

**COURT PROCEDURE / HOFPROSEDURES
PART 1 / DEEL 1**

FEBRUARY / FEBRUARIE 2003

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]

- 1.1 See Rule 18(10). Marks should be allocated as follows: Set them out in such manner as will enable the Defendant to reasonably assess the quantum thereof (1 mark). Date of birth (½ mark). Nature and extent of injuries (½ mark). Nature, effects and duration of the disability (½ mark). Claim separately: medical / hospital and other similar expenses (½ mark). Pain and suffering, stating whether temporary or permanent (½ mark). Disability in respect of the earning of income, stating earnings lost to date and how amount is made up (½ mark). The enjoyment of the amenities of life, giving particulars (½ mark). Stating whether the disability concerned is temporary or permanent (½ mark). Disfigurement with full description thereof (½ mark). (5½)
- 1.2 A Summons not complying with the provisions of Rule 18 is deemed to be an irregular step in terms of Rule 30. (1)
- 1.3 Notice must be given to all parties specifying the particulars of the (½) irregularity may only done only if the applicant has taken no further (½) steps, and has within ten (10) days(½) of becoming aware of the step, by written notice, afforded his opponent an opportunity of removing the cause of complaint.(½) (2)
- 1.4 BE PLEASED TO TAKE NOTICE that Application will be made to the above Honourable Court on TUESDAY the day of2002 (1)at 10:00 or so soon thereafter as Applicant's Counsel may be heard for an Order in the following terms:
1. Striking out the Plaintiff's Summons as an irregular proceeding in terms of the provisions of Rule 30.(1)
 2. Costs of this Application. (½)
 3. Further and/or alternative relief. (1)
- KINDLY ENROLL the matter accordingly. (1) (3½)

Applicant's Attorney
Address

QUESTION 2**[10]**

- 2.1 An ex parte application to found jurisdiction and to sue by edictal citation (½)
- 2.2 The short form (½)
- 2.3 It is not served (½)
- 2.4 An attorney. If the answer refers to the right to appear in terms of Section 4(2) of Act 62 of 1995 no mark should be given. (½)
- 2.5 The following points should be dealt with:
1. Full names, status and address of Applicant (1)
 2. Full names, status and address of Defendant (1)
 3. That Defendant is a peregrinus of the Republic of South Africa (1)
 4. That Applicant has a prima facie cause of action against Defendant (by attaching pro forma particulars of claim) (1)
 5. That Defendant is owed a debt within the jurisdiction of the Court and that the debt is due and payable and capable of attachment. (1)
 6. That Applicant intends instituting action (1)
 7. The Prayer is for an Order calling on ABC (Pty) Ltd to show cause why all amounts owing by the debtor to the Defendant should not be attached to found jurisdiction for Applicant's claim; for alternative relief and costs. (2)

[8]**QUESTION 3****[3]**

- 3.1 False (security for capital plus costs) (1)
- 3.2. False (1)
- 3.3. False (1)

QUESTION 4**[10]**

1. Attorneys address not within 8 km of Court house. (2)
2. Pietermaritzburg Court has no jurisdiction over defendant, (2)
3. Defendant is an unassisted minor. (2)
4. Causa fails to say to whom or by whom money was lent. (2)
5. Amount of claim exceeds jurisdiction. (1)
6. Interest rate excessive. (1)

QUESTION 5**[10]**

- 5.1 Rule 24[9] - give notice 15 days before the hearing of intention to call a medical practitioner [expert] to give evidence and 10 days supply a summary of his proposed evidence. (3)
- 5.2 Rule 24[2][a] - give notice that plaintiff is required to submit to medical examination by a medical practitioner nominated by defendant. (3)
- 5.3 Rule 24[10] - give notice not less than 10 days before hearing of intention to use the photographs. (2)
- 5.4 Rule 32[1] - ask that the Court dismisses plaintiff's claim with costs. (2)

NOTE TO EXAMINER: *Candidates need not give rule numbers or time periods.*

QUESTION 6**[15]**

6.1

REQUEST FOR FURTHER PARTICULARS

1. Ad paragraph 3
Who was driving the plaintiff's vehicle CAW567 at the time of the collision.
2. Ad paragraph 4
Plaintiff is required to specify the precise manner in which the Defendant is alleged to have been negligent.
3. Ad paragraph 5
- 3.1 Plaintiff is required to detail in what respects his vehicle was damaged.
- 3.2 Plaintiff is required to set out how the sum of R9 200-00 is made up. (7)

6.2

6.2.1

**NOTICE IN TERMS OF SECTION 2(2)b OF THE
APPORTIONMENT OF DAMAGES ACT NO 34 OF 1956**

Be pleased to take notice that an action has been instituted by the abovenamed plaintiff against the abovenamed defendant arising out of a collision between vehicles with registration number CAW123 and CAW 567 on 1 March 2002 at or near the intersection of Berg and Breë Streets, George.

