

**COURT PROCEDURES / HOFPROSEDURES  
PART 1 / DEEL 1**

**14 AUGUST/AUGUSTUS 2001**

**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. Plaintiff is ..... an adult male ..... occupied as a ..... presently resident at ..... and born on ..... (2)
2. Defendant is the ..... municipality a body with legal personality by virtue of the Local Authorities Act Act No ..... (1)
3. On or about ..... and at ..... Plaintiff slipped and fell at the premises of the defendant. (1)
4. The sole cause of the incident as described ..... above was the negligence of a servant of the defendant acting within the course and scope of his employment with the defendant and who was negligent in one or more of the following respects. (2)
  - 4.1 He failed to properly dry the floor of the defendants premises after washing and well knowing that this would constitute a danger to pedestrians. (½)
  - 4.2 He failed by neglecting to take adequate steps to warn members of the public of the presence of water on the defendants floor. (½)
5. As a result of the incident described herein above the plaintiff suffered the following physical injuries:
  - 5.1 a fractured femur. (½)
  - 5.2 A dislocation of the right hip involving the acetabulum. (½)
6. As a result of the injuries sustained the plaintiff:
  - 6.1 has incurred medical expenses in the sum of R28 567,00 details of which are set out in Annexure "A" hereto. (1)
  - 6.2 will require future medical treatment in the sum of R67 500,00 details of which are set out in the Report of Dr B Breaker an Orthopaedic Surgeon Annexure "B" hereto. (1)
  - 6.3 was unable to work for a period of four months and suffered a loss of income during the said period calculated as follows R5 500,00 per month x 4 = R22 000,00. (1)

- 6.4 will in future be permanently partially disabled and will suffer a loss of income over the rest of his working life as set out in the report of Mr U N Handy an Industrial Psychologist and quantified by Mr A Bacus an Actuary marked Annexure "C" and "D" respectively. (1)
- 6.5 has undergone pain and suffering and a loss of amenities in the past and will experience pain and suffering and a loss of amenities in future and has sustained general damages in the sum of R60 000,00. (1)
7. Plaintiff has given proper notice of his intention to institute this action to the defendant in compliance with the limitation of legal proceedings (Provincial and Local authorities) act and the period mentioned therein has elapsed despite such demand the defendant fails and or refuses to pay the sum claimed to the plaintiff. (2)

**QUESTION 2**

[7]

- 2.1 Be pleased to take notice that application will be made to the above Honourable Court on this ..... day of ..... at ten o'clock in the morning or as soon thereafter as applicants counsel may be heard for an order in the following terms. (2)
1. Directing the defendant to comply with plaintiff's notice in terms of Rule 35(3) within seven days of service of this order. (2)
  2. Cost of this application. (1)
  3. Further or alternative relief.
- Further take notice that the affidavit of Plaintiff attorney is Annexed marked "A". (1)
- Kindly enroll the matter accordingly.
- 2.2 Plaintiff attorney would sign this document. (½)
- 2.3 Plaintiff attorney would sign this document. (½)

**QUESTION 3**

[3]

- 3.1 Apply for leave to appeal and if unsuccessful petition the Chief Justice. (2)
- 3.2 Apply for special leave to appeal to the Supreme Court of Appeal. (1)

**QUESTION 4**

[8]

- 4.1 4.1.1 There is no allegation that the goods were delivered. (1)
- 4.1.2 There is no allegation that the plaintiff is the holder of the cheque. There is no allegation that the plaintiff presented the cheque nor is there an allegation that the defendant drew the cheque or on which bank the cheque was drawn. (2)
- 4.1.3 There is no allegation that the plaintiff is the owner of the vehicle, nor is there an allegation that the defendant's vehicle was being driven in the course and scope of the employment of the employee concerned. (2)

#### 4.2 EXCEPTION

Please take notice that the defendant excepts to the plaintiff's summons in that it fails to disclose a cause of action.

Particulars:

The summons does not allege that the goods were delivered to the defendant.

