

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
COURT PROCEDURES / HOFPROSEDURES
PART 1 / DEEL 1**

17 FEBRUARY / FEBRUARIE 2004

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

[11]

-
- 1.1 Durban Yes, the place where the contract was entered into.(1)
JHB Yes, place of delivery(1)
CT Yes, place where payment was to be effected alternatively the place where the breach occurred. Note not because plaintiffs' place of business or registered office is situated in Cape Town.(1)
BFN Yes, principal place of business of defendant.(1)
Kim Yes, registered office of defendant.(1)
- 1.2 TPD and NPD (1)
Concurrent jurisdiction(1)
- 1.3 Yes (1)
- 1.4 Bloemfontein (Registered office) or Kimberley (Principal place of business)(2)
The whole cause of action did not arise in any other jurisdiction. (1)

2.1 Plaintiff's Particulars of Claim

1. The plaintiff Anne Brown an adult female housewife residing at 1 Proes Street Pretoria. (½)
 2. The defendant is David Brown an adult male consulting engineer residing at 2 Hilda Street, Hatfield, Pretoria. (½)
 3. The parties are domiciled within the area of jurisdiction of the above honourable court. (½)
 - 4.1 The parties were married to each other out of community of property at Johannesburg on the 01 July 1993, which marriage still subsists. (½)
 - 4.2 Prior to the said marriage the parties concluded an ante nuptial contract which provided for the application of the accrual system in terms of the Matrimonial Property Act. A copy of the said ante nuptial contract is annexed hereto as Annexure A. (1)
 - 4.3 There are 2 minor children born of the marriage between the parties namely, their daughter aged 3 years and their son aged 7 years. (½)
 - 5.1 The said children are presently in the custody of the plaintiff and it is in the best interests of the said children that their custody be awarded to the plaintiff subject to the defendant's right of reasonable access at all reasonable times. (½)
 - 5.2 The arrangements which have been made or which are contemplated for the custody of the said children are the best that can be made under the prevailing circumstances. (½)
 6. The marriage relationship between the parties has broken down irretrievably as a result of the following factors: (1)
 - 6.1 The parties have developed diverging interests and have become totally estranged.
 - 6.2 The parties have not lived together as husband and wife since 01 July 2002.
 - 6.3 The parties no longer have any love and affection for each other and the consortium between them has come to an end.
 7. In the premises there is no reasonable prospect of the continuation a of a normal marital relationship between the parties.
-

8. The defendant is obliged to maintain the plaintiff who has not worked since the birth of the eldest child seven years ago and is dependant on the plaintiff. (½)

9. The defendants' estate has shown a greater growth than that of the plaintiff and she is entitled to half of the difference in growth of the value of the estates of the parties. (1)

Wherefore plaintiff claims: (2)

- a) A decree of divorce
- b) an order in terms whereof custody and control of the 2 minor children be awarded to the plaintiff subject to the defendant's right of access at all reasonable times
- c) An order in terms whereof defendant shall pay maintenance for the plaintiff in the sum of R3000.00 per month
- d) An order in terms whereof defendant shall pay maintenance in respect of the 2 minor children in the sum of R1500.00 per month per child
- e) An order in terms whereof one half of the difference in growth of the value of the estates of the parties as at the date of divorce be awarded to the plaintiff
- f) Costs of the action
- g) Further or alternative relief.

(8½)

2.2

NOTE TO EXAMINER:

If broadly speaking the factors are enumerated a full mark can be given.

2.2.1 Maintenance in respect of the minor children (1)

- a) Standard of living of the parties
- b) Needs of the children
- c) Income of the parties (financial position)

2.2.2 Maintenance in respect of the plaintiff(1)

- a) Duration of the marriage
- b) Plaintiff's employment situation and duration of unemployment
- c) The needs of the plaintiff
- d) The ability of the plaintiff to become gainfully employed
- e) The ability of the defendant to meet a claim for maintenance in respect of the plaintiff
- f) The standard of living of the parties

g) The value of the respective estates of the parties

2.2.3 The plaintiff is entitled to half of the growth in the estate of the defendant because the plaintiff's estate has not grown at all. Defendant's estate: Value 1993 terms R250 000

Value 2004 terms R500 000

Actual value R1.5 million

Growth R1 million

50% thereof is R500 000 (2)

2.3 Statistics form (½)

Annexure A Mediation in certain divorce proceedings Act. (½)

QUESTION 3 [9]

3.1 The shopkeeper may sue in the Magistrate's Court for the full amount because there are two separate claims. If there was only one claim, the Plaintiff could only sue in the Magistrate's Court by abandoning R10 000-00.

