

COURT PROCEDURE / HOFPROSEDURES

PART 1 / DEEL 1

12 FEBRUARY 2002 / 12 FEBRUARIE 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

[12]

1. A notice of surrender must be published in the form as contained in Form A to the first schedule to the Insolvency Act (1) in the Government Gazette and in a newspaper circulating in the district in which he resides. (1)
2. The notice should state that an application will be made to a particular court on a particular day ($\frac{1}{2}$) that his statement of affairs will lie for inspection at the office of the Master of the High Court. ($\frac{1}{2}$)
3. It is imperative that the publication be made no more than thirty days and no less than fourteen days prior to the hearing thereof. (1)
4. The applicant must allege that his estate is in fact insolvent(1); he should give details of the causes of his insolvency;(1) the application must state that within a period of seven days from date of publication notice was given to all known creditors;(1) he must further state that he lodged copy of his statement of affairs at the Master;(1) he must attach the certificate by the Master that his statement of affairs has so lain. (1)
5. He must also give full details of his income. (1)
6. He must state and demonstrate that he owns sufficient realisable property of sufficient value to defray all costs of the sequestration, which will be payable out of the free residue of the estate and specifically that there will be an advantage of substance to creditors in the event of the court granting such an order. (2)

Note to examiners:

This is the approach which the court will adopt to decide whether to grant the application.

The practice in the Transvaal is that sworn appraisals should be given, especially in respect of immovable property. This appears not to be the case in all other divisions and no separate marks should be given in respect thereof.

2.1

NOTICE OF INTENTION TO DEFEND

Be pleased to take notice of the above-named defendant hereby gives "notice of his intention to defend" the above action. (½)

NOTICE OF INTENTION TO EXCEPT

Be pleased to take notice that the defendant intends excepting to the plaintiff's particulars of claim. Defendant will rely on the following: (½)

1. More than three years have elapsed since the date on which the plaintiff avers the sum claimed was due and payable on 30th September 1998; (1)
2. Interest is claimed from a different date to the 30th September; (½)
3. No allegation is made in the pleadings that the plaintiff is entitled to interest from any date other than the date of delivery; (½)
4. For this reason plaintiff's claim fails to disclose a cause of action alternatively is vague and embarrassing. (1)

Be pleased to take notice that the plaintiff is accorded a period of ten days within which to remedy the defect failing which defendant will except to plaintiff's particulars of claim. (1)
[5]

SPECIAL PLEA

1. Plaintiff in his particulars of claim alleges that the plaintiff's claim was due and owing on 30th September 1998. (1)
2. The summons in this action was served on date of 2002. (1)
3. By virtue of the provisions of section 11 of the Prescription Act 68 of 1969, the plaintiff's claims has become prescribed and is unenforceable, wherefore the defendant prays that the special plea be upheld and that the plaintiff's claim be dismissed with costs. (1)
[3]

PLEA OVER ON THE MERITS

In the event of the above honourable court dismissing defendant's special plea as set out herein above defendant pleads over on the merits:

1. Save for admitting the identity of the plaintiff the defendant has no knowledge of the other averments contained in this paragraph and the plaintiff is put to the proof thereof. (1)
2. The contents of this paragraph are admitted. (1)
3. The contents of this paragraph are admitted. Defendant, however, pleads that the goods sold and delivered were not manufactured of stainless steel as plaintiff was obliged to deliver in terms of the agreement but were manufactured of mild steel unsuitable for use in building boats and that they were totally unsuited for the purpose acquired of which the plaintiff was at all times aware. The defendant herewith tenders return of the said goods. (1)
4. Defendant admits demand but pleads that in the premises it is not indebted to the plaintiff in the amount claimed, or any other amount. (1)

Wherefore defendant prays that plaintiff's claim be dismissed with costs. (1)

It is clear that as the plaintiff's claim has prescribed by virtue of the provisions of section 11 of Act 68 of 1969 a special plea should be taken. In addition the date from which interest accrues differs from the date on which the amount is due and payable and does not for that reason sustain a cause of action in respect of the time period alternatively is vague and embarrassing. The necessary notice in this regard must be supplied by the candidate. In respect of the plea over on the merits one would expect the candidate to delineate the purpose for which the goods were bought, the respects in which the goods were defective and rendered them unsuitable for the purpose acquired.

[5]

QUESTION 3

[7]

An ordinary acknowledgement of debt drawn suitably entitles the candidate to half marks.

