

**COURT PROCEDURE / HOFPROSEDURE
FEBRUARY 2000 / FEBRUARIE 2000**

PART 1 / DEEL 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 examiners should apply their discretion in marking the answer.*

QUESTION 1

[6]

- (a) The matter is brought in the Magistrate's Court for the district of Durban. The plaintiff's attorney's address does not comply with the rules as he is required to give an address for the service of pleadings and documents within 8 kilometres of the court.
- (b) "Applicant" (Applikant) should be replaced by "Plaintiff" (Klaer) and "Respondent" (Applikant) should be replaced by "Defendant" (Verweerder).
- (c) The summons should aver that the plaintiff and defendant are adult or major males.
- (d) "of" is incorrect - it should read residing and employed etc.
- (e) The court has no jurisdiction over the defendant as he is not residing or employed in Durban and no allegation is made as to whole cause of action.
- (f) The plaintiff is required to state his first name.
- (g) The plaintiff is required to state his occupation and his residence or place of business.
- (h) R150 000 exceeds the jurisdiction of the Magistrate's Court.
- (i) Add: "and delivered by the plaintiff to the defendant at the defendant's instance"
- (j) The claim has apparently prescribed.
- (k) Add: "Wherefore the plaintiff prays for judgment against the defendant."
- (l) Add: "plus interest thereon at the rate of 15,5% per annum from date of service of summons plus costs".

QUESTION 2

[5]

- 2.1 Mark and Jane Wholesalers CC, a close corporation duly incorporated in accordance with the provisions of the laws of South Africa having its registered office at 1 West Street, Durban.
- 2.2 John Smith N.O. a major businessman in his capacity as liquidator of XYZ(Pty)Ltd (in liquidation) of (address).
- 2.3 Peter Jones a major male and Mary Jones a major female NNO as trustees of the Jones children's trust of (address).
- 2.4 Paul Moonsamy an adult male in his capacity as the father and natural guardian of Peter Moonsamy a minor male scholar, a resident at (address).
- 2.5 The Body Corporate of Marine View.

QUESTION 3

[4]

- 3.1 No. It is a claim for damages and does not fall within the ambit of the rule relating to summary judgment. (2)
- 3.2 Yes. It is a claim for a liquidated amount in money. (2)

QUESTION 4

[4]

- 4.1 See rule 16 (2)
- 4.2 See rule 21 (2)

QUESTION 5

[8]

- 5.1 Your client is entitled to interest on her claim in terms of the amendments to the Prescribed Rate of Interest Act. He is entitled to the interest from 11 June 1998 and at the prescribed rate of interest which is currently 15,5%. (2)
- 5.2 The allegation: "Despite written demand by the Plaintiff that the Defendant make payment of the aforesaid amount by 10 June 1998, the Defendant has failed to make payment of that amount or any portion thereof".
Prayer: "Interest on the aforesaid amount at the prescribed rate of interest from 11 June 1998 to date of payment. (4)
- 5.3 Your client will be entitled to interest at the prescribed rate of interest from date of service of the summons to date of payment. (2)

QUESTION 6**[8]**

- 6.1 Draft a notice of intention to amend and if no objection is received, issue and file the amended pages. (2)
- 6.2 Launch an application for leave to amend. (3)
- 6.3 Apply orally or in writing to the presiding magistrate for leave to amend. (1)
- 6.4 File a further affidavit rectifying and explaining the reason for the error. (2)

QUESTION 7**[14]**

The affidavit should contain a description of the applicant and the respondent, the duration of the applicant's residence in the jurisdictional area of the court applied to. Reference should also be made either in the body of the affidavit or by way of an annexure thereto annexing the particulars of claim. The grounds upon which the applicant will rely in order to seek order for divorce and the relief which he will claim. The method of effecting service must also be dealt with in the body of the affidavit and in the prayer, usually one authorising an official in the country in which the summons will be served who is normally seized with serving summonses be authorised to serve the summons.

ORDER OF COURT

After having heard counsel for the applicant the court makes the following order:

1. Authorising the applicant to serve a summons on the respondent by way of edictal citation.
2. Directing that such summons may be served by an official of the Netherlands. Department of Justice usually seized with the service of process in that country.
3. That the respondent be ordered to enter an appearance to defend within 30 days (one month) of date of service of the summons.
4. That the costs of this application be costs in the divorce action.
5. Further and/or alternative relief.

QUESTION 8**[20]**

- 8.1 In terms of the Act the Road Accident Fund is obliged to compensate a person for any loss or damage suffered as a result of any bodily injury to himself caused by or arising out of the negligent driving of a motor vehicle. (2) (Note: These are the main principles covering any claim and should be mentioned).

A motor vehicle is described in the Act as any vehicle designed or adapted for propulsion or haulage on a road (1) by means of fuel, gas or electricity (1) and includes a trailer, a caravan, an agricultural or any other implement adapted to be drawn by such a vehicle (1). The trailer which struck Mr X was drawn by a tractor which meets these requirements and he therefore has a claim.