(3)

3.2 Durban: place of residence

Pietermaritzburg: place of employment

Bellville: whole cause of action arose within the Court's jurisdiction (6)

QUESTION 4 [6]

I, JOHN SMITH, do make oath and say:-

1.

I am the proprietor of WEST STREET PANEL BEATERS, carrying on business at 1 West Street, Durban. (*this affidavit must be given by an expert and cannot be given by the Plaintiff.*)

2.

I have worked as a panel beater for 15 years repairing motor vehicles and am familiar with what work is required to repair damaged motor car bodies and the reasonable cost of carrying out such work.

3.

I examined the motor vehicle ND1234, brought into me at WEST STREET PANEL BEATERS, by Jabulani Gamede and I established that it has been damaged in the following respects:-

- 3.1 The boot has been pushed in and requires replacement
- 3.2 The right mudguard has been dented and requires replacement
- 3.3 The rear bumper has been broken and requires replacement
- 3.4 The rear windscreen has been broken and requires replacement

4.

The reasonable cost of repairs for such damage is R26 000-00 inclusive of V.A.T.

QUESTION 5

[10]

- 5.1 I would grant provisional sentence against Mr. Smart.
- 5.2 Although the onus in the principal case rests on the Plaintiff, at provisional sentence stage the Defendant must show on a balance of probabilities that the Plaintiff is not entitled to provisional sentence.

In this case, it would seem the affidavits are not likely to show any probability in favour of either party, and so the Defendant has failed to establish his defence to resist provisional sentence.

- 5.3 I would call on Mr. Smart to pay the claim and costs and I would demand that simultaneous with such payment he provides security *de restituendo* against payment of the amount due under judgment.

Should the Plaintiff not provide security on demand or once he has provided security and the Defendant has paid the claim, I would deliver a notice of Defendant's intention to enter into the principal case (or to defend) and within the following ten days I would file a plea.

QUESTION 6**[10]**

6.1 I will advise both X and Y that they have valid third party claims against the Road Accident Fund. (1)

By virtue of the fact that the driver of motor vehicle ND 555 was solely to blame for the collision, (1) X has an unlimited claim for both special and general damages (1). He will be awarded the total amount of damages that he may be able to prove.

Y was a passenger in motor vehicle ND 555 whose driver was solely to blame for the collision. As against the Road Accident Fund his claim in terms of Section of 18 (1) (b) of Act No 56 of 1996 is limited to the sum of R25 000 for special damages only (1) (that is for past medical and hospital expenses and past loss of earnings). (1) He does not receive any compensation in respect of general damages. (1)

Insofar as the balance of his claim is concerned for special and general damages, Y may proceed against the driver/owner of (1) ND 555.

(6)

6.2 I will advise X and Y that the Apportionment of Damages Act does not apply in respect of their claims as they were innocent claimants and did not in any way cause or contribute to the collision (1). (see Section 1 of the Apportionment of Damages Act, 34 of 1956). For both X and Y to succeed, they are merely obliged to prove the proverbial 1% negligence on the part of either driver to enable them to recover the total amount of whatever special and general damages they may prove. (1)

The fact that which X and Y were passengers in taxis that did not have public permits will not be an impediment to them succeeding in full as both drivers were at fault. (1)

(3)

QUESTION 7**[3]**

The Road Accident Fund is within its rights not to entertain this claim because the Act provides that a claim may only be instituted and prosecuted (1) by:

(i) the claimant himself (1)