The correct answer is a consent in terms of Section 58 of the Magistrate's Court Act. The candidates are not expected to set out more than the broad essentials which are:-

1. The customer acknowledges he has received a demand for the amount. (1)
2. He undertakes to pay the amount plus interest and cost in the relevant instalments. (2)

3. There is an acceleration clause in the case of default. (1)
4. There is a consent to judgment. (2)
5. There is a consent to an emoluments attachment order. (1)

QUESTION 4 **[6]**

- 4.1 Mervyn Ram Naidoo in his capacity as father and natural guardian of Vinesh Naidoo [or Vinesh Naidoo duly assisted by his father and natural guardian] (1)
- 4.2 There are no facts alleged which would justify proceedings against any one other than the professor concerned so the candidate is not given any marks if he also nominated any one other than the professor concerned. (1)
- 4.3 The plaintiff cannot apply for summary judgment as his claim is a claim for damages which is not thus based on a liquid document or a liquidated amount of money or any of the other of the category of claims for which summary judgment may be applied. (2)
- 4.4 Plaintiff could sue in the Small Claims Court. (2)

QUESTION 5 **[6]**

- 5.1 Lodge with the Clerk of Court a written application for default judgment in duplicate, together with the original summons, the original return of service, the original cheque, or an Affidavit setting out reasons to the satisfaction of the court why such original cannot or should not be found. (2)
- 5.2 Lodge with the Clerk of the Court a written request for default judgment in duplicate, together with original summons and the return of service. (2)
- 5.3 Apply to the Clerk of Court in writing for default judgment in duplicate together with the original summons and the return of service, and the Clerk of Court shall refer to the court any such a request for judgment and you must furnish to the court evidence either oral or by Affidavit of the nature and the extend of the claim. The court shall thereupon assess the amount recoverable by the Plaintiff and shall give an appropriate judgment. (2)

QUESTION 6 **[6]**

- 6.1 At any stage prior to judgment. (2)
-

6.2 Your client may:

- (a) pay into court to abide the result of the action the sum sued for together with such sum for costs as the court may determine or give security to the satisfaction of the Plaintiff for such sum;
- (b) in the case of a claim sounding in money or of an alternative claim sounding in money, give security by a registered bank or financial institution or persons to satisfy any judgment for the capital amount which may be given against him in the action, which security shall be acceptable to the attorney for the Plaintiff or for the Plaintiff, where he acts in person. (2)

6.3 Yes - no prohibition if you have not receive notice to discover. (2)

QUESTION 7 **[4]**

I would advise the Fund to repudiate the claim. (1)

In terms of Article 19(c) and (d) of the Act, the Fund is not obliged to compensate the claimant (½) where:

- the claim has not been submitted by the Claimant personally (½)
- or by an attorney (½);
- or by a person who is employed by the State, Province, Territory or Local Authority (½)

The fact that it has been agreed that a portion of the claim will be paid to the Assessor also contravenes the provisions of Article 19 and invalidates the claim. (1)

QUESTION 8 **[7]**

- 8.1 (a) Duty to Support
Marriage Certificate or customary union certificate of the Claimant and deceased. (1)
Birth Certificates of the minor child, surviving widow and the deceased. (1)
- (b) Liability of the Fund
Inquest Record or Charge Sheet with Accident Report. (1)
Death Certificate or post-mortem report (1)
- (c) Quantum
Employer's Certificate. (½)
Actuarial Assessment. (½)
Liquidation and Distribution Account, if applicable. (½)
Employer's Certificate in respect of the widow if employed. (½)

8.2 By allocating 2 parts each to deceased and widow and 1 part to the child. (1)

QUESTION 9 **[2]**

You cannot submit a claim against the Fund for this loss.(1) The Fund's liability is limited to claims arising from bodily injury or death as a result of a motor collision (Art.17) (1)

QUESTION 10 **[4]**

- 10.1 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. In respect of the minor children, prescription only starts running once they attain majority.(1)
- 10.2 Within 3 years of the breadwinner's death in respect of the widow's claim, and within 3 years of them attaining majority, in respect of the children's claims. (1)
- 10.3 Yes, because you would be dealing with a regulation claim where the Claim Forms have to be lodged within two years of the date of the accident, irrespective of whether the Claimant is a minor. (1)

QUESTION 11 **[2]**

- 11.1 Yes. Application may be brought for an interim payment. (½) This is only in respect of the claim for the medical expenses and loss of income, but not for general damages. (½)
- 11.2 Before this application can be made the Fund must have conceded liability in writing. (½) It's ability to pay is not in issue. (½)

QUESTION 12 **[2]**

Yes. Your client has a claim (1), provided he was not being conveyed for reward.(1)

QUESTION 13 **[3]**

- 13.1 No. He does not have a claim.(1) There was no physical contact between him and the other vehicle. (1)
- 13.2 Yes. He will then have a claim under Regulation 3 (1)

QUESTION 14 **[1]**

At the prescribed legal rate applicable from time to time (currently 15.5%), from 14 days from the date of judgment to the date of payment.