(3)

#### QUESTION 5

[9]

**NOTE TO EXAMINERS:** *If the candidate prepares an acknowledgement of debt which is not a consent in terms of Section 58 of the Magistrate's Court Act, then the maximum mark should be five marks.*

The correct answer is that he should prepare a consent in terms of Section 58 of the Magistrate's Court Act, the essential point of which are as follows: (2)

1. Defendant acknowledges receipt of a letter of demand. (1)
2. Defendant consents to judgment for the amount of R15 000,00 plus costs. (2)
3. Defendant consents to an Order of Court being made against him for payment of the judgment debt in instalments of R2 000,00 per month commencing 1 July 2000 and he consents to an emoluments attachment order being made against his employer for deductions of these amounts from his salary if he defaults. (4)

#### QUESTION 6

[4]

"1.

Plaintiff is required to state precisely what goods were sold. (½)

2.

How is the sum of R14 700,00 arrived at? Plaintiff is required to state the individual price of each of the items sold. (1)

3.

Who acted for defendant in the ordering of the goods and who acted for plaintiff in receiving the orders? (½) If the orders were placed in writing copies are required. (1)

4.

Who effected delivery and who received delivery of the goods?" (1)

#### QUESTION 7

[4]

The essential averments in such a plea are:

- (a) the existence of the arbitration clause in the contract (1)
- (b) that it applies to this dispute (1)
- (c) details of the dispute between the parties (1)

(d) the prayer should be for stay of proceedings pending the decision of the arbitrator (1)

[If the plea were drawn in the High Court it would be a special plea.]

[The defendant could have made application to stay proceedings simultaneously with entering appearance for this relief and need not have waited to file a plea].

## QUESTION 8

[10]

- 8.1 Evidence will have to be led/certificate obtained from employers to confirm: (1)
- 8.1.1 Loss of promotion (1/2)
  - 8.1.2 Future promotional opportunities (1/2)
  - 8.1.3 Sick leave benefits (1/2)
  - 8.1.4 That the compensation for 3 months was ex gratia and thus claimable (1)
  - 8.1.5 Normal retirement age (1/2)
  - 8.1.6 Date of commencement of employment (1/2)
  - 8.1.7 Salary and benefits had the accident not occurred and client been promoted (1/2)
  - 8.1.8 Present salary and benefits (1/2)
  - 8.1.9 Usual annual increases in salary (1/2)
- 8.2 Yes (1)
- 8.3 The claim is calculated thus:
- |                                 |   |                   |
|---------------------------------|---|-------------------|
| 6 Months salary (6 x R5 000-00) | = | R30 000-00        |
| Less sick leave pay             |   | <u>R 5 000-00</u> |
|                                 |   | CLAIM R25 000-00  |
- The payment made ex gratia must NOT be taken into account (3)

## QUESTION 9

[4]

Yes. Your client can institute a claim. (1) The whole cause of the accident was not due to the fact that your client was under the influence of liquor. (1) We are dealing here with causation and the facts tell us that the other driver was negligent, and not your client. (1) The fact that someone drives a vehicle under the influence of liquor, whilst being a criminal offence, is not *per se* civil negligence. (1)

## QUESTION 10

[8]

- 10.1 Yes. Your client does have a claim. (1) The fee paid for the conveyance was legal and thus your client was conveyed for legal reward. (1) Your client's claim is for R25 000-00 in respect of both general and special damages.(1) (3)
- 10.2 Yes. (1) Your client may claim from the driver personally any damages that can be proved in excess of the R25 000-00. (1) (2)
- 10.3 Yes. (1) If the vehicle was not covered by a lawful permit, the conveyance was illegal, and accordingly not for reward as defined by the Act. (1) Your client's claim will again be limited to R25 000-00, but in respect of special damages only. (1) (3)

**QUESTION 11**

**[3]**

Prescription in respect of the widow's claim will only commence running from the date of the breadwinner's death, and not from the date of the accident. (1) The claim for loss of support arises from the death of the breadwinner. (1) In respect of the minor children, prescription will only start running once they attain majority. (1)

**QUESTION 12**

**[8]**

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

CASE NO : 123/00

IN THE MATTER BETWEEN .....

The State

and

Mr A

**STATEMENT IN TERMS OF SECTION 115**

I, Mr A, do hereby declare that

1.

I am the accused in this matter and understand the nature of the charge against me.

2.

I hereby plead not guilty to the charge.

3.