- (ii) Any person entitled to practice as an attorney within the Republic (1)
- (iii) Any person who is in the service, or who is a representative of the state or government or a provincial, territorial or local authority (1)

QUESTION 8**[3]**

No. (1) In terms of the provision of Section 19(b)(1) of the RAF Act, the Road Accident Fund is not obliged to compensate any person being conveyed for reward on a motor cycle. (1)

QUESTION 9**[3]**

The liability of the Fund to compensate a third party for any loss or damage as a result of the death of any person shall in respect of funeral expenses be limited to the necessary actual cost to cremate or inter the deceased in a grave. (1)

The father could claim the cost of the coffin (R2 000) and cost of the Undertaker (R2 500). (1)

He will not be able to claim for the cost of the gravestone and refreshment costs. (1)

QUESTION 10**[2]**

10.1 The Medical Practitioner who treated the claimant, or the Superintendent of the Hospital at which the Claimant was treated. (1)

10.2 Any Medical Practitioner who is able to acquaint himself with the claimant's medical history from the records and reports of those who previously treated the claimant. (1)

QUESTION 11**[4]**

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. (1) In terms of the Act, interest is only payable from a date 14 days after the grant of the Judgment, and not from the date of acceptance of the offer. (1)

11.3 Your client can apply for Judgment in terms of the offer on 5 days notice given to the Defendant in writing of his intention to do so. (1)

QUESTION 12

[14]

12.1 In the Magistrate's Court for the District of BLOEMFONTEIN held at BLOEMFONTEIN

Case No: 234/03

In the matter between

MR A

Appellant

and

THE STATE

Respondent

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE that the Appellant notes an Appeal to the High Court of South Africa (FREE STATE PROVINCIAL DIVISION) against the sentence imposed by the Honourable Magistrate in the Bloemfontein Magistrate's Court on the 3rd of MARCH 2003.

The grounds of Appeal are as follows:

1. That the learned Magistrate erred in not taking into account the cumulative effect of the sentence namely that of seventeen (17) years imprisonment suspended for five (5) years.
2. That the learned Magistrate erred in not imposing an alternative suitable form of punishment namely a fine.
3. That the learned magistrate erred in not imposing an alternative form of sentence namely correctional supervision despite the accused being found to be a suitable candidate therefore.

4. That the learned Magistrate failed to take into account the personal circumstances of the accused and his social background.
5. The learned Magistrate erred in not lending sufficient importance to the fact that all monies due to the SARS had been repaid.
6. That the sentence imposed induces a sense of shock.

DATED at BLOEMFONTEIN on this the 3rd day of MARCH 2003.

MAKHUME & ASSOCIATES

per:
Appellant's Attorneys
12 Burke Street
BLOEMFONTEIN

AND TO: THE CLERK OF THE COURT
BLOEMFONTEIN

AND TO: THE CHIEF CLERK OF THE
DIRECTOR OF PUBLIC PROSECUTIONS (8)

12.2 An application for condonation is to be filed by way of notice of motion accompanied by an affidavit explaining the reason why the application for leave to appeal was not timeously filed and averring that the appellant has a reasonable prospect of success.

(4)

12.3 The Court of Appeal may confirm the sentence, delete or amend the sentence and imposed such punishment as ought to have been imposed at the trial. The Court may also remit the case to the trial Court with instructions to deal with any matter in such manner as the Court of Appeal may think fit.

(2)

QUESTION 13**[3]**

In terms of Section 34 of the CPA the judicial officer presiding in criminal proceedings shall at the conclusion of such proceedings make an order that any article being the subject of the criminal proceedings be returned to any other person entitled thereto, if such person may lawfully possess the article. Client is accordingly to be advised that he is to request the Court/Public Prosecutor, to deal with this aspect at the conclusion of the matter. He will have to provide proof of ownership and this can be dealt with in his evidence in chief and the request for the return of the goods be made at the conclusion of the case. You, as the attorney, may assist your client personally in Court in making the request for the return of the goods.

