

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

15 FEBRUARIE / 15 FEBRUARY 2005

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. WLD does not have jurisdiction.
2. Plaintiff's full names should be stated.
3. WLD and TPD do not have concurrent jurisdiction.
4. No negligence alleged – no cause for action.
5. Ownership of BMW irrelevant.
6. Insufficient particulars alleged to found vicarious liability.
7. No allegation that plaintiff has suffered damages.
8. Insufficient particulars of damages to comply with Rule 18.
9. Costs to reinstate to pre accident condition not alleged.
10. Preamble to prayers wrong. Should be "Jointly and severally the one paying the other to be absolved".
11. Rate of interest should be 15.5% pa.
12. Date from which interest runs can hardly be date of collision.
13. Attorney + Client costs not applicable.
14. Wrong form of summons used. Should have been particulars of claim (combined summons) not a declaration which follows a simple summons.

Max [10]

QUESTION 2

[15]

2. a) Application should be made for an interdict by way of Notice of Motion and Supporting Affidavit. [½]
- b) In the High Court of South Africa (Orange Free State Provincial Division).

In the matter between

Jack Jones

APPLICANT

Mr Buckle

RESPONDENT [½]

NOTICE OF MOTION:

Be pleased to take Notice that the abovementioned Applicant intends applying to the above Honourable Court for an Order in the following terms;

- i) That Respondent be interdicted from carrying out any panel-beating activities on the premises known as 3 Village Avenue, Bloemfontein.
- ii) That the Defendant be interdicted and restrained from causing any excessive noise on the premises known as 3 Village Avenue, Bloemfontein. [1]
- iii) Costs of the Application. [1]
- iv) Further and/or alternative relief.

Further take notice that the accompanying Affidavit of Jack Jones will be used in support of this Application. [1]

Further take Notice that the Applicant has in terms of Rule 6 (5) appointed the address of Kosie Koekemoer Inc, Applicants attorneys of record for the service of further Notices and Papers in the above Application. [1]

Further take Notice that if you intend opposing this Application you are to inform Applicant's attorneys of your intention to do so on or before such and such a date of 2004. [1]

Further take Notice that after having given your Notice of your Intention to Oppose you are to file your Opposing Affidavit within 15 days of such Notice of Intention to Oppose. If no such Notice be given, the Application will be made on such and such date of 2004. [1]

Kindly enroll the matter accordingly.

.....
Kosie Koekemoer Inc
Plaintiff's attorneys of record

TO: The Registrar
Bloemfontein
AND TO: Respondent
Buckle
3 Village Avenue
Bloemfontein

Note to examiner:

The Supporting Affidavit should contain the following information:

1. The Applicant's details [1]
2. The Respondent's details [1]
3. That the Court has jurisdiction to hear the matter [1]
4. That the Respondent is carrying out an unlawful activity on his premises which should be described [1]
5. That he is creating a nuisance and interfering with the Applicant's enjoyment of the property. Describe fully [1]
6. That Applicant is suffering damage as a result of his unlawful activities [1]
7. That the Applicant has no other remedy but to approach the Court for the relief sought [1]
8. That the Applicant has suffered damage for which he has no claim sounding in money which will restore him to the situation ant quo [1]

The above is not exhaustive but intended merely as a guideline.

QUESTION 3 [4]

1. Apply to rescind judgment [1]
2. Show that your client was not in willful default in failing to attend court, and that your client has a good defence to the action. [3]

QUESTION 4 [6]

1. Make an ex parte application for a garnishee order [2]
2. Serve a warrant of execution at defendant's domicilium executandi and, assuming no movable is attached, re-issue that warrant and attach the immovable property. The alternative would be to make application in terms of Section 66[1] for an order permitting the attachment of the immovable property but this may take too long in practice. [3]
3. Institute section 65 proceeding or emoluments attachment application (Section 65(j)). [1]

QUESTION 5 **[3]**

1. Make an application for further and better discovery in terms of Rule 60(2). Where any order so made, if not fully complied with within the time so stated, make application to have the claim/defence dismissed. [1]
2. No – a document not discovered may not be used for any purpose at the trial of the action without the leave of the Court or the consent of the other side. [2]

QUESTION 6 **[4]**

1. Absolution from the instance. [1]
2. Yes [1]
3. No [1]
4. Institute the proceedings afresh. [1]

QUESTION 7 **[4]**

1. He can make payment into court without prejudice in terms of Rule 18(2). [1]
2. He can make a tender to pay the amount supported by a payment into Court. [1]
3. He can consent to judgment for that portion of the amount he admits in terms of Rule 11(5). [1]
4. Pay the amount he admits directly to the plaintiff. [1]