Be pleased to take further notice that the Defendant alleges that you, Mr O N Geluk are a joint wrongdoer and may accordingly intervene as a defendant in the aforementioned action.

Dated at George on 1 September 2002.

(6)

6.2.2 By close of pleadings.

(2)

QUESTION 7

[9]

7.1 Provisional sentence in favour of the plaintiff for R100 000-00 [and interest and costs].

(2)

7.2 In order to avoid provisional sentence a defendant has to show that, on his affidavits, his defence will be likely to succeed and the claim of the plaintiff would not be likely to be believed on the overall probabilities of the matter. The defendant has clearly not shown this as it is impossible for a Court on the affidavits before it in this case to make any finding on the probabilities.

(4)

7.3 The defendant should, within 2 months of provisional sentence, tender payment to the plaintiff of the claim and costs against the plaintiff providing security to restore this amount to the defendant if the defendant is successful in the main action and then give notice of his intention to enter the main case.

(3)

QUESTION 8

[6]

8.1 The plaintiff may apply for summary judgment for the arrear rental portion of the claim but not for the damages.

(2)

8.2 The plaintiff may apply for summary judgment for delivery of the motor car.

(2)

8.3 The plaintiff may apply for summary judgment for work done.

(2)

QUESTION 9

[18]

9.1 Mr Smuts is entitled to a claim for loss of support in his personal capacity (1) Mr Smuts' income is significantly less than Dr Smuts and she contributed to his support ($\frac{1}{2}$)

All the children have a claim for loss of support arising from the death of their mother including the 23 year old who is entitled to be supported until she is self supporting. ($1\frac{1}{2}$)

(3)

9.2 9.2.1 Mr Smuts in his personal capacity and representative capacity on behalf of the two minor children. (1) The eldest has a claim in her own right and claims in her personal capacity (1)

(2)

- 9.2.2 The claims must be lodged within three years from the death of Dr Smuts (1)
- 9.2.3 a. negligence on the part of the other driver (1)
 b. Proof of income of the deceased and Mr Smuts (1)
 c. That the eldest daughter is still needing support; (for example, confirmation of registration from the University) (1)
 d. That she died as a result of the injuries sustained in the collision (1) (4)
- 9.2.4 a. Post mortem or inquest-report (1)
 b. death certificate (1) (2)
- 9.3 The prospects of success are good. The other driver was convicted of negligent driving (½) He need only prove 1% negligence on the part of that driver to succeed 100% with the claim in his personal and representative capacities. (1) There is no apportionment of damages in this instance (1) That her blood alcohol level exceeds the limitation in terms of the law has no bearing on the matter. (½) (3)
- 9.4 Yes. You have been obliged to comply with requirements of a statute (the RAF Act) (½) and this entitles you to your party and party costs. (the Nhlapo judgment) (½) (1)
- 9.5 In respect of the claims of Mr Smuts and his eldest daughter from the date of Dr Smut's death (1) In respect of the 2 minor children from when they attain majority (1) (2)

QUESTION 10

[5]

The alternative Plea would read as follows:

"Alternatively, and in the event of it being proved that the driver of the insured vehicle was negligent in any respect or at all (which is denied) (1), then the Defendant pleads that the Plaintiff was also negligently and that such negligence contributed to the collision (1) and, accordingly in terms of the Apportionment of Damages Act any damages recoverable by the Plaintiff must be reduced by the extent to which he was negligent (1)

In the alternative, Defendant prays that the Plaintiff's claim be reduced by the extent to which this Honourable Court finds that the Plaintiff was negligent, and that such negligence contributed to the collision (1) and that this Honourable Court make such order as to costs as may be just and equitable. (1)

QUESTION 11

[2]

- 11.1 By delivering a written notice of acceptance of the offer to the Defendant. (1)
- 11.2 No. Your client is not entitled to interest. In terms of the Act, interest is only payable from a date 14 days after the grant of Judgment, and not from the date of acceptance of the offer. (1)

12.1 I will commence by:

1. Placing the personal circumstances of the accused on record (as set out in the question).
2. I will state that his previous conviction should be ignored - a small amount and long time back.
3. I will emphasise the social disgrace which his offence has attracted and the possibility that his business will be affected thereby.
4. I will ask the court to order that he repay the amount involved by way of reasonable monthly instalments and will emphasise that imprisonment will no doubt result in the complainant not receiving financial compensation.
5. Seriousness of the crime and resulting feelings of the community.
6. He has shown remorse by pleading guilty and has accordingly come to court with clean hands and not wasted the time of the court.
I will thereafter deal with the various forms of punishment.
7. He has cooperated with the Police.