I admit that:

1. On the 1<sup>st</sup> of February 2000 and at the Pub and Grub, Port Elizabeth, I struck the deceased one blow in the face with a fist.
2. I struck the said blow whilst I was involved in a fight with the deceased and in self defence.
3. I admit that the deceased is Mr X.
4. I admit that he died at Port Elizabeth on 1 February 2000.
5. I admit that the cause of death was a brain haemorrhage caused when the deceased struck his head against a rock when he fell.
6. I admit that the deceased sustained no further injuries from the time that he was taken from the scene of the incident until such time as he died at the hospital.
7. I admit as being correct the contents of the medico-legal report of Dr Angev that is dated at Port Elizabeth on this the 2<sup>nd</sup> of February 2000.

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MR A

**QUESTION 13****[10]**

13.1 Close the case of the defence. (1)

Apply for the discharge of the accused. (1)

Lead evidence by the accused or on behalf of the accused. (1)

13.2 Close the case for the defence. This step should be taken with caution and only when a practitioner is convinced that there is no prima facie case on record at that point in time. Should the defence not give evidence to rebut that which has been placed on record by the State, the Magistrate will be entitled to accept the State evidence. This step should only be taken once you have discussed it with your client, pointed out the pros and cons and received his instructions to act accordingly. (3)

Apply for the discharge in terms of Section 174 if you are of the opinion that insufficient evidence has been placed on record to allow a reasonable man to convict the accused. The credibility of witnesses does not come into consideration at this stage. Such an application can always be launched in order to establish the Magistrate's attitude towards the evidence which has been placed before him at that point in time. (3)

Evidence for the defence will have to be led if there is a prima facie case on record. The accused and any other witnesses who can support his case may be called. (2)

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

Section 65(2) of the Criminal Procedure Act reads as follows:

*"An Appeal shall not lie in respect of new facts which arise or are discovered after the decision against which the appeal is brought, unless such new facts are first placed before the Magistrate or regional Magistrate against whose decision the appeal is brought and such Magistrate or regional Magistrate gives a decision against the accused on such new facts."*

14.1 As the Attorney I will first on my own evaluate if the new facts have any relevance to the application for bail and if I am not satisfied I will proceed with the appeal on the recorded facts.

14.2 If the new facts are relevant and have a bearing on the application for bail I will not proceed with the appeal but will request that the new facts be placed before the same Magistrate who heard the original bail application for him or her to consider first and then give a ruling thereon. Only after he/she shall have given a negative ruling on the new facts can I then proceed with the appeal

**QUESTION 15**

**[2]**

Competent verdicts on a charge of Culpable Homicide are the following:

- (a) The offence of assault with intent to do grievous bodily harm.
- (b) The offence of robbery.
- (c) In a case relating to a child the offence of exposing an infant whether under a statute or at Common Law, or the offence of disposing of the body of a child in contravention of Section 113 of the General Law Amendment Act 1935, concealing the fact of its birth.
- (d) The offence of common assault.
- (e) The offence of public violence.
- (f) The offence of pointing a firearm, air gun or air pistol in contravention of any law.

**ESTATES / BOEDELS  
PART 2 / DEEL 2**

**14 AUGUST/AUGUSTUS 2001**

**ANSWERS/ANTWOORDE**

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**QUESTION 1**

**[60]**

- 1.1. FIRST AND FINAL LIQUIDATION AND DISTRIBUTION ACCOUNT (1) IN THE ESTATE OF THE LATE **JOHN SMITH** (ID 470105 8236 00 8) (1) WHO DIED ON 18 JULY 2000 (1) AND WHO WAS MARRIED OUT OF COMMUNITY OF PROPERTY (WITH THE EXCLUSION OF THE ACCRUAL SYSTEM) (1)

MASTER'S REFERENCE NO: 9927/2000 (1)

<b>LIQUIDATION ACCOUNT</b>		
<b>ASSETS</b>		
<b>1. IMMOVABLE PROPERTY</b>		
Portion 1 of Erf 246 Potchefstroom, registration division IQ, North West Province Measuring 500 square metres. Held under deed of transfer no 1267/98 dated 17 February 1998. (2) (To be transferred to the surviving spouse as legatee in terms of clause 5 of the Will) (1)	1	450 000-00
<b>2. MOVABLE PROPERTY</b>		
<b>Motor Vehicles</b>		
1998 Mercedes Benz C250 sedan registration no ABC 724 NW (1)	2	120 000-00
1999 Apache Adventurer SV4 registration no PHB 829 NW (1) (Both vehicles to be transferred to Peter Smith, major son, as residuary heir in terms of clause 6 of the Will) (1)	3	280 000-00