QUESTION 8 **[4]**

1. Apply to the Plaintiff by notice in terms of Rule 15(1) for copies of all or any of the accounts or documents upon which the action is founded. [1]
2. Request further particulars in terms of Rule 16(1) to enable defendant to plead. [1]
3. Request security for costs in terms of Rule 62. [1]
4. Deliver exception to the summons if applicable. [1]

QUESTION 9**[14]**

- 9.1 Past medical and hospital expenses. (1)
Future medical expenses. (1)
Past and future loss of earnings. (1)
General damages. (1)
(4)
- 9.2 Yes. The head/facial injuries were probably caused by the fact that your client was not wearing the seat belt. Accordingly he contributed to such injuries and his damages can be reduced accordingly in terms of the Apportionment of Damages Act. (2)
- 9.3 Orthopaedic surgeon
Neurosurgeon
Psychologist / Psychiatrist
Maxillo – facial Specialist
Occupational therapist
Actuary (3)
- 9.4 No. They will in due course and if claim is successful be recoverable as part of your client's party & party costs. (2)
- 9.5.1. Your client will now only be able to recover from the R.A.F. as an ordinary passenger his special and general damages limited to R 25 000.00 (1)
- 9.5.2. Your client can recover all the damages he has suffered and can prove in excess of the amount of R 25 000.00 he recovers from the R.A.F. (1)
- Your client has no claim against Telkom because an employee cannot recover damages from his employer arising from a co-employee's negligence. (1)

Question 10**[6]**

- 10.1 My client will not have a claim against the Road Accident Fund. A cart is not a motor vehicle in terms of the Road Accident Fund Act. A motor vehicle means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicles. (2)
- 10.2 My client will have a claim for compensation against the Road Accident Fund. The collision was due to the negligent driving of the driver of the other motor vehicle. My client, despite his intoxication and not having a valid driver's license was not the cause of the collision. He may have committed a criminal act which, in the present circumstances did not in any way contribute to the collision. (2)

- 10.3 Yes. He has an unlimited claim. In **Bezuidenhout** versus the **Road Accident Fund**, the Supreme Court of Appeal held that Regulation 2(1)(d) of Act No. 56 of 1996 is ultra vires the empowering provisions of the Act. The pre-requisite of physical contact is no longer necessary. (2)

Question 11 **[2]**

Issue and serve a subpoena duces tecum on the South African Police. The subpoena should properly describe the documents, which the police are required to produce, and deliver forthwith to the Registrar. In the absence of such description, the police are not obliged to obey the subpoena. [Rule 38(4)]

Question 12 **[1½]**

- | | |
|-------------------------------|-----|
| (1) Minors | (½) |
| (2) Mental patients | (½) |
| (3) Persons under curatorship | (½) |

Question 13 **[1½]**

- | | |
|-------------------|-----|
| 13.1 23 July 2006 | (1) |
| 13.2 No | (½) |

[Note: All "hit and run" claims must be lodged within two years of the occurrence.]

QUESTION 14 **[4]**

- 14.1 In terms of Section 60(11B) an accused is obliged to inform the Court whether:

he has previously been convicted of any offence; and
there are any charges pending against him or her and whether he or she
has been released on bail in respect of these charges. [2]

- 14.2 Wilful failure by an accused to comply with the disclosure requirement is an offence punishable by a fine (a maximum of R40 000.00) or to imprisonment not exceeding 2 years.

Furthermore, a Court may withdraw bail if an accused has not correctly disclosed all his previous convictions or has failed to make a full disclosure.

[2]

QUESTION 15

[6]

- 15.1 In Shabalala and 5 Others vs Attorney-General of the Transvaal and Another it was held that the right to a fair trial, embodied in Section 25(3) of the interim Constitution, ordinarily includes access to the statements of witnesses and such of the contents of a police docket as are relevant in order to enable an accused person properly to exercise that right. The prosecution may, however, in a particular case, be able to justify the denial of such access on the grounds that it is not justified for the purposes of a fair trial. This would depend on the circumstances of each case. The State is entitled to resist a claim by the accused for access to any particular document in the police docket on the grounds that:

Such access is not justified for the purposes of a fair trial; or

It has reason to believe that there is a reasonable risk that access to the relevant documents would lead to the disclosure of the identity of an informer or State secrets; or

There is a reasonable risk that such disclosure may lead to the intimidation of witnesses or otherwise prejudice the proper ends of justice. [4]

- 15.2 Even where the State denies access to a document on one of these grounds, an application can be brought to the trial court which has a discretion to order that the defence nevertheless be granted access to such document after having balanced the dangers involved in disclosing the document with the danger that a fair trial will otherwise not be possible.

