

HIGH COURT / HOOGGEREGSHOF
17 AUGUST 1999 / 17 AUGUSTUS 1999

PART 1 - QUESTION 1 / DEEL 1 - VRAAG 1

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 1.1

[10]

- 1.1.1 Three. (½)
- 1.1.2 You refer the matter to the Registrar of the Court appealed from to set the amount for security. (1)
- 1.1.3 No, unless you have an order declaring immovable property specially executable, you have to obtain excision against movables first. (½)
- 1.1.4 You can attempt to settle the matter, alternatively abandon the judgement. (1)
- 1.1.5 The grounds on which objection can be made are the following:
(a) the type of examination
(b) the identity of the doctor
(c) the time, date and place
(d) that insufficient funds have been tendered in respect of expenses (1)
- 1.1.6 No effect, the amendment is deemed to have been abandoned. (1)
- 1.1.7 An application can be made to the judge to vary his order. (1)
- 1.1.8 Apply to have the summons set aside as an irregular proceeding in terms of the provisions of Rule 30 after written notice that you intend to do so if the defect is not remedied. (1)
- 1.1.9 That it is vague and embarrassing alternatively that it does not sustain a cause of action. (1)
- 1.1.10 In an application for summary judgement all the defendant has to do is to go on oath and set out a defence. The court will accept the contents of the affidavit to be true and if it discloses a defence will grant leave to defend. In a provisional sentence matter the onus is on the defendant to convince the court that on a

balance of probabilities he will succeed in the main action and failing the court is obliged to grant provisional sentence.

(2)

NOTE: If there is a deficiency in the liquid document or in the summons, the onus remains on the plaintiff.

QUESTION 1.2

[5]

1.2.1 An order for attachment *ad confirmandam jurisdictionem*. The facts to be alleged are the following:

- 1.2.2 (a) That the applicant has a prima facie claim against the defendant
- (b) That the defendant is a peregrinus of the court
- (c) That the defendant is the owner of property within the jurisdiction of the court.

QUESTION 1.3

[2]

A supplementary affidavit must be filed indicating how the mistake arose and setting out the true facts.

QUESTION 1.4

[4]

See Rule 32

QUESTION 1.5

[10]

1.5.1 An application must be made to the High Court for an order varying the marital regime between the parties to one out of community of property. The notice of motion must contain a prayer authorising and ordering the Registrar of Deeds to register a post nuptial contract.

(1)

1.5.2 A draft of the contract should be appended to the notice of motion. The affidavit should contain the following:

- (a) The background to the problem and how the mistake arose
 - (b) The true intention of the parties at the time of solemnisation of the marriage.
-

- (c) Full details of creditors and that notice has been given to them
- (d) That their creditors have no objection to the proposed change in the marital regime.

(9)

QUESTION 1.6

[4]

See Section 24 of the Supreme Court Act.

QUESTION 1.7

[15]

- 1.7.1 Plaintiff is Mrs Jones an adult female, housewife, presently resident at ...
- 1.7.2 Defendant is Mr Jones an adult male, businessman, presently resident at...
- 1.7.3 The parties were married to each other out of community of property on 13 August 1981 which marriage subsists
- 1.7.4 There are no children born of the marriage
- 1.7.5 The court has jurisdiction by virtue of the fact that the parties are domiciled within the jurisdiction of the above honourable court
- 1.7.6 The marriage between the parties has irretrievably broken down by virtue of the following reasons: a, b, c, d, e
- 1.7.7 During the subsistence of the marriage the plaintiff worked in various businesses belonging to the defendant at no remuneration and contributed an equal shares with the defendant in regard to the increase of the defendants's estate by virtue of her services.
- 1.7.8 The plaintiff is entitled to a redistribution of assets in terms of Section 7(3) of the Divorce Act wherefore plaintiff probes for an order in the following terms:
 - (a) decree of divorce
 - (b) costs of suit
 - (c) a redistribution of 50% of the defendant's assets

MAGISTRATE'S COURT / LANDDROSHOF
17 AUGUST 1999 / 17 AUGUSTUS 1999

PART 1 - QUESTION 2/DEEL 1 - VRAAG 2

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 2.1

[11]

-
- i) The full names (or at least one of the first names) of the plaintiff are necessary in the summons.
 - ii) The plaintiff must be assisted by his guardian in the summons.
 - iii) The Magistrate's Court of Johannesburg does not have jurisdiction in the action. The defendants are not resident in Johannesburg and part of the cause of action arose in Pretoria.
 - iv) There is no allegation that plaintiff performed his obligations under the contract.
 - v) There is no allegation that the surety agreement was in writing.
 - vi) There is no allegation that the second defendant was a co-principal debtor or that he waived excussion.
 - vii) The rate of interest is incorrect.
 - viii) The date of interest is wrong.
 - ix) No allegation is made in the particulars to support the claim for costs on an attorney and client basis.
 - x) There is no allegation that the defendants are "jointly and severally" liable in the prayer.
 - xi) The amount exceeds the jurisdiction of the Magistrate's Court.

One mark for each correct answer.

