

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

13 AUGUST/AUGUSTUS 2002

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

[6]

Any six of the following:

1. An application for attachment/arrest to confirm jurisdiction should precede the action.
2. Wrong form of summons.
3. No *locus standi*.
4. Damages - no application for summary judgment.
5. No security for costs claimable from *peregrinus* defendant.
6. No claim for personal injuries.
7. Jurisdiction - amount claimed falls within the jurisdiction of the magistrate's court.
8. An attorney cannot depose to an affidavit supporting summary judgment.

QUESTION 2

[14]

2.1 Any three of the following:

- (a) insolvent
- (b) *peregrinus*
- (c) vexatious
- (d) corporations (if financially unstable). (3)

2.2 Be pleased to take notice that application will be made to the above honourable court on Tuesday, the tenth day of 2002 for an order in the following terms: (1)

- (a) directing the plaintiff to give security for defendant's costs in a sum of within ten days of granting of this order; (1)
- (b) the costs of this application; (1)
- (c) further and/or alternative relief;

QUESTION 3**[5]**

The candidate must mention five of the following:

1. the date, place and duration of the conference and the names of the parties present;
2. if a party feels that he is prejudiced because another party has not complied with the rules, the nature of such non-compliance;
3. every party claiming relief has requested his opponent to make a settlement proposal and that such opponent has reacted thereto;
4. whether any issues be referred by the parties for mediation, arbitration or decision by a third party;
5. whether the case should be referred to another court;
6. which issues should be decided separately in terms of the provisions of rule 33(4);
7. the admissions made by each party;
8. any dispute regarding the duty to begin or the onus of proof;
9. any agreements regarding the production or proof by way of an affidavit in terms of rule 38(2);
10. which party will be responsible for the copying and the other preparation of documents;
11. which documents or copies of documents will without further proof serve as evidence of what they purport to be, which extracts may be proved without proving the whole document and/or any other agreement regarding the proof of documents.

QUESTION 4**[10]**

1. Jurisdiction - defendant resides in Pretoria and collision occurred in Pretoria and suing out of Durban Court. (1)
2. Dies induciae of 3 days is too short. (1)
3. Para 4 & 6 : No Vicarious Liability alleged - no basis for action against First Defendant. (2)
4. Para 5 : Prescription - collision occurred in 1991. (1)
5. Para 5 & 7 : Locus Standi of Plaintiff - he is driver of the vehicle and not the owner.(2)
6. Para 7 & 8 : Jurisdiction - claim amount exceeds Magistrate's Court jurisdiction. (1)
7. Prayer : Interest exceeds prescribed rate. (1)
8. No basis for costs on scale between attorney and client. (1)

QUESTION 5**[7]**

5.1 If the defendant has ceded its claim to its bankers then he no longer is the owner of the claim and thus was not entitled to issue sum mons. This would be a good def ence. (2)

5.2 NOTICE OF INTENTION TO AMEND DEFENDANT'S PLEA

PLEASE TAKE NOTICE that the defendant intends to amend its plea by adding the following paragraph after paragraph 7 to read as follows:

"8.

Alternatively to the foregoing, the plaintiff, on or about 1 May 2001, ceded ownership of his alleged claim against the defendant to Second Flag Bank who thus became the owner of the alleged claim. Accordingly plaintiff does not have title to the claim and was not entitled to institute proceedings against the defendant for the recovery thereof."

AND FURTHER TAKE NOTICE that unless objection in writing is made within 10 [TEN] days after the delivery of this notice to the proposed amendment, the Plaintiff's Particulars and Claim shall be deemed to be duly amended. (3)

NOTE TO EXAMINERS

Candidates are not expected to be able to set out the relevant wording of Rule 55A accurately.