Should the State refuse to make such an order an application can be made to a Higher Court compelling the State to furnish the documents. [2]

QUESTION 16

[15]

- 16.1 Yes.

[1]

- 16.2 The attorney is an officer of the Court and may accordingly not mislead the Court in any way.

[1]

- 16.3 The onus is upon the State to prove its case and accordingly:
The State is challenged to prove its case by way of a plea of not guilty.
No explanation of plea is to be given and the accused is to exercise his right to remain silent.
No misleading questions can be put to witnesses during cross examination which will give the impression that the accused was not present, did not stab the deceased etc;
The accused will not be able to give evidence.
As soon as it appears that the State has proved its case against the accused he will be obliged either to change his plea to one of guilty to any offence which the State has been able to prove at that time or alternatively the accused will close his case and he will address the Court on the evidence before it at that point in time. [5]

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

Case No. 115/93

In the matter between

THE STATE

And

ACCUSED

STATEMENT IN TERMS OF SECTION 112(2)

I, the accused, do hereby declare that:

1. I am the accused in this matter and I understand the nature of the charge against me. This statement is made freely and voluntarily and I am aware of my rights in this regard.
2. I have heard the evidence of the State witnesses in this regard and I do not dispute the evidence which has been given to date.
3. I accordingly admit that on the 3rd of June 1993 the deceased and I were both present at the Royal Hotel, Pretoria.
4. We were drinking beer and in the course of the evening a dispute over the ownership of a bottle of beer developed between myself and the deceased. We were both relatively inebriated at the time but I was fully aware of my actions. A fist-fight broke out between the deceased and I and I picked up a knife which was on the counter for the cutting of biltong and I stabbed the deceased once in the neck
5. I admit that I exceeded the bounds of self-defence in so stabbing the deceased as it was unnecessary to use a weapon in the circumstances

- 6 I furthermore admit that I should have foreseen that by stabbing the deceased in the neck I could cause his death. I accordingly admit that my actions were wrongful and unlawful
- 7 I admit that the deceased died as a consequence of the stab wound to the neck and I admit the contents of the post-mortem report of Dr Jacobs as well as his findings relating to the deceased's death.
- 8 I accordingly plead guilty to culpable homicide.

DATED at PRETORIA on this the day of

[8]

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

15 FEBRUARIE / 15 FEBRUARY 2005

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

[50]

| | | | | | |
|--|--|------|--------------|-----|------------|
| <p>First and Final Liquidation and Distribution Account in the joint estate of the late Peter Jones, Identity number 300528 5238 007 [1], married in community of property to Jane Jones (born Nell) [1], Identity number 320816 6143 008. [1] Date of death : 28 July 2004 [1] Master's reference : 42683/04 [1]</p> | | | | | [5] |
| LIQUIDATION ACCOUNT | | | | | |
| <u>ASSETS</u> | | | | | |
| 1. <u>IMMOVABLE PROPERTY</u> | | | | | |
| 1.1 | Portion 1 of Erf 884 Potchefstroom, Registration Division JT North-West Province, measuring 900 square metres, held under deed of transfer no T1234/72, dated 18 October 1972 | (1) | 880 000,00 | [1] | |
| | (To be transferred to the surviving spouse as residuary heir in terms of clause 4 of the will) | | | [1] | |
| 1.2 | Portion 16 of the farm Pezula situate in the district of Mankwe, Registration Division JT North-West Province, measuring 246 hectares. Held under deed of transfer no T4567/68, dated 14 July 1968 | (2) | 1 800 000,00 | [1] | |
| | (To be transferred to John Jones as legatee in terms of clause 3 of the will) | | | [1] | |
| 2. <u>MOVABLE PROPERTY</u> | | | | | |
| 2.1 <u>Livestock consisting of:</u> | | | | | |
| | 25 Jersey cows [in milk] | (3) | 125 000,00 | | |
| | 1 Jersey bull | (4) | 34 000,00 | | |
| | 2 Shetland ponies | (5) | 1 400,00 | [1] | |
| | (Awarded to John Jones as legatee in terms of clause 3 of the will) | | | | |
| 2.2 <u>Farming implements:</u> | | | | | |
| | John Deere tractor | (6) | 223 000,00 | | |
| | Rotatiller plough | (7) | 5 000,00 | | |
| | 10-ton cattle truck | (8) | 19 500,00 | [1] | |
| | (Awarded to John Jones as legatee in terms of clause 3 of the will) | | | | |
| 2.3 <u>Motor Vehicles</u> | | | | | |
| | 2003 BMW 330d sedan, registration no DDT403 NW | (9) | 200 000,00 | | |
| | 2002 Volkswagen Jetta 1.8 sedan, registration no ABC108 NW. | (10) | 140 000,00 | | |
| | (Awarded to the surviving spouse in terms of clause 4 of the will) | | | [1] | |
| Carried forward | | | 3 427 900,00 | | |