2.2.1 The notice may take the form of a letter or a formal notice.

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

Case no. 321/98

In the matter between:

DAWOOD PATEL

PLAINTIFF

and

ISHWAR MOTORS (PTY) LIMITED

DEFENDANT

**NOTICE IN TERMS OF SECTION 2(2) OF THE APPORTIONMENT OF DAMAGES
ACT**

TO: Mr John Smith
1 West Street
Durban

YOU ARE HEREBY NOTIFIED that the abovementioned plaintiff has issued summons against the abovementioned defendant in the Magistrate's Court Durban under case number 321/98;

AND that the plaintiff claims payment from the defendant in the summons in the amount of R15000,00 plus interest and costs arising from a collision that took place on 27 July 1997 in Church Street Durban between a vehicle registration number ND123 which is alleged to be the property of the plaintiff and a vehicle, registration number ND 456, driven by the defendant's employee.

FURTHER TAKE NOTICE that the defendant denies that the collision was caused by his negligence and contends that the collision was caused by your negligence whilst driving vehicle registration number ND789;

IN THE ALTERNATIVE the defendant contends that the collision was caused partially by his negligence and partially by your negligence, and the defendant intends to issue summons against you for a contribution of such damages as the defendant may be ordered to pay;

YOU ARE HEREBY notified in terms of section 2(2) of the Apportionment of Damages Act, no 34 of 1956 as amended, of the abovementioned action.

AND TAKE NOTICE that you may join the action as a defendant, you being a joint wrongdoer in the collision.

DATED at DURBAN this 1st day of February 1998.

(signed) Joe Attorney
DEFENDANT'S ATTORNEYS

[9]

2.2.2 The close of pleadings. [1]

2.2.3 Ishwar Motors (Pty Ltd will not be able to recover any contribution from Smith for the amount which it pays to Patel without the leave of the Court.

[1]

2.2.4 No. [1]

QUESTION 2.3 [10]

2.3.1.1 Your client needs to address a letter of demand to the Minister of Safety and Security claiming and setting out his damages and how it is calculated . The amendment to the Prescribed Rate of Interest Act provides that interest may be claimed from the date of such a demand.

[1]

2.3.1.2 Your client needs give notice to the Minister of Safety and Security, or the National Commissioner of Police, or the Regional Commissioner of Police, setting out his claim and stating that if the amount claimed is not paid within one calendar month of receipt of the notice, summons will be issued.

[1]

2.3.2 By Registered Post / By Hand

Minister of Safety and Security
Civitas Building
Struben Street
Pretoria

Or

The Commissioner of the South African Police Services
Wachthuis
Thibault Arcade
Pretoria

Dear Sir

Re: Collision on (date) at (place), (vehicles).

Our client is Dawid Julies.

On the above date and place a collision took place between a motor vehicle with registration number BB700 T, of which our client, Mr D Julies, is the owner and a police vehicle, driven by constable Koos van der Merwe, who was at that time in the employ of the South African Police Services and acting within the course and scope of his duties.

The collision was caused by the sole negligence of the said constable van der Merwe in that the vehicle he was driving collided with the rear of the our client's motor vehicle.

As a result of the collision our client's vehicle was damaged beyond economic repair. The pre accident value of our client's vehicle was R50000,00 and the post accident value was R10000,00.

We have been instructed to claim from you as we hereby do, payment of the sum of R40000,00. Unless the said amount is paid at our offices within one calendar month of receipt of this letter, summons will be issued against you.

You will be held liable for interest from the date of receipt of this demand.

Yours faithfully

Joe Attorney

[8]

QUESTION 2.4

[6]

2.4.1 The defendant may give security by way of an undertaking by a bank or financial institution or by a person acceptable to the plaintiff for the claim. Alternatively he may pay into court the amount of the claim **and costs** to abide the result of the action.

[2]

2.4.2 2.4.2.1 Yes
2.4.2.2 No
2.4.2.3 Yes
2.4.2.4 Yes

[4]

QUESTION 2.5**[5]**

In the provisional sentence summons the plaintiff has the right to reply to the defendant's affidavit. In summary proceedings the plaintiff has no right to reply.

The plaintiff may lead oral evidence to prove the signature of the defendant in provisional sentence proceedings.

The defendant who admits his signature or whose signature is proven, must prove on the balance of probabilities that the defendant will succeed in his defence of the principal case or that he will succeed in his counterclaim.

Once provisional sentence is granted, defendant may only enter into the principal case after he has paid the plaintiff's claim and costs.

QUESTION 2.6**[3]**

Where the sheriff is unable to attach sufficient movable assets to satisfy the judgment.

Where the court declared the property to be executable in the judgment.

If the court, on good cause shown, (application) gives an order for execution of the immovable property.

If the court, at an section 65 enquiry, orders attachment of the debtor's immovable property.

QUESTION 2.7**[3]**

2.7.1 A warrant of arrest is issued to bring the debtor before a competent court.

[1]

2.7.2 After arrest or warning, the debtor appears in court. The court must inform the debtor that it intends to inquire in a summary manner into his failure to appear in court, that he may be convicted and a penalty of three months imprisonment may be imposed upon him, and that he may be represented by a legal practitioner if he so chooses. Thereafter the court shall proceed to the enquiry into the financial affairs of the debtor.

[2]

MVA / MVO
17 AUGUST 1999 / 17 AUGUSTUS 1999

PART 1 - QUESTION 3 / DEEL 1 - VRAAG 3

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 3.1

[25]

3.1.1 Where the claim is subject to an apportionment in terms of the Apportionment of Damages Act, the apportionment has to first be applied to the full Common Law damages proved in the damages action and the award reduced accordingly.

