? Motiveer u antwoord.

3.2 Assume that an amount of R53 500.00 is due and payable to SARS in respect of income tax and that John's accountant charged a professional fee of R1 500.00 to prepare and lodge the estate's tax returns.

4. John's funeral costs amounted to R10 000.00.

5. Accept that:

5.1 the values of the assets stated in 2.1 and 2.5 above represent their fair market value;

5.2 the total liabilities amount to R322 844.00. Provide for and calculate all the necessary administration costs that are not already provided for in the question.

Required:

Draw the following sections of the estate account:

- ✓ The heading [8]
- ✓ The liquidation account [28] 20
- ✓ The recapitulation statement [4] 2
- ✓ The distribution account [10] 5
- ✓ The estate duty addendum [15] 10

QUESTION 2 [11]

H and W are married to each other in community of property. H dies without leaving a will and the net value of the joint estate is R800 000.00. H is survived by W and four children, A, B, C and D. C renounces his inheritance.

How must the joint estate be divided? Motivate your answer.

(H) |-----| W
800 000 ÷ 5
400 000 ÷ 5

VRAAG 3 [18]

A, wat binne gemeenskap van goed getroud is, gee aan u opdrag om sy testament op te stel. Hy is van sy vrou vervreem, en wil sy hele boedel aan sy enigste kind, 'n meerderjarige, nalaat. Dit is verder sy begeerte dat geen eggenoot van sy erfgenaam enige regte op die erfenis moet verkry uit hoofde van die huwelik met die erfgenaam nie.

U, 'n prokureur, moet die eksekuteur wees.

Stel A se testament op wat minstens 2 bladsye beslaan.

VRAAG 4 [6]

Die oorledene bemaak in sy testament sy huis aan A.

Die huis is teen R2 000 000 gewaardeer. 'n Bedrag van R800 000 is op sterfdatum uitstaande op die verband wat oor die eiendom geregistreer is.

Hoe sal u die verband hanteer, en welke bedrag moet aan A in die distribusierekening toegeken word?

Motiveer u antwoord.

QUESTION 3 [18] 10

Nb - P.
A, who is married in community of property, instructs you to draw his will. He is estranged from his wife, and wishes his entire estate to be left to his only child, who is a major. It is also his desire that no spouse of his heir should acquire any rights to the heir's inheritance by virtue of the marriage to the heir. — *Draw 2 pages & more you draw the estate - Son*

You, an attorney, are to be the executor.

Draw A's will which is at least 2 pages in length.

Commissioner de Calus (S)

QUESTION 4 [6] 2

The deceased in his will bequeaths his house to A.

The house is valued at R2 000 000. An amount of R800 000 is owing at date of death on the mortgage bond registered over the property.

How would you deal with the mortgage bond, and what amount must be awarded to A in the distribution account?

Motivate your answer.

DIE EINDE

THE END