



THE FIDUCIARY INSTITUTE OF SOUTH AFRICA



FPSA FISA BOARD EXAMINATION

Examination date/Eksamendatum: 19 NOVEMBER 2012
Time/Tyd: 9:00 – 13:15 (4 hours/ure 15 min)
Total marks/Totale punte: 150

You are expected to answer three sections of 50 marks each.
Daar word van u verwag om drie afdelings van 50 punte elk te beantwoord.

Section A is compulsory for everybody, except for students who have already passed this section.

Afdeling A is verpligtend vir almal, behalwe vir studente wat dit reeds geslaag het.

Note that candidates who have passed one or two sections previously will only receive the section(s) not passed. Time available to complete 1 section will be 1 hour 30 minutes and for two sections 3 hours.

Let op dat kandidate wat reeds een of twee dele geslaag het sal slegs die dele nog nie geslaag nie ontvang. Tyd beskikbaar om een afdeling te voltooi is 1 uur 30 minute en om twee afdelings te voltooi 3 ure.

Only answers in your own handwriting in the official answer book will be considered.

Slegs antwoorde in u eie handskrif in die amptelike antwoordboek sal oorweeg word.

**SECTION A: LAW AND ETHICS IN FIDUCIARY SERVICES
COMPULSARY SECTION (50 MARKS)**

QUESTION 1

State and motivate whether the following statements are **true** or **false**. **No marks will be allocated if no motivation, or an incorrect motivation, is given.**

- 1.1 The Constitution of the Fiduciary Institute of South Africa (FISA) states that one of the objectives of the Institute is: *“To ensure that members maintain the highest professional and ethical standards in the pursuance of their profession”*. FISA’s ethical standards are based on the principles of responsible conduct and competence. (2 x ½ = 1)
- 1.2 Phyllis, a retired accountant, is a trustee of her brother’s testamentary trust and she administered her father’s estate. She fulfils all the administrative functions of a trustee. Phyllis does not need to comply with the Regulations of the *Financial Intelligence Centre Act, 38 of 2001*, to establish and verify the identity of a trust. (2 x ½ = 1)
- 1.3 Should an executor fail to lodge the First and Final Liquidation and Distribution Account, the Master may, after a sufficient period of notice to the executor, apply to the court for an order directing the executor to account to the Master for his administration of the estate. (2 x ½ = 1)
- 1.4 *Chief Master’s Directive 3 of 2006* states that a next-of-kin affidavit must be completed by someone who knew the deceased and his/her family well, in the presence of 2 witnesses, who must not be related to the deceased. (2 x ½ = 1)
- 1.5 The following heading of a Liquidation and Distribution Account meets the requirements of the *Administration of Estates Act, 66 of 1965*:
First and Final Liquidation and Distribution Account in the intestate estate of the late Minnie Mouse, who died on 16 December 2008, married in community of property to Mickey Mouse. Master’s Reference Number 234/2008/12. (2 x ½ = 1)
- 1.6 A minor may be nominated in a will as executor. (2 x ½ = 1)

[6]

QUESTION 2

Select the correct option(s) by writing the corresponding letter next to the question number. There can be more than one correct answer for each question.

2.1 Peter, a fiduciary professional and a member of FISA, is removed as a trustee of a testamentary trust, by the Master who appointed him, for allegedly not carrying out the provisions of the trust and failing to comply with a request from the Master. Which of the following options are available to Peter?