The amount reduced by the apportionment, has to be reduced further by the final award made by the Commissioner. (3)

3.1.2 (1)	Past hospital, medical, transport expenses	31 000,00 (½)
(2)	Past loss of earnings	12 000,00 (½)
(3)	Future loss of earnings	180 000,00 (½)
(4)	General damages	60 000,00 (½)

		R283 000,00
	Less 50% apportionment	141 500,00 (1)

		R141 500,00
	Less W.C.C. Award	93 000,00 (2)

		R48 500,00
		=====
		(5)

3.1.3 Magistrate's Court. Once all the deductions in terms of the Apportionment of Damages Act, and the compensation for Occupational Injuries and Diseases Act have been made, the claim will fall within the Jurisdiction of the Magistrates Court. The claimant will not recover the costs of an action instituted in the High Court. (2)

3.1.4 PARTICULARS OF CLAIM

-1-

The plaintiff is Joe Bloggs an adult male delivery assistant and who resides at ? (2)

-2-

The defendant is the Road Accident Fund, a statutory body created in terms of Section 2 of the Road Accident Fund Act 56 of 1996 and having its registered offices or principal place of business at (address). (2)

-3-

The Road Accident Fund has been created to handle claims for bodily injuries arising out of motor collisions which arose from the negligent driving of motor vehicles. (2)

-4-

On the 20th August 1997 and at Johannesburg a collision occurred between motor vehicle (?) then driven by the plaintiff and motor vehicle (?) then driven by (?) (2)

-5-

As a result of the collision aforesaid the plaintiff has sustained bodily injuries. (1)

-6-

As a result of the injuries suffered in the collision, the plaintiff has suffered damages in the amount of R283 000,00. (1)

-7-

The parties have agreed that the defendant will be liable for 50% of the plaintiff's damages as proven or agreed. (2)

-8-

The plaintiff is an employee as defined in terms of the compensation for Occupational Injuries and Diseases Act 130 of 1993.

The Commissioner for Compensation for Occupational Injuries and Diseases Act has made a final award in the sum of R93 000,00.

The award made by the Commissioner falls to be deducted from the amount of compensation that Plaintiff will receive in terms of the Road Accident Fund Act. (2)

-9-

The plaintiff has complied with the statutory provisions of the Act. (1)
(15)

QUESTION 3.2**[7]**

- 3.2.1 To bring an application for an interim payment. (1)
- 3.2.2 After summons have been issued and the time to enter an appearance to defend has expired. (1)
- 3.2.3 The affidavit in support of the application shall contain
- (1) the amount of damages claimed
 - (2) the grounds of the application
 - (3) all documentary proof or certified copies thereof
 - (4) the defendant's ability to pay
 - (5) Defendant has admitted liability in writing (5)

QUESTION 3.3**[18]**

- 3.3.1 The contingencies which should be taken into account are:
- 3.3.1.1 A general contingency that the deceased may have died before reaching retirement age in any event, which includes the risk of unemployment; (1)
 - 3.3.1.2 The prospects of the widow remarrying; (1)
 - 3.3.1.3 The prospect of the deceased and his wife having had further children but for the accident; (1)
- 3.3.2 The general formula or rule of thumb procedure that one follows is to allocate two parts of the deceased's income to himself, two parts to his wife and one part to each of the children. (1)
- 3.3.3 No. Payment of any pension or insurance benefits are specifically excluded by the provisions of the Assessment of Damages Act. (2)
- 3.3.4 Regard must be had to any inheritance that the widow and her children will receive from the deceased's estate. One has to deal here with what is termed an accelerated benefit and is a calculation which the actuary takes into account when assessing the loss of support. What he does is place value on the widow and her children receiving the inheritance sooner than they would have but for the accident. (2)
- 3.3.5 They will be entitled to claim for loss of support until they attain the age of eighteen (18) years or are able to establish that they were entitled to further tertiary education in which event their claim will be until such time as they complete their tertiary education. (2)

3.3.6 The essential allegations to be made are the following:

- (a) That the deceased was married to the plaintiff; (1)
- (b) The three minor children were born of the marriage between the first plaintiff and the deceased; (1)
- (c) That the deceased had a duty during his lifetime to support his wife and children; (1)
- (d) That the deceased did, in fact, support them; (1)
- (e) They have been deprived of such support and therefore suffered damages. (1)

3.3.7 No. The Road Accident Fund cannot apply an apportionment in respect of the deceased's negligence to the claims. They are "innocent claimants" and only have to prove a degree of negligence on the part of the other driver to succeed in full. The Fund can, however, recover from the deceased's estate. (3)

**CRIMINAL PROCEDURE / STRAFPROSESREG
17 AUGUST 1999 / 17 AUGUSTUS 1999**

PART 1 - QUESTION 4/DEEL 1 - VRAAG 4

ANSWERS/ANTWOORDE

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QUESTION 4.1

[15]

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF GERMISTON
HELD AT GERMISTON

Case no 123/98

In the matter between:

THE STATE

and

CLIENT

ACCUSED

STATEMENT IN TERMS OF SECTION 112(2) OF ACT 51 OF 1977

I, the undersigned, CLIENT, do hereby declare as follows:

COUNT 1

- (a) I am the accused in this matter and I understand the nature of the charge against me. I voluntarily plead guilty to a charge of culpable homicide.
- (b) I admit that on the day mentioned in the charge sheet I was the driver of motor vehicle XYZ234GP on Rissik Street, a public road within the magisterial district of Germiston

- (c) I admit that whilst driving the said vehicle I failed to stop at a pedestrian crossing and thereby collided with Mr X, a pedestrian, who at the time was crossing the road.
- (d) As a consequence of the said collision Mr Rissik sustained bodily injuries which caused his death.
- (e) The deceased sustained no further injuries from the scene of the collision to the state-mortuary where a post-mortem was carried out by the forensic pathologist.
- (f) I furthermore confirm the contents of the post-mortem report of the said pathologist which indicates that the deceased died as a consequence of multiple injuries which I admit he sustained in the said collision.
- (g) I furthermore confirm that the collision was occasioned by the negligence of myself in that I failed to keep a proper lookout and should have seen the deceased whilst he was crossing the road and should have taken adequate steps to avoid the said collision with him.