QUESTION 14**[3]**

14.1 You will be obliged to withdraw from acting on behalf of both accused as there is obviously a clash of interests. The reason therefore is that you cannot cross examine your own client. (2)

14.2 You would withdraw as attorney of record in respect of both accused. (1)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA HELD AT PRETORIA

Case No. 235/03

In the matter between

MR A

and

THE STATE

REQUEST FOR FURTHER PARTICULARS

The accused hereby requires the State to furnish the following Further Particulars in order to enable him to prepare for trial:

1. On which date and at which time of day did the collision occur?
2. Exactly where in Pretoria is it alleged the offence occurred?
3. What are the registration letters and number of the vehicle which the accused allegedly drove.
4. The grounds of recklessness/negligence on which the State shall rely are required.
5. It is alleged that the deceased was injured in the collision and that such injuries caused his death? If so full details of such injuries are required.
6. When is it alleged that X died.

7. Where is it alleged that X died.
8. A copy of the post mortem report relating to the deceased is required.
9. A copy of the police docket is required.

DATED at PRETORIA this the 17th day of MARCH 2003.

MAKHUME & ASSOCIATES

per:

Plaintiff's Attorneys

12 Burke Street

BLOEMFONTEIN

TO: THE CLERK OF THE COURT
PRETORIA

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ESTATES / BOEDELN
PART 2 / DEEL 2**

17 FEBRUARY / FEBRUARIE 2004

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

[80]

The First and Final Liquidation and Distribution Account in the Estate of the late **MABEL ARENDSE** (identity no 280516 0053 08 2), (1) who was married out of community of property, (1) subject to the accrual system. (1)
Date of death: 01 July 2003 (1)
Master's reference: 2526 / 2003 (1)

LIQUIDATION ACCOUNT

A IMMOVABLE PROPERTY AWARDED [7]

A unit comprising:

- (a) Section 10 as shown and more fully described on sectional plan SS 10/1992 in the scheme known as VREKLEKKER in respect of the land and building or buildings situated at erf 1105 Bloemfontein, Mangaung Local Municipality, of which section the floor area according to the said sectional plan is 250 square metres in extent; and (2)
- (b) an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan (1)

Held by the deceased by virtue of Deed of Transfer ST 5025 / 1999 (1)

Appraised value (1)

800 000,00

Awarded to Basil Arendse in terms of the redistribution agreement entered into between the residuary heirs		(2)		
B	<u>MOVABLE PROPERTY AWARDED</u>	[3]		
Postage stamp collection		(1)		
Valued by LICK & PASTE, specialist postage stamp dealers		(1)		500 000,00
Awarded to Arthur Arendse, surviving spouse, in terms of the will		(1)		
C	<u>ASSETS REALISED</u>	[5]		
1	Accrual claim against Arthur Arendse	(2)	700 000,00	
2	Proceeds of interest-bearing deposit with MNO Bank:			
	Capital	(1)	1 000 000,00	
	Accrued interest to date of death	(2)	<u>25 000,00</u>	<u>1 725 000,00</u>
	TOTAL ASSETS			<u>3 025 000,00</u>
D	<u>ADMINISTRATION EXPENSES</u>	[18]		
1	Notice to creditors:			
	Government Gazette	(1)	* 20,00	
	The Daily Gossip	(1)	200,00	
2	Advertisement of this account:			
	Government Gazette	(1)	* 20,00	
	The Daily Gossip	(1)	200,00	
3	Bank charges:			
	Actual to date	(1)	300,00	
	Provision for further charges	(1)	150,00	
4	Master's fees (maximum)	(2)	* 600,00	
5	Executor's remuneration			
	@ 3½% on R 3 025 000,00	(2)	* 105 875,00	
	Plus 14% VAT on R 105 875,00	(1)	* 14822,50	
6	John Smith, appraiser, for appraisal of sectional title unit	(1)	3 000,00	
7	Lick & Paste for valuation of stamp collection	(1)	1 000,00	
8	Attorneys PQR for transfer costs in respect of the sectional title unit	(1)	5 000,00	
9	Attorneys STU for cancellation costs in respect of the bond over the sectional title unit	(2)	698,50	