| | | | | | |
|---------------------------|--|------|-----------|------------|-----|
| 2.4 | <u>Furniture and effects:</u> | | | | |
| | Dining room suite | (11) | | 10 000,00 | |
| | Grandfather clock | (12) | | 4 000,00 | |
| | 3 Bedroom suites | (13) | | 24 000,00 | |
| | 4 Persian carpets | (14) | | 90 000,00 | |
| | 6 Paintings | (15) | | 12 400,00 | |
| | (Awarded to the surviving spouse as residuary heir in terms of clause 4 of the will) | | | | [1] |
| 2.5 | <u>Cash and Cash Investments:</u> | (16) | | 35 100,00 | [1] |
| 2.5.1 | Credit balance in current account at ABC Bank, XYZ Branch, account number 631-204-871 | (17) | | | |
| | Capital R150 000,00 | | | 153 500,00 | [2] |
| | Interest to date of death R 3 500,00 | | | | |
| 2.5.2 | Fixed deposit at ABC Bank, XYZ Branch, certificate number 632-502-406 | (18) | | | |
| | Capital R500 000,00 | | | 512 500,00 | [1] |
| | Interest to date of death R 12 500,00 | | | | |
| | (Awarded and ceded to surviving spouse as residuary heir in terms of clause 4 of the will) | | | | [1] |
| 3. | <u>INSURANCE POLICIES</u> | | | | |
| | Proceeds of Sun Life policy on the life of the deceased : policy number 89101112/X | (19) | | 950 500,00 | |
| | (Collected by executor and paid into estate banking account) | | | | [1] |
| <u>LIABILITIES</u> | | | | | |
| 1. | ADMINISTRATION COSTS | | | | |
| 1.1 | Advertisements: | | | | |
| | Section 29: | | | | |
| | Sowetan | (20) | 206,00 | | |
| | Government Gazette | | 22,00 | | [2] |
| | Section 35: | | | | |
| | Sowetan | (21) | 206,00 | | |
| | Government Gazette | | 22,00 | | [1] |
| Carried forward | | | 456,00 | | |
| 1.2 | Valuation Costs : J Mutle | | | | |
| | House | (22) | 4 000,00 | | [1] |
| | Farm | (23) | 6 000,00 | | [1] |
| 1.3 | Valuation Costs : P Naidoo | | | | |
| | Movable Property | (24) | 2 000,00 | | [1] |
| 1.4 | Transfer costs : Steyn Attorneys Inc | | | | |
| | House | (25) | 18 000,00 | | [1] |
| | Farm | (26) | 20 000,00 | | [1] |
| 1.5 | Bank charges | (27) | 100,00 | | [1] |