COUNT 2

I the undersigned, Client, do hereby declare as follows:

- (a) that I refer to the contents of sub paragraph (b) herein before and confirm the contents thereof
- (b) I admit that at the time of driving the aforesaid motor vehicle the alcohol content of my blood, expressed in grams per 100ml blood was more than 0.08gms per 100ml being 0.12gms per 100ml.
- (c) I admit that a blood sample was drawn from my body within two hours of driving the said vehicle, the bloodsample was correctly drawn and thereafter correctly analysed.
- (d) I admit that at the time of driving I knew that it is an offence to drive a motor vehicle on a public road whilst the alcohol contents of one's blood exceeds 0.08gm per 100ml of blood and I accordingly confirm that my actions were wrongful and unlawful

DATED at GERMISTON this the 27th day of July 1998.

CLIENT

The following should be placed before the Court in mitigation of sentence:

Personal circumstances of the accused:

Age, family connections (dependants), his income, his type of work and for how long he has been in employment, any organisations to which he belongs, his status in life etc.

Remorse:

He has pleaded guilty

He made a statement to the Police from the outset-cooperation.

He has contacted the family of the deceased and made financial arrangements for burying the deceased etc

Penalty:

He has suffered damage to his own vehicle and a possible civil claim will be instituted against him by the family of the deceased and he will lose his insurance cover as a consequence of the conviction.

He himself was injured

A passenger in his vehicle was injured

His licence will no doubt be endorsed with this conviction which will affect his employability (eg. If he wants to obtain a Public Drivers Permit)

He now has a previous conviction relating to a serious offence

Accused has suffered trauma and is now receiving psychiatric treatment.

No previous conviction - remind court of basic principle that first offenders should be kept out of jail if possible.

The following aggravating circumstances will have to be countered:

- (i) The prosecutor may wish to argue that alcohol played a role in this offence - client has not been convicted of drunken driving and it is a known fact that sober drivers also commit this offence namely culpable homicide with a motor vehicle
- (ii) Prosecutor may argue that a motor vehicle is a dangerous instrument that is to be driven with utmost care - whilst this is so, a small degree of negligence can have consequences which far outweigh the degree of negligence.

- (iii) Prosecutor may bring to the Court's attention the high rate of deaths involving pedestrians - this should not be overemphasised by the Court as there is invariably contributory negligence on the part of pedestrians
- (iv) Prosecutor may argue that collision happened at a pedestrian crossing - while this is so there is also a duty upon a pedestrian to exercise care while crossing at a pedestrian crossing.
- (v) Prosecutor may remind Court of media campaign - drive alive - this should also not be over-emphasised as the degree of negligence in this particular matter was slight.
- (vi) Prosecutor may also state that collisions cost the country excessive amounts of money e.g. Traffic Officials being obliged to man the country's roads on a 24 hour basis - this will have to be done in any event. (etc, etc, etc)

QUESTION 4.3

[17]

4.3.1

IN THE REGIONAL COURT FOR THE DISTRICT OF PORT ELIZABETH
HELD AT PORT ELIZABETH

Case Number: rc1/145/98

In the matter between:

C
and
STATE

APPELLANT

RESPONDENT

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE that the abovementioned appellant hereby notes an appeal to the Eastern Cape Division of the High Court of South Africa against his conviction and sentence in the Regional court at Port Elizabeth on the 2nd day of April 1998 on a charge of armed robbery.

The Appeal is noted on the following grounds:

AdConviction:

1. The Magistrate erred in admitting the confession made by the appellant as evidence and should have held that the confession was not freely and voluntarily made by reason of the fact that the evidence disclosed that same was extracted by way of an assault.
2. The Magistrate, by his remark during the appellant's evidence in chief "only an idiot would believe this" had prior to the conclusion of all evidence already made up his mind to disbelieve the appellant. This was grossly irregular.
3. The Magistrate erred in accepting the identification of the Appellant by the witness Slabbert that the Appellant was the person who left the bank in haste and accordingly was the robber.
4. The Magistrate erred in holding that the identification parade at which the witness Slabbert identified the appellant was properly constituted and held and should have found that as Slabbert had advised the investigating officer that he had seen a photograph of C in the paper prior thereto, same should not have been held. The Magistrate further erred in finding Slabbert's identification of appellant to be reliable.
5. The Magistrate erred in rejecting the evidence of the accused substantiated by his witness D as being false when he has insufficient grounds to do so.

Ad Sentence:

The Magistrate, in sentencing the appellant to ten years imprisonment:

1. Failed to take into account the personal circumstances, including the age, of the appellant, the fact that the appellant was a first offender and that the appellant had led an exemplary life until the time of the offence.
2. Imposed a sentence that induces a sense of shock.