(6)

12.2 In terms of Section 276 the relevant sentences which may be imposed are:

1. Imprisonment
2. Periodical imprisonment
3. A fine
4. Correctional supervision (Section 276(h))
5. Correctional supervision, that is imprisonment from which such a person may be placed under correctional supervision in his discretion by the Commissioner. (Section 276(i)).

Imprisonment

Unsuitable as he will be removed from society, family and business will suffer, the effect of accused being criminalised in prison.

Remind the court of the general rule that first offenders are to be kept out of prison as far as possible (etc, etc)

Periodical imprisonment

This should only be resorted to if the court finds it necessary and unavoidable to imprison the accused. The advantage will be that he will be able to continue with his business during the week and will serve a period of imprisonment over weekends. The disadvantage is that he will come into contact with criminals.

A fine

This should be seriously considered by the court and could be coupled with a period of imprisonment, alternatively a fine. The court can be addressed on the ability of the accused to pay the amount and requested to allow the accused to repay same by way of monthly instalments.

Correctional supervision

Under Section 276(h) for a period not exceeding three years. I would attempt to persuade the court that this is the punishment which should be considered. A probation officer or a correctional officer's official report is to be obtained and requested in this regard and the matter will have to be postponed until such time as the report is available. In argument in support of this form of punishment, one can argue that:

- a) Correctional supervision is less intrusive than imprisonment and should be applied in cases where a fine is inappropriate;
- b) The family life of the offender can continue;
- c) A compulsory training and educational programme recommended by the probation officer can be very beneficial in developing the social skills of the offender;
- d) The offender is not exposed to the negative influences of the prison sub-culture;
- e) It is cost effective and involves the community in the punishment and rehabilitation of the offender;
- f) The personal circumstances of the offender, including his family situation and employment, make it possible to maintain effective control and supervision of the offender;
- g) The offender is willing to subject himself to correctional supervision.

Imprisonment in terms of Section 276(i)

If it becomes clear that the court will impose imprisonment then this alternative should be requested.

(8)

QUESTION 13

[11]

13.1 Appeal Procedure:

1. Draft a Notice of Appeal and a Power of Attorney which must be signed by the accused.
2. Serve the Notice of Appeal together with the Power of Attorney on the Clerk of the Court and the Magistrate.
3. Obtain a copy of the Court record.
4. The Attorney will either act in the High Court himself or alternatively brief Counsel. The Attorney will also consider amending the notice of appeal now that the court record has become available.
5. Ensure that Heads of Argument are prepared and timeously served on the Registrar of the High Court and the Deputy Public Prosecutor.
6. Await a Notice of Set Down and attend Court.

(5)

13.2

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PORT ELIZABETH HELD
AT TODD CHAMBERS TODD STREET PORT ELIZABETH**

Case No: 114/02

In the matter between

I M DRUNK

Appellant

and

THE STATE

Respondent

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE THAT THE Appellant hereby notes an Appeal to the Eastern Cape Division of the High Court of South Africa against the sentence imposed upon him by the Honourable Magistrate G Steyn on the 25th of June 2002. The Appellant hereby Appeals on the following grounds:

1. The Magistrate erred in not taking the Appellant's personal circumstances into consideration.
2. The Magistrate erred in not considering alternative forms of punishment which would have had the effect of the Appellant not having to serve a term of imprisonment.
3. That the learned Magistrate erred in over-emphasising the interest of the public above that of the accused (etc. etc.).

DATED at PORT ELIZABETH on this the 22nd day of JULY 2002.

ABC ATTORNEYS

per:
Appellant's Attorneys
12 Graham Street
North End
PORT ELIZABETH
(REF: *)

AND TO: THE REGIONAL MAGISTRATE:
MR G STEYN

AND TO: THE CLERK OF THE REGIONAL COURT
NEW LAW COURTS
PORT ELIZABETH

(6)

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

FEBRUARY / FEBRUARIE 2003

ANSWERS/ANTWOORDE

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QUESTION 1

[59]

1.1

Sithole, Mohammed and Steyn
P.O. Box 20
Tshwane 0001

10 August 2002

The Master of the High Court
Private Bag X60
TSHWANE
0001

(1)

Dear Sir

ESTATE LATE JOHN SMITH

The abovenamed deceased died on 27 July 2002 without leaving a will. The surviving spouse, supported by the major heirs, is prepared to accept appointment as executrix. We enclose the following for your attention: (1)

- 1.1 Death notice (1)
- 1.2 Section 9 inventory (1)
- 1.3 Next-of-kin affidavit (1)
- 1.4 Nomination of the surviving spouse as executrix by the two major children (2)
- 1.5 Acceptance of Trust as executor in duplicate (2)
- 1.6 Certified copy of the death certificate (1)

We look forward to receiving the Letters of Executorship.