| | | | | | |
|---|--|---|---------------------|---------------------|------------|
| 1.6 | Postages and Petties | (28) | 50,00 | | [1] |
| | | | 50 606,00 | | |
| 1.7 | Master's fees | | 600,00 | | [1] |
| 1.8 | Executor's remuneration: 3,5% on R5 246 900,00 | | 183 641,50 | | [2] |
| 1.9 | Burial Costs PQR Funeral Services | (29) | 8 000,00 | | [1] |
| 1.10 | S.A. Revenue Services Final assessment | (30) | 16 460,00 | | [1] |
| TOTAL ASSETS | | | | 5 219 900,00 | |
| TOTAL LIABILITIES | | | 259 307,50 | | |
| BALANCE FOR DISTRIBUTION | | | 4 960 592,50 | | [1] |
| | | | 5 219 900,00 | 5 219 900,00 | [30] |
| <u>RECAPITULATION STATEMENT</u> | | | | | |
| 1. | Total cash [items 16, 17 and 19] | | | 1 139 100,00 | [1] |
| 2. | Liabilities | | 259 307,50 | | [1] |
| 3. | Cash available for distribution | | 879 792,50 | | [1] |
| | | | 1 139 100,00 | 1 139 100,00 | [3] |
| <u>DISTRIBUTION ACCOUNT</u> | | | | | |
| Balance for distribution | | | | 4 960 592,50 | [1] |
| Distributed as follows: | | | | | |
| To John Jones , major son as legatee in terms of clause 3 of the will. | | | 2 207 900,00 | | [2] |
| The award consists of: | | | | | |
| | Fixed property | R1 800 000,00 | | | [1] |
| | Livestock | R 160 400,00 | | | [1] |
| | Farm implements | <u>R 247 500,00</u> | | | [1] |
| | | R2 207 900,00 | | | |
| Remainder to Jane Jones , surviving spouse. | | | 2 752 692,50 | | [1] |
| Distributed as follows: | | | | | |
| (a) | By virtue of marriage in community of property add back: one half of funeral costs | R1 376 346,25 <u>R 4 000,00</u> R1 380 346,25 | | | [1] [1] |
| (b) | As heir in terms of clause 3 of the will | <u>R1 372 346,25</u> R2 752 692,50 | | | [1] |
| | | | 4 960 592,50 | 4 960 592,50 | [1] |

| | | | | |
|--|----|-------------------|--|------|
| The award to the surviving spouse consists of: | | | | |
| Fixed property | R | 880 000,00 | | |
| Motor vehicles | R | 340 000,00 | | |
| Furniture | R | 140 400,00 | | |
| Fixed deposit | R | 512 500,00 | | [2] |
| Cash | R | <u>879 792,50</u> | | [12] |
| | R2 | <u>752 692,50</u> | | |

QUESTION 2

[30]

| ESTATE DUTY | | | |
|---|-------------------|---------------------|-----|
| | R | R | |
| Assets per liquidation account | | 7 000 000,00 | (1) |
| LESS proceeds of life policy | | 800 000,00 | (2) |
| | | <u>6 200 000,00</u> | (2) |
| LESS surviving spouse's half share | | 3 100 000,00 | |
| | | <u>3 100 000,00</u> | |
| PLUS fiduciary interest: | | | |
| (Age of F on his next birthday after date of death: 66 years) | | | (2) |
| $R500\ 000,00 \times 6,00726 \times 12\% =$ | | 360 435,60 | (3) |
| | | <u>3 460 435,60</u> | |
| PLUS policy deemed to be property of the deceased | | 800 000,00 | (2) |
| | | <u>4 260 435,60</u> | |
| LESS deductions: | | | |
| Deceased's half share of liabilities | 500 000,00 | | (2) |
| Bequest to wife [S 4(q)] | 100 000,00 | | (2) |
| Bequest to PBO | 200 000,00 | 800 000,00 | (2) |
| NET VALUE | | <u>3 460 435,60</u> | (2) |
| LESS rebate [S 4 A] | | 1 500 000,00 | (2) |
| DUTIABLE AMOUNT | | <u>1 960 435,60</u> | (2) |
| Estate duty on R1 960 435,60 @ 20% | 392 087,12 | | (2) |
| Apportionment: | | | |
| F : $\frac{360\ 435,60}{3\ 460\ 435,60} \times 392\ 087,12$ | 40 839,41 | | (2) |
| Estate : $\frac{3\ 100\ 000,00 + 800\ 000,00 - 800\ 000,00}{3\ 460\ 435,60} \times 392\ 087,12$ | 351 247,71 | | (2) |
| | <u>392 087,12</u> | | |

QUESTION 3**[10]**

- 3.1 Person 16 years and older [1]; Who can appreciate the nature and effect of his act [1].
- 3.2 On the last page [1]; Anywhere [1]
- 3.3 (a) Commissioner of Oaths [1]
- (b) On any page [1]; Anywhere [1]
- (c) Except for the page on which the certificate appears, anywhere on all the other pages. [1]
- (d) That he has satisfied himself as to the identity of the testator [1] and that the will so signed is the will of the testator [1].