DATED AT PORT ELIZABETH ON THIS THE 18TH DAY OF JULY 1998

XYZ

Per:

Appellant's Attorneys

10 Cherry Street

Port Elizabeth

TO: THE CLERK OF THE COURT
PORT ELIZABETH

((a) The refusal of a witness to take the oath as described in the question is not a ground of appeal - included to make candidates think) [12]

4.3.2 Power of Attorney. [1]

4.3.3 14 Court days - to be served on clerk of Criminal court. [2]

4.3.4 An Application for condonation for the late filing of the Notice of appeal will have to be brought. An Affidavit drawn by the accused and supported by his attorney if necessary and vice versa must be utilized in support thereof. [2]

QUESTION 4.4 [2]

In view of the accused's strange allegations you should immediately be alert to the fact that section 77, 78,79 will apply. You will have to enlighten the court as to the position and if necessary obtain medical evidence eg through the district surgeon and request the court to direct that the matter be enquired into and be reported on in accordance with the provisions of Sec 79.

QUESTION 4.5 [6]

4.5.1 The questioning of the Magistrate is insufficient - it does not cover all the elements of the offence of theft. He should have asked the accused if he understands the nature of the charge against him, did he intend depriving the complainant of his ownership in the bicycle and possibly for what reason did he take same. [3]

4.5.2 Section 113 of the CPA is applicable. The accused will have to advise the Court of the reasons why he pleaded guilty and will have to satisfy the court on a balance of probabilities that he did not understand the legal process and/or his rights. The accused will be obliged to take the stand and give evidence under oath. [3]

ESTATES / BOEDEL'S
18 AUGUST 1999 / 18 AUGUSTUS 1999

PART 2/DEEL 2

ANSWERS/ANTWOORDE

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QUESTION 1

[8]

P O Box 1
PRETORIA

1 July 1998

Master of the High Court
Private Bag X100
PRETORIA

Dear Sir

re **ESTATE LATE H** (1)

We enclose herewith:

1. Original wills dated 10 June 1994 and 20 May 1998. (2)
2. Death certificate. (1)
3. Death notice. (1)
4. Inventory. (1)
5. Acceptance of trust as executor in duplicate. (1)

We await letters of executor ship at your earliest convenience. (1)

Yours faithfully

Attorneys Inc

QUESTION 2

[21]

2.1 A died within 3 months of his divorce. (1) In terms of section 2(B) of the Wills Act, B is deemed to have died before A. (1) The estate devolves as to the legacy upon the 10 year old child. (1) In terms of the Intestate Succession Act the residue will devolve as to a child's share to C or R125 000,00 (2) whichever is the greater while the 10 year old will receive a child's share. (2) If the unborn child is born alive, it will inherit a child's share. (2)

B may have a claim for maintenance under a divorce settlement (1) and possibly, in her capacity as mother and natural guardian (1) of the 10 year old if the legacy and a child's share of the residue is insufficient. (1)

(12)

2.2 Yes. (1) As three months have elapsed since the date of divorce, B regains her status as a beneficiary. (2) Therefore she (1) and the 10 year old child inherit. (1)

C would have a claim under the Maintenance of Surviving Spouses Act, (1) and possibly a claim in her capacity as mother and natural guardian (1) for maintenance of the unborn child, (1) if it is subsequently born alive. (1)

(9)

QUESTION 3

[56]

3.1 First and Final Liquidation and Distribution Account (1) in the estate of the late A (1), Identity number 690126 0216 08 3 (1) of Pretoria (1) who was married out of community of property (1) without the accrual system (1).

Date of death: (1)

Master's reference: (1)

[8]

3.2 LIQUIDATION ACCOUNT

ASSETS

<p>A. Immovable property</p> <p>Erf 100, Pretoria (1)</p> <p>Measuring</p> <p>Held under Deed of Transfer T..... as per sworn appraisalment (1)</p> <p>Awarded to the residuary heirs in terms of the Will (1)</p>	<p>R3 000 000,00 (1)</p> <p>[4]</p>
<p>B. Movable property</p> <p>Sundry movable assets as per sworn appraisalment (1)</p> <p>Awarded to the residuary heirs in terms of the Will (1)</p>	<p>R100 000,00 (1)</p> <p>[3]</p>
<p>C. Claims in favour of the estate</p> <p>Investments and cash assets as per certificates/collected</p>	<p>R1 500 000,00 (1)</p> <hr/> <p>R6 100 000,00 (1)</p> <p>[2]</p>

LIABILITIES

1. Sundry administration expenses (not specified as per question)	R135 900,00 (1)	
2. Executors remuneration 3½% (1) of gross assets	R213 500,00 (1)	
3. Master's Fees As per tariff (maximum)	R600,00 (1)	
Liabilities	R350 000,00 (1)	
Estate Duty	R1 037 500,00 (1)	
Total Liabilities	R1 387 500,00 (1)	
Total Assets		R6 100 000,00 (1)
Amount available for distribution	R4 712 500,00 (1)	
	R6 100 000,00	R6 100 000,00

[9]

3.3 RECAPITULATION STATEMENT

Cash and assets reduced to cash		R3 000 000,00 (1)
Liabilities	R350 000,00 (1)	
Estate Duty	<u>R1 037 500,00 (1)</u>	
	R1 387 500,00	
Surplus cash awarded to the residuary heirs	R1 612 500,00 (1)	
	R3 000 000,00	R3 000 000,00

[4]