5.3 The plaintiff must serve a notice of objection to the amendment within 10 days. (1) Such notice, to be valid, would have to set out the grounds for objection. (1)

QUESTION 6**[4]**

6.1 6.1.1 No. It does not have the effect of a final judgment. (1)

6.1.2 Yes. This is a final judgment. (1)

6.1.3 No. This is an interlocutory order not having the effect of a final judgment. (1)

6.2 No. It is not necessary to obtain leave to appeal any judgment in the Magistrate's Court. (1)

QUESTION 7**[4]**

7.1 Except in the case of service by post or upon order of the court, process, notice or other documents shall not be served on a Sunday. (1)

- 7.2 No. The person's age must apparently be not less than 16 years of age. (1)
- 7.3 This does comply in terms of Rule 9(d). (1)
- 7.4 Unless the Defendant has consented thereto, the summons cannot be served on the Defendant's attorney as no provision is made therefore in Rule 9. (1)

QUESTION 8

[25]

- 8.1 No. The claim is for bodily injuries and is personal in nature.(1) It does not form part of the Joint Estate. Thus, Mr Smith does not have *locus standi* to act on behalf of Mrs Smith in respect of this claim. (1) He can however claim the special damages o.b.o. the Joint Estate.(1) [3]
- 8.2 Yes. He can claim in respect of funeral expenses and in respect of the past medical and hospital expenses. (2) He can also claim general damages i.r.o. his own injuries(1) [3]
- 8.3 Past hospital expenses. (½)
 Past medical expenses. (½)
 Future medical expenses. (½)
 Future loss of earnings. (½)
 Past loss of earnings. (½)
 General damages. (½) [3]
- 8.4 She may claim one month's salary (R5000.00) i.r.o. past loss of earnings. (1) The amount she received as sick leave pay cannot be claimed because it was paid to her ex contract. (1) She can also claim i.r.o. future loss of earnings the amount her employers paid her when she was off work for the operation (1) because this pay ment was paid ex gratia. (1) [4]
- 8.5 An employers certificate giving details of her nett earnings and sick leave entitlement. [2]
- 8.6 No. (1) Mrs Smith need only prove 1% negligence in respect of the other vehicle to succeed 100% in her claim. (1) [2]
- 8.7
1. Vouchers in support of past hospital expenses.(1)
 2. Vouchers in support of past medical expenses. (1)
 3. Statutory medical report by doctor who treated her (1)
 4. Road Traffic Collision report. (½)
 5. Affidavit by Mrs Smith in which she covers the issues of negligence and Quantum. (1)
 6. Consent by Mrs Smith to inspect hospital and medical records (½)
 7. Employer's certificate. (½)

8. Mrs Smith's Identity Document. (½)
9. Sketch plan of accident and all statements of witnesses in her possession. (1) [7]
- 8.8 By not later than the 19th August 2003. [1]

QUESTION 9 [8]

- 9.1 I would advise my client that an appeal against the Magistrate's decision at this point in time cannot be brought until such time as the new facts have been placed before the Magistrate and he has been given an opportunity to consider whether bail should be granted in the light thereof. I would accordingly advise the state that you wish to bring a new application for bail based on new facts. A date will be arranged and the accused will be given an opportunity of giving evidence. Further evidence from other parties in support thereof may also be placed before the court at this stage. In the event of the Magistrate thereafter refusing bail the appeal procedure can follow. (4)
- 9.2 No. (1)
- 9.3 The accused or his legal advisor is compelled to inform the court whether the accused has previously been convicted of any offence and whether there are any charges pending against him and whether he has been released on bail in respect of those charges. (2)
- 9.4 Yes. (1)

QUESTION 10 [2]

Section 113 allows an accused who has been convicted and before sentence is passed to correct a plea of guilty to that of not guilty. At the following hearing I would advise the court of the accused's intention to apply for the plea of guilty to be corrected to one of not guilty.

11.1

IN THE REGIONAL COURT FOR THE DISTRICT OF PRETORIA, HELD AT PRETORIA

Case No: 1234/00

In the matter between

ABC

and

THE STATE

STATEMENT IN TERMS OF SECTION 115

I, ABC, do hereby declare that:

1. I am the accused in this matter and I understand the nature of the charge against me.
2. I plead not guilty.
3. I deny that I robbed the accused as set forth in the charge hereto and place the state to the proof thereof.
4. On the date and time on which the offence took place I was at the home of XYZ attending a party and could accordingly not have been one of the persons who accosted the complainant.