Yours faithfully

.....
SITHOLE MOHAMMED AND STEIN

(10)

1.2

1.2.1

FIRST AND FINAL LIQUIDATION AND DISTRIBUTION ACCOUNT IN THE ESTATE OF THE LATE JOHN SMITH (IDENTITY NO 580714 6108 00 7) WHO DIED ON 27 JULY 2002 AND WHO WAS MARRIED OUT OF COMMUNITY OF PROPERTY EXCLUDING THE ACCRUAL SYSTEM.

(5)

1.2.2

MASTERS REFERENCE NO: 9298/2002

LIQUIDATION ACCOUNT			
ASSETS			(4)
1. IMMOVABLE PROPERTY			
NONE			
2. ASSETS REALISED			
2.1 Fixed deposit with All South African Bank: account number 12345	1	200 000,00	
2.2 Savings account with All South African Bank: account number 6789	2	18 250,00	
2.3 Proceeds of 500 General Electric shares sold for 1200 cents per share	3	6 000,00	
2.4 Proceeds of life policy number P/6000485 with ABC Insurance Co.	4	100 000,00	
TOTAL ASSETS		324 250,00	
LIABILITIES			
1.1 ADMINISTRATION COSTS			
1. Advertisements			
To creditors: section 29			
Gauteng Chronicle	120,00		
Government Gazette.....	18,00	5	138,00 (2)
Account for inspection: section 35			
Gauteng Chronicle.....	120,00		
Government Gazette	18,00	6	138,00 (2)
1.2 Brokers commission			
ABC Brokers: 5% x R6 000	7	300,00	(2)
Carried forward		576,00	

DISTRIBUTION ACCOUNT

Balance available for distribution		307 490,00	
Distributed as follows:			
1. Dorothy Smith, surviving spouse of the deceased, in terms of section 1(1)(c)(i) of the Intestate Succession Act, 81 of 1987 Award consists of cash	125 000,00		(3)
2. James Smith, minor son of the deceased, born 12 May 1985 (ID No: 850512 5053 082), one-third of the residue in terms of section 1(1)(c)(ii) of the Intestate Succession Act, 81 of 1987 Award consists of cash, to be paid into the Guardian's Fund in terms of section 43(6) of the Administration of Estates Act, 66 of 1965	60 830,00		(4)
3. Jane Smith, major daughter of the deceased, one-third of the residue in terms of section 1(1)(c)(ii) of the Intestate Succession Act, 81 of 1987 Award consists of cash	60 830,00		(3)
4. Timothy Smith, major adopted son of the deceased, one-third of the residue in terms of section 1(4)(e)(i) of the Intestate Succession Act, 81 of 1987 Award consists of cash	60 830,00		(3)
	307 490,00	307 490,00	

(13)

ESTATE DUTY ADDENDUM		
Property In terms of section 3(2)		
Total assets as per liquidation account		324 250,00 (1)
Less: Policy payable to estate		100 000,00 (1)
		224 250,00
Property in terms of section 3(3)		
Proceeds of all domestic policies on life of the deceased:		
ABC Insurance Co. (estate)	100 000,00	(1)
DEF Insurance Co. (surviving spouse)	150 000,00	(1)
		250 000,00
GROSS VALUE OF ESTATE		474 250,00
LESS: Allowable deductions in terms of section 4		
Section 4(a) - 4(d)	16 760,00	(1)
Section 4(q) [R125 000 + R150 000]	275 000,00	(3)
		291 760,00
NETT VALUE OF ESTATE		182 490,00
LESS: Rebate in terms of section 4A		1 500 000,00 (2)
DUTIABLE ESTATE		NIL

(10)

JOINT WILL

We the undersigned,

JOHN ANDREWS

and

JOAN ANDREWS

spouses married to each other in community of property and residing at Bloemfontein, declare this document to be the last will and testament of both of us.

(1)

1.

We hereby revoke all wills previously made by us, whether jointly or separately.

(2)

2.

We hereby mass our respective half shares in our joint estate and dispose of our massed estate upon the death of the first dying of us as follows:

(3)

1. We bequeath our farm ONTSPAN to our son PETER subject to the lifelong usufruct of the survivor of us.

(2)

2. We leave the residue of our massed estate to the survivor of us.

(1)

3.