- a) Peter may appeal the decision to the provincial or local division of the High Court having jurisdiction.
- b) Peter may retain the Letter of Authority.
- c) Peter must immediately comply with the Master's request and reapply for his appointment as trustee.
- d) Peter must apply to the court for relief and satisfy the court that despite his non-performance, his removal will not be in the interests of the trust and the beneficiaries. He should provide reasons for his non-performance.
- e) Peter should approach FISA for assistance, should he feel aggrieved. (1)

2.2 Select the action(s) below that may constitute an offence and contravene FISA's Code of Conduct:

- a) Jack regularly goes on holiday with his brother, Piet, the manager of a local bank where Jack opens the bank accounts of most of his deceased estates.
- b) When questioned, Peter, an employee of BIG Bank Trust, tells clients that Warren, a former colleague, is no longer a trust officer as he has been suspended from FISA and has since resigned from BIG Bank Trust.
- c) Janet, an Estates Administrator for LITTLE Bank Trust, unilaterally delays the sale of a fixed property in an estate for 14 months, to allow time for the market to recover so that she can achieve a higher sale price for the cash strapped beneficiaries.
- d) Susan regularly organises poker games at her house with her clients. She charges each client R200, which covers snacks and drinks.
- e) Johann advertises his services as a fiduciary practitioner on his Facebook profile. He states that fiduciary practitioners are the Master's preferred administrators of deceased estates. He attaches several articles by Bruce Cameron to support this statement. (1)

2.3 Accountable institutions, as defined in Section 2 of Schedule 1 of the *Financial Intelligence Centre Act, 38 of 2001*, are not exempt from complying with the duty to identify and the duty to keep records, in respect of the following types of transaction(s):

- a) Administration of an inter vivos trust, as trustee.
- b) Drafting a will and including a testamentary trust.
- c) Administration of a deceased estate as the executor of that estate.
- d) Administration of a trust, as trustee, established by court order.
- e) Drafting a codicil. (1)

2.4 Harriet Noble must report the death of her husband to the Master, but neglects to do so within the prescribed time. The Master applies to the court for a conviction order making Harriet liable for the following penalty (or penalties):

- a) A fine not exceeding R50.
- b) Imprisonment for a period not exceeding 1 (one) month.
- c) A court order compelling Harriet to report the death within a period decided by the court.
- d) A fine not exceeding R50 and imprisonment for a period not exceeding 3 months, suspended pending Harriet reporting the death within 14 days of the conviction.
- e) A reduction in the penalty if Harriet submits the documents within 14 days of being requested to do so by the Master. (1)

2.5 Any person who wilfully submits a false account to the Master shall:

- a) upon application by the Master, be ordered by the court to lodge a correct account one month after the order was issued.
- b) be found guilty of an offence and if convicted, shall receive a fine not exceeding R1 000 or imprisonment for a period not exceeding 5 (five) years, or both.
- c) be guilty of breaching FISA's Code of Conduct and be called to appear before FISA's Disciplinary Committee, irrespective of whether or not such person is a member of FISA.
- d) immediately be removed as executor by the Master, provided the Master complies with the process as contained in the *Administration of Estates Act, 66 of 1965*.
- e) upon application be removed as trustee of a trust by the court, if he/she is found guilty and convicted (1)

2.6 An executor testamentary may only assume a co-executor if:

- a) The will expressly awards this power of assumption to the executor testamentary.
- b) All the beneficiaries agree to the assumption.
- c) The Master has issued letter of executorship to the executor testamentary.
- d) The executor testamentary executes a deed of assumption in respect of the person to be assumed.
- e) The person to be assumed need only submit the completed and signed "Acceptance of Trust" to the Master (1)

[6]

QUESTION 3

In many instances the Master of the High Court has the same powers as the High Court, although these powers do not always correspond. For example, the Master or the High Court may remove an executor from office, although section 54 of the *Administration of the Estates Act, 66 of 1965*, contains examples where only the Court may remove an executor from office.

This judicial and *quasi*-judicial function of the Master is particularly apparent in the following cases:

- the acceptance and registration of wills;
- the interpretation of wills; and
- the sale of immovable assets from the estate.

Briefly reflect on each of the above three cases by indicating what the Master's judicial or *quasi*-judicial function in entails. [6]

QUESTION 4

Adam is a trustee of the Diamond Family Trust. One of the beneficiaries lays a complaint regarding Adam's performance of his duties as trustee with the Master of the High Court. The beneficiary alleges that certain irregularities have taken place regarding the disposal of a share portfolio of the trust.