3.4 DISTRIBUTION ACCOUNT

Amount available for distribution		R4 712 500,00 (1)
Consisting of:		
Fixed property	R3 000 000,00 (1)	
Movable assets	R100 000,00 (1)	
Surplus cash	R1 612 500,00 (1)	
	<u>R4 712 500,00</u>	
Awarded as follows in terms of the will of the deceased: (1)		
1. The surviving spouse B a cash legacy		R500 000,00 (1)
2. Cancer Association of SA a cash legacy		R100 000,00 (1)
3. C major son of the deceased married out of community of property ½ share of the residue		R2 056 250,00 (1)
4. D major son of the deceased ½ share of the residue		R2 056 250,00 (1)
		<u>R4 712 500,00</u>

[9]

3.5 ESTATE DUTY ADDENDUM

Total assets as per liquidation account		R6 100 000,00 (1)
Proceeds of policy payable to the surviving spouse		R100 000,00 (1)
Dutiable assets		<u>R6 200 000,00 (1)</u>

ALLOWABLE DEDUCTIONS:		
Total liabilities	R350 000,00 (1)	
Bequest to surviving spouse and proceeds of policy [Section 4(q1)]	R600 000,00 (1)	
Bequest to charitable organisation	R100 000,00 (1)	<u>R2 050 000,00</u>
General rebate	<u>R1 000 000,00 (1)</u>	<u>R4 150 000,00</u>
Dutiable amount		<u>R1 037 500,00 (1)</u>
Estate duty payable @ 25% (1)		
		[9]

3.6 CERTIFICATE

I the undersigned

..... (1)

in my capacity as executor in the (1) estate of the late A do hereby certify:

This account is a true and proper account (1) of the administration of the estate. It is a final account (1) and contains all the income (1) collected from date of death to the date hereof (1).

Signed at Pretoria this day of1998. (1)

EXECUTOR (1)
[8]

QUESTION 4**[7]**

The Wills Act provides that if a will consists of more than one page, each page other than the page on which it ends must also be signed by the testator. (2) The Will is therefore invalid as it does not conform to the prescribed formalities in terms of the Act. (2) Application may however be made to the High Court for an order (1) directing the Master to accept the document for purposes of winding up the estate (1) on the basis that the document was intended by the deceased to be his will. (1)

QUESTION 5**[8]**

Where the original or duplicate original of a will has been lost but a copy thereof is available, application can be made to the High Court (1) for an order that the copy must be accepted by the Master as the last will of the deceased. (1) The Court must be satisfied on a preponderance of probabilities (1) that there was in fact a properly executed will in existence (1) and evidence must be procured regarding the circumstances under which the will was lost. (1) The Court must also be satisfied that a proper search for the original document took place, (1) that the testator did not destroy the will with the intention to revoke it (1) and that the contents of the copy are the same as that of the lost document. (1)

ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK
18 AUGUST 1999 / 18 AUGUSTUS 1999

PART 3/DEEL 3

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]

- | | | |
|-----|--|-----|
| 1.1 | The full names of the member representing the seller | (1) |
| | The full names of the purchaser | (1) |
| | The status of the purchaser | (1) |
| | The registration number of the purchaser | (1) |
| | The ID number(s) of the purchaser and, if married in community of property,
also that of the spouse | (1) |
| | The description of the property | (1) |
| | The purchase price and method of payment thereof | (1) |
| | Whether a loan is involved | (1) |
| | Any conditions precedent | (1) |
| | Agent's commission | (1) |
| | Date of occupation | (1) |
| | Addresses of the parties | (1) |
| | The transfer of the property | (1) |
| | The costs of the contract | (1) |

(NB: *The other clauses normally appearing in such a contract do not rely on information derived from the parties and no marks are awarded for them.*)

- 1.2 The purchaser confirms that he has not been introduced to the property by an estate agent and that he buys it from the seller direct. The purchaser herewith indemnifies the seller against any claim for agent's commission including claim for legal costs, if any. (5)

1.3 Condition precedent

This agreement is subject to:

- 1.3.1 The purchaser succeeding within 60 days of the signing of this agreement to sell his erf known as Erf 123 Uvongo successfully for an amount of at least R100 000,00 and that the property is transferred to the prospective purchaser within 90 days; and
- 1.3.2 The purchaser is granted a loan for at least R80 000,00 by a financial institution where he must apply within 7 days after the signing of this contract, which loan must be for a period of 20 years at an initial interest rate of not more than 22,5% per annum. Said loan must be approved within 90 days from the signing of this contract.
- 1.3.3 If the provisions contained herein are not met within the period stipulated, the contract will lapse and be null and void, except if the parties agree otherwise in writing and the deposit and any interest earned thereon be repaid to the purchaser.

[12]

QUESTION 2

[15]

The letter/opinion should contain the following

1. The document is defective the following respects.
 - 1.1 Mary Smith is married in community of property and is not assisted by her husband [1] nor does he consent to her binding the joint estate [1]
 - 1.2 Pete Jones, the co-security has not signed the Suretyship as intended and there is no clause that binds the party who signs alone [2]
 - 1.3 The identity of the creditor is incomplete in that the registration number is not given [1]
 - 1.4 The document has not been stamped [1]

2. Although the document contains all the essential elements of a Suretyship i.e. identity of debtor [2] identity of surety [1] and identity of creditor [1] the undertaking to fulfil the obligations of a 3rd party (tenant) [1] the Deed of Suretyship is invalid and therefore not enforceable [4]

QUESTION 3

[25]

3.1 There are two possibilities

- (a) Admission of debt; or
- (b) A loan agreement

The preferred option is a loan agreement as this will bring about a saving in stamp duty as opposed to the stamp duty required for a admission of debt.