Should we die simultaneously, or should the survivor of us die within 21 days of the death of the first-dying without having made a further valid will, we leave the estates of both of us to our son PETER.

(2)

4.

The survivor of us leaves his/her whole estate to our son PETER.

(1)

5.

We nominate JACK ARMSTRONG, attorney of Bloemfontein, to be the executor of the estates of both of us. We grant unto our executor all such powers as are allowed by law, including the power of assumption, and we direct that it shall not be necessary for our executor to furnish security for the due and faithful performance of his functions.

(3)

ROBERT WILLIAMS
on behalf of TESTATOR

TESTATRIX

COMMISSIONER OF OATHS
(2)

6.

No benefit accruing to any person by virtue of the provisions of this our will shall form part of the joint estate of the beneficiary and any present or future spouse of his or hers. The same applies to the fruits derived from such benefit.

Such benefit, as also the fruits derived therefrom, shall also be excluded from the accrual of any present or future marriage of the beneficiary which may be subject to the accrual system.

(3)

Thus done and signed at Bloemfontein on this the 1st day of February 2003 by ROBERT WILLIAMS on behalf of the testator, by the testatrix and the undersigned witnesses, all being present at the same time.

(1)

AS WITNESSES:

1. _____

ROBERT WILLIAMS on
behalf of the TESTATOR

2. _____

TESTATRIX
(2)

I, RICHARD BLOOM, Commissioner of Oaths hereby certify that I have satisfied myself as to the identity of the testator and that the will signed on his behalf by ROBERT WILLIAMS is the will of the testator.

RICHARD BLOOM
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A
3 SHORT ST
BLOEMFONTEIN
(5)

ESTATE LATE JOE SOAP**REDISTRIBUTION AGREEMENT (1)****MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:****KENNETH SOAP****AND****CHARLES SOAP**

Major heirs of the deceased, and (1)

CHARLES SOAP

In his capacity as executor in the estate of the late Joe Soap by virtue of Letters of Executorship No. 456/02. (1)

WHEREAS the fixed property in the estate known as:

Holding 407 Winterveld Agricultural Holdings, Registration Division JR Gauteng Province, Measuring 1400m²

(hereinafter referred to as the PROPERTY) has been bequeathed to the said major heirs in equal shares, (1)

AND WHEREAS the Department of Agriculture and Land Affairs has turned down an application to sub-divide the property into two portions, or to transfer the property to the heirs in undivided shares, (1)

NOW THEREFORE the parties to this agreement agree as follows:

1.

That the property be awarded to Kenneth Soap, subject to the conditions set out hereunder. (1)

2.

That the costs of transfer of the said property be borne by the estate of the late Joe Soap. (1)

3.

That all the other assets in the estate of the late Joe Soap be awarded to Charles Soap. (2)

4.

That the said Kenneth Soap shall pay an amount of R40 000,00 (forty thousand rand) to Charles Soap, which amount shall be paid upon registration of the property in his name and for which amount a guarantee shall be furnished to the said Charles Soap before date of registration. (3)

5.

The parties acknowledge that they are aware that this Redistribution Agreement is subject to the confirmation by the Master of the High Court.

(1)

SIGNED AT TSHWANE on this 1ST day of FEBRUARY 2003

AS WITNESSES:

1. _____

2. _____

KENNETH SOAP
HEIR

SIGNED AT TSHWANE on this 1st day of FEBRUARY 2003

AS WITNESSES:

1. _____

2. _____

CHARLES SOAP
HEIR/EXECUTOR

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

FEBRUARY / FEBRUARIE 2003

ANSWERS/ANTWOORDE

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QUESTION 1

[10]

Statements which are made expressly (1) or impliedly (1) without prejudice in the course of *bona fide* negotiations for the settlement of a dispute cannot (1) be disclosed in evidence without the consent (1) of both parties. A letter written by one attorney to another with the object of settling a dispute is not admissible (1) in evidence. It is considered public policy (1) to allow people to try to settle their disputes without the fear that what they may have said will be held against them if the negotiations should break down. A statement to be privileged must form part of the negotiations, and is not privileged merely by having been written in a letter containing the words "without prejudice" at the top.

The reply to such a letter is likewise not admissible in evidence (1). If, however, statements are made in such a letter which are not relevant to the dispute, such statements may well be admissible in evidence (1). Thus, if a letter contains a defamatory statement which is irrelevant with regard to the dispute, such statement will be actionable (1) and an acknowledgement of inability to pay debts is an act of insolvency even if it is made without prejudice. When the settlement offer contained in a letter written without prejudice is in fact accepted by the other side and the dispute is then settled on that basis both letters will become admissible in evidence (1).