<b>3. SHARES</b>		
4 000 ordinary shares in Consolidated Mining Ltd, at 3125 cents per share (1)	4	125 000-00
75 shares of R2-00 each in Automotive Engineering (Pty) Ltd at R1 000-00 per share (1) (All shares to be transferred to surviving spouse in terms of clause 5 of the Will) (1)	5	75 000-00
<b>4. CLAIMS IN FAVOUR OF THE ESTATE</b>		
Proceeds of Federal and Colonial life policy on the life of the deceased: policy no 295076X2P (2) (Collected and deposited on estate bank account)	6	250 000-00
<b>TOTAL ASSETS</b>		1 300 000-00

<b>LIABILITIES</b>		
<b>1. ADMINISTRATION COSTS</b>		
<b>1.1 Advertisements</b>		
To creditors: section 29		
Western Chronicle 60-00(1)	7	
Government Gazette <u>18-00(1)</u>		78-00
Account for inspection: section 35		
Western Chronicle 60-00(1)	8	
Government Gazette <u>18-00(1)</u>		78-00
<b>1.2 Valuation costs</b>		
Nel and Visser (stockbrokers) for valuation of shares in Consolidated Mining Ltd (2)	9	134-00
Pieterse en Jansen, (auditors) for valuation of shares in private company (2)	9A	500-00
<b>1.3 Transfer costs</b>		
Ndhlovu and Partners:		
Provision for transferring immovable property to surviving spouse (1)	10	3 000-00
<b>1.4 Bank costs</b>		
Debited (cheque account) 30-00		
Provision 50-00(1)	11	80-00
<b>1.5 Postages and pettyies</b> (1)		30-00
<b>1.6 Executor's remuneration 3,5% on R1 300 000-00</b> (1)		45 500-00
<b>1.7 Master's fees (maximum)</b> (1)		600-00
		50 000-00

<b>2.</b>	<b>CLAIMS AGAINST THE ESTATE</b>			
<b>3.</b>				
2.1	Condolences (Pty) Ltd	(1)	12	6 400-00
	Funeral expenses			
2.2	Commercial Bank			
	debit balance on current account	(1)	13	<u>17 000-00</u>
	<b>TOTAL LIABILITIES</b>			73 400-00
	<b>BALANCE FOR DISTRIBUTION</b>	(1)		<u>1 226 600-00</u>
				<u>1 300 000-00</u>

<b>RECAPITULATION STATEMENT</b>			
Total amount of cash in estate (Proceeds of policy)	(1)		250 000-00
<b>LESS:</b>			
cash legacy		50 000-00(1)	
Liabilities		73 400-00(1)	<u>123 400-00</u>
Cash available for distribution	(1)		<u>126 600-00</u>

<b>ESTATE DUTY ADDENDUM</b>			
<b>Property in terms of section 3(2)</b>			
Total assets as per liquidation account	(1)		1 300 000-00
<b>LESS:</b> Policy payable to estate	(1)		<u>250 000-00</u>
			1 050 000-00
<b>ADD:</b>			
<b>Property deemed to be property in terms of section 3(3)</b>			
Proceeds of all domestic policies			
Sunshine Insurers (wife)		100 000-00(1)	
Ocean Insurance Co (daughter)		200 000-00(1)	
Federal and Colonial (estate)		250 000-00(1)	
Ajax Group Life Scheme (wife)		<u>275 000-00(1)</u>	
		825 000-00	
<b>LESS:</b> Policy donated to wife per ANC		<u>100 000-00(1)</u>	<u>725 000-00</u>
			1 775 000-00
<b>ADD:</b> Payment by Pension Fund	(1)		<u>290 000-00</u>
			<b>2 065 000-00</b>
<b>GROSS DUTIABLE ESTATE</b>			
<b>LESS: Allowable deductions i.t.o. section 4</b>			
Section 4(a) - 4(d)	(1)		73 400-00
Section 4(q): value of bequest to spouse	(1)		450 000-00
payment by pension fund	(1)		300 000-00
value of shares	(1)		200 000-00
Section 4(h): legacy for educational purposes	(1)		<u>50 000-00</u>
			991 600-00
<b>NETT VALUE OF ESTATE(1)</b>			
<b>LESS:</b> Rebate in terms of section 4A	(1)		<u>1 000 000-00</u>
			<b>NIL</b>
<b>DUTIABLE AMOUNT (1)</b>			