4.1 What steps can the Master take, in terms of the *Trust Property Control Act, 57 of 1988*, to remedy the situation and to prevent further maladministration, prior to applying for a court order to remove Adam? (5)

4.2 Briefly state the process that the beneficiary can follow if Adam is a member of FISA. (2)

[7]

QUESTION 5

Michelle, a member of FISA, has recently been asked by the sole trustee to attend to the administration of the Pink Will Trust. Pink Will Trust is a non-discretionary trust. During her reconciliation of trust accounts, she notices that the trust deed states that a certain fixed property must be sold when the youngest beneficiary turns 21. However, the youngest beneficiary is 31 and the property has not been sold.

5.1 Briefly explain what steps Michelle should follow in terms of the *Trust Property Control Act, 57 of 1988*. (5)

5.2 What possible penalties may Michelle face, if any, in terms of the *Trust Property Control Act, 57 of 1988*, and as a member of FISA should she fail to follow the steps as explained in 5.1 above? (2)

[7]

QUESTION 6

Orange Bank Trust Company and Green Bank Trust Company are both members of FISA. Recently, their respective holding companies, namely Orange Bank and Green Bank, began a competitive and public price war, each proclaiming to offer the lowest bank charges. Orange Trust Bank Company places an advertisement in a local newspaper which contains the following:

- A list of their services
- The FISA logo
- A slogan that states: "Orange provides superior fiduciary services and has the best turnaround time for estate liquidations. Contact us for the best value for your money."

Green Bank Trust Company lodges a complaint with FISA against Orange Bank Trust Company, alleging that Orange Bank Trust Company has contravened the FISA Code of Ethics and of Professional and Responsible Conduct.

With reference to each of the items listed on the advertisement, state whether or not Orange Bank Trust Company has contravened the FISA Code of Ethics and of Professional and Responsible Conduct. Motivate your answer. [5]

QUESTION 7

An accountable institution must, for the purposes of establishing and verifying the identity of the major natural persons who are named as beneficiaries of a trust, obtain certain documentation, as prescribed by the *Financial Intelligence Centre Act, 38 of 2001*, from the person acting on behalf of the trust.

7.1 List the documents commonly requested and refer to authority. (4)

7.2 What is the penalty for not complying with this requirement? (2 x ½ = 1)

[5]

QUESTION 8

8.1 Elfred was removed as a trustee from the MegaTron Trust by the Master. After the investigation against Elfred was completed, it was established that the Master's reasons for Elfred's removal were unjustified. Elfred wishes to be re-instated as a trustee of the MegaTron Trust and approaches you for advice.

Advise Elfred on his possible re-instatement as a trustee and refer to applicable case law. (3)

8.2 The Nikkle Trust (created in 1987) contained the following provision:

"The trustees are empowered to award study bursaries to white male students who are members of the Dutch Reformed Church and who wish to pursue studies in the chemical engineering field."

An aggrieved applicant would like to have the provision of the trust deed deleted as this provision discriminates against female, non-white and varying religious applicants who do not wish to study chemical engineering.

The trustees have approached you for advice with regard to the removal of the provision. Please advise the trustees accordingly and refer to authority in your answer. (5)

[8]

[TOTAL: 50 MARKS]

SECTION B - ADMINISTRATION OF DECEASED ESTATES (50 MARKS)

QUESTION 1

Answer the questions below by choosing the correct option from i to iv. Select the correct option(s) by writing the corresponding letter(s) next to the question number. **There can be more than one correct answer for each question.**

Question 1.1

Which document(s) are required by the South African Revenue Service (SARS) to approve the deceased's loan account value in a private company, of which he was a shareholder? Choose the correct statement.