QUESTION 2

[12]

Prior to 23 April 1999 such an agreement was regarded as against public policy and thus unenforceable (1). However, the Contingency Fees Act No 66 of 1997 came into effect on 23 April 1999 (1), in terms of which it is possible for an attorney (and advocate) to conclude a contingency fee agreement with a client (1), subject to rather onerous conditions as set out in the Act (1): The agreement must be in writing (1) with its form and content prescribed by the Minister of Justice (1); the client enjoys a 14 day "cooling off" period (1); the agreed fees may not be more than twice the "normal" fees of the attorney (1) and in money claims may not be more than 25% of the amount obtained by the client (1); where applicable, the agreement must be countersigned by the advocate concerned (1); the client has the right to claim a review of the agreement or the fees charged in terms thereof (1).

In certain specific instances a common law contingency free agreement may be permissible.

QUESTION 3**[8]**

- 3.1 Yes (1). Any trust creditor who suffered a loss as a result of the theft of trust monies, has a claim against the Fidelity Fund (1) for the balance of his loss after deduction of any money or benefits recovered from any other source than the Fund – such as the attorney's personal estate (1). (3)
- 3.2 No. (1)
- 3.3 Yes. (1)
- 3.4 Yes. (1)
- 3.5 Yes, if he is believed to be in possession of relevant information to assist the attorney's client. (1) The Attorney should notify the practitioner representing the other client. It is not necessary to obtain his consent. (1) (2)

QUESTION 4**[20]****DEED OF SURETYSHIP**

We, the undersigned,

JAMES MODISE
Identity number

and

DEREK COETZEE
Identity number

(hereinafter referred to as "the SURETIES") (1)

do hereby interpose and bind ourselves (1) as SURETIES for and CO-PRINCIPAL DEBTORS (1) with and on behalf of

ABC INVESTMENTS (PROPRIETARY) LIMITED

(hereinafter referred to as "the PRINCIPAL DEBTOR") (1)

unto and in favour of

XYZ PROPERTY HOLDINGS (PROPRIETARY) LIMITED

(hereinafter referred to as "the CREDITOR") (1)

for the due and punctual payment by the PRINCIPAL DEBTOR to the CREDITOR of all sums of money which the PRINCIPAL DEBTOR now owes or may from time to time hereafter owe to the CREDITOR (1), including damages for breach of contract or otherwise arising from a Deed of Lease entered into on (date) into between the CREDITOR and the PRINCIPAL DEBTOR in respect of premises, being Erf 123 Rosebank, Johannesburg and any extensions or renewals thereof and the due and proper

performance by the PRINCIPAL DEBTOR of the PRINCIPAL DEBTOR'S obligations (1) which the PRINCIPAL DEBTOR may now or in the future owe to the CREDITOR thereunder (1).

1. The SURETIES renounce the benefits of excussion, division, cession of action, no value received, non causa debiti and revision of accounts, with the meaning and effect whereof the SURETIES declare themselves to be fully acquainted. (1)
2. The SURETIES agree and acknowledge that this suretyship shall be in addition to any other suretyships, guarantees or purported suretyships or guarantees concluded by the SURETIES to the CREDITOR on behalf of the PRINCIPAL DEBTOR. (1)
3. Should any extension of time, lenience or other indulgence be granted to the PRINCIPAL DEBTOR for the fulfilment of any of its obligations, irrespective of whether or not the SURETIES have had notice of such extension of time or variation, the SURETIES declare that such extension of time or variation shall not release the SURETIES from their liability in terms of these presents and shall not be regarded as a waiver or tacit renunciation of the CREDITOR'S rights hereunder. (1)
4. The SURETIES consent in terms of Section 45 of Act 32 of 1944 or any amendment thereof, to the CREDITOR taking any legal proceedings for enforcement of any of its rights under this Suretyship for recovery of monies claimed under this Suretyship, if the CREDITOR so elects, in the Magistrate's Court in any district having jurisdiction in respect of the CREDITOR by virtue of Section 28 of the aforesaid Act. Should the CREDITOR not elect to take legal proceedings in the Magistrate's Court, but in a High Court, the SURETIES consent to the jurisdiction of the High Court of South Africa (Witwatersrand Local Division) in respect of any action arising under this Suretyship. (1)
5. The SURETIES choose *domicilium citandi et executandi* for all purposes hereunder at:

JAMES MODISE :

DEREK COETZEE : (1)
6. The SURETIES acknowledge that this is the entire agreement between the SURETIES and the CREDITOR and no alteration or amendment shall be valid unless reduced to writing and signed by the CREDITOR and the SURETIES. (1)
7. In the event of any dispute arising out of any breach by the SURETIES of their obligations under this Agreement, the SURETIES agree to pay the CREDITOR'S costs on the attorney and own client scale. (1)
8. The costs of drawing this Suretyship and all charges incidental thereto including any stamp duty shall be borne by the SURETIES. (1)

SIGNED by the SURETIES at this day of 2003.