10 Attorneys ABC for postages & petties plus 14% VAT on R100,00	(1) (1)	100,00 14,00	
			132 000,00
NOTE: Figures marked with an asterisk are accurate; the rest are not, and candidates may have different figures.			
E CLAIMS AGAINST THE ESTATE	[4]		
1 Receiver of Revenue for final income tax assessment	(1)	20 000,00	
2 Estate duty	(1)	<u>174 600,00</u>	<u>194 600,00</u>
			326 600,00
Balance for distribution	(2)		<u>2 698 400,00</u>
			<u>3 025 000,00</u>
RECAPITULATION STATEMENT	[3]		
1 Assets realised	(1)		1 725 000,00
2 Total liabilities	(1)	326 600,00	
3 Surplus available for distribution among the heirs	(1)	<u>1 398 400,00</u>	
		<u>1 725 000,00</u>	<u>1 725 000,00</u>
DISTRIBUTION ACCOUNT	[10]		
1 Balance for distribution	(1)		2 698 400,00
2 Postage stamp collection awarded to ARTHUR ARENDSE, surviving spouse, as a special bequest in terms of the will	(2)	500 000,00	
3 Awarded to BASIL ARENDSE, major son of the deceased, one half of the residue of the estate in terms of the will, as qualified by the redistribution agreement The award comprises:	(2)		
Section 10 Vreklekker	(1)	R 800 000,00	
Cash	(1)	R <u>299 200,00</u>	
		1 099 200,00	
4 Awarded to CYRIL ARENDSE, major son of the deceased, one half of the residue of the estate in terms of the will, as qualified by the redistribution agreement The award comprises cash	(2) (1)		
		<u>1 099 200,00</u>	
		<u>2 698 400,00</u>	<u>2 698 400,00</u>

INCOME AND EXPENDITURE ACCOUNT**[8]**

1 Interest paid on 30 September 2003 on investment of R 1 000 000,00 with MNO Bank:			
Cheque received	R 50 000,00	(1)	
LESS interest accrued to date of death	R <u>25 000,00</u>	(2)	25 000,00
2 Executor's remuneration @ 6% on R 25 000,00		(2)	1 500,00
PLUS 14% VAT on R 1 500,00		(1)	210,00
3 One half of balance awarded to BASIL ARENDSE		(1)	11 645,00
4 One half of balance awarded to CYRIL ARENDSE		(1)	<u>11 645,00</u>
			<u>25 000,00</u>

NOTE: The income to be shown is post-death income COLLECTED to the date of the L & D account.

FIDUCIARY ASSETS**[1]**

NONE

ESTATE DUTY**[12]****Assets of the deceased**

Assets per liquidation account (1) 3 025 000,00

LESS Deductions

Liabilities per liquidation account (1) 152 000,00

Section 4(q) deduction in respect of bequest to surviving spouse (2) 500 000,00 652 000,00NET VALUE (2) 2 373 000,00**LESS Section 4 A deduction** (2) 1 500 000,00DUTIABLE AMOUNT (2) 873 000,00Estate duty @ 20% on R 873 000,00 (2) 174 600,00

NOTE: Donations *inter vivos* are no longer added back for estate duty purposes.

CERTIFICATE [4]

I, the undersigned,

PETER FOURIE,

in my capacity as executor, do hereby declare that, to the best of my knowledge and belief, the above account is a true and proper account of the liquidation and distribution of the state, [1] and that all the assets [1] and income collected subsequent to the death of the deceased to date hereof have been disclosed therein. [1]

Signed at Bloemfontein on 30 November 2003. [1]

EXECUTOR

Will

This is the will of me, the undersigned,

BOY NIGEL
(ID No. 810110 3261 081)

unmarried and presently resident at 10 Bell Street, Brakpan (1)

1.

I hereby revoke all wills previously made by me. (1)

2.

I hereby nominate Kay Els, a director of the legal firm Els and Partners Incorporated of Brakpan as the executor of my estate (1). I grant him the power of assumption (1). I direct that it shall not be necessary for him to furnish security to the Master of the High Court for the due performance of his duties as such (1).