- a) Annual Financial Statements as close as possible to the date of death.
 - b) Annual Financial Statements for the 3 years prior to the date of death.
 - c) Valuation of any fixed property on the prescribed Form Rev 246.
 - d) Auditor's valuation of the shares and loan account.
 - i) b
 - ii) c
 - iii) All of the above
 - iv) None of the above
- (1)

Question 1.2

You are attending to a deceased estate and after the section 29 of the *Administration of Estates Act 66 of 1965* advert has expired, it is clear that the estate is insolvent. Choose the correct statement.

- a) You need instruction from any creditor to surrender the estate under the *Insolvency Act, 24 of 1963*.
 - b) Policies payable to nominated beneficiaries can be redirected under Section 63 of the *Long-term Insurance Act, 52 of 1998*.
 - c) Proceeds of insurance policies in existence for less than 3 years and payable to the estate cannot be attached by creditors, under Section 63 of the *Long-term Insurance Act, 52 of 1988*.
 - d) Proceeds of insurance policies in existence for less than 3 years and payable to a nominated beneficiary can be attached by creditors, under Section 63 of the *Long-term Insurance Act, 52 of 1988*.
 - i) a
 - ii) b
 - iii) c
 - iv) None of the above
- (1)

Question 1.3

You are attending to the estate of a South African resident, who has bequeathed his house in Paris, France, to his brother who is a South African resident living in England. He (the deceased) inherited the house from his aunt, who was never a resident of South Africa.

Which of the following options will be applicable when faced with this scenario?

Please motivate your answer.

- a) You need to include the asset in your estate account under the asset and liability portion of the estate account.
- b) Executor's remuneration on the asset is 3,5% (plus VAT), unless specified differently in the will.
- c) You do not need to include the asset in your estate account under the Estate Duty Addendum of the estate account as the property is not a South African asset.
- d) No estate duty will accrue directly as a result of the asset.
 - i) a
 - ii) b
 - iii) c
 - iv) d

(1)

Question 1.4

Which of the following statements *correctly* reflect the capital gains tax implications for the deceased estate of a male, aged 45, who was married out of community of property with the exclusion of the accrual system, and who died on 10 April 2012?

- a) If the surviving spouse is the sole heiress, the "roll-over" principle applies and the value for her to use as the base cost of the asset, in the future, is the sworn valuation of the property at the date of death.
- b) The maximum *effective* rate of tax is 13,3%.
- c) The annual exclusion of R30 000 is granted to individuals in the year of death.
- d) There is no CGT implication regarding the small business he started from zero and sold for R1 600 000 on 2 April 2012, as it falls below the R1 800 000 small business exclusion.
 - i) b
 - ii) a and b
 - iii) a, b and d
 - iv) All of the above

(1)

[4]

QUESTION 2

Briefly discuss the key issues that you identify in the questions below.

Question 2.1

Explain the main objective of the Chief Masters Directive 4 of 2011. (1)

Question 2.2

During the preliminary estate interview when the estate is reported, you are advised of the following:

- Your deceased client, Ravi Pillay, received an income of R100 000 per annum from a trust.
- This income ceased on his death.
- Ravi was 36 years of age.

2.2.1 Use the tables below to calculate the ceasing annuity and indicate which section(s) of the estate account it must be reflected under. (2)

Table A - Life Expectancy Table	
Years	Male annuitants
36	8.13647
37	8.11558
38	8.09274
39	8.06781
40	8.04030
41	8.01067
42	7.97844
43	7.94344
44	7.90547
45	7.86380
46	7.81924
47	7.77109
48	7.71843
49	7.66236
50	7.60201

Table B - Compound Interest Table	
Years	12%
36	8.1924
37	8.2075
38	8.2210
39	8.2330
40	8.2438
41	8.2534
42	8.2619
43	8.2696
44	8.2764
45	8.2825
46	8.2880
47	8.2928
48	8.2972
49	8.3010
50	8.3045

2.2.2 Assuming you had to calculate the ceasing interest on a usufruct that your father had over a share portfolio, of which you are the holder of the bare dominium, what part of the standard calculation would you seek to change when deriving the ceasing interest? (1)