DATED AT PRETORIA ON THIS THE 3RD DAY OF MAY 2001

ABC

LEGAL REPRESENTATIVE

(4)

11.2 The following questions can be asked:

- (i) The nature of the lighting in the street where the complainant was accosted - how far are the closest street lights?
- (ii) Was it a moonlit night?
- (iii) Had the complainant been drinking on this occasion, and if so what was the degree of intoxication?
- (iv) Does the complainant, an elderly man, wear spectacles? Did he wear them on this particular night?
- (v) Can the complainant describe his assailants? If so were there any specific distinguishing features in respect of both assailants?
- (vi) For what period of time did he have an opportunity to observe his assailants?
- (vii) Did he know his assailants prior to the day in question?
- (viii) When did he see his assailants (and in particular the complainant) for the first time?
- (ix) Details as to the condition of the watch - was it new, secondhand? (5)

NOTE TO EXAMINERS

The foregoing is not exhaustive.

11.3 Assault GBH

Common assault

Theft

Receiving stolen property

(2)

QUESTION 12

[4]

- (i) Close the case for the accused
- (ii) Bring an application for the discharge of the accused i.t.o. Sec 174. In this instance the attorney will address the court stating that he intends bringing such an application. He will shortly outline the reasons therefore. (i.e. the defects in the state's case) The court will be advised that the state has failed to make out a prima facie case against the accused. The accused is not obliged to be put on his defence in order to assist the state and there is insufficient evidence on record for a reasonable man to convict the accused.

**ESTATES / BOEDEL'S
PART 2 / DEEL 2**

13 AUGUST/AUGUSTUS 2002

ANSWERS/ANTWOORDE

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QUESTION 1

[6]

1.1

LAST WILL AND TESTAMENT

I, the undersigned

MARY POPPINS (born Wright) a widow

hereby revoke all former wills previously made by me, either jointly or singly. (1)

1.

I nominate and appoint JOSEPH NDHLOVU, attorney at law of the firm Ndhlovu and Sithole Incorporated to be the executor of my estate (1) and if he does not survive me or for any reason fails to accept the appointment then I appoint the senior partner of the aforesaid firm to be the executor of the estate.(1) My executor shall have power of assumption (1) and shall not be required to furnish security to the Master of the High Court in terms of the provisions of the Administration of Estates Act no 66 of 1965.(1)

2.

I bequeath an amount of R100 000,00 to the Mandela Children's Fund.(1)

AS WITNESSES:

1.

2.

.....
TESTATRIX

3.

I bequeath my house and my Mercedes Benz motor car to my eldest daughter Joanne Smith(1) and in the event of her predeceasing me, I direct that my house and motor car will devolve on her eldest son John Smith.(1)

4.

I leave the residue of my estate to my youngest daughter Mathilda Steyn.(1)

5.

I direct that any bequest or inheritance accruing in terms of my will shall not form part of any existing or future community estate (1) and the right of accrual as contemplated in the Matrimonial Property Act no 88 of 1984 is hereby specifically excluded from any bequest or inheritance in terms of this will. (1) Such bequest or inheritance shall not be subject to attachment or execution by any creditor of any spouse.(1)

SIGNED AT PRETORIA ON 25 JULY 2001 (1) in the presence of the subscribing witnesses, all being present and signing at the same time and in the presence of one another.

AS WITNESSES:

1.

2.