Z Zondo

Kay Els

C of Oaths

on behalf of the testator

(1)

3.

I hereby bequeath my whole estate in equal shares to my father and mother. Should any one of them not be able or willing to inherit, then the remaining parent will inherit my whole estate. (1)

Signed at Brakpan on this 10th day of April 2003 (1)

As Witnesses:

1. J BOND

KAY ELS
on behalf of and at the direction
of the testator (2)

2. E BRAND

Certificate in terms of Sec 2(1)(a)(v)

I, Z Zondo of 12 Lang Street Brakpan, in my capacity as Commissioner of Oaths, certify that I have satisfied myself as to the identity of the testator (1), Boy Nigel, and that the accompanying will is the will of the testator (1).

Z Zondo

Commissioner of Oaths
Capacity:
Brakpan 10th April 2003 (1)

QUESTION 3

[7]

B inherits a child's portion or R125 000,00 whichever is the greater (§ 1 (1) (c) (i) of the Intestate Succession Act, No 81 of 1987). Descendant(s) inherit(s) the balance (§ 1 (1) (c) (ii) of Act 81 of 1987). (2)

If a descendant, *in casu D*, renounces his right to inherit, his inheritance vests in the surviving spouse (§ 1 (6) of Act 81 of 1987). (2)

Thus –

B inherits R400 000,00 (a child's portion of R200 000,00 plus **D**'s inheritance of R200 000,00). (2)

C inherits R200 000,00. (1)

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEY'S PRACTICE / PROKUREURSPRAKTYK
PART 3 / DEEL 3**

18 FEBRUARY / FEBRUARIE 2004

ANSWERS/ANTWOORDE

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QUESTION 1

[36]

1.1 Like all professional people you are expected to charge a reasonable fee for your services unless the client is entitled to be assisted pro-amico / pro-bono. While you must not overreach your client the fee must be adequate to enable you to practise profitably. Explain to the client that if he is successful the court is likely to award costs against the Defendant on the party and party basis. This does not purport to cover your costs, which will be calculated on an attorney and client basis and is likely to be substantially more. The client is liable for your entire fee and disbursements and will have the benefit of any costs recovered from the Defendant. Under no circumstances can you look to the other party for payment. You can assist your client by accepting a deposit or payment on instalments or on extended payment .

(8)

1.1.1 When you wish to act on a contingency basis a written agreement in prescribed form must be entered into setting forth exactly on what contingency you will become entitled to a fee and how such fee will be calculated and that client was fully informed on all options. You may not recover more than double your normal fees or more than 25% of the capital award whichever is the lower amount. You cannot settle the matter without lodging affidavits by yourself and client with the court if summons has been issued or with the Law Society if summons has not yet been issued. The client may ask for your fee to be reviewed by the Law Society.

(5)

2.1 Dear X

I regret to have to confirm to you that our bookkeeper appears to have stolen some of your trust money deposited with us. Since she was in our employ my partner and I are liable to replace this amount to your trust account, which we shall do the moment we have established the exact amount. We have reported the trust shortfall to our law society which will also exercise supervision that we act correctly in this matter. It appears that we are unable to pay the amount you will be entitled to recover any shortfall as well as your reasonable costs and reasonable interest from the Attorneys Fidelity Fund. They will require you to have given timeous notice of the possibility of a claim and will want to be satisfied that you were unable to recover from us or from any other source. Whatever the position, you should not suffer any loss. Please feel free to obtain independent representation in prosecuting your claim against us and the Fidelity Fund.

(8)

2.2 Dear X

On discovering that the claim of A had prescribed due to our negligence I called A in and informed him of the position. While not admitting liability I advised him to consult another attorney to assert his rights. As you know we cannot continue to act in this matter (eg. by taking the chance that the defendant will not raise a plea of prescription). The client will no doubt get his new attorney to send us a letter of demand which I shall pass on to the Attorney Indemnity Insurance Fund. We are covered for amounts in excess of R200 000 and should be out of pocket in the worst case by no more than the excess payment of R20 000. I understand that the AIIF normally instructs their own attorneys to handle the matter and to either defend or a settle same as they may be advised in consultation with us.