QUESTION 15**[8]**

- 15.1 The application can not be brought outside court hours. As the amount involved is R30 000.00 the offence does not fall under Schedule 7 and Section 59 A is accordingly not applicable. Furthermore Section 50(6)(b) states specifically that "an arrested person is not entitled to be brought to court outside ordinary court hours". (2)
- 15.2 Section 50(6)(d) applies. The prosecutor may apply for the bail application to be postponed to any date or court for a period not exceeding seven days. (2)
- 15.3 In terms of Section 60(1) (a) and Section 35 (1)(f) of the 1996 Constitution an accused has the right to be released from detention if the interests of justice permit. The accused will now have to bring a formal bail application.

The onus will be upon the State to prove on a balance of probabilities that it is not in the interests of justice for the accused to be released on bail. The court has an inquisitorial duty to obtain such facts as are necessary to allow it to make a decision in this regard. (4)

QUESTION 16**[17]**

- 16.1 (i) Ascertain the various possible sentences that may be imposed upon the accused - study case law applicable. Address the court regarding various sentences which will have the effect of keeping the accused out of jail e.g. suspended sentence, correctional supervision.
- (ii) Consider obtaining probation officer and correctional officer reports.
- (iii) Investigate the personal circumstances of the accused to be placed on record (e.g. age, educational status, being a student not in a position to pay a fine, reliant on others for her financial needs, effect of peer pressure on her - living in a student environment where her behaviour has been compromised by fellow students).
- (iv) Argue that the accused is remorseful as she has pleaded guilty - she has come to court with clean hands.
- (v) Argue that she co-operated with the police from the outset- a sign of remorse.
- (vi) Record the strong possibility of a disciplinary investigation by the educational institution and further possible punishment.
- (vii) The emotional trauma she will suffer knowing that she has seriously injured other persons and affected their lives.
- (viii) No previous convictions.
- (ix) Psychological or medical report can be filed confirming she has taken steps to control her alcohol abuse.

- (x) Consider whether the accused is to give evidence under oath - could have a positive effect if she expresses her remorse herself.
- (xi) Consider the possibility of calling further witnesses relating to good character etc.
- (xii) Prepare to address the court on the feelings of the community in relation to the particular offence.
- (xiii) Advise the court as to the possibility of possible civil proceedings being instituted against her

The above is not exhaustive.

(10)

16.1

16.2.1 Advise the court that you have received instructions to bring an application for leave to appeal against the sentence.

Request the court to let the matter stand down in order to allow you to prepare the documentation.

Prepare a Power of Attorney to be signed by your client.

Draft the application for leave to appeal setting out the grounds of appeal.

Serve the Power of Attorney and Notice on the clerk of the criminal court.

Appear in court and hand up the abovementioned documents - address the court thereon if required to do so.

Once the application for leave to appeal has been granted a verbal application for bail pending the outcome of the appeal will be made.

(3)

16.2.2 In the Magistrate's Court for the district of Pretoria held in Pretoria.

Case no: 12/123/01

In the matter between

ABC

APPLICANT

and

The State

RESPONDENT

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Be pleased to take notice that the Applicant hereby applies for leave to appeal to the Transvaal Provincial Division of the High Court of South Africa against the sentence of three years imprisonment imposed upon her by the Honourable Magistrate XYZ on the 1st July 2001.

The grounds of appeal are as follows:

1. That the sentence imposed upon her induces a sense of shock.
2. That the learned Magistrate erred in failing to take into consideration the personal circumstances of the accused.
3. That the learned Magistrate erred in not taking into account the various alternative sentences at his disposal that could have had the affect of avoiding direct imprisonment.
4. That the learned Magistrate erred in taking into consideration the testimony of various expert witnesses all of whom recommended sentences other than direct imprisonment. Etc.etc.
5. That the learned Magistrate over emphasized the seriousness of the offence and the interests of the community.

Dated at Pretoria the 1st July 2001

Accused

Attorney

To: The Clerk of the Criminal Court
Pretoria

and to

The Chief Clerk of the Director of Prosecution
Pretoria

and to

Magistrate XYZ
Pretoria

(4)

ESTATES / BOEDEL S

PART 2 / DEEL 2

12 FEBRUARY 2002 / 12 FEBRUARIE 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

[66]

The First and Final Liquidation and Distribution Account (1) in the joint estate of the late **BEN JOHNSON** (Identity No. 301201 0053 083) (1) and surviving spouse **MARIE JOHNSON** (Identity No. 321103 0053 082) (1) to whom the deceased was married in community of property.