(6)

- 8.2 The account from the HF Verwoerd Hospital. (½)
The account from the Medi-Centre pharmacy. (½)

(1)

- 8.3 Yes. (1)
Mr X has a common law claim against the driver of the tractor. (2)

(3)

8.4	Total damages	R25 806,00	(½)
	Less 30%	<u>R7 741,80</u>	(1)
		R18 064,20	
	Less final award	<u>R5 806,00</u>	(1)
	TOTAL	<u>R12 258,20</u>	(½)

(3)

- 8.5 8.5.1 The plaintiff is Mr X, an adult male (address should be given) employed by Mr Y and who at all times material hereto was an employee as contemplated by section 1 of the Compensation for Occupational Injuries and Diseases Act.

(2)

- 8.5.2 On or about the 30th January 1999 and at Verwoerdburg Drive, Pretoria a collision occurred between motor vehicle AAA123GP, and a trailer (1), drawn by motor vehicle AAA124GP, (1) and Mr X who was then a pedestrian (1).

(3)

- 8.5.3 The Commissioner for Occupational Injuries and Diseases has made a final award (1) in the amount of R5 806,00 and this amount falls to be deducted from the amount of the plaintiff's damages. (1)

(2)

QUESTION 9

[6]

- 9.1 The classes of passengers whose claims are limited are those being conveyed in or on the motor vehicle concerned:

- (a) For reward; (½)
- (b) In the course of the lawful business of the owner of the vehicle; (½)
- (c) In the case of an employee of the driver or owner of that motor vehicle in the course of his/her employment; (½)
- (d) For the purpose of a lift club; (½)
- (e) The ordinary passenger who does not fall into any of the above categories. (1)

(3)

- 9.2 The claims of all passengers are limited to the total sum of R25 000,00. (1) In the case of the ordinary passenger, this is in respect of special damages only (1) but in the case of the other four classes of damages it is in respect of special and general damages. (1) (3)

QUESTION 10

[12]

10.1

In the Regional Court for the District of PRETORIA held at PRETORIA

Case No: RC1/15/99

In the matter between:

THE STATE

and

GEORGE JACOBS

**STATEMENT IN TERMS OF SECTION 115 OF THE
CRIMINAL PROCEDURE ACT, 1977**

I, GEORGE JACOBS,

do hereby declare that:

1. I am the accused in this matter and I understand the nature of the charge against me.
2. I hereby plead not guilty to the charge.
3. I admit that:
 - a) On the 21st of July 1999 I was at a tavern in Proes Street, Pretoria.
 - b) I admit that I struck the deceased one blow on the head with an iron bar.
 - c) I admit that I struck the blow subsequent to the deceased having stabbed me with a knife and acted in self defence.
4. I admit that the blow to the head of the deceased caused his death and admit the contents of the post-mortem report of Dr Strauss, dated the 22nd of July 1999 as being true and correct.
5. I furthermore admit the contents of the police photo album as correctly depicting the scene of the incident as on the day in question.

6. I furthermore admit as being true and correct the report, dated the 24th of July 1998, of S.Pathologist, relating to the blood of the deceased being found on the iron bar.
7. I furthermore admit the fingerprint report of Sergeant Thyus, of the South African Police Service, as being true and correct.

The admissions referred to hereinbefore can be formally recorded as being admissions in terms of Section 220 of the Criminal Procedure Act.

DATED at PRETORIA on this the 31st day AUGUST 1999.

GEORGE JACOBS
(10)

- 10.2 Assault with intent to do grievous bodily harm and common assault. (2)

QUESTION 11 [4]

In terms of Section 300 the court may award compensation were the offence causes damage to or loss of property.

You as attorney, will advise your client that the accused will first have to be convicted and that thereafter an application can be made, either by himself personally, or you as the attorney acting on his behalf, or the prosecutor requesting the court to award compensation for the damage or loss.

Your client will have to place you in possession of the quotation relating to the repairs and you will have to be prepared either to prove same by way of an affidavit or by leading an expert witness (being the person who prepared the quotation) in court in order to satisfy the court as to quantum.

The effect of such order is the same as a civil judgement of that court.

QUESTION 12 [4]

In terms of section 68 of the CPA any court before which a charge is pending in respect of which an accused has been released on bail may order that bail be cancelled, upon information on oath that:

- (a) the accused is about to evade justice or is about to abscond in order to evade justice; or that
- (b) the accused interferes or threatens or attempts or has interfered or threatened or attempted to interfere with witnesses; or that
- (c) the accused defeats or has defeated or attempted to defeat the end of justice; or that
- (d) he or she poses a threat to the safety of the public or of a particular person; or that

- (e) the accused has not disclosed or has not correctly disclosed all his/her previous convictions in the bail proceedings or where his/her true list of previous convictions has come to light after his/her release on bail;
- (f) further evidence has since become available or facts have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or
- (g) it is in the public interest/interest of justice to do so.

QUESTION 13

[2]

The attorney can make application to the court to suspend the payment of the fine:

- 1. until the expiration of a period not exceeding five years; or
- 2. on condition that the fine is paid over a period not exceeding five years in instalments and at intervals determined by the court.

This request will only be considered favourably if the accused is able to provide the court with information which will convince it that, although the accused is unable to pay the fine at that stage, he will be able to pay it if he is allowed to pay it off over a period or before a specific date in future.