QUESTION 4**[10]**

| | | |
|--|-------------|-----|
| Mrs X is entitled to a half share of the joint estate by virtue of the marriage in community of property | R305 000,00 | (2) |
| The deceased's half share devolves as follows: | | |
| Mrs X inherits a child's share or R125 000,00, whichever is the greater. | | (2) |
| A child's share is $R305\ 000,00 \div 3 =$ less than R125 000,00. | | |
| Mrs X inherits | R125 000,00 | (2) |
| Residue of R180 000,00 is inherited as follows: | | |
| A | R90 000,00 | (1) |
| Mrs X [because she alone stands to benefit by B's renunciation - Section 1(6) of the Intestate Succession Act] | R90 000,00 | (3) |
| | R610 000,00 | |

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK
PART 3 / DEEL 3**

16 FEBRUARIE / 16 FEBRUARY 2005

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

[40]

- 1.1 The various law societies have prescribed attorney-and-client fees for debt collection. You may enter into a contingency fee agreement. The agreement must be in writing in the prescribed form, stating on what contingency you become entitled to a fee and how it is calculated and that your client was informed of all options. You may not recover more than double your normal fee or more than 25% of the amount recovered (whichever is lower). (8)
- 1.2 You may recover the tariff stipulated in the rules of the magistrate's court for undefended actions or any attorney-and-client fees if the debtor has consented in writing. In the Northern Provinces Rule 81 will apply. (4)
- 1.3 It was obviously the intention that the brothers should bind themselves jointly and severally as sureties as manifested in the wording of the deed. Therefore the failure by one of the sureties to sign the document will render it invalid in terms of the provisions of section 6 of Act no 50 of 1956. You will not succeed against the signatory unless the suretyship provides otherwise. (6)
- 1.4 It is normal practice to appoint a tracing agent on a "no trace no pay" basis. In your summons you must add a further claim for tracing costs. (4)
- 1.5 Since A was a partner and liable at the time the cause of action arose, he remains liable. (2)
- 1.6 You may sue Abe's insolvent estate and require the trustee to set aside the sale of the business in terms of Section 31 of the Insolvency Act. Ben should have required the sale to be advertised in terms of Section 34. (6)

"14 July 2004

REGISTERED POST

Mr D Debtor
23 Bank Street
Margate

Dear Sir

We act on behalf of A and refer to the acknowledgement of debt signed by you on the (date) in terms of which you acknowledged your indebtedness to our client as will more fully appear from the acknowledgement of debt.

The acknowledgement of debt provided that in the event of your failure to pay any instalment by due date our client would be obliged to give 14 days notice in writing by prepaid registered post requiring you to effect payment and in the event of your failure to make such payment our client would have the right to claim the full outstanding balance. The balance owing is the sum of R50 000.00 together with interest thereon at the rate of 15.5 % per annum.

The instalment of R5 000.00 which was payable by you on the (date) has not been paid and consequently in accordance with the provisions of the acknowledgment of debt we hereby call upon you to effect payment of such instalment within 14 days from date of the receipt of this letter by you. Should you fail to effect payment the aforementioned full balance will become due and payable and we have instructions to issue summons against you for the recovery thereof.

1.8 You may in addition to the usual Section 65 remedies (5)

1.8.1 Obtain an emolument attachment order in order to recover part of the salary directly from the employer;

1.8.2 You could attach the vehicle and have same sold in execution; and

1.8.3 You could attach the claim against debtor's brother by way of garnishee order.

Cession of Book Debts

made and entered into by and between:

ABC WHOLESALERS CC
herein represented by ABC the managing member thereof he being duly
authorised hereto
(hereinafter called the CEDENT)

AND

XYZ BANK LTD
(hereinafter called the CESSIONARY)

WHEREAS the CEDENT has agreed to grant security for its indebtedness to the CESSIONARY arising out of an overdraft facility granted to it by the CESSIONARY;

and

WHEREAS the CEDENT has agreed to cede as security to the CESSIONARY all its book debts present and future.

NOW THEREFORE:

1. The CEDENT hereby cedes to the CESSIONARY all its right, title and interest in and to all the book debts of the CEDENT, both present and future from whatsoever cause arising as security for the above indebtedness of the CEDENT to the CESSIONARY arising from the obligation set out in the recital hereto.
2. This cession shall be of force and effect until the whole of the CEDENT's indebtedness to the CESSIONARY shall have been extinguished by payment or other form of discharge.
3. The CEDENT shall while the cession is in force and when required to do so by the CESSIONARY deliver to the CESSIONARY a list of all the CEDENT's debtors which shall reflect the names and addresses of such debtor and the amount of the indebtedness of each of them.

3.3 Letter to client:

We confirm that the claim forms have now been submitted to the Liquidator who will see to it that the claim will be proved at the next meeting of creditors.