.....(1)

TESTATRIX

[14]

1.2 LIQUIDATION ACCOUNT

ASSETS			
<u>IMMOVABLE PROPERTY AWARDED</u>			
Erf 123 situated in the township of Pretoria, Registration Division JR, Province Gauteng, Measuring 1000 square metres Held by Deed of Transfer T1894/87 dated 27 June 1987			
	(1)		
At appraised value	1		500 000-00
Awarded to Joanne Smith as legatee in terms of clause 3 of the will			
	(1)		
<u>MOVABLE PROPERTY AWARDED</u>			
1. 1999 Mercedes Benz sedan registration no ABC 246 GP			
	(1)		
At appraised value	2	120 000-00	
Awarded to Joanne Smith as legatee in terms of clause 3 of the will			
	(1)		
2. Furniture and household effects			
At appraised value	3	300 000-00	
3. 300 ordinary shares in Anglovaal Ltd @ R100 per share			
As per valuation by ABC Brokers	4	30 000-00	
4. Jewellery, consisting of a diamond brooch and two sapphire earrings set in gold			
At appraised value	5	<u>50 000-00</u>	500 000-00
Items 3, 4 and 5 above awarded to Mathilda Steyn as residuary heir in terms of clause 4 of the will			
	(2)		
			<u>1 000 000-00</u>

ASSETS REALISED			1 000 000-00
1. Proceeds of Sanlam Life policy on the life of the deceased: policy number 67891057PX	(1)	6	100 000-00
2. Proceeds of Liberty Life policy on the life of the deceased: policy number 987534PS	(1)	7	150 000-00
3. Money Market Investment: ABSA Bank Capital: 180 000-00	(1)	8	
Interest to date of death:	1 500-00	(1)	181 500-00
TOTAL ASSETS			1 431 500-00

[10]

1.3 ESTATE DUTY ADDENDUM

PROPERTY IN TERMS OF SECTION 3(2)			
Total assets as per liquidation account	(1)		1 431 500-00
Less: proceeds of life insurance policies:			
Sanlam Life:		100 000-00	
Liberty Life:	(1)	150 000-00	250 000-00
			1 181 500-00
PROPERTY DEEMED TO BE PROPERTY IN TERMS OF SECTION 3(3)			
Sanlam Life:		100 000-00	
Liberty Life:	(1)	150 000-00	250 000-00
GROSS VALUE OF ESTATE			1 431 500-00
LESS: deductions in terms of section 4			
Section 4(a) - 4(d)		80 000-00	(1)
Section 4(h): bequest to a public benefit organisation		100 000-00	(2)
			180 000-00
NETT VALUE OF ESTATE			1 251 500-00
LESS: primary rebate in terms of section 4A	(1)		1 000 000-00
DUTIABLE ESTATE (1)			251 500-00
Estate duty payable by estate @ 20%	(1)		50 300-00 (1)

[10]

1.4 RECAPITULATION STATEMENT

Total cash as per items 6-8	(1)		431 500-00
Liabilities	(1)	80 000-00	
Cash legacy	(1)	100 000-00	
Estate duty	(1)	50 300-00	
Cash available for distribution	(1)	201 200-00	
		431 500-00	431 500-00

(5)

DISTRIBUTION ACCOUNT

1. Balance for distribution	(1)		1 301 200-00
AWARDED TO MANDELA CHILDREN'S FUND	(1)		
The award comprises cash	(1)	100 000-00	
AWARDED TO JOANNE SMITH			
major daughter of the deceased,(1) married out of community of property,(1) in terms of clause 3 and subject to clause 5 of the will (1)		620 000-00	
Award consists of:			
Fixed property		R500 000-00(1)	
Motor vehicle		R120 000-00(1)	
		<u>R620 000-00</u>	
AWARDED TO MATHILDA STEYN			
major daughter of the deceased, married out of community of property(1) in terms of clause 4 and subject to clause 5 of the will (1)		581 200-00	
Award consists of:			
Furniture and household effects		R300 000-00 (1)	
Shares		R 30 000-00 (1)	
Jewellery		R 50 000-00 (1)	
Cash		<u>R201 200-00 (1)</u>	
		<u>R581 200-00</u>	
		1 301 200-00	1 301 200-00

(14)

[19]

QUESTION 2

[10]

1. W2 is entitled to R125 000,00 or a child's share, (1) whichever is the greater. (1)
2. A child's share in this instance amounts R57 500,00 (R230 000,00 divided by 4) (1). W2 accordingly inherits R125 000,00. (1)
3. The remaining R105 000,00 devolves **per capita** upon E, A and B. (1) B is represented **per stirpes** by his two descendants C and D. (1) In the result, E and A inherit R35 000,00 (1) each and C and D R17 500,00 each. (1)
4. F is not a blood relation of X (1) and is therefore not an **intestate heir**. (1)