(5)

3.2.1 THE LOAN

The LENDER loans herewith to the BORROWER the amount of R200 000,00 on the terms contained herein and the borrower borrows herewith said amount from the lender and will apply said amount for redeeming the bond over the borrower's residence.

(5)

3.2.2 INTEREST

The interest that will be paid monthly in instalments will be calculated at 15% per annum.

(5)

3.2.3 REPAYMENT

3.2.3.1 The Borrower undertakes to repay the interest on the capital amount to the Lender in equal monthly installments of R2 125,00

3.2.3.2 The Borrower undertakes to repay the capital amount of R200 000,00 to the Lender within 5 (five) years from date hereof in a single sum.

3.2.3.3 All payment by the Borrower to the Lender will be in cash

3.2.3.4 The Borrower must pay the monthly instalments to the Lender before or on the last day of every month

3.2.3.5 The first instalment is due before or on the last working day in April

3.2.3.6 All payments in terms of the agreement must be made at the domicillium citandi et executandi of the Lender.

(5)

3.2.4 FAILURE AND REMEDIES

Should the Borrower fail to:

3.2.4.1 pay the interest timeously in accordance with clause -;

3.2.4.2 pay the capital in accordance with -;

the lender will be entitled to:

- (a) Claim specific performance and damages
- (b) Cancel the agreement and claim immediate payment of the full capital amount
- (c) Claim interest on the outstanding capital amount at the agreed rate plus 4% (four per cent) from the date of failure to the date of the payment of all capital, interest and costs due in terms hereof.
- (d) Recover all legal costs (fees and expenses) at the tariff as agreed to between the Lender and his legal representative.

(5)

QUESTION 4

[10]

Section 2(6)(b) of the Apportionment of Damages Act stipulates: "The period of extinctive prescription in respect of a claim for a contribution shall be 12 months calculated from the date of the judgment in respect of which a contribution is claimed or, where an appeal is made against such judgment, the date of the final judgment on appeal: provided that if, in the case of any joint wrongdoer, the period of extinctive prescription in relation to any action which may be instituted against him by the Plaintiff, is governed by a law which prescribes a period of less than 12 months as the period in which legal proceedings shall be instituted against him or within which notice shall be given that proceedings will be instituted against him, the provisions of such law shall apply mutatis mutandis in relation to any action for a contribution by a joint wrongdoer, a period or periods concerned being calculated from the date of the judgment as aforesaid instead of from the date of the original cause of action".

"A" therefore has 12 months as from the 2nd July 1998 (date of judgment) to sue "B" for a contribution.

- (a) It detracts from the dignity of the profession. It could lead to dishonesty. It gives an unfair advantage to the unscrupulous. (3)
- (b) 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)
- (c) No, it is not unethical to defend a person whom an attorney believes to be guilty because his duty is not to determine guilt but merely to do the best for the client. The state has the onus to prove the accused guilty beyond a reasonable doubt.
Note - the court must not be misled in the process. It is for the court to judge the matter. (4)
- (d) To indemnify anyone who has suffered monetary loss as a result of theft by an attorney, a candidate attorney or any person employed by an attorney.
- (e) (i) Pro amico is free representation ($\frac{1}{2}$) by an attorney of a client in a particular relationship ($\frac{1}{2}$) to the attorney. No fees may be charged but disbursements may be recovered (1). (2)
- (ii) Contingency fees constitute a fee equal to a percentage of the client's successful claim or on a higher scale if necessary and are now permitted in South Africa. In terms of recent legislation in contingency fees no fee is payable if the client is not successful. (5)
- (iii) This is similar to fees pro amico (1) and is subject to the same rules(1), in particular this may not be used as a means for touting (1) (3)

BOOKKEEPING / BOEKHOU
18 AUGUST 1999 / 18 AUGUSTUS 1999

PART 4/DEEL 4
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

[70]

Trust Bank Book

1999				1			
July	1	Balance	150 000	July	1	Stockbroker - ABSA shares	
		ABSA Investment	55 000			Mrs Jones	50 000
	2	Mr Clark	100 000		2	ABSA Bank	75 000
	4	ABC Company	50 000		4	NBS Investment	50 000
	6	ABSA Bank	76 000		6	Investec Bank	100 000
	6	Mr Clark	2 000		14	Correspondent	38 955
	12	XYZ	40 000			Transfer to Business	1 045
	20	Investec	105 020		15	Transfer Duty	2 000
	22	Mr Crook	5 000			Seller	100 000
	30	Stockbroker	56 000		20	Clark	20
						Transfer to Business	5 000
					22	Transfer to Business	4 500
						Balance	<u>212 500</u>
			<u>639 020</u>				<u>639 020</u>

Business Cash Book

1999				1999			
July	14	Transfer ex Trust	1 045	July	1	Balance	28 000
	20	Transfer ex Trust	5 000		5	Counsel - ABC	10 000
	22	Transfer ex Trust	4 500		8	Sheriff	375
	27	Staff loan - interest	100		22	Bail - Crook	3 000
		Balance	45 230		24	Wesbank - office equipment	1 500
						Wesbank - vehicle	2 000
						Wesbank - bond	5 000
					27	Loan - staff	5 000
					30	Law Society	<u>1 000</u>
			<u>55 875</u>				<u>55 875</u>