(8)

QUESTION 3

[13]

3.1

Date

I, the undersigned do hereby exercise the option (dated) granted to me by in terms of which I was granted the option to purchase stand (description) Herhold's Bay together with all improvements thereon subject to all the terms and conditions contained in the option.

DATED AT JOHANNESBURG ON THIS DAY OF 2003.

AS WITNESSES:

1. _____

2. _____

_____ SIGNED

(5)

NOTE TO EXAMINER:

This is not the only way in which the option can be exercised. The document exercising the option must be dated, it must identify the person exercising the option and the option itself. It must also state that the option is exercised subject to all its terms and conditions.

3.2 The letter to your client should advise him:

- That the document exercising the option should be dated and signed by him in the presence of two witnesses.
- That if the option is exercised by delivery through the post it will be regarded as having been exercised on the date of posting if this corresponds to the wording of the option. If, however,

the option is worded to the effect that the exercising thereof must reach the grantor before the expiry date the date of posting will not suffice.

- That in all the circumstances your client should ensure that exercising of the option should actually reach the grantor before the expiry date. Your client should therefore telefax the document to the grantor if possible and then send it by courier so as to ensure that it is timeously received.

(8)

QUESTION 4

[17]

4.1 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 plead. Any payment may be received and judgment by default may be taken.

(3)

4.2 4.2.1 No

(2)

4.2.2 No

(3)

4.2.3 No.

You may not borrow from a client unless client has taken independent advice or is a money-lender, due to the conflict of interest. An agent may not take a secret commission vis-à-vis a principal but may accept it with client's consent.

(3)

4.3 The court assumes that you have read the applicable authorities and that you will disclose supporting and adverse authority. You should obviously emphasise what supports you.

(3)

4.4 Since it is foolish to enter a trial without either funds or instructions you should place the client on terms so that client can have no doubt of your intention to withdraw which you must then do at an opportune time (i.e leaving client time to find another attorney.

(3)

QUESTION 5**[6]**

-
- 5.1 A Section 78 (2) investment in an interest-bearing account with a financial institution, the interest accruing to the Fidelity Fund. (3)
- 5.2 Although the seller is the attorney's client, the money is held in trust on behalf of the purchaser and remains the purchaser's property until transfer is registered. The sheriff will therefore not be entitled to attach the money in satisfaction of the writ issued against the seller. (3)

QUESTION 6**[12]**

- 6.1 He must ask the deponent whether he/she knows and understands the contents of the affidavit; he must ask the deponent whether he/she has any objection to taking the prescribed oath; he must ask the deponent whether he/she regards the oath as binding on his/her conscience. If the deponent has an objection to taking the oath, he/she may make a solemn declaration. The affidavit or solemn declaration is then signed in the presence of the Commissioner of Oaths, who also signs it. A certificate must be added to the bottom of the document, confirming that the document was signed and attested to before him. The affidavit must contain the full names, physical address and authority of the Commissioner of Oaths. (7)
- 6.2 No, unless it is an affidavit taken by an attorney for purposes of the registration of a transaction in the Deeds Office or required to be submitted to the Minister of Justice. (3)
- 6.3 An attorney is automatically a Commissioner of Oaths ex officio. (2)

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEY'S PRACTICE / PROKUREURSPRAKTYK
PART 4 / DEEL 4**

18 FEBRUARY / FEBRUARIE 2004

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]

- | | | |
|----|-------------------------------------|-----|
| 1. | monthly – at the end of each month | (2) |
| 2. | quarterly – four times a year | (2) |
| 3. | daily – first available banking day | (2) |
| 4. | annually | (2) |
| 5. | annually | (2) |

QUESTION 2

[15]

2.1

SUPPLEMENTARY CASH BOOK (T) – SEPTEMBER 2002 (1)

Balance	(1)	64 789	R/D cheque	(1)	734
Interest	(1)	7 108	Balance	(1)	102 942
Stale cheque	(1)	1 779			
Deposit	(1)	30 000			
	(1)	103 676		(1)	103 676