QUESTION 3

[5]

There is presumption that the testator intended J to receive the farm free from the burden thereon. (2)

J will receive the farm free of the bond (unless a contrary intention can be gathered from the will). (1)

The bond will have to be repaid with funds forming part of the residue of the estate. (1)

The bond is therefore effectively repaid out of D's share of the estate. (1)

QUESTION 4

[10]

- 4.1 The descendants of a predeceased descendant inherit **per stirpes**. (1) Section 2C(2) of the Wills Act.
A inherits half the estate. (1)
D and E each inherit one quarter of the estate. (1)
[3]
- 4.2 The *jus accrescendi* applies because no substitute is appointed for A (1) and because the will does not say how the estate is to be divided between A and B. (1)
B inherits the whole estate. (1)
[3]
- 4.3 If a descendant of a testator who, together with the surviving spouse of the testator, is entitled to a benefit in terms of the will renounces his right to receive the benefit, such benefit shall vest in the surviving spouse. Section 2C(1) of the Will Act. (2)
W inherits half the estate. (1)
A and C each inherit one quarter of the estate. (1)
[4]

QUESTION 5

[3]

Yes. In terms of section 3 of the Estate Duty Act the proceeds of all policies on the life of the deceased are dutiable in principle. (2)

This case is not one of the exceptions excluded in terms of section 3. (1)

QUESTION 6

[16]

1.

I leave my entire estate to my Trustee in trust (1) for my handicapped son CHRISTOPHER, (1) subject to the terms and conditions set out below. [2]

2.

The income earned (1) on the trust capital shall be applied in the absolute discretion (1) of my Trustee for the maintenance and general well-being of my son CHRISTOPHER, (1) it being my wish that no expense shall be spared in ensuring that my son leads as comfortable and happy a life as possible. (1)

If the income of the trust is insufficient for the above purposes, my Trustee may in his discretion utilise trust capital. (1)

Any unutilised trust income shall be capitalised. (1) [6]

3.

The Trust shall terminate (1) upon the death of CHRISTOPHER, whereupon the trust capital plus accumulated income (1) shall devolve upon my son BARNABAS (1) or, failing him, his descendants **per stirpes** by representation. (1) [4]

4.

As Trustee of the Trust created in paragraph 1 above I nominate PETER KING, attorney of King Williams Town. (1) If he is unable to assume office or continue in office as Trustee, I nominate in his stead the senior partner from time to time of this firm of attorneys KING and SUBJECT of King Williams Town. (1)

I grant unto my Trustee all such powers as are allowed by law, including the power of assumption, (1) and I direct that no Trustee shall be obliged to furnish security for the due performance of his or her functions. (1) [4]

QUESTION 7

[3]

7.1 The farm is shown as an asset in the liquidation account, and awarded to B in the distribution account, subject to the fideicommissary condition of A's will. (1)

7.2 The farm is shown in the fiduciary assets account in B's estate, and awarded to C in terms of A's will. (2)

**ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK
PART 3 / DEEL 3**

14 AUGUST/AUGUSTUS 2002

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]

Confidentiality

1. The employee acknowledges that all material and information which has or will come into his possession or knowledge in connection with this agreement or the performance of his obligations hereunder, consists of confidential and proprietary information, which, if disclosed to third parties, will be damaging.
2. The employee therefore agrees to hold such material and information in the strictest confidence, not to make use thereof other than for the performance of his obligations under this agreement, to release it only to other employees requiring such information and not to release or disclose it to any other party.
3. The Employee will not use the name of the Employer without securing the prior written approval of the other party thereto.
4. The parties agree that the provisions of this clause will survive the termination of this agreement.

QUESTION 2

[10]

- 2.1
- a) A resolution by your client.
 - b) A special power of attorney in favour of the person who will appear before the Master to prove the claim.
 - c) An affidavit in proof of the claim in statutory form.
 - d) A statement of account showing the monthly totals and a short description of the purchases and payments made for the full period of trading or for the past 12 months whichever is the shorter period. See Section 44 of the Insolvency Act.