QUESTION 14

[3]

- 14.1 In terms of Section 196 the wife is competent and compellable. (1)
- 14.2 No. (1)
- 14.3 Yes. (1)

ESTATES / BOEDELS
15 FEBRUARY / FEBRUARIE 2000

PART 2/DEEL 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 1

[86]

1.1

The Master of the High Court
Pretoria

Dear Sir

RE: ESTATE JAN SMIT (1)

We report the estate of Jan Smit and enclose herewith

Original will	(1)
Death Certificate	(2)
Death Notice	(1)
Inventory	(1)
Acceptance of Trust as Executrix, in duplicate	(1)
Copy of Antenuptial Contract No 196/1973	(½)
Copy of Marriage certificate	(½)

We await Letters of Executorship at your earliest convenience.

Yours faithfully

[8]

1.2 Redistribution Agreement entered into by LETTIE SMIT in her personal capacity and in her capacity as Executrix in the estate of the late JAN SMIT (2)
 NO 5000/99, PIET SMIT and KOOS SMIT (2)

WHEREAS the parties are the heirs to the estate of the late JAN SMIT in the following proportions:

LETTIE SMIT	a half share	R730 000.00	(1)
PIET SMIT	a quarter share	R365 000.00	(1)
KOOS SMIT	a quarter share	R365 000.00	(1)

AND WHEREAS the parties wish to redistribute the assets according to their respective interests;
(1)

NOW THEREFORE it is agreed that the assets will be distributed as follows:

TO LETTIE SMIT

Erf 123 Pretoria in extent 2000 square metres	300 000-00	
Clothing and personal effects of no commercial value	-	
Household furniture	20 000-00	
1990 BMW sedan	60 000-00	
Shares listed on the JSE	200 000-00	
Cash	<u>150 000-00</u>	
	<u>730 000-00</u>	(1)

TO PIET SMIT

The farm Boplaas in extent 2000 hectares	600 000-00	
Livestock	100 000-00	
Farm implements	40 000-00	
less cash paid in	<u>(375 000-00)</u>	
	<u>365 000-00</u>	(1)

TO KOOS SMIT

Cash	<u>365 000-00</u>	(1)
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Signed at Pretoria this 12th November 1999 (1)

_____ Lettie Smit	_____ Piet Smit	_____ Koos Smit	(1)
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[13]

1.3.1 LIQUIDATION ACCOUNT

ASSETS

1. Awarded			(1)
The Farm Boplaas in extent 2000 hectares held under Deed of Transfer T1/1977	[1]	600 000-00	(1)
Erf 123 Pretoria in extent 2000 square metres held under Deed of Transfer T50/1986	[2]	300 000-00	(1)
Personal Effects	[3]	Nil	(½)
Household furniture	[4]	20 000-00	(1)
1990 BMW Sedan	[5]	60 000-00	(1)
Livestock	[6]	100 000-00	(1)
Farm implements	[7]	40 000-00	(1)
Shares listed on the Johannesburg Stock Exchange	[8]	200 000-00	(1)
2. Realised			(1)
Fixed Deposit at ABC Bank	[9]	300 000-00	(1)
Interest accrued to date of death (8/12 of R45 000)	[10]	30 000-00	(2)
Current account at ABC Bank	[11]	10 000-00	(1)
		<u>1 660 000-00</u>	

LIABILITIES

1. Administration Expenses			(1)
Cost of advertising for Creditors	-	Local Newspaper	(1)
	-	Government Gazette	
Cost of advertising this account	-	Local Newspaper	(1)
	-	Government Gazette	
Masters fees			(1)
Executor's remuneration (31/2% of R1 660 000-00)		58 100-00	(1½)
(NB no VAT as executrix is not a VAT vendor)			(½)
Conveyancing costs			(1)
Costs of valuation of assets			(1)
Provision for bank charges			(1)
Provision for postage and petties		<u>42 900-00</u>	(1)
		100 000-00	
2. Creditors			
Funeral expenses			
ABC Bank mortgage bond		<u>100 000-00</u>	(1)
Total liabilities		200 000-00	

3. Estate Duty		Nil	(1)
Balance to Distribution Account		<u>1 460 000-00</u>	(1)
		<u>1 660 000-00</u>	

1.3.2 DISTRIBUTION ACCOUNT

By balance for distribution		1 460 000-00	(1)
To awarded in terms of the Will and Redistribution Agreement to			(1)

LETTIE SMIT, widow			
Erf 123 Pretoria	300 000-00		(1)
Personal effects	-		(½)
Household furniture	20 000-00		(1)
1990 BMW Sedan	60 000-00		(1)
Shares listed on JSE	200 000-00		(1)
Cash	<u>150 000-00</u>	730 000-00	(1)

PIET SMIT, major			
The Farm Boplaas	600 000-00		(1)
Livestock	100 000-00		(1)
Farm implements	<u>40 000-00</u>		(1)
	740 000-00		
Less cash paid in	<u>(375 000-00)</u>	365 000-00	(1)

KOOS SMIT, minor (now having attained majority)			
Cash		<u>365 000-00</u>	(1)
		<u>1 460 000-00</u>	
		<u>1 460 000-00</u>	

1.3.3 INCOME AND EXPENDITURE ACCOUNT

By interest on Fixed Deposit	45 000-00		(1)
Less accrued to date of death	<u>30 000-00</u>	15 000-00	(1)