[52]

- |     |      |  |     |
|-----|------|--|-----|
| 1.2 | i)   | Death notice   | (1) |
|     | ii)  | Original Will  | (1) |
|     | iii) | Inventory  | (1) |
|     | iv)  | Acceptance of trust in duplicate   | (1) |
|     | v)   | Certified copy of the death certificate, if signatory of death notice was not present at death and did not identify the deceased after death | (2) |
|     | vi)  | Bond of security for full value of assets, unless exempted in the will   | (2) |
|     |      |  | [8] |

**QUESTION 2** **[10]**

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B is entitled to half of the joint estate by virtue of the marriage in community of property. R303 000-00 (2)

As far as the deceased's half share is concerned, B inherits a child's share or R125 000-00, whichever is the greater. (2)  
 A child's share is  $R303\ 000-00 \div 3 = R101\ 000-00$  (1)  
 Therefore B inherits R125 000-00 (1)

The children inherit the residue of the estate in terms of § 1(1)(c)(ii) of the Intestate Succession Act, no. 81/1987. (1)  
 C inherits  $R303\ 000-00 - R125\ 000-00 = R178\ 000-00 + 2$  R89 000-00 (1)

In terms of § 1(6) of the Intestate Succession Act, when a child renounces his/her inheritance, it shall vest in the surviving spouse. Therefore B inherits a further (3)  
R89 000-00  
R606 000-00

**QUESTION 3** **[10]**

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3.1 In view thereof that Simon died within 3 months after he divorced, Section 2(B) of the Wills Act will be applicable. (1)

Susan is considered to have died before the dissolution of the marriage and Susan will therefore not benefit under the Will. (2)

As Simon has died without leaving issue, his new wife Mary will be the sole beneficiary in terms of the Intestate Succession Act of 1987. (3)  
[6]

3.2 Because the will was not altered after the divorce, and because more than 3 months have lapsed since divorce, Susan regains her status as a beneficiary. Susan will therefore inherit the whole estate in terms of his Will. (3)

His new wife may have a claim against the estate for maintenance in terms of the Maintenance of Surviving Spouses Act No. 27 of 1990. (1)  
[4]

**QUESTION 4****[9]**

If the Will is signed by the testator by the making of a mark a Commissioner of Oaths (2)  
must certify that he has satisfied himself as to the identity of the testator (1)  
and that the Will so signed is the Will of the testator, (1)  
and each page of the Will, excluding the page on which his certificate appears, is also signed  
by the Commissioner of Oaths (1)  
anywhere on the page. (1)  
The Will must be executed (signed and witnessed) in the presence of the Commissioner of Oaths (1)  
who shall then attend to certify the Will as soon as possible after the Will has  
been so signed. (2)

**QUESTION 5****[6]**

An executor must furnish security unless he/she is a parent, spouse or child of the deceased, (2)  
or unless he/she has been exempted in the will from finding security (section 23 of Act 66/1965). (1)

Security is furnished on a form entitled "Undertaking and Bond of Security". The undertaking is  
completed and signed by the executor who binds himself/herself to the Master in an amount equal to  
the total value of the assets for the proper performance of his/her functions. (1)

An insurance company completes and signs the bond of security in which it binds itself unto the Master  
as surety for the obligations undertaken by the executor. (2)

**QUESTION 6****[5]**

6.1 Yes. (1)

6.2 The wife shall have a claim against the estate of the deceased spouse for the provision of her  
reasonable maintenance needs (2) until her death or remarriage (1) in so far as she is not able  
to provide therefor from her own means and earnings. (1)

**ATTORNEY'S PRACTICE / PROKUREURSPRAKTYK  
PART 3 / DEEL 3**

**15 AUGUST/AUGUSTUS 2001**

**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 There will be a number of ways of answering this question. You must allocate 20 marks for correct legal issues. The appended list is not necessarily comprehensive. There may also be others that are raised and may be accepted. Four marks must be allocated for presentations and draftsmanship.