AS WITNESSES:

1. _____ J MODISE
2. _____ D COETZEE (1)

NOTE TO EXAMINER: 3 marks are available for allocation for draftsmanship. The above suggested numbered clauses are not comprehensive; please use your own discretion.

QUESTION 5

[10]

LETTER

(Address)
(Date)

To: Shirley Naidoo (Address)

Madam,

RE: AGREEMENT OF LEASE DATED (DAY, MONTH, YEAR) (1)

By reason of your failure to remedy your breach of the abovementioned agreement (1), being, your failure to pay rent for the months of July, August, September and October 2003 (1), notwithstanding written notice to do so having been served on you on the (day, month, year), (1) you are hereby informed that the said agreement is hereby cancelled in terms of clause (specify) thereof (1).

You are hereby required forthwith to vacate the premises occupied by you in terms of the said agreement (1).

In terms of the said agreement you are liable for rent for the months of (specify), (year) at the rate of R...(rands) per month and in the sum of R... (rands), being rent for the current month until today's date. Kindly remit the total rent due, i.e. the sum of R...(rands), within X days of the date hereof (1).

If you do not vacate the said premises by noon on the (day, month, year), or if you fail to pay the said sum of R... (rands) within (specify period) from date hereof (1), action will be instituted against you for confirmation of this cancellation, ejection from the premises and for payment of such sum (1); should action for ejection be instituted, damages for holding over will also be claimed from you (1).

Yours faithfully,

(Signature of lessor's attorney)

QUESTION 6**[10]****SUSPENSIVE CONDITION:**

This agreement shall be of no force or effect unless, within 30 days reckoned from the effective date or any extension of such date by mutual agreement in writing, –

- 6.1 the Seller's rights and obligations in terms of the existing lease agreement concluded between (A) as landlord and the Seller as tenant in respect of the premises are ceded and assigned from the Seller to the Purchaser with effect from the effective date with the consent of the landlord (5); or
- 6.2 the existing lease agreement between the landlord and the Seller is cancelled and a new lease agreement is concluded between the Purchaser and the landlord on terms and conditions mutually acceptable to them (5).

QUESTION 7**[10]**

- 7.1 The Trust will be registered with the Master of the High Court in the area in which your client resides. (1)
- 7.2
1. Two copies of the Deed of Trust.
 2. Letter from an Auditor.
 3. Acceptance of Trust by the trustees. (3)
- 7.3
1. The name of the bank at which the Trust will operate its account.
 2. The name and address of the person who will keep and maintain the records of the trust.
 3. Occupation of the Trustees. (3)
- 7.4 R100.00. (1)
- 7.5 The Trustees have a discretion regarding the benefits that beneficiaries will receive, if at all. (2)

QUESTION 8**[10]**

- 8.1 The legality of the agreement is not affected (1). However, the agreement cannot be enforced in a court of law until it has been stamped (1). The Stamp Duties Act provides for penalty stamps to be affixed to the document (1), in addition to the basic stamp duty, if it is not stamped within 21 days of signature (1). These penalty stamps must be cancelled by the Receiver of Revenue (1). (5)
- 8.2 The stamps may always be cancelled by the Receiver of Revenue (1) by way of his official rubber stamp (1). It may also be cancelled by any of the parties to the agreement (1) by initialling and writing the date (1) on each individual stamp (1). (5)

QUESTION 9**[10]**

This is not a litigious matter, so there is no tariff applicable. The attorney must therefore take into consideration the following factors:

- 9.1 The complexity of the matter;
- 9.2 The importance of the matter to client;
- 9.3 The time spent in doing the work;
- 9.4 The knowledge and expertise required;
- 9.5 The time and place at which the work was done including consultations;
- 9.6 The urgency of the matter;
- 9.7 The amount of money involved;
- 9.8 The seniority of the practitioner;
- 9.9 The extent of perusal and consideration of any documents;
- 9.10 The extent of work done by you and by other non-qualified staff.