To Executors remuneration @ 6%		900-00	(1)
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To awarded to			
LETTIE SMIT		7 050-00	(1)
PIET SMIT		3 525-00	(1)
KOOS SMIT		<u>3 525-00</u>	(1)
		<u>15 000-00</u>	
		<u>15 000-00</u>	

1.3.4 ESTATE DUTY ACCOUNT

By gross value of the estate		1 660 000-00	(1)
Add deemed property	Policy no 123	500 000-00	(1)
	Policy no 456	200 000-00	(1)
	Land Bank Policy	<u>200 000-00</u>	(1)
		2 560 000-00	
Deduct liabilities (including Land Bank Loan)	400 000-00		(1)
Section 4(q) deductions:			
(i) Award to L SMIT	730 000-00		(1)
(ii) Policy in favour of L SMIT	500 000-00		(1)
Section 4A abatement	<u>1 000 000-00</u>	<u>2 630 000-00</u>	(1)
Dutiable amount of estate		<u>Nil</u>	(1)
Therefore no estate duty payable			

1.3.5 EXECUTORS CERTIFICATE

I, Lettie Smit, in my capacity as Executrix, declare that, to the best of my knowledge and belief (1)

(i) this is a true and proper account of the liquidation and distribution of the estate (1)

(ii) all the assets and income collected from the date of death to the date of this account have been disclosed herein. (2)

Dated at Pretoria this 10th December 1999. (1)

L Smit

[59]

1.4 VALUATION OF ASSETS

Farm property	- appraiser or Land Bank Valuator appointed for the magisterial district in which farm lies	(2)
Town property	- appraiser	(½)
Personal effects	- appraiser	
Household furniture	- appraiser	(½)
1990 BMW sedan	- appraiser	(½)
Livestock and farm implements	- appraiser appointed for the magisterial district where assets are	(1)
Shares listed on JSE	- stockbroker	(1)
Current account	- bank accountant/manager	(½)

[6]

QUESTION 2

[4]

- 2.1 In terms of section 4(1) the Master within whose are of jurisdiction the deceased ordinarily resided shall have jurisdiction. (1)
The estate must therefore be reported to the Master in Pretoria. (1)
- 2.2 Another Master may assume jurisdiction with the consent of the Master who has jurisdiction in terms of the residence requirement. (1)
(1)

QUESTION 3

[10]

Section 2B of the Wills Act provides that if any person dies within three months after his marriage was dissolved by a divorce or annulment (1) and the deceased executed a will before the date of such dissolution, (1) that will shall be implemented in the same manner as it would have been if his previous spouse had died before the date of dissolution, (1) unless it appears from the will that the testator intended to benefit his previous spouse notwithstanding the dissolution. (1)

Applying these provisions to the given set of facts, Sannie is regarded as having died before 19 September 1998. (1) In the absence of a clear indication that the testator intended to benefit Sannie notwithstanding the divorce, coupled with the fact that he did not alter his existing will before he died, the bequest to Sannie fails whilst his new wife cannot, upon the wording of the will, benefit thereunder as a testate heir. (1)

If a bequest to a testate heir fails (as in this instance) the question arises as to what happens with the object of the bequest (one-half of Pieter's estate in this instance).

No provision is made for a (1) substitute, (1) and because the clause in Pieter's will is a joinder of heirs re et verbis (1) the one-half bequeathed to Sannie accrues in equal shares to James and Bettie on the basis of the jus accrescendi. (1)

DEATH NOTICE

(In terms of section 7 of the Administration of Estates Act, 1965)

1. Surname of deceased Smit
 2. Full first names Jan
 3. Identity number 500025001086 4. Nationality South African
 5. Occupation Director
 6. Ordinary place(s) of residence during the 12 months prior to death and the Province(s) 10 Long Street, Pretoria
 7. Date of birth 2nd January 1950 8. Place of birth Pretoria
 9. Date of death 30th June 1999
 10. Has the deceased left a will? Yes
 11. Marital status at time of death Married
 12. If married, place where married Johannesburg

13. Full names of surviving spouse and his/her occupation Lettie Smit - Housewife
 14. State whether marriage was in or out of community of property/whether accrual system is applicable Out
 (a) Name(s) of predeceased spouse(s) and/or divorced spouse(s) (state opposite name of each whether predeceased or divorced) N/A
 (b) Date of death of predeceased spouse(s) N/A
 15. Master's office(s) where predeceased's estate(s) is/are registered and number(s) of estate(s), if available N/A

16. Full names of children of deceased (state whether major or minor or predeceased and in the latter event, whether they left issue and, if that be the case, the full names of such issue)
Piet Smit major
Koos Smit minor (born on 10 November 1978)

17. Names of parents of deceased (state whether parents alive or deceased)
 (a) Father Daan Smit - (both)
 (b) Mother Marie Smit - (deceased)

18. Name and address of person signing the death notice Lettie Smit
10 Long Street
Pretoria

19. *Capacity Surviving Spouse

120. (a) Was the signatory present at the deceased's death? No
 (b) If the answer to the previous question is no, did the signatory identify the deceased after his death? No

Dated at Pretoria the 10th day of July 19 99
 "L Smit"
 Signature

* State whether signatory is surviving spouse, nearest blood relative or connection residing in the district in which death has taken place; or is caused by such spouse, blood relative or connection to give this notice; or is required by the Master to submit this death notice.
 † If the answer to both questions is no, a death certificate or a certified copy must be submitted herewith.