2.2

BANK RECONCILIATION STATEMENT AT SEPTEMBER 2002 (1)

Bank Balance as per bank statement	114 310	(1)
Less outstanding cheque	17 218	(1)
	97 092	
Add outstanding deposit	3 114	(1)
	100 206	
Add error	2 736	(1)
Balance as per cash book	102 942	(2)

QUESTION 3

[35]

TRUST CASH BOOK

Green	9 306-00	Correspondent	7 931-60
		Transfer to Business	1 374-40
	9 306-00		9 306-00

BUSINESS CASH BOOK

Transfer ex Trust	1 374.40	Sherrif	200.00
		Stamp	80.00

TRUST LEDGER

CORRESPONDENT (BLACK) - TRUST

Cash	7 931.60	Cash	9 306.00
Transfer to Business	1 374.40		
	9 306.00		9 306.00

BUSINESS LEDGER

CORRESPONDENT (BLACK) - BUSINESS

Fees + VAT	1 026.00	Fees	205.20
Sherrif	200.00	Fees	68.40
Stamp	80.00	Transfer ex Trust	1 374.40
Fees & VAT	342.00		
	1 648.00		1 648.00

FEEES

Correspondent	180.00	Correspondent	900.00
Correspondent	60.00	Correspondent	300.00

OUTPUT VAT

Correspondent	25.20	Correspondent	126.00
Correspondent	8.40	Correspondent	42.00

FEE JOURNAL

Correspondent (B)	Dt	1 026-00	
Fees	Ct		900-00
Output VAT	Ct		126-00
<i>Being fees for summons</i>			

Fees	Dt	180-00	
Output VAT	Dt	25-20	
Correspondent (B)	Ct		205-20
<i>Being 20% allowance</i>			

Correspondent (B)	Dt	342-00	
Fees	Ct		300-00
VAT Output	Ct		42-00
<i>Being collection commission</i>			

Fees	Dt	60-00	
VAT Output	Dt	8-40	
Correspondent (B)	Ct		68-40
<i>Being 20% allowance</i>			

TRANSFER JOURNAL

Correspondent (T)	Dt	1 374-40	
Correspondent (B)	Ct		1 374-40
<i>Transfer fees and disbursements</i>			

STATEMENT OF ACCOUNT

To summons	900-00	180-00
To VAT	126-00	25-20
To paid stamp	80-00	
To paid sherrif	200-00	
By cash Green		9 306-00
To Collection commission	300-00	60-00
To VAT	42-00	8-40
To cheque herewith	7 931-60	
	9 579-60	9 579-60

NOTE TO EXAMINER:

Collection commission varies in different provinces. Examiners must use their discretion in this instance.

1 mark for each ledger entry

2 marks for each journal entry

6 marks for each accounting statement

TRUST CASH BOOK

Purchaser	100 000	ABSA	100 000
Purchaser	30 000	ABSA	200 000
ABSA	107 000	Seller	300 000
ABSA	212 000	Purchaser	7 000
Building Society	300 000	Lender	12 000
		T/F	30 000

PURCHASER

Cash	300 000	Cash	100 000
T/F	30 000	Cash	30 000
		Cash	300 000
		Lender	100 000

LENDER

Purchaser	100 000	Balance	200 000
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ABSA (SECTION 78(2)(A) PURCHASER

Cash	100 000	Cash	107 000
Cash	7 000		

ABSA (SECTION 78(2)(A) LENDER

Cash	200 000	Cash	212 000
Cash	12 000		

BUSINESS CASH BOOK

T/F	30 000	Receiver of Revenue	22 000
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PURCHASER

Cash	22 000	T/F	30 000
Fees	8 000		

FEEES

	Purchaser	8 000
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TRANSFER JOURNAL

Purchaser (T)	Dt	30 000-00	
Purchaser (B)	Ct		30 000-00
<i>Transfer and bond costs</i>			

FEE JOURNAL

Purchaser	Dt	8 000-00	
Fees	Ct		8 000-00

NOTE TO EXAMINER:

1 mark for each entry