After the second meeting of creditors, and provided no special meetings are held, the liquidator has to draw his account and submit same to the Master of the Supreme Court who will inspect same, prepare a list of queries or approve the account and allow the liquidator to advertise the fact that the account will be confirmed. Thereafter the liquidator will make a distribution in terms of the account and will pay dividends to the proved creditors insofar as they have not been paid earlier. (6)

QUESTION 4

[10]

An attorney may in principle refuse to accept any mandate. An attorney must refuse in the following circumstances:

- 4.1.1 He does not have the necessary expertise to do the work;
- 4.1.2 He does not have sufficient time to do the work;
- 4.1.3 He is in a conflict of interest situation;
- 4.1.4 He cannot come to a satisfactory arrangement about fees;
- 4.1.5 The instruction is unlawful, immoral or contrary to public policy.

He must accept a mandate from an existing client particularly in an emergency situation. He must also accept the mandate if there are a limited number of attorneys in a particular area which has the effect that there is no other attorney to assist the client. (10)

QUESTION 5

[15]

- 5.1 Do the necessary research eg read Lewis and any relevant cases. Guidance could also be obtained from the Law Societies or from colleagues. (3)
- 5.2 It is not only in order but also advisable that an attorney agrees on a fee in advance with the advocate as this will eliminate the surprise element and resultant problems if the fee is more than anticipated. It is the attorney's duty to keep his client informed of the cost implications of each case. (2)

5.3 Section 83(8) provides that only an attorney may prepare the following documents with the expectation of a fee, gain or reward:

1. An agreement or deed in respect of immovable property or rights in or to immovable property, other than leases not exceeding 5 years, conditions of sale or broker's notes;
2. a will or testamentary writing;
3. memorandum and articles of association or prospectus of a company;
4. documents relating to the creation or dissolution of a partnership or any variation of the terms thereof; and
5. any instrument or document required or intended for any use in civil proceedings in the Republic.

5.4. An attorney may not under any circumstances arrange a consultation if he knows that he will not be able to be present. Should unforeseen circumstances occur and the consultation must necessarily take place, the attorney must arrange that one of his partners, a professional assistant or a candidate attorney in his employ, attend the consultation. If it is necessary for the attorney himself to attend because it is the wish of his client that he does so, the consultation should rather be postponed.

(5)

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
BOOKKEEPING / BOEKHOUD
PART 4 / DEEL 4**

16 FEBRUARIE / 16 FEBRUARY 2005

ANSWERS/ANTWOORDE

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[30]

Trust cash book

| | | | |
|--------------|-------|------------------------|------|
| Marcus (1/2) | 1 000 | Tracing agent (1/2) | 250 |
| Thomas (1/2) | 2 000 | Business Account (1/2) | 570 |
| | | Marcus (1/2) | 1180 |

Marcus (T)

| | | | |
|--------------------------|-------|----------------------|-------|
| Paid tracing agent (1/2) | 250 | Bank – deposit (1/2) | 1 000 |
| Transfer to Bus. (1/2) | 570 | Bank – Thomas (1/2) | 2 000 |
| Bank self | 1 180 | | |

Marcus (B)

| | | | |
|-------------------------|-------|-------------------------|-------|
| Demand & summons (1/2) | 342 | Transfer ex trust (1/2) | 570 |
| Collection comm.. (1/2) | 228 | | |
| | <hr/> | | <hr/> |

Fees

| | | | |
|--|--|--------------|-------|
| | | Marcus (1/2) | 300 |
| | | Marcus (1/2) | 200 |
| | | | <hr/> |

VAT Output

| | | | |
|--|--|--------------|----|
| | | Marcus (1/2) | 42 |
| | | Marcus (1/2) | 28 |

Business Cash Book

| | | | |
|---------------------|-----|--|--|
| Trust account (1/2) | 570 | | |
|---------------------|-----|--|--|

| | | | |
|-----------------------------|---|--------------|--------------|
| | Marcus (B) | 342 | |
| | Fees | | 300 |
| Fees Journal | VAT output | | 42 |
| (4) | Letter of demand and summons fees re: Thomas | | |
| | Marcus (B) | 228 | |
| Fees Journal | Fees | | 200 |
| (4) | VAT – output | | 28 |
| | Collection commission vs Thomas | | |
| Transfer Journal | Marcus (T) | 570 | |
| (3) | Marcus (B) | | 570 |
| | Transfer fees | | |
| Accounting statement | | | |
| Marcus | | | |
| Re: Collection | | | |
| Thomas | | | |
| | Deposit received | | 1 000 |
| | Collection Thomas | | 2 000 |
| | Paid tracing agent | 250 | |
| (10) | Letter of demand and summons fees | 300 | |
| | Collection commission | 200 | |
| | Vat at 14% | 70 | |
| | Cheque herewith | 1 180 | |
| | Balance held in trust | 1 000 | |
| | | <u>3 000</u> | <u>3 000</u> |