INVENTARIS • INVENTORY

Ingevolge artikel *9 (1) (a)/9 (2) (a)/9 (2) (b)/27/78 van die Boedelwet, 1965.

In terms of section *9 (1) (a)/9 (2) (a)/9 (2) (b)/27/78 of the Administration of Estates Act, 1965.

Aandag word gevestig op die bepalings van artikel 102 (1) (b) van die Wet wat bepaal dat iemand wat opsetlik 'n valse inventaris ingevolge die Wet opstel 'n misdryf begaan, en by skuldigbevinding met 'n boete van hoogstens R1 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel sodanige boete as sodanige gevangenisstraf strafbaar is.

Attention is directed to the provisions of section 102 (1) (b) of the Act which provides that any person who wilfully makes any false inventory under the Act shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

*Volle naam van oorledene Jan Smit
Full name of deceased.....

Volle naam van langsliewende eggenoot (in die geval waar eggenotes in gemeenskap van goed getroud was)
Full name of surviving spouse (in a case where spouses were married in community of property).....

Adres van langsliewende eggenoot
Address of surviving spouse.....

Saamgevoegde boedel van
Massed estate of.....

of/or

*Volle naam (name) van die minderjariges onder voogdyskap of persoon ten opsigte van wie se goed 'n brief van kuratele uitgereik is
Full name(s) of minor(s) under tutorship or person in respect of whose property letters of curatorship have been granted.....

Volledige adres
Full address.....

Ek/I (volle naam/full name)..... Lettie Smit

van/of (volledige adres/full address)..... 10 Long Street
Pretoria

in my hoedanigheid van/in my capacity as..... Surviving Spouse/Langsliewende eggenoot

verklaar hierby dat na my beste wete en oortuiging die hieringenoemde besonderhede 'n ware en juiste inventaris is—

hereby declare that to the best of my knowledge and belief the within mentioned is a true and correct inventory—

*~~(a) van al die goed wat na my wete ten tyde van die dood van *bogenoemde oorledene/gesamentlike boedel van bogenoemde oorledene en sy langsliewende eggenoot/bogenoemde saamgevoegde boedel behoort het;~~

*~~(a) of all property known to me to have belonged, at the time of death, to the *abovenamed deceased/joint estate of the abovenamed deceased and surviving spouse/abovenamed massed estate;~~

*~~(b) van al die goed wat na my wete in besit van bogenoemde~~

*~~(b) of all property known to me to have been in the possession of~~

~~oorledene op die perseel te.....
ten tyde van *sy/haar dood was;~~

~~the abovenamed deceased upon the premises at.....
at the time of *his/her death;~~

*~~(c) wat die waarde van al die goed in bogenoemde boedel aandui;~~

*~~(c) showing the value of all property in the abovenamed estate;~~

*~~(d) van al die goed wat deur my versorg of geadministreer word.~~

*~~(d) of all the property taken care of or administered by me;~~

Pretoria
Plek/Place

10 Julie/July 1999
Datum/Date

"L Smit"
Handtekening/Signature

Name en adresse van persone wat as erfgename by die boedel belang het in wie se teenwoordigheid hierdie inventaris opgestel is. (Verstrek te word in die geval van 'n inventaris kragtens artikel 9 van die Wet):

Names and addresses of persons having an interest in the estate as heirs in whose presence this inventory was made. (To be furnished in the case of an inventory under section 9 of the Act):

STERFKENNIS

(Kragtens artikel 7 van die Boedelwet, 1965)

1. Van van oortedene Smit

2. Volle voorname Jan

3. Identiteitsnommer 5001025001086 4. Nasionaliteit Suid afrikaner

5. Beroep Direkteur

6. Gewone verblyfplek(ke) gedurende die 12 maande wat die dood voorafgegaan het en die Provinsie(s) Longstraat 10, Pretoria

7. Geboortedatum 2^{de} Januarie 1950 8. Geboorteplek Pretoria

9. Datum van dood 30 Junie 1999

10. Het die oortedene 'n testament nagelaat? Ja

11. Huwelikstaat ten tyde van dood Getroud

12. Indien getroud, plek waar getroud Johannesburg

13. Volle name van langsewende eggenoot/eggenote en sy/haar beroep Lettie Smit - Huisvrou

14. Vermeld of huwelik binne of buite gemeenskap van goed was/of aanwasbedeling van toepassing is Buite

(a) Naam (name) van vooroorlede en geskeide eggenoot/eggenote (dui aan teenoor naam van elkeen of vooroorlede of geskei)
NvT

(b) Datum van dood van vooroorlede eggenoot/eggenote NvT

15. Kantoor/kantore van meester(s) waar vooroorledene(s) se boedel(s) geregistreer is en nommer(s) van boedel(s), indien beskikbaar
NvT

16. Volle name van kinders van oortedene (vermeld of meerderjarig of minderjarig, vooroorlede en, in laasgenoemde geval, of hulle nakomelinge nagelaat het en, indien wel, die volle name van sodanige nakomelinge)

Piet Smit meerderjarige

Kaas Smit minderjarige (gebore op 10 November 1978)

17. Name van ouers van oortedene (vermeld of ouers in lewe of oorlede is)

(a) Vader Daan Smit - (albei)