2.2.3 In calculating a ceasing usufruct, there are two key steps in determining the capitalised value. Explain the reason for the second step. (1)

Question 2.3

Your colleague has attended to the preliminary client interview and provides you with the following information and documentation for you to use in obtaining the Letters of Executorship/Letters of Appointment from the Master:

- The deceased died intestate.
- He was married out of community of property, by ante nuptial contract, without the accrual system.
- Original death certificate.
- Death Notice.
- Inventory confirming preliminary estate value to be R5 000 000.
- Preliminary interview discussion records.
- Certified copy of the identity document of the deceased.
- Acceptance of Trust by executor who is not compliant under Regulation 910.
- Certified copy of the identity document of the executor being appointed.

List at least 8 additional documents that must be provided before the Master will issue Letters of Executorship. (8x½=4)

[9]

QUESTION 3

Question 3.1

You have just been advised of the death of your clients, whose details are set out below. They both died intestate. You are to meet with the families shortly.

Sanele Gumede married Sibonyile Gumede during 1982 and the ceremony was formally recorded as a civil marriage, with the register being signed at the local church. Sanele died in June 2012, leaving no descendants, but a total estate (all items in his name) of R900 000.

In 1996, Jack and Jill Donaldson were married in the same church and followed exactly the same process as Sanele and Sibonyile. Jill died intestate in June 2012, leaving no descendants, but a total estate (all items in her name) of R900 000.

3.1.1 Explain and calculate what each surviving spouse will inherit from the intestate estate and explain why. Refer to authority. (3)

3.1.2 How will the answer that you provided in 3.1.1 be affected in each case if each family had one child. Refer to authority. (3)

Question 3.2

Your client, David, is married to Nombeko, under customary law and the marriage has been registered as such. There are no other parties involved. They have come to you to seek your advice about registering a civil marriage and drawing up their wills.

They have 2 children (aged 6 and 16 years of age). Neither party has any other children.

Before registering the marriage as a civil marriage and signing his will, David dies.

Both their children, as well as Nombeko, survive him.

His estate comprises of one bank account to the value of R1 200 000.

3.2.1 Calculate and explain who will inherit from the estate and explain why. (3)

3.2.2 Explain whether you foresee any problems in making payments directly to all the heirs. (1)

3.2.3 Discuss whether your answer in 3.2.1 will be different if they had registered the civil marriage. (1)

3.2.4 Is Nombeko regarded as a “spouse” for estate duty purposes? Explain the reasons for your answer. (1)

[12]

QUESTION 4

Monique, aged 45, and Martin, aged 39, were married on 6 June 2010. They had concluded an ante-nuptial contract (ANC), *with the inclusion of the accrual system*.

Martin has no children and was divorced previously in 2004 and 2009.

Monique has two children from a previous marriage. Carl, her son, is 19. Jennifer (25 years old), her daughter, died a week before Monique died in a car accident. Jennifer’s daughters, Kyla and Wendy, who are both minors, survived Jennifer. At the time of her death on 6 March 2012, Monique was a director and 50% shareholder in the private company Sea the World Tours (Pty) Ltd that specialises in cruises around the world.

Martin is a popular tennis coach.

The following assets of Monique, which have subsequently been validated and approved where necessary by the Commissioner, were reflected in the inventory lodged with the Master of the High Court.