Date of death : 30 June 2001 (1)

Master's reference : 2705/2001 (1)

[5]

LIQUIDATION ACCOUNT			
A. IMMOVABLE PROPERTY AWARDED	[3]		
The farm ONTSPAN 379, district PARYS, Province of the Free State; Measuring 250hectares; Held by deceased by virtue of Deed of Transfer T407/1979	(1)		
Land Bank Valuation	(1)		500 000-00
Awarded to JAMES JOHNSON, major son of the deceased, in terms of the will	(1)		
B. MOVABLE PROPERTY AWARDED	[6]		
1. Furniture and household effects	(2)	50 000-00	
2. Savings account in the name of the surviving spouse with ABS Bank	(1)	15 000-00	
3. Policy no. 150789001 with DEF Insurance Co. on the life of the surviving spouse: surrender value	(2)	<u>18 000-00</u>	<u>18 000-00</u>
Awarded to the surviving spouse, MARIE JOHNSON, as residuary heir in terms of the will	(1)		
C. ASSETS REALISED	[1]		
Proceeds of policy 987 456 002 with XYZ Insurance Co.	(1)		<u>65 000-00</u>
			<u>648 000-00</u>

D. ADMINISTRATION EXPENSES	[11]		
1. Notice to Creditors:			
Government Gazette	(1)	18-00	
Volksblad	(1)	192-00	
2. Advertisement of this account:			
Government Gazette	(1)	18-00	
Volksblad		192-00	
3. Master's fees (maximum)	(2)	600-00	
4. Executor's remuneration @ 3,5% on R648 000.00	(2)	22 680-00	
5. Jan Spies for Land Bank appraisalment	(1)	980-00	
6. J.P. Labuschagne for valuation of furniture and household effects	(1)	320-00	
7. Attorneys MNV for costs of transfer of farm	(1)	3 200-00	
8. Provision for bank charges	(1)	<u>300-00</u>	28 500-00
E. CLAIMS AGAINST THE ESTATE	[3]		
1. Receiver of Revenue for final income tax assessment	(1)	2 500-00	
2. XYZ Insurance Co for loan against policy 987 456 002	(2)	<u>25 000-00</u>	<u>27 500-00</u>
			56 000-00
Balance of Distribution			<u>592 000-00</u>
			<u>648 000-00</u>
RECAPITULATION STATEMENT	[3]		
1. Assets realised	(1)		65 000-00
2. Liabilities	(1)	56 000-00	
3. Cash available for distribution	(1)	9 000-00	
		65 000-00	65 000-00

<u>DISTRIBUTION ACCOUNT</u>	[8]		
1. Balance for distribution			592 000-00
2. Awarded to JAMES JOHNSON, major son of the deceased, in terms of the will The award comprises the farm ONTSPAN	(2) (1)	500 000-00	
		<u>500 000-00</u>	<u>592 000-00</u>
Awarded to the surviving spouse MARIE JOHNSON, in terms of the will	(1)	92 000-00	
The award comprises:			
Furniture and household effects	R50 000.00 (1)		
Savings account	R15 000.00 (1)		
Policy with DEF Insurance Co	R18 000.00 (1)		
Cash	<u>R 9 000.00</u> (1)		
		<u>592 000-00</u>	<u>592 000-00</u>
<u>INCOME AND EXPENDITURE ACCOUNT</u>	[6]		
1. Rental for the farm ONTSPAN for the period 1 July 2001 to 31 December 2001	(2)		15 000-00
2. Executor's remuneration @ 6% on R15 000.00	(2)	900-00	
3. Balance awarded to JAMES JOHNSON to whom the farm has been bequeathed	(2)	14 100-00	
		<u>15 000-00</u>	<u>15 000-00</u>
<u>FIDUCIARY ASSETS</u>	[2]		
None			
<u>ESTATE DUTY</u>	[13]		
<u>ASSETS OF DECEASED:</u>			
assets per Liquidation account	(1)		648 000-00
LESS Proceeds of policy 987 456 002 with XYZ Insurance Co	(1)		<u>65 000-00</u>
			583 000-00
LESS Surviving spouse's half share	(2)		<u>291 500-00</u>
			291 500-00
<u>PLUS DEEMED ASSETS:</u>			
Proceeds of policy 987 456 002 with XYZ Insurance Co	(1)	65 000-00	
Proceeds of policy paid directly to surviving spouse	(1)	<u>500 000-00</u>	<u>565 000-00</u>
			856 000-00
<u>LESS DEDUCTIONS:</u>			
Liabilities per Liquidation account	(1)	56 000-00	
LESS half share of surviving spouse	(1)	<u>28 000-00</u>	
		<u>28 000-00</u>	