(b) Moeder Marie Smit - (oorlede)

18. Naam en adres van persoon wat sterfkennis onderteken Lettie Smit
Longstraat 10
Pretoria

19. *Hoedanigheid Langsewende eggenoot

20. (a) Was ondertekenaar by oortedene se dood aanwesig? Nee

(b) Indien antwoord op vorige vraag nee is, het ondertekenaar die oortedene na sy dood uitgeken? Nee

Gedateer te Pretoria op hede die 10^{de} dag
van Julie 1999

"L Smit"
Handtekening

* Vermeld of ondertekenaar langsewende eggenoot/eggenote, naaste bloed- of aanverwant wat in die distrik woon waarin die dood plaasgevind het, is; of deur sodanige eggenoot/eggenote, bloed- of aanverwant aangesê is om hierdie kennisgewing te gee; of deur die Meester aangesê is om hierdie sterfkennis in te dien.

† Indien die antwoorde op beide vrae nee is, moet 'n sterftesertifikaat of 'n gesertifiseerde afskrif hiermee saam ingedien word.

Beskrywing van goed volgens die titelbewys (meld ook nommer en datum daarvan) Description of property according to the title deed (also state number and date thereof)	Waarde/Value R c	
The Farm Bopkass in extent 2000 hectares held under Deed of Transfer T1/1977 (This property is subject to a mortgage bond of R200 000,00 in favour of The Land Bank and R200 000,00 covered by equivalent life insurance on the deceased's life)	600 000	00
Erf 123 Pretoria in extent 2000 square metres held under Deed of Transfer T50/1986 (subject to a mortgage bond in favour of ABC Bank of R100 000,00)	300 000	00
Totaal/Total.....R	900 000	00

2. Roerende goed/Movable property

J 243

Beskrywing Description	Waarde/Value	
	R	c
Personal effects of no commercial value	—	—
Household furniture	20 000	00
1990 BMW Sedan	60 000	00
Livestock	100 000	00
Farm implements	40 000	00
Shares listed on the Johannesburg Stock Exchange	200 000	00
Totaal/Total.....R	<u>420 000</u>	<u>00</u>

Beskrywing Description	Waarde/Value	
	R	c
One year Fixed Deposit at ABC Bank (Interest rate payable on maturity 15% and matures on the 31 st of October 1999)	300 000	00
Current account at ABC Bank	10 000	00
Totaal/Total.....R	<u>310 000</u>	<u>00</u>
OPSOMMING—SUMMARY		
1. Onroerende goed/Immovable property.....	900 000	00
2. Roerende goed/Movable property.....	420 000	00
3. Vorderings ten gunste van boedel/Claims in favour of estate.....	310 000	00
Totaal/Total.....R	<u>1 630 000</u>	<u>00</u>

**ATTORNEY'S PRACTICE / PROKUREURSPRAKTYK
FEBRUARY / FEBRUARIE 2000**

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 examiners should apply their discretion in marking the answer.*

QUESTION 1 **[13]**

- a) A Form CM22 setting out the Registered address of the Company (2)
- b) A Form CM29 setting out the details of the Directors of the Company (2)
- c) A Form CM31 containing the Auditors consent to act (2)
- d) A Form CM46 – The Application to commence business (2)
- e) A Form CM47 – A Statement by each director stating the adequacy or otherwise of the Company's Capital (3)
- f) The Form CM5 in terms of which the Company's name was reserved (2)

QUESTION 2 **[28]**

- a) This agreement is subject to the fulfilment of the condition that the Purchaser shall obtain and register a mortgage bond over his immovable property situate at within one month from date of signature hereof as security for payment of for the full amount of the purchase price. If this suspensive condition is not fulfilled within the said period the provisions of this agreement will be of no force and effect and neither party shall have any claim against the other (8)

- b) STOCKTAKING

On the take over date the parties will do a stocktaking of the Business in accordance with the following provisions:-

- Each party will be entitled to be present or represented at the stocktaking.
- The Stock will be valued at the cost price thereof.
- After the stocktaking a schedule reflecting the stock and its value will be prepared and signed by the parties.
- Any Stock which is damaged or is unsaleable will be excluded for the purpose of valuing the stock unless the parties agree in writing as to its value.
- If there is a dispute as to whether any stock is damaged or unsaleable the Seller will retain ownership therein and this stock shall also be excluded for the purposes of valuing the stock.
- The Parties agree that the value of the stock as reflected in the said schedule shall be final and binding upon them. (8)

(c) RESTRAINT OF TRADE

The Seller, in order to protect the goodwill of the business and the interest of the Purchaser in such goodwill, agrees and undertakes in favour of the Purchaser that he will not, within a radius of 50 kilometres from the premises in which the business is conducted, and for a period of three years after the take over date, either as principal, agent, partner, shareholder, director, employee, or in any similar capacity, directly or indirectly be associated with or engaged in any firm, business, or company which carries on a business the same as, or similar to the business sold or in any new but similar business. The Seller agrees that the restraints imposed by this clause are necessary to protect the Purchaser and are reasonable both as to area and duration. Each of the restraints constitutes a separate and independent restraint several from the others.

(12)

NOTE TO EXAMINER

The above clauses are a guide only. If the candidate's answer shows that he/she understands the principle of a suspensive condition and sets out an acceptable manner to take and value to stock and an appropriate restraint of trade, appropriate marks must be given.