House (primary residence of Monique and Martin)	Note 1	R3 000 000
Furniture and effects		R 400 000
Mercedes SLK (damaged in accident)	Note 2	R 500 000
Sea the World Tours (Pty) Ltd		
- 50% shareholding	Note 3	R5 000 000
- Loan account		R 500 000
- Outperformance scheme 100 000 units	Note 4	R2 500 000
HSBC Guernsey offshore unit trusts	Note 5	R 350 000
10 000 Sanlam ordinary shares	Note 6	R 315 000
Group life insurance payable to her estate		R2 500 000
Life policy A	Note 7	R1 100 000

Martin's assets at the date of Monique's death on 6 March 2012

Porsche Boxster	Note 8	R 500 000
Bank account		R 10 000

The commencement values, in the ANC, for each of their estates are as follows:

Monique

House (primary residence in which Monique and Martin lived)	R1 500 000
Furniture and effects	R 400 000
Sea the World Tours (Pty) Ltd	
- 50% shareholding	R2 000 000
- Loan account	R 500 000
10 000 Sanlam ordinary shares	R 300 000
Group life insurance payable to estate, surrender value	R2 200 000
Life policy B	R 850 000

Martin

Porsche Boxster	R 750 000
Bank account	R 10 000

Excluded assets for accrual purposes in the ANC are as follows:

Any pension fund assets
Furniture and effects
10 000 Sanlam ordinary shares

The CPI Index values are given as follows:

Start date	6 June 2010	111.5
Month of death	6 March 2012	122.6

Notes

- 1 There is a bond for R1 000 000 over the house.
- 2 The Mercedes SLK in which she died, was written off and the value of the car was paid into her estate bank account after death. The car was owned by Sea the World Tours (Pty) Ltd.
- 3 The company has recently been re-valued in line with the requirements prior to listing on the JSE.
- 4 The units allocated under the Outperformance scheme were awarded and accepted at a strike price of R15 late in 2010 and were sold for R25 by the executor.
- 5 The HSBC investment was made from funds sent offshore under her approved offshore investment allowance.
- 6 The Sanlam shares were valued cum dividend of 5% of the total value reflected.
- 7 Life Policy A, on Monique's life and with no nominated beneficiaries, is ceded to the bank, for the bond *in securitatem debiti*.
- 8 Martin owes R500 000 to a finance house under instalment finance for his Porsche.
- 9 There are no maintenance obligations against either Monique or Martin under their divorce orders.
- 10 Monique has a credit card with ABSA Bank. The current outstanding balance is R150 000.
- 11 Monique also has an overdrawn cheque account for R25 000, well within her credit limit of R100 000, with ABSA Bank.
- 12 The bank that issued the credit card, includes full credit life protection over all their clients' credit products, the premium of which forms part of the monthly bank charges.

Monique's will

- 1 She leaves 20% of the residue of her estate to her friend, James.
- 2 She leaves 30% of the residue of her estate to her husband, Martin.
- 3 She leaves 50% of the residue of her estate to her children, in equal shares.
- 4 Executor's remuneration payable is set at 3,5% (plus VAT) on the first R3 000 000 and 1% (plus VAT) on any amount thereafter.

Further notes

- 1 Her friend, James, predeceased her leaving 2 minor children, Jack and Jill.
- 2 No other administration charges are to be taken into account.

Question 4.1

Calculate the accrual claim against or in favour of Monique's estate. Show all your calculations. Only use the Rand values given above. Do not make any further assumptions regarding liabilities. (16)

Question 4.2

Calculate the executor's remuneration and Master's fees payable in Monique's estate. Show all your calculations. (3)

Question 4.3

Prepare a schedule setting out all heirs in the estate detailing the various percentages that each beneficiary will receive. No calculation of actual inheritances is required, but you do need to explain why each person will inherit and what they will inherit. (6)

[25]

[TOTAL: 50 MARKS]

**SECTION C: DRAFTING WILLS AND WILLS CONSULTATIONS
(50 MARKS)**

QUESTION 1

Karel Client (49 years old) married Sarah 25 years ago out of community of property, with the inclusion of the accrual system. In terms of the ante-nuptial contract, they both had an initial value of zero.

As a result of health problems, Sarah has never worked and she did not earn any income during their marriage.

Karel and Sarah are the parents of two major children, Sonja en Peter.

Sonja is still single and a student. She lives with her parents. Peter is married and financially independent.

Grandmother Kariena Client, Karel's mother, also lives with Karel, Sarah and Sonja in the house. Karel is financially responsible for grandmother Kariena.