Benefits in favour of surviving spouse in terms of section 4(q):			
Policy paid directly to her.	(1)	500 000-00	
Awarded to her in distribution account (½ X R92 000,00)	(2)	<u>46 000-00</u>	<u>574 000-00</u>
			282 000-00
LESS Standard deduction	(1)		<u>1 000 000-00</u>
Dutiable amount	(1)		<u>NIL</u>
Therefore no estate duty payable			
CERTIFICATE	[5]		
I, the undersigned, hereby declare that, to the best of my knowledge and belief, the above is a true and proper account of the liquidation and distribution of the estate (1), and that all assets of the deceased (1) and income collected subsequent to the death of the deceased to date hereof have been disclosed therein (2)			
Signed at BLOEMFONTEIN this 31 st day of December 2001. (1)			
<hr/> A. B. BOTHA P. P. THE EXECUTRIX			

(66)

2.1 We hereby mass our separate estates (1) upon the death of the first dying of us (1) and direct that the so massed estates shall, upon the death of the first dying, devolve upon our son James, (1) subject to the lifelong usufruct of the survivor of us.(1) Should the survivor of us repudiate this will, we determine that the estate of the first dying shall then devolve upon our son James free of any usufruct.(1)

(5)

2.2

ADIATION CERTIFICATE

I the undersigned

Suzan Smith

in my capacity as the surviving spouse (1) of the late John Smith do hereby declare as follows:

I am aware of the conditions contained in the joint Last Will and Testament of the deceased and myself, (1) dated 4 November 1998 which constitutes a massing of our separate estates.

I am aware that I have the right to either accept or reject the said will (1) and that the consequences of both acceptance and rejection have been explained to me. (1) Under the circumstances I have decided to adiate the terms of the will (1) which will have the effect that I will forfeit my own estate in favour of our son James and I will receive the usufruct of both estates. (1)

Signed at Pretoria on 24 July 2001 (1)

S SMITH

I the undersigned

Tony Miller

An Attorney *(1) do hereby certify that I have explained to the said Suzan Smith the consequences of either accepting or rejecting the joint will of herself and the deceased, (1) that she fully understands the consequences of either accepting or rejecting the will, (1) and that she after due consideration elected to accept the will. (1)

(11)

T MILLER

* or someone with the necessary expertise

QUESTION 3**[18]**

3.1 S's Estate will devolve as follows:

B receives ½ of the joint estate by virtue of the marriage in community of property. (1)	R400 000-00 (½)
B inherits either a child's share or R125 000.00, whichever is the greater (Section 1(1)(c) of the Intestate Succession Act) (1)	
A child's share is R400 000.00 divided by 5 = R80 000.00 (1)	
B therefore inherits	R125 000-00 (1)
C cannot inherit because she was not A's wife at the time of his death (1)	Nil (½)
D inherits because he is a descendant (1)	R68 750-00 (½)
E inherits because he is a descendant (1)	R68 750-00 (½)
F inherits because he is a descendant (1)	R68 750-00 (½)
H inherits because she is deemed to be a descendant - Section 1(4)(e)(i) (1)	R68 750-00 (½)
Because of the adoption, G is deemed to be a descendant of her adoptive parent P and cannot inherit from S. (1)	Nil (½)
V does not inherit because she is not a blood relation. (1)	Nil (½)
	<hr/>
	R800 000-00
	<hr/>
	(15)

3.2 The renounced benefit vests in the surviving spouse = section 1(6) (2)

B therefore inherits R125 000-00 + R68 750-00 = R193 750-00. (1)

(3)

ATTORNEY'S PRACTICE / PROKUREURSPRAKTYK

PART 3 / DEEL 3

13 FEBRUARY 2002 / 13 FEBRUARIE 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

[10]

DOMICILIUM CITANDI ET EXECUTANDI

1.1 The parties choose domicilium citandi et executandi ("domicilium") for the purpose of giving any notice, paying any sum, serving any process, or for any other purpose arising from this agreement, as follows:

SELLER at:.....

Fax:.....

BUYER at:.....

Fax:.....

1.2 Either party to this agreement may, from time to time, by written notice to the other, change his domicilium to any other address in South Africa which is not a post office box or poste restante.

1.3 Any notice or payment by one party to the other ("the addressee") which :

1.3.1 is delivered by hand or transmitted by telefax during normal business hours of the addressee will be presumed, until the contrary is proved, to have been received by the addressee at the time of the delivery,

1.3.2 is posted by prepaid registered post from an address in South Africa to the addressee's domicilium shall be presumed, until the contrary is proved, to have been received by the addressee on the fourth day after posting.

QUESTION 2**[5]**

When an attorney withdraws from a case he should do so timeously and should inform his client timeously that he is doing so to enable his client to make alternative arrangements or to appear in person. He must withdraw at the correct moment (opportune stage) or take the risk to continue with the brief and to fulfil it.