QUESTION 3

[16]

To ABC

We have been consulted by Mr X who is the owner of which adjoins the property owned by you on the western side.

We are instructed that you are operating a nightclub on the premises.

Your conducting of this business is not only a contravention of the municipal bylaws and title conditions as they apply to your property but also constitutes a nuisance which makes it impossible for our client to enjoy the quiet, undisturbed and beneficial use of his property.

The noise which comes from your property and which is caused by the loud music played throughout the night as well as by the continuous sound of motor vehicles coming and going is unbearable and prevents our client and his wife from getting to sleep. This has affected their health to such an extent that they have both had to receive medical treatment.

The purpose of this letter is to advise you that unless you immediately cease conducting the nightclub in your property, our client will:

1. Report you conduct to the local authority so that it can take the appropriate steps against you in terms of the bylaws and,
2. Bring an urgent application to the High Court for an interdict restraining you from operating the nightclub and from continuing the activities presently conducted by you on the property.

QUESTION 4

[17]

- 4.1 *Pro amico* is free representation by an attorney of a client who is in a particular relationship to the client. No fees may be charged but disbursements may be recovered (3)
- 4.2 Attorney and own client fees are fees recovered by the attorney from his client at an agreed or reasonable tariff. (3)
- 4.3 Contingency fees constitute a percentage of a client's successful claim if the claim sounds in money or are fees that a chargeable at a rate higher than normal if the work is successfully concluded. This type of fee was until recently not permitted but has now been legalised by legislation if certain formalities are complied with. (5)
- 4.4 *Costs de Bonis Propriis*. These are costs which a Court may order the attorney to pay himself either on a party and party basis or on an attorney and client basis usually as an indication of its displeasure at the attorney's conduct. (3)
- 4.5 This is an interim order made by a Court relating to costs incurred in a matter that is not finalised and means that these costs will follow the final costs order in the matter. (3)

QUESTION 5**[16]**

- 5.1 There is nothing to prevent an attorney from being involved in any lawful business apart from his practice. He may therefore be a partner in another business and may also be a director of companies. (4)
- 5.2 It would be unprofessional to allow the person in question to run the collection matters unsupervised. There is, however, nothing wrong with allowing an unqualified person to do professional work if he is properly supervised by an attorney who will always bear the final responsibility. (4)
- 5.3 An attorney may interview a witness who has been subpoenaed by the other side if he believes that person can help his client's case. It is not necessary to obtain the other attorneys consent but the other attorney should be notified of the consultation. (4)
- 5.4 This is a borderline case. It can be argued that because you would not have received information which could have a bearing on the action you are asked to institute you may act. On the other hand it can equally be argued that because of the longstanding relationship which you have with the first client you should not act against it in any matter. It would probably be unwise to accept the mandate from a business point of view because you would probably lose the first client.

(This answer is a guide only and the candidate should be given marks if he appreciates the problem)

(4)

QUESTION 6**[10]**

- 6.1 It is agreed that ownership in the vehicle shall remain vested in the seller until such time as the purchase price is paid in full notwithstanding delivery thereof to the purchaser. In the event of the Purchaser's default in making any payment in respect of the purchase price the seller shall be entitled to cancel this agreement forthwith and to take possession of the vehicle. (5)
- 6.2 Until such time as the purchase price is settled in full the purchaser shall keep the vehicle insured at his cost with an insurance company approved by the seller. The purchaser shall also ensure that the seller's interest in the vehicle is endorsed against the insurance policy and shall furnish the seller with proof of such insurance and endorsement. (5)

**BOOKKEEPING / BOEKHOU
FEBRUARY / FEBRUARIE 2000**

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

[30]

- 1.1 1.1.1 Input VAT is the tax paid by the practitioner when purchasing taxable supplies from a registered VAT vendor. (2)
- 1.1.2 Output VAT is the tax charged by a practitioner for all services rendered to clients. (2)
- 1.2 VAT vendor - When the fee income for a 12 month period exceeds R150 000. (2)
- 1.3 The following details must appear on a trust receipt:
1. It shall be pre-numbered;
 2. It must be at least in duplicate;
 3. Date of receipt;
 4. Amount in words and figures;
 5. From whom received, For whose credit, Identification of transaction;
 6. Indicate that it is trust;
 7. Whether received in cash or cheque. (8)
- 1.4 The following details must appear on the counterfoil of a trust cheque which has been issued:
- (a) Date;
 - (b) For whose account;
 - (c) Nature of transaction;
 - (d) Amount; and
 - (e) Folio reference. (6)
- 1.5 1.5.1 You will deposit the payment in your Trust Account. (2)

1.5.2 You will account for the entire payment to your client as your client has already paid you your attorney/client account in the matter. (3)

1.6 Trust Reconciliation is a list of all Trust Creditors balances in the Trust ledger which are reconciled with the balances available in the Trust Banking Account and trust investment accounts. (78(2A) and (2)(a)). (5)

QUESTION 2

[40]