1. Cost of procedure
2. Simplicity to arrange
3. Quicker to establish
4. Ease of future management and administration
5. Less outside administration in future
6. Less expense in future administration
7. Easy to make contributions in kind and value
8. Simplicity of changing membership interest or agreement (24)

1.2 Why not a partnership?

All of the above (1 – 8) are relevant to a greater or lesser degree

The following are essential elements and to the extent that they are not mentioned the possible maximum marks must be reduced:

- (a) Separate personality which means
  - possible non personal liability and
  - continued existence after death of member
  - Something about insolvency/liquidation
- (b) Partnership may not provide for sharing of profits only as against different classes of shares. (6)

***These essential elements must be stated – 2 marks come off the possible maximum for each not referred to.***

**QUESTION 2****[24]**

- 2.1 The crossing may be cancelled. The cheque may not be made payable to bearer. (4)
- 2.2 An attorney is not the judge of his client's case but there is an obligation on an attorney to advise his client properly about the merits and demerits of his case. If despite advice to the contrary the client insists on proceeding the attorney may carry out the instruction unless the attorney is of the view that to carry on would be an abuse of the court and the legal process. It would be advisable for the attorney to advise the client in writing that the client is proceeding despite the attorney's advice not to do so. (4)
- 2.3 It is inadvisable for an attorney who is acting in a matter to give evidence in the case. If this situation arises the attorney should withdraw and arrange for another attorney to act. The position may be different where the attorney's evidence is to be given on formal and uncontentious matters. If however the attorney's evidence relates to the actual disputes between the parties he must withdraw. (4)
- 2.4 It is advisable for an attorney to arrange a fee with Counsel in advance and this is permissible. It is the attorney's duty to keep his client advised in regard to the cost aspects of a matter and this can only be done if proper arrangements are made with advocates in regard to fees. (4)
- 2.5 You should advise your client that the Law Society should be requested to assess the fee through a fee assessment committee so as to determine whether or not your fee is reasonable. There is of course nothing to prevent on negotiating with your colleague in an attempt to settle the dispute. (4)
- 2.6 The attorney's conduct is not acceptable. Interviews with the media about a client's affairs are precluded without the client's consent under the general rule of confidentiality. Even with that consent the attorney may not publicise his practice by way of press interviews unless this is in the clear interest of the client or in the public interest. This may happen if the media have published incorrect information and if a story requires amplification.
- The confidence of the client is absolute and must be preserved by the attorney with certain exceptions i.e. the death or disability of a client where information may be given to executors, administrators, trustees etc. (4)

**QUESTION 3****[20]**

I, the undersigned (The Debtor)

of being my chosen domicilium citandi et executandi for the purpose hereof do

hereby acknowledge that I am truly and lawfully indebted to (hereinafter called The Creditor) in the sum of R100 000-00 (ONE HUNDRED THOUSAND RAND) for and in respect of monies actually lent and advanced by The Creditor to me. I hereby agree and undertake to repay the said sum of R100 000-00 (ONE HUNDRED THOUSAND RAND) to The Creditor together with

interest calculated thereon at a rate equivalent to 2% higher than the prime rate of interest charged by XYZ Bank Limited from time to time on overdrawn banking accounts within five years from date of signature hereof. (8)

As security for the due and timeous repayment of the aforesaid loan and the interest thereon I hereby pledge to the Creditor all my right, title and interest in the one thousand shares numbered 1 to 1000 which I hold in ABC Limited by virtue of Share Certificate No. 4 issued to me by the said Company. The said shares shall be regarded as pledged to the creditor as a continuing covering security for all money which I may owe to the creditor in terms of this acknowledgement of debt.

In order to perfect the pledge of the said shares I shall simultaneously with the signing hereof deliver to The Creditor the aforesaid share certificate together with a share transfer form in respect thereof signed by me in blank. In the event of my failing to repay my indebtedness and the interest thereon to the creditor as provided for herein he shall be entitled to acquire the pledged shares at a price equal to the fair value thereof which in the absence of agreement shall be determined by the auditors of the company whose decision shall be final and The Creditor shall be entitled to set off the said consideration against my indebtedness to him .

Upon repayment of the loan and interest the pledge shall term inate and The Creditor shall deliv er the said share certificate to me.

I agree and undertake to pay the costs of the preparation hereof and any stamp duty payable.