QUESTION 3**[3]**

The attorney has a right of retention ex contractu on all documents that are the product of his work, skill and knowledge.

QUESTION 4**[7]****INDEMNITY (Agent's commission)**

The Purchaser indemnifies the Seller and holds her harmless against any claim by an Estate Agent for agent's commission arising out of this transaction. Should any such claim be made against the Seller, the Purchaser shall be obliged to settle or defend such claim forthwith and shall be liable for payment of all costs in connection therewith.

QUESTION 5**[12]****DETERMINATION OF COST PRICE OF STOCKS**

- 5.1 The seller and the buyer shall jointly take stock at the close of business on the day before the effective date. Any items which are not marketable for any reason must be excluded from the sale unless the parties agree otherwise.
- 5.2 The seller's invoices and statements of account in respect of the stocks will constitute prima facie proof of their cost price.
- 5.3 If the seller is unable to provide satisfactory proof of the cost price of any item, it must be determined by reference to the supplier, whose determination will be binding upon the parties.
- 5.4 The parties shall record the cost price of the stocks in writing and sign the record.
- 5.5 The parties shall use their best endeavours and shall co-operate fully with each other to complete the stock-taking and the computation of the cost price of the stocks prior to the effective date.

QUESTION 6

[15]

The general rule is that a practitioner is entitled to accept or refuse any work offered to him unless [1] in terms of the rules he is obliged [1] to accept or refuse it.

The obligation to refuse arises when there is conflict of interest [1] lack of qualification [1] by the attorney, lack of expertise [1] inability [1] of performance through overburden or where the work offered is illegal [1] or improper.

It is not proper for an attorney to undertake and charge for work which the absence of legal qualifications [1] does not allow him to perform, eg an attorney who is not a conveyancer should not undertake the transfer of fixed property. Neither should he prepare the documents and request a colleague [1] to sign on his behalf and to execute the transfer.

It is not improper for an attorney to refuse to act if the attorney is convinced that his client has no case [1]. There is seldom a duty [1] to take on work. The occasion may however arise when there is a duty [1] to assist an established and regular client [1] in the case of emergency. Such a client may well be prejudiced [1] by the delay in obtaining another attorney should his regular attorney refuse to act. The established client faced at night or during a weekend with an urgent application to court or with arrest is entitled to expect his attorney that he take what measures he can to relieve the emergency. There is also a duty on the attorney to act if there is no other attorney [1] available. This can easily happen in small towns. (p.75)

QUESTION 7

[15]

The following is merely an example (clauses in bold are essential. Examiners should use their discretion)

ACKNOWLEDGEMENT OF DEBT

I, the undersigned,

of (address) which address I choose as **domicillum citandi** et executandi for purposes hereof

(hereafter referred to as "the Debtor")

do hereby **admit that I am liable, and hold myself bound to**

(name of creditor)

(hereafter referred to as "the Creditor")

for the due and proper payment of **the amount** of R10 000,00 (Ten Thousand Rand) by reason of **money actually lent and advanced** to me by the Creditor (hereafter referred to as "the Principal Debt") and furthermore I declare that I am bound by the following conditions:

1. The Principal Debt shall **bear interest** at the rate of 10 % (ten percent) per annum, the amount of which shall be **calculated** monthly in arrear on the outstanding balance due on the last day of each calendar month and shall be so calculated and capitalised on the same day of each and every month until the total amount due in terms hereof shall have been paid.
2. The Principal Debt, together with interest calculated as set out in clause 1 above, shall **be paid in 12 (twelve) monthly instalments**, the first of which shall be made on the last day of the month during which this document is signed, and thereafter on the last day of every succeeding month until the Principal Debt together with interest shall have been paid in full.
3. Should any payment due in terms hereof not be made on due date the Creditor may regard **the balance** of the Principal Debt and interest owing in terms hereof **as due and payable immediately**, and may issue summons therefor in any competent court without further notice or demand to the Debtor.
4. The Debtor hereby expressly **renounces the benefits** of the legal exceptions *non causa debiti, errore calculi*, the revision of accounts and no value received.
5. The Debtor agrees to the jurisdiction of the Magistrate's Court in terms of section 45 of Magistrates' Court Act 32 of 1944 for the recovery of any amount due in terms hereof.
6. The Principal Debt shall become due and payable immediately in the event of the insolvency of the Debtor, or if the Debtor commits an act of insolvency.
7. The **Debtor shall pay the costs hereof** as well as the stamp duty on demand. Should the Creditor incur costs in the collection of the Principal Debt, the Debtor shall pay such costs on the attorney-and-client scale as well as collection costs calculated at 10 % (ten percent) of each and every payment made in reduction of the Principal Debt, interest and costs.
8. The Creditor shall be entitled to cede or pledge his interests herein or to trade therewith at his own discretion without the consent of the Debtor.
9. The Creditor may allocate any payment to capital, interest, costs or any other item as he deems fit despite any allocation made or deemed to be made by the Debtor. (1)