FEES JOURNAL

Correspondent (B) - Enver vs Cassim - Romeo vs Juliet Fees Instruction fees	60 60	120
Fees Correspondent - Enver vs Cassim - Romeo vs Juliet 20% allowance on fees	24	12 12
Correspondent (B) - Enver vs Cassim - Romeo vs Juliet Fees Collection fees	200 100	300
Fees Correspondent (B) - Enver vs Cassim - Romeo vs Juliet 20% allowance on fees	60	40 20
Correspondent (B) - Romeo vs Juliet - Fees Letter of demand and summons fees	200	200
Fees Correspondent (B) - Romeo vs Juliet 20% allowance on fees	40	40

TRANSFER JOURNAL

Correspondent (T)		
- Enver vs Cassim	408	
- Romeo vs Juliet	288	
Correspondent (B)		
- Enver vs Cassim		408
- Romeo vs Juliet		288
Transfer fees & disbursements		

ACCOUNTING STATEMENT TO CORRESPONDENT

Enver vs Cassim		
Cash collected		2 000
Instruction fee	60	12
Tracing agent	200	
Collection fee	200	
Romeo vs Juliet		
Cash collected		1 000
Instruction fee	60	12
Letter of demand & summons fee	200	40
Collection fee	100	20
Cheque herewith	2 304	
	3 124	3 124

Business cash book

Transfer ex trust	696	Tracing agent	200
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Fees

20% allowance	24	Correspondent	120
20% allowance	60	Correspondent	300
20% allowanxw	40	Correspondent	200

Trust cash book

Cassim	2 000	Correspondent	2 304
Romeo	<u>1 000</u>	Transfer to business	<u>696</u>
	<u>3 000</u>		<u>3 000</u>

Correspondent (T) - Enver vs Cassim

Bank self	1 592	Bank	2 000
Transfer to business	<u>408</u>		<u> </u>

Correspondent (T) - Romeo vs Juliet

Bank self	712	Bank	1 000
Transfer to business	<u>288</u>		<u> </u>

Correspondent (B) - Enver vs Cassim

Instruction fee	60	20% allowance	12
Tracing agent	200	20% allowance	40
Collection fee	<u>200</u>	Transfer ex trust	<u>408</u>
	<u>460</u>		<u>460</u>

Correspondent (B) - Romeo vs Juliet

Instruction fee	60	20% allowance	12
Collection fee	100	20% allowance	20
Letter of demand & summons fee	200	20% allowance	40
	<u> </u>	Transfer ex trust	<u>288</u>
	<u>360</u>		<u>360</u>

QUESTION 3

[30]

**FEBRUARY 2000
TRUST CASH BOOK**

2000		2000			
1/2	Balance bf	100 000	8/2	Unpaid cheque - Hawk	50 500
4/2	Deposit - Hawk	150 000	15/2	Transfer to business	51 000
	Costs - Hawk	50 500		Eagle	749 500
9/2	Redeposit - Hawk	50 500			
15/2	Building Society:				
	Eagle	<u>500 000</u>			
		<u>851 000</u>			<u>851 000</u>

BUSINESS CASH BOOK

2000		2000			
15/2	Transfer from trust	51 000	5/2	Receiver of Revenue	35 000
				Transfer duty Eagle	

HAWK - TRUST ACCOUNT - PURCHASE PROPERTY EX EAGLE

2000			2000		
8/2	Unpaid cheque	50 500	4/2	Cash - Deposit	150 000
15/2	Transfer to Eagle	150 000		Costs	50 500
	Transfer to business	<u>50 500</u>	9/2	Redeposit	<u>50 500</u>
		<u>251 000</u>			<u>251 000</u>

EAGLE - TRUST ACCOUNT - SALE PROPERTY TO HAWK

2000			2000		
15/2	Transfer to business	500	15/2	Building Society Bond	500 000
	Paid self	<u>749 500</u>		Balance - Proceeds Sale	<u>250 000</u>
		<u>750 000</u>			<u>750 000</u>

OWL - TRUST ACCOUNT

2000			2000		
15/2	Transfer : Eagle	<u>100 000</u>	1/2	Balance b/f	<u>100 000</u>

FEES

			2000		
			15/2	Agreement	1 000
				Bond	15 000

HAWK - BUSINESS ACCOUNT - PURCHASE PROPERTY EX EAGLE

2000			2000		
5/2	Receiver of Revenue: transfer duty	35 000	15/2	Transfer from trust	50 500
15/2	Fees for agreement	500			
	Fees: Transfer bond	<u>15 000</u>			
		<u>50 500</u>			<u>50 500</u>

EAGLE - BUSINESS ACCOUNT - SALE PROPERTY TO HAWK

2000			2000		
15/2	Fees: Agreement	<u>500</u>	15/2	Transfer ex trust	<u>500</u>

TRUST JOURNAL

15/2/2000	Owl	100 000	
	Hawk	150 000	
	To Eagle		250 000
Transfer second bond and deposit sale of property Eagle to Hawk			

FEES JOURNAL

15/2/2000	Hawk	15 000	
	To fees		15 000
Transfer and bond due on registration of transfer ex Eagle			
15/2/2000	Hawk	500	
	Eagle	500	
	To fees		1 000
Fees: drawing agreement sale Hawk/Eagle			

TRANSFER JOURNAL

15/2/2000	Hawk Trust Account	50 500	
	To Hawk Business Account		50 500
	Eagle Trust Account	500	
	To Eagle Business Account		500
Transfer fees and disbursements			