Dated at this day of 2000-07-24

AS WITNESSES:

1. \_\_\_\_\_  
THE CREDITOR
2. \_\_\_\_\_  
THE DEBTOR  
(12)

<p><b><u>NOTE TO EXAMINER:</u></b> <i>The above is a guide as the document can take other forms. The candidate must establish the debt, the rate of interest and the repayment date. The candidate must also know that delivery is an essential element of pledge and must make acceptable provision in regard to the pledged asset in the case of default.</i></p>
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**QUESTION 4** **[18]**

4.1 The Seller may indeed cancel an agreement in these circumstances. All that needs to be done is that the Seller has to acquire a right to cancel by giving notice to the Purchaser placing him in mora. The notice must contain details of the breach and the Purchaser must be given a reasonable time within which to perform, failing which the contract may then be cancelled by giving notice of cancellation. (5)

4.2 FIRST LETTER

We act on behalf of our client Mr Seller who instructed us to communicate with you about the agreement of sale entered into between yourself and our client on 30 June 2000.

In terms of Clause 2 of the agreement you were obliged to deliver a guarantee to our client for the sum of R250 000-00 within 30 days from the date of the agreement. You have failed to do so.

Our instructions are to demand from you, as we hereby do, delivery of the required guarantee within a period of 30 days from the date of receipt of this letter (other permutations are also possible) failing which our client will cancel the agreement and hold you liable for damages he may suffer as a result of your breach of contract.

(9)

#### SECOND LETTER

We refer to your letter dated,,,,,,,,,

You have failed to perform in terms of our client's demand and in the circumstances the contract under reference is hereby cancelled.

(4)

#### QUESTION 5

[8]

We the undersigned,

(hereinafter referred to as the Sureties)

do hereby bind ourselves as sureties jointly and severally for and on behalf of and as co-principal debtors in solidum with ABC CC (hereinafter referred to as the Debtor) to and in favour of XYZ Ltd (hereinafter referred to as the Creditor) for the due and punctual payment by the Debtor to The Creditor of all monies whether now due owing and pay able or becoming due owing and pay able in the future.

DATED AT            THIS        DAY OF                    2000.

1.

2.

*Note. If the suretyship is drawn in the above manner it is not necessary for the sureties to renounce the benefits of execution and division.*



**BOOKKEEPING / BOEKHOUD**  
**PART 4 / DEEL 4**

**15 AUGUST/AUGUSTUS 2001**

**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**

**[20]**

- 1.1 If the client owes me money for fees and disbursements (1) already raised in the books (1), so much as is received in cash up to that amount must be deposited into the business banking account (1) and any excess into the trust banking account (1). If the amount is received by way of a cheque, the total amount must be deposited into the trust banking account (1) and thereafter, once the cheque is cleared (1), the business portion owing should be transferred to the business banking account (1). (7)
- 1.2 Output tax: Tax levied (1) on taxable supplies (1) by a registered vendor (1). (3)
- Input tax: Tax paid (1) when purchasing tax able supplies (1) from a registered Vendor (1). (3)
- 1.3 VAT must be paid every second month (1) if the annual value of taxable supplies is less than R30 m (1) and every month (1) if it is more than R30 m (1). The VAT is payable on or before the 25<sup>th</sup> of the month following the end of the tax period (1). (5)
- 1.4 The accounting records must be kept for 5 years (1) at the firms main office (1). (2)

**QUESTION 2**

**[20]**

2000			2000		
Feb 1	Balance	53752	Feb 12	Cheque 193	7272
18	Deposit	64770	16	Cheque 194	1926
24	Deposit	23906	18	Cheque 195	7849
28	Deposit	12302	28	Cheque 196	25000
	Cheque 129 written back	733		Cheque 197	15000
	Interest	428		Balance	98844
		155891			155891

**BANK RECONCILIATION STATEMENT AT 28 FEBRUARY 2000**

Balance as per bank statement			134525
Add: Bank error			1333
			<u>135858</u>
Less: Outstanding cheques	192	9316	
	196	25000	
	197	15000	49316
			<u>86542</u>
Add: Outstanding deposit			12302
Cash book balance			<u><u>98844</u></u>