Below is a list of Karel's assets and liabilities. Please answer the questions following the list. Take only the assets and liabilities mentioned in the list into account.

- **R400 000 cash investment** in a fixed deposit for two years with Blue Hill Bank. The deposit was made one year ago.
- **House** valued at R1 000 000.
- **Retirement annuity** with RAFSA, with a fund value of R650 000.
- A **life policy** with Future Life Limited on Karel's life. His two children are the nominated beneficiaries of the policy. The death claim value amounts to R2 000 000.
- There is an **outstanding mortgage bond** of R500 000 with Blue Hill Bank, secured by a mortgage over the house.
- **Bank overdraft** of R100 000 with Blue Hill Bank.
- Karel does not have any other debts.
(Please ignore all possible administration costs.)

Question 1.1

Will the persons listed below have any claim against Karel's deceased estate? Fully motivate your answer.

1.1.1 Sarah

1.1.2 Sonja

1.1.3 Peter

1.1.4 Kariena

(2)

Question 1.2

In terms of his will, Karel wants the full value of his retirement annuity to be bequeathed in two equal shares to his children, Sonja and Peter. Please explain to Karel whether it will be possible to give effect to the above mentioned wish in a will. In your answer you must refer to what will happen, in practice, to the retirement annuity at his death. Also explain how the executor will deal with the retirement annuity.

(4)

Question 1.3

Karel also mentions that he would like the residue of his estate (which, according to him, includes the house and the proceeds from the Future Life policy) to be bequeathed to his wife.

1.3.1 Explain to Karel whether it will be possible to give effect to these wishes concerning the residue of his estate and the life policy. Explain what will happen by using the values in the above list, in practice, to the residue of his estate and the life policy at his death. Also explain how the executor will deal with the residue.

(8)

1.3.2 Formulate a clause in the will to help Karel to execute his wishes given in question 1.3.1.

(2)

Question 1.4

Karel is not sure who he should appoint as executor and he requests you not to include an executor's clause in the will.

Explain to Karel what the practical results will be when he dies without appointing an executor in his will.

(3)

Question 1.5

Karel decides to appoint his brother, Gert Client, as the executor of his estate. Please formulate the executor's clause as it should appear in the will. (3)
[22]

QUESTION 2

You have to advise John and Marie with regard to their will. They have been married for 10 years and they have one child, Wanda, who is 5 years old. John and Marie often travel together and they are afraid that they might die simultaneously in an accident. John and Marie would like the survivor of them to inherit the total estate of the first-dying, but in the event of their simultaneous death, both estates must be bequeathed to Wanda.

Question 2.1

Explain to them the considerations and problems regarding "simultaneous death" in the context of wills and law of succession. Do you feel that these considerations and problems will be of particular interest in their case, given their wishes? Please motivate your answer. (3)

Question 2.2

In light of their wishes advice John and Marie with regard to the structure of their will. (You do not have to formulate the clauses.) (5)
[8]

QUESTION 3

Christiaan Beukes asks your advice regarding the drawing up of a will for his minor son, Chris, who is still at school. In his will, Chris's grandfather (who is dying) bequeathed a farm to Chris.

Question 3.1

Is there any legal obstacle against the farm being bequeathed to Chris? Please motivate your answer and briefly refer to any practical implications. (2)

Question 3.2

Will it be possible for Chris (junior) to draw up a valid will? Please motivate your answer and refer to the relevant authority. (4)

Question 3.3

Please explain to Christiaan whether it will be possible for his daughter, Carien, who is younger than Chris, to sign as the witness of a will. Please motivate your answer and refer to relevant authority. (3)

[9]

QUESTION 4

Your client, Sarel Bothma, informs you that he is married in community of property to Susara. During their marriage, he bought a farm, Luipaardsfontein. He approaches you for advice regarding the practicability of a bequest in his current will. It reads as follows:

“I hereby bequeath my farm, Luipaardsfontein, to my son, Gerhardus Stefanus Bothma.”