BOOKKEEPING / BOEKHOUD
PART 4 / DEEL 4

FEBRUARY / FEBRUARIE 2003

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]

1.1

Supplementary Cash Book - February 2002

(1)

Balance	90 633(1)	Error cheque	1 205(1)
Error cheque	1 250(1)	Rd Cheque	2 186(1)
		Balance	88 492(1)
	91 883		91 883
			(6)

1.2

Bank Reconciliation Statement - February 2002

(1)

Balance as per Bank Statement			83 282(1)
<u>Less</u> Outstanding cheques	287	500(1)	
	293	<u>2 929(1)</u>	3 429(1)
			79 853 (1)
<u>Add</u> Outstanding deposit			8 639(1)
			88 492(1)
BALANCE as per Cash Book			88 492(1)
			(+1)
			(9)

QUESTION 2

[35]

Correspondent (B)	136-80	
Fees		120-00
Output VAT		16-80
Instruction fees ABC / Ben Smith		
Fees	40-00	
Output VAT	5-60	
Correspondence (B)		45-60
1/3 Allowance ABC / Ben Smith		

Correspondent (B) Fees Output VAT Summons fees ABC / Ben Smith	205-20	180-00 25-20
Fees Output VAT Correspondent (B) 1/3 Allowance ABC / Ben Smith	60-00 8-40	68-40
Correspondent (B) Fees Output VAT Collection commission ABC / Ben Smith	273-60	240-00 33-60
Fees Output VAT Correspondent (B) 1/3 Allowance ABC / Ben Smith	80-00 11-20	91.20
Correspondent (T) Correspondent (B) Transfer fees and disbursements ABC / Ben Smith	510-40	510-40

Business cash book

Trust account	<u>510-40</u>	Tracing agent	<u>100-00</u>
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Correspondent (B)

Instruction fees	136-80	One third allowance	45-60
Tracing agent	100-00	One third allowance	68-40
Summons fees	205-20	One third allowance	91-20
Collection commission	273-60	Transfer ex trust	510-40
	<u>715-60</u>		<u>715-60</u>

Fees

One third allowance	40-00	Correspondent	120-00
One third allowance	60-00	Correspondent	180-00
One third allowance	80-00	Correspondent	240-00

Output VAT

One third allowance	5-60	Correspondent	16-80
One third allowance	8-40	Correspondent	25-20
One third allowance	11-20	Correspondent	33-60

Trust cash book

Ben Smith	2 400-00	Business account	510-40
		Correspondent	1 889-60
			1 889-60

Correspondent (T)

Transfer to business	510-40	Ben Smith	2 400-00
Paid self	1 889-60		
			2 400-00

NOTE TO EXAMINER: *Ledger entries ½ mark each*
 Journal entries 3 marks each

QUESTION 3 **[20]**

- 3.1 Trust Investment Account S78(2)(A), S78(2)(a). (2)
- 3.2 3.2.1 Yes (2)
 3.2.2 No (2)
- 3.3 No (2)
- 3.4 Compare debit business balance of a client with the trust credit balance. (3)
- 3.5 Draw business cash cheque - cash and pay bail. Transfer amount from trust to business banking accounts. (3)
- 3.6 3.6.1 Tax paid by vendor. (2)
 3.6.2 Tax charged by vendor. (2)
- 3.7 Transfer R900 from business account to trust account and make client a business debtor for R900. (4)
- 3.8 No. You cannot receive into business account any trust money. (2)

QUESTION 4 **[30]**

Trust cash book - February 2002

4	Adams - Deposit	30 000	4	ABC Bank	30 000
	Adams - Costs	20 000	8	Unpaid cheque	20 000
9	Adams - Costs	3 000	15	Flint	300 000
15	Guarantee	270 000		Business account	3 120
	ABC Bank	30 120			
		353 120			353 120

Adams (T)

Feb 8	Unpaid cheque	20 000	2002		
15	Paid Flint	300 000	Feb	4	Deposit
	Transfer to business	3 120			Costs
				9	Costs
				15	Interest
					Proceeds guarantee
		323 120			30 000
					20 000
					3 000
					120
					270 000
					323 120

Trust Investment in terms of Section 78(2A) - Adams

Feb 4	ABC Bank	30 000		Feb 15	ABC Bank	30 000
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Business cash book - February 2002

9	Adams	17 000		15	Rec. of revenue trf duty	17 000
15	Trust account	3 120				

Output VAT

				Feb 15	Adams	420
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Adams (B)

Feb 5	Transfer duty	17 000		Feb 9	Bank self	17 000
15	Fees	3 420		15	Transfer ex trust	3 120

Fees

				Feb 15	Adams	3 000
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Adams (B)	3 420	
Fees		3 000
Output VAT		420
Transfer & bond fees		
Adams (T)	3 120	
Adams (B)		3 120
Transfer fees due		

NOTE TO EXAMINERS: 1 mark for each entry

The above solution has split the R20 000 received in cash on 9 February 2002 between trust and business. An alternative procedure would be to deposit the full R20 000 into the trust banking account. The trust transfer would then be R20 120.