(5)

2.2 All of the above documents must be lodged with the Master of the High Court (or the Magistrate) who will conduct the first and second meetings of creditors at least 24 hours before the meeting and the creditor must ensure that the person nominated in the Power of Attorney appears at the meeting of creditors to formally prove the claim. The candidate should know that there are normally two meetings of creditors and that special meetings thereafter at which claims can be proved can only be convened with the Master's consent and that the creditor concerned will have to pay the cost of convening a special meeting.

(5)

QUESTION 3

[10]

Sale of business (Clauses)

1. Business must be a going concern and the VAT implications must be appreciated
2. Sale and purchase
3. Purchase price
4. Payment of purchase price
5. Suspensive conditions
6. Stocktaking
7. Assets and Liabilities
8. Delivery of Assets
9. Adjustment accounts
10. Effective date
11. Warranties
12. Voetstoots
13. Employees and Pension Fund
14. Publication in terms of Insolvency Act
15. Restraint
16. Breach
17. Domicilia and notices
18. Whole agreement
19. Waiver
20. Jurisdiction
21. Dispute Resolution
22. Agents' commission
23. Costs

NOTE TO EXAMINER:

The above list may not be exhaustive and candidates must be given marks for clauses which may be relevant but are not included in this list.

Allocate ½ mark per clause up to a maximum of 10 marks.

QUESTION 4**[15]**

1. In the event of any dispute between the parties in respect of this agreement, including the validity thereof, the non-compliance of the conditions thereof or the termination thereof, the parties shall be obliged, without prejudice to any other rights they may have, to investigate whether the dispute may be resolved by way of negotiation and discussion between themselves by implementing the techniques of negotiating, mediation or any other form of alternative dispute resolution;
2. In the event of the parties not being able to resolve the dispute in the way set out hereinbefore within a period of 14 (FOURTEEN) days, or such period as may be agreed upon by the parties either may refer the dispute to arbitration.
3. The arbitrator shall be one or more persons agreed upon by the parties.
4. If the parties are unable to agree on the appointment of an arbitrator within 10 (TEN) days calculated from the date on which the dispute was declared, the parties agree that the arbitrator shall be a legal practitioner practising for not less than 10 (TEN) years, to be nominated for this purpose by the President of the Law Society of the appropriate province.

NOTE TO EXAMINER:

The above is a guide answer only. In the modern context there are various ways of resolving disputes with a view to arriving at a win/win situation for both parties.

Any answer which addresses the problem with a view to achieving this object must be given marks.

The agreement must however make provision for a final resolution of the dispute if amicable methods fail

QUESTION 5**[5]**

1. If an attorney has consulted with both parties in a dispute he runs the risk of having a conflict of interest. He may have compromised himself by doing so.
2. If the disputes relating to the joint estate are of such a nature that the involvement of the attorney has not been compromised he may continue to endeavor to reach a settlement by mediating between the parties.
3. If however his knowledge is such that his independence is compromised he MUST withdraw as attorney of both parties.
4. In this instance he should refer each party to other attorneys.

QUESTION 6**[10]**

- 6.1 A certificate issued in terms of the provisions of the Attorneys Act No. 53 of 1979 (S42) to any practitioner practicing for his own account and remains valid until 31 December of each year. (2)
- 6.2 It must be applied for to the Secretary of the Law Society concerned in the prescribed form. An attorney wishing to practise for his own account and before commencing to practise must obtain a certificate. Each attorney practising for own account must be in possession of a valid fidelity fund certificate which must be renewed annually. (5)
- 6.3
- a) He may not continue to practise.
 - b) If he does he will be committing an offence in terms of the Attorney's Act.
 - c) He does not afford protection to his clients under the Fidelity Fund rules.
 - d) He may be suspended or removed from the Roll of practitioners.
- (3)