Explain to Sarel the different factors that must be taken into account when the executor is executing the will. Please discuss the effect of adiation (amongst others) in your answer. [5]

QUESTION 5

Question 5.1

A testator bequeaths his total estate “to my brothers, A and B, in equal shares”. B dies before the testator and leaves behind descendants. Please explain how the testator’s estate will devolve on his death. Motivate your answer in full and refer to authority. (3)

Question 5.2

A testator leaves his total estate “to my children, A and B, in equal shares”. B dies before the testator and leaves behind descendants. Please explain how the testator’s estate will devolve on his death. Motivate your answer in full and refer to authority. (3)

[6]

[TOTAL: 50 MARKS]

SECTION D: TRUST ADMINISTRATION (50 MARKS)

QUESTION 1

Question 1.1

Answer the questions below by choosing the correct option from i to iv. Fully **motivate your answer**, with reference to authority.

Indicate the instances where a court can delete or vary the trust instrument if the document contains any provision that brings about consequences that the founder of a trust did not contemplate or foresee.

- a. Hampers the achievement of the object of the beneficiaries.
- b. Prejudices the interest of the trustees.
- c. Is in conflict with public interest.
- d. Where the beneficiaries are minors.

Choose any one of the following options to answer the question.

- i) a and b
- ii) d
- iii) a
- iv) c

(1)

Question 1.2

Your advice is needed regarding the stipulations of the Lucky Family Trust. The creator of the trust was Mr Lucky Rixon, who died a few years ago. The income beneficiary of the said trust is Lucky's wife, Amy. Amy is also a trustee of the trust, together with Lucky's accountant and attorney. Their four children are the capital beneficiaries of the trust. The assets of the trust are a share portfolio worth R10 000 000, which was bequeathed to the trust by Lucky. The trustees of the trust decided to sell all the shares and to invest the proceeds in a current account, in order to provide Amy with an income.

Lucky's oldest son, John, asks for your advice regarding the possibility to stop the trustees from selling the shares. Motivate your answer by referring to applicable authority.

(3)

Question 1.3

State the period prescribed by the *Trust Property Control Act, 57 of 1998*, that a trustee must keep documents that serve as proof of investments, safe custody, control, administration, alienation or distribution of trust property. (1)

Question 1.4

Briefly discuss the concept of a trust as a legal person in the South African context.(3)

Question 1.5

Briefly discuss the extent of protection offered to a trustee when the trust deed includes a provision that the trustee(s) will be exempted from liability for breach of trust. (2)

Question 1.6

Briefly discuss the importance of the case of *Ganie & others v Ganie & others, 2012, JOL 28245 (KZD)*, by referring to section 20 of the *Trust Property Control Act, 57 of 1988*. (3)

[13]

QUESTION 2

Answer the questions below by stating whether the statements are **true** or **false**.

Fully motivate your answer, with reference to authority.

- 2.1 Most *mortis causa* trusts are created by way of a will, but theoretically a *mortis causa* trust can also be created by way of another instrument. (1)
- 2.2 The term “discretionary trust” normally denotes the position where the trustees have been granted discretionary powers in the trust deed to appoint any person(s) they deem fit as the income and capital beneficiaries of the trust, and therefore it is not necessary to include an ascertainable or named group of persons when the trust is established. (1)
- 2.3 Once a beneficiary of a discretionary trust receives an income or capital distribution from the trust, that beneficiary acquires a vested right to all future income and capital distributions equal to the value of the initial distribution that he/she received. (1)

- 2.4 Where the trust deed prescribes that decisions will be made by way of a majority vote by the trustees and no quorum is prescribed in the trust deed, it means that only the majority of the trustees have to participate in the decision-making process and therefore the minority can be excluded. (1)
- 2.5 A South African trust can freely invest in a direct offshore share portfolio as long as one of the beneficiaries of the trust