Journal Entries

1999 July 8	Correspondent (B) Fees Revenue stamps Fees and disbursements (2½) OK Bazaars vs XYZ Tyre Co.	570	00	500	00	70	00
	Fees Correspondent (B) (2) 20% allowance on fees	100	00	100	00		
14	Correspondent (B) Fees (2) Coll - Commission	250	00	250	00		
	Fees Correspondent (B) (2) Fees & 20% allowance OK Bazaars vs XYZ Tyre Co.	50	00	50	00		
	Correspondent (T) Correspondent (B) (2) Transfer fees & disbursement	1 045	00	1 045	00		
20	Clark (B) Fees Fees in respect of property transfer (2)	5 000	00	5 000	00		
	Clark (T) Clark (B) Transfer fees (2)	5 000	00	5 000	00		
1999 July 22	Mr Crook (B) Fees Fees re bail application (2)	1 500	00	1 500	00		

Mr Crook (T)		4 500	00		
Mr Crook (B)				4 500	00
Transfer fees & disbursement	(2)				

Trust Ledger Accounts

ABSA - Trust Investment - Mrs Investor - Section 78 (2A)

1999				1999		
July	1	Balance	100 000	July	1	Bank
						50 000

Mrs Jones (T)

1999				1999		
July	1	ABSA shares	50 000	July	1	Balance
						100 000
						Interest ABSA
						5 000
					30	Stockbroker
						56 000

Mr Clark (T)

1999				1999		
July	15	Transfer duty	2 000	July	2	Bank
						100 000
	20	Paid seller	100 000		6	Bank costs
						2 000
		Paid self	20		20	Investec - Interest
						5 020
		Transfer to Business	<u>5 000</u>			
			<u>107 020</u>			<u>107 020</u>

ABSA - Trust Investment - Section 78 (2)(a)

1999				1999		
July	2	Bank	<u>75 000</u>	July	6	Bank
						<u>75 000</u>

ABC Company (T)

				1999		
				July	4	Bank
						50 000

Fidelity Fund

				1999		
				July	6	Interest ABSA
						1 000

NBS - Trust Investment - Section 78 (2A) - ABC

1999			
July	4	Bank	50 000

Investec Trust Investment - Section 78 (2A) - Mr Clark

1999				1999			
July	6	Bank	<u>100 000</u>	July	20	Bank	<u>100 000</u>

Correspondent (T)

1999				1999			
July	14	Paid Self Transfer to Business	38 955 <u>1 045</u>	July	12	Bank XYZ	40 000

Mr Crook (T)

1999				1999			
July	22	Transfer to Business	4 500	July	22	Bank	5 000

Business Ledger Accounts

ABC (B)

1999			
July	5	Paid Counsel (This entry could also be debited to counsel account)	10 000

Correspondent (B)

1999				1999			
July	8	Fees & disbursement	570	July	8	20% allowance	100
		Paid Sheriff	375		14	20% allowance	50
	14	Call commission	<u>250</u>			Transfer ex Trust	<u>1 045</u>
			<u>1 195</u>				<u>1 195</u>

Fees

1999				1999			
July	8	20% Allowance	100	July	8	Correspondent	500
	14	20% Allowance	50		14	Correspondent	250
					20	Clark	5 000
					22	Crook	1 500

Revenue Stamps

	1999
	July 8 Correspondent 70

Mr Clark(B)

1999	
July 20 Fees	1999
<u>5 000</u>	July 20 Transfer ex Trust <u>5 000</u>

Mr Crook (B)

1999	
July 22 Bank - Bail	
	1999
	July 22 Transfer ex Trust 4 500
Fees <u>1 500</u>	<u> </u>

Lease Office Equipment

1999	
July 24 Wesbank	
1 500	

Lease Motor Vehicle

1999	
July 24 Wesbank	
2 000	

Drawings

1999	
July 24 Wesbank - bond	
5 000	

Staff Loan - Secretary

1999	
July 27 Bank	
5 000	

Interest received

	1999
	July 27 Staff loan 100

Subscriptions

1999			
July 30	Law Society	1 000	

QUESTION 2 **[4]**

- 2.1 Business account (1)
- 2.2 Trust account (1)
- 2.3 Estate account (1)
- 2.4 Business account (1)

QUESTION 3 **[12]**

- 3.1 (a) The trust creditor can not claim against the bank as it is not the banks customer. (1)
- (b) No. This loss is not covered by the Fidelity Fund. (1)
- (c) The attorney is liable to make good any trust shortfall. If the bank goes insolvent, he would be liable to repay all monies due to trust creditors. (6)

- 3.2 He could claim as a concurrent creditor in the insolvent estate of the bank. (2)

- 3.3 Immediately report the deficit to the Law Society and thereafter transfer monies from business to cover deficit. (2)

- 3.4 The limits are:
No supervision or inadequate supervision. (2)

QUESTION 4 **[14]**

- 4.1 Monthly. (1)
- 4.2 At intervals of not more than 3 calendar months. (2)
- 4.3 On the first banking day following receipt of trust monies. (2)

- 4.4 Once each calendar year or at such other time as the Council may require. (2)
- 4.5 Within six months after the annual closing of the accounting records of the firm concerned or at such other times as the Council may require. (3)
- 4.6 Once the account is opened, and without delay. (1)
- 4.7 For 5 years and at the head office of the firm. (3)