QUESTION 7**[10]**

1. The candidate should be aware that a deponent can either swear or affirm. (1)
2. Before the Commissioner administers the oath or affirmation he must ask the deponent:
- 2.1 Whether he knows and understands the contents of the declaration (1)
 - 2.2 Whether he has any objection to take the prescribed oath or to make the affirmation as the case may be. (1)
 - 2.3 Whether he considers the prescribed oath or affirmation as the case may be to be binding on his conscience. (1)
3. Once he acknowledged this the Commissioner must ask the deponent to utter the following words:
- "I swear that the contents of this declaration are true so help me God." (1)
- (in the case of the deponent swearing) OR
- "I truly affirm the contents of this declaration." (1)
- (in the case of an affirmation).

4. The deponent must sign the declaration in the presence of the Commissioner of Oaths. (1)
5. Below the deponent's signature the commissioner must certify that the deponent has acknowledged that he knows and understands the contents of the declaration and shall in addition indicate the manner, place and date of taking the oath/affirmation. (1)
6. THE COMMISSIONER OF OATHS MUST:
 - 6.1 Sign the declaration and print his full name and business address below the signature, and (1)
 - 6.2 State his designation and the area for which he holds his appointment or the office held by him if he holds the appointment ex officio. (1)

QUESTION 8**[20]**

NOTE TO EXAMINER: *Candidates have a wide scope as to how to answer this question.*

The candidate should, however, know that couples can marry (a) in community of property (b) out of community of property by virtue of an Antenuptial Contract with the exclusion of the Accrual System and (c) out of Community of Property with the inclusion of the Accrual System and should give an explanation in respect of each system. They should also know that in marriages where the accrual system applies provision should be made for a base starting figure of the party's assets and that certain assets can be excluded from the accrual. The candidate should also be able to give well-motivated advice as to which regime should be followed and provided the advice is well-motivated and well set-out, candidates should be given good marks. It would seem that in the example quoted in the question it would be most advisable for the parties to marry with the accrual system and for the husband's farm to be excluded from the accrual and that the base figure of the parties assets should thereafter be NIL in respect of each of them. The candidates should be given marks for clear and concise use of language.

QUESTION 9**[5]**

1. A duty to be honest and fair
2. A duty to be true and faithful to the State
3. A duty to apply and uphold the law
4. A duty to deliver the best service possible to your client
5. A duty to uphold the integrity and dignity of the legal profession
6. A duty not to overcharge or overreach clients
7. A duty to be courteous to clients and deponents.

There may be others and marks must be given for an answer which appreciates the high moral standard of the profession.

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

14 AUGUST/AUGUSTUS 2002

ANSWERS/ANTWOORDE

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QUESTION 1

[20]

1.1 Before considering a transfer from the trust to the business banking account I would establish if:

sufficient trust funds are held and are available to justify a transfer - in this regard any cheques comprising the credit must not only have been cleared, but such funds must be available for the mandate in question

a debit exists in business respect of any fees or disbursements due to me.

(6)

If both these preconditions are present, a transfer can be made.

The transfer entries involve:

the use of the transfer journal to move the transferable value from the client's trust account credit to the same client's business account debit and

the issue of a cheque for the transferable amount from the trust banking account and the depositing thereof into the business banking account.

(6)

[12]

1.2 I would compare (1) the total (1) of all my trust creditors obligations (1) by reading each client's credit balance, (1) with the trust funds available (1) by reading my trust cash book balance (1) and the balances held in any trust investment accounts in terms of Section 78(2) (a) and (1) 78(2A) of the Attorneys Act. (1).