**QUESTION 3**

**[25]**

**Trust Cash Book**

Colin	60000	Second Bank - Colin	60000
Second Bank	15000	Counsel - Colin	6000
Gladys	150000	Third Bank - Gladys	100000
Various clients	250000	First Bank	200000
Gladys	15000	Rec of Revenue - Transfer duty	10000
First Bank	101200	Law Society	1200
		Balance	<u>214000</u>
	<u>591200</u>		<u>591200</u>

**Colin - Trust Account**

Counsel	6000	Bank	60000
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**Trust Investment 78(2A) - Colin**

Second Bank	60000	Second Bank	15000
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**Gladys - Trust Account**

Rec of Revenue	10000	Bank - Deposit	150000
		Bank - Costs	15000

**Trust Investment Gladys - 78(2A)**

Third Bank	100000		
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**Various clients - Trust Accounts**

		Bank	250000
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**Section 78(2)(a) Trust Investment**

First Bank	200000	First Bank	100000
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**Fidelity Fund**

Law Society	<u>1200</u>	First Bank	<u>1200</u>
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**VRAAG 4 [35]**

U korrespondent stuur aan u die volgende staat:

Opsomming van staat

Invordering Jackson v Lewis		3200
Dagvaarding en ander koste	460	
Opspoorder	250	
Prokureur/Kliëntgelde	300	
BTW	42	
U een-derde toelaag		100
BTW		14
Tjek hiermee	2262	
	<u>3314</u>	<u>3314</u>

Gevra:

- 4.1 Toon aan hoe u die bogenoemde transaksies in u rekeningboeke, insluitende trust- en besigheidskasboeke, trust-, fooie- en oordragjoernale, besigheids- en trustgrootboekrekening sal aanteken.
- 4.2 Stel'n staat vir u kliënt op waarby'n tjekaangeheg is en plaas die bedrag waarop u geregtig is na u besigheidsrekening oor.

**QUESTION 4 [35]**

You receive the following statement from your correspondent:

Summary of statement

Collection Jackson vs Lewis		3200
Summons and other costs	460	
Tracing agent	250	
Attorney/Client fee	300	
VAT	42	
Your one-third allowance		100
VAT		14
Cheque herewith	2262	
	<u>3314</u>	<u>3314</u>

Required:

- 4.1 Indicate how the above transactions will be recorded in your books of account, including trust and business cash books, trust, fee and transfer journals, business and trust ledger accounts.
- 4.2 Prepare a statement to your client enclosing a cheque and transfer the amount you are entitled to transfer to your business account.

List of Trust Creditors

Colin	54000
Gladys	155000
Sundry clients	<u>250000</u>
	<u>459000</u>

Trust funds available

As per trust cash book	214000
Section 78(2A)	
Colin	45000
Gladys	100000
Section 78(2)(a)	<u>100000</u>
	<u>459000</u>

**QUESTION 4**

**[35]**

Trust Cash Book

Correspondent	2262	Paid Jackson	2148
		Transfer to Business	114
	<u>2262</u>		<u>2262</u>

Business Cash Book

Transfer ex Trust	114		
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Correspondent (Trust)

Jackson - collection	3200	Cash received	2262
Transfer to business	114	Jackson - disbursements	1052
	<u>3314</u>		<u>3314</u>

Jackson (Trust)

Disbursements Lewis	1052	Cash Lewis	3200
Cheque self	2148		
	<u>3200</u>		<u>3200</u>

Correspondent (Business)

Fees	114	Transfer ex Trust	114
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Fees (Business)

		Correspondent	100
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VAT Output

		Correspondent	14
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TRUST JOURNAL

	Debit	Credit
Correspondent (Trust) Jackson (Trust) Cash collection - Lewis	3200	3200
Jackson (Trust) Correspondent (Trust) Fees & disbursements - Lewis	1052	1052

FEES JOURNAL

	Debit	Credit
Correspondent (Business) Fees VAT output One third allowance Jackson vs Lewis	114	100 14

TRANSFER JOURNAL

	Debit	Credit
Correspondent (Trust) Correspondent (Business) Transfer allowance - Jackson vs Lewis	114	114

STATEMENT OF ACCOUNT : JACKSON VS LEWIS

Cash collected - Lewis		3200
Paid correspondent' s fees and disbursements	1052	
Cheque herewith	2148	
	<u>3200</u>	<u>3200</u>