QUESTION 2**[20]**

| Trust cash book | | | |
|-----------------|---------|------------|---------|
| Poor | 100 000 | Absa Bank | 200 000 |
| Absa Bank | 210 000 | Unit Trust | 100 000 |
| Unit Trust | 106 000 | R/D Cheque | 100 000 |
| | | Rich | 10 000 |

| Trust Ledger Rich | | | |
|-------------------|----------------|-------------------|----------------|
| Cash – Unit trust | 100 000 | Balance | 400 000 |
| Cash – RD Cheque | 100 000 | Cash – Poor | 100 000 |
| Cash - Self | 10 000 | Cash – Unit Trust | 106 000 |
| Balance | 406 000 | Absa - Interest | 10 000 |
| | <u>616 000</u> | | <u>616 000</u> |
| | | Balance | 406 000 |

| Section 78(2A) Absa Bank (If Rich) | | | |
|------------------------------------|----------------|------|----------------|
| Cash | 200 000 | Cash | 210 000 |
| Rich | 10 000 | | |
| | <u>210 000</u> | | <u>210 000</u> |

You must get a written instruction to buy Unit Trusts as this is not a Section 78(2A) OR 78(2)(a) Investment.

(1 Mark for each correct entry (18) and 2 marks for explanation)

QUESTION 3**[20]**

- 3.1 Section 78(2A) and Section 78(2)(a)
- 3.2 No
Yes
- 3.3 No
- 3.4 Compare the Business debit ledger balances of clients with the Trust credit ledger balances of the same client.
- 3.5 Draw a business cheque to cash and cash the cheque thereafter transfer the amount required from Trust to Business
- 3.6 VAT paid by attorney for purchases made
VAT charged by attorney for services rendered
- 3.7 Transfer R1800-00 from Business
- 3.8 No

QUESTION 4**[30]**

| Trust cash book | | | |
|-----------------|---------|----------|---------|
| Green | 1602,00 | Black | 1488,00 |
| | | Transfer | 114,00 |

| Business Cash book | |
|--------------------|--------|
| Transfer | 114,00 |

| Green Attorneys (T) | | | |
|---------------------|----------------|-------|----------------|
| Black | 2000,00 | Cash | 1602,00 |
| Transfer | 114,00 | Black | 512,00 |
| | <u>2114,00</u> | | <u>2114,00</u> |

| Green Attorneys (B) | | | |
|---------------------|---------------|----------|---------------|
| Fees | <u>114,00</u> | Transfer | <u>114,00</u> |

| Black | | | |
|-------|----------------|---------------|----------------|
| Green | 512,00 | Green (White) | 2000,00 |
| Cash | 1488,00 | | |
| | <u>2000,00</u> | | <u>2000,00</u> |

| Fees | | | |
|------|--|-------|--------|
| | | Green | 100,00 |

| Vat | | | |
|-----|--|-------|-------|
| | | Green | 14,00 |

JOURNAL (TRUST)

Black R512,00

Green R512,00

Being summons & collection

Smm. Fees and disbursements

Green R2000,00

Black R2000,00

Being amount collected from White

JOURNAL BUSINESS (FEES)

| | | |
|-----------------|---------|---------|
| Green | R114,00 | |
| Fees | | R100,00 |
| VAT | | R14,00 |
| Being allowance | | |

ACCOUNT TO BLACK

RE: WHITE

| | | |
|---------------------|----------|----------|
| To Fee Summons | R100,00 | |
| To paid stamp | R50,00 | |
| To paid Sheriff | R120,00 | |
| By cash White | | R2000,00 |
| To Collection Comm. | R200,00 | |
| To VAT on fees | R42,00 | |
| To cheque herewith | R1488,00 | |
| | <hr/> | <hr/> |
| | R2000,00 | R2000,00 |

| | |
|----------------------------------|----|
| (1 Mark for each entry) | 22 |
| 5 Marks for statement of account | 5 |
| 3 Marks for general | 3 |