[8]

QUESTION 2**[15]**

2.1

SUPPLEMENTARY BUSINESS CASH BOOK JANUARY 2000 (1)

Balance (1)	2 000	Adj deposit (1)	311
Adj cheque (1)	482	Int on OD (1)	1 100
Electronic transfer (1)	3 000	Stop order - Ins (1)	700
		RD cheque (1)	1 660
		Balance (1)	1 711
	<u>5 482</u>		<u>5 482</u>

[9]

2.2

BANK RECONCILIATION STATEMENT 31 JANUARY 2000 (1)

Balance as per bank statement (1)	(12 489)
LESS: Bank error (1)	6 000
	<u>(6 489)</u>
ADD: o/s cheque (1)	2 800
	<u>(9 289)</u>
ADD: o/s deposit (1)	11 000
Balance as per cash book (1)	<u>1 711</u>

[6]

QUESTION 3**[50]****TRUST CASH BOOK**

4/2/02	Purchaser-deposit (1)	100 000	5/2/02	Phoenix bank(1)	100 000
	Purchaser-costs (1)	20 000		Correspondent (1)	15 000
26/2/02	Phoenix bank (1)	100 580	26/2/02	Correspondent (1)	100 000
			28/2/02	Correspondent (1)	3 420
				Business account (1)	1 140
				Purchaser (1)	1 020
		<u>220 580</u>			<u>220 580</u>

(9)

BUSINESS CASH BOOK

28/2/02	Trust Account (1)	1 140			(1)
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PURCHASER (T)

5/2/02	Correspondent (1)	15 000	4/2/02	Deposit (1)	100 000
26/2/02	Correspondent (1)	100 000		Costs (1)	20 000
28/2/02	Correspondent (1)	4 560	26/2/02	Interest (1)	580
	Bank (1)	1 020			
		<u>120 580</u>			<u>120580</u>
					(7)

TRUST INVESTMENT - PURCHASER - SEC 78(2A) (1)

5/2/02	Bank (1)	100 000	26/2/02	Bank (1)	100 000
					(2)

Correspondent (T)

28/2/02	Cash (1)	3420	28/2/02	Purchaser (1)	4 560
	Transfer to Business (1)	<u>1 140</u>			<u>4 560</u>
					(3)

TRUST JOURNAL

28/2/02	Purchaser (T)	4 560	
	Correspondent (T)		4 560
	Correspondents fees & disbursements		
	Purchaser/Seller		
			(2)

FEES JOURNAL

28/2/02	Correspondent (B)	1 140	
	Fees		1 000
	VAT Output		142
	Correspondence allowance		
			(3)

TRANSFER JOURNAL

28/2/02	Correspondent (T)	1 140	
	Correspondent (T)		1 140
	Transfer allowance		(2)

ACCOUNTING STATEMENT TO PURCHASER

Deposit received		100 000
Proceeds bond		200 000
Deposit - costs		20 000
Paid transfer duty & bond costs	15 000	
Paid Seller on your behalf	300 000	
Paid Correspondent fees including VAT	4 560	
Interest on investment		580
Cheque herewith	1 020	
	<u>320 580</u>	<u>320 580</u>
		(10)

CORRESPONDENT (B)

5/2/02	Allowance (1)	<u>1 140</u>	28/2/02	Transfer ex Trust (1)	<u>1 140</u>
					(2)

FEEES

	28/2/02	Correspondent (1)	1 000
			(1)

VAT OUTPUT

	28/2/02	Correspondent (1)	140
			(1)

NOTE TO EXAMINER: *7 discretionary marks for neatness and presentation*

QUESTION 4**[15]**

- 4.1 (a) A list of trust creditors shall be extracted at intervals of not more than 3 calendar months (1).
- (b) The list must show all persons on whose account money is held (1) or has been received (1) and the amount of all such monies standing to the credit of each such person (1) who shall be identified therein by name (1). The list must also show the total of such amounts (1) and that total must be compared with the total of the credit balance in the trust banking account (1), trust investment account and the amounts held as trust cash (1).
- (c) The balances shall be noted in a permanent, prominent and clear manner in the ledger account (1) from which that balance was extracted (1).
- (d) The list must be retained for a minimum period of five years (1). (11)
- 4.2 (a) Such funds must be invested in a trust savings or other interest bearing account (1) with a banking institution or building society (1).
- (b) The client's written confirmation of the investment must be obtained as soon as possible or he must be notified as soon as possible thereof in writing (1).
- (c) The trust savings or other interest bearing account must be identified as an investment in terms of Section 78(2)A of the Act (1). (4)