10. Any certificate issued under the signature of the Creditor or his duly authorised agent that purports to certify the amount due hereunder shall be accepted as prima facie proof of such indebtedness and shall have sufficient probative value to enable the Creditor to obtain summary judgment or provisional sentence against the Debtor in any competent court for the amount stated in such certificate, and the Debtor accepts the onus of disproving the amount so stated as not being the amount owing. (1)
11. The debtor shall not be entitled for any reason whatsoever to withhold or defer payment stipulated for in this acknowledgement of debt. (1)
12. The Debtor shall be at liberty to pay any portion of the Principal Debt and finance charges before the due date thereof without derogating from any right he may have in terms hereof. (1)

THUS DONE AND SIGNED at (place) on this (day, month, year) in the presence of the undersigned witnesses.

QUESTION 8**[8]****PURCHASER'S RIGHT TO CANCEL:**

Subject to the provisions of Section 29A of the Alienation of Land Act no 68 of 1981 (1), the Purchaser is entitled to cancel this agreement (1) by way of written notice (1) delivered to the Seller (1) within 5 (five) days of the signing of this agreement by the Purchaser (1), provided that the said notice is signed by the Purchaser (or his/her agent by virtue of a written power of attorney) (1), that it clearly identifies this agreement (1) and that it is unconditional (1).

QUESTION 9**[10]**

- 9.1 Both spouses have equal powers with regard to the disposal of assets of the joint estate, the contracting of debts which lie against the joint estate and the management of the joint estate. Any one of them may perform any juristic act with regard to the joint estate without the consent of the other subject to certain exceptions see Sections 14 and 15(1) of the Act.

(5)
- 9.2 A number of acts can only be done by one spouse with the written consent of the other, namely
 - (1) Alienation, burdening of or giving a real right in immovable property of the joint estate;
 - (2) Alienation, cession or pledge of shares, insurance policies, mortgage bonds, fixed deposits or any similar assets or any investment by the other spouse in a financial institution, forming part of the joint estate;

- (3) Alienation or pledge of any jewellery, coins, stamps, paintings or any other asset of the joint estate held mainly as investments;
- (4) Withdrawal of money held in the name of the other spouse in any bank or Post Office Savings Bank;
- (5) As a credit receiver entering into a credit agreement as defined in the Credit Agreements Act no 75 of 1980;
- (6) As a purchaser enter into a contract as defined in the Alienation of Land Act (ie where the purchase price is paid by instalments);
- (7) Binding himself/herself as surety.

A number of other acts may only be done with the consent (also verbally) of the other spouse, namely alienation of furniture or other effects of the common household forming part of the joint estate; receiving money due to the other spouse by way of earnings, pension, etc by virtue of the profession or business of the other spouse, or damages for loss of income, or inheritance, etc; donating to another person an asset of value forming part of the joint estate.

(Limit of 5 marks)

QUESTION 10**[5]**

An Amending Founding Statement (CK2 form) (1) is signed by the members who resign (1) and by the new members (1), which form must reflect the holding by the new members of their interest in the close corporation (1). The Amending Founding Statement is then lodged for registration with the Registrar of Close Corporations (1). No revenue stamps are required.

QUESTION 11**[10]**

11.1 It is proper to issue summons provided the client has been fully informed of the risks of an adverse order for costs if the defendant raises prescription as a special plea. Any payment may be received and judgment by default may be taken.

(5)

11.2 You should refer the client to another attorney to deal with the underlying claim as well as the client's rights arising from your negligence. Inform the AIF of any claim. While you should be open with client you should not admit liability since admission may vitiate your insurance cover.

(5)

BOOKKEEPING / BOEKHOUD

PART 4 / DEEL 4

13 FEBRUARY 2002 / 13 FEBRUARIE 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

[20]

Supplementary Trust cash book for September 2001

Balance	65 000	Unpaid cheque	734
Cheque written back	1 800	Balance	103 166
Interest	7 100		
Telegraphic transfer	30 000		
	<u>103 900</u>		<u>103 900</u>

Trust bank reconciliation statement at 30 September 2001

<u>Balance as per bank statement</u>	114 516
<u>Add bank error</u>	2 736
	<u>117 252</u>
<u>Less outstanding cheques</u>	17 200
	<u>100 052</u>
<u>Add outstanding deposit</u>	3 114
<u>Balance as per cash book</u>	<u>103 116</u>

QUESTION 2**[30]**Fees Journal

Correspondent : Hennies / Charles Glass Fees Output VAT Summons fees	307-80	270-00 37-80
Fees Output VAT Correspondent : Hennies / Charles Glass 1/3 Allowance in above matter	90-00 12-60	102-60
Correspondent : Hennies / Charles Glass To Fees Output VAT * Collision commission	456-00	400-00 56-60
Fees Output VAT Correspondent : Hennies / Charles Glass 1/3 Allowance	133-33 18-67	152-00

Transfer Journal

Correspondent Trust Correspondent : Business Transfer fees & disbursement	659-20	659-20
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*** Collection Commission (maximum) varies in each province.**

Correspondent (T) Hennies / Charles			
Transfer to Business	659-20	Cash	4 457-80
Cash	3 798-60		
Trust Cash Book			
Charles Glass	4 457-80	Transfer to Business	659-20
		Correspondent	3798-60
Output VAT			
1/3 Allowance	12-60	Correspondent	37-80
1/3 Allowance	18-67	Correspondent	56-00

Fees

1/3 Allowance	37-80	Correspondent	270-00
1/3 Allowance	18-67	Correspondent	400-00

Business Cash Book

Transfer from Trust	659-20	Sheriff	150-00
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Correspondent (B) Hennies Shoe Store / Charles Glass

Summons	307-80	1/3 Allowance	102-60
Sheriff	150-00	1/3 Allowance	152-00
Collection Commission	456-00	Transfer from Trust	659-20
	<u>913-80</u>		<u>913-80</u>

Accounting Statement

re: Hennies Shoe Store vs Charles Glass		
Cash collected		4 457-80
Summons Fees	270-00	
VAT thereon	37-80	
Your 1/3 Allowance		90-00
VAT thereon		12-60
Paid Sheriffs charges	150-00	
Collection commission	400-00	
VAT therein	56-00	
Your 1/3 allowance		133-33
VAT therein		18-67
Cheque herewith	3 798-60	
	<u>4 712-40</u>	<u>4 712-40</u>

QUESTION 3

[40]

Trust Cash Book

July 1	Balance	200 000	July 11	UBS-investment	50 000
6	Purchaser - Deposit	50 000		UBS-investment	200 000
	Purchaser - Costs	25 000	26	Seller	500 000
26	UBS-investment	55 000		Transfer to	
	UBS-investment	210 000		business	25 500
	UBS-investment	300 000		Purchaser	4 800

Business Cash Book

July 26	Transfer from Trust	25 500	July 8	Transfer duty	18 000
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Fees Journal

July 26	Purchaser Lender Fees	7 200 300	7 500
Trust & other fees			

Transfer Journal

July 26	Trust Purchaser Trust Lender Business Purchaser Business Lender	25 200 300	25 200 300
Being transfer fees/disbursements			

Trust Journal

July 26	Lender Purchaser	150 000	150 000
Transfer proceeds second bond			

Trust Ledger : Purchaser

July	26	Cash seller	500 000		July	6	Cash - deposit	50 000
		Transfer to					Cash - costs	25 000
		Business	25 200			26	Lender	150 000
		Cash Purchaser	4 800				Cash	300 000
			<u>530 000</u>					<u>530 000</u>

Trust Ledger : Lender

July	26	Purchaser	150 000		July	1	Balance	200 000
		Transfer to				26	UBS-interest	10 000
		Business	300					

Trust Ledger : Purchaser (UBS Bank) Trust Investment 78(2A)

July	11	Cash	<u>50 000</u>		July	26	Cash	<u>50 000</u>
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Trust Ledger : Lender (UBS BANK) Trust Investment 78(2A)

July	11	Cash	<u>200 000</u>		July	26	Cash	<u>200 000</u>
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Business Ledger : Fees

					July	26	Purchaser	7 200
							Lender	300

Business Ledger : Purchaser

July	8	Transfer duty	18 000		July	26	Transfer from Trust	25 200
		26 Fees	<u>7 200</u>					

Business Ledger : Lender

July	26	Fees	<u>300</u>		July	26	Transfer from Trust	<u>300</u>
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QUESTION 4**[10]**

1. Input tax - Tax payable on acquiring taxable services from a registered vendor.
Output tax - Tax chargeable on taxable services rendered. (2)
2. To record fee debits in every matter where fees are charged (1)
3. Yes (1)
4. To check that all the Trust ledger balances equal the amount of trust money in the Trust Banking and investment accounts. (1)
5. Section 78(2A) interest accrues to the trust creditor and Section 78(2)(a) interest accrues to the Fidelity Fund (2)
6. You use the Journal to credit the incorrect ledger account and debit the correct ledger account (1)
7. No - both are books of Prime Entry (1)
8. No - transfer to business and issue a cash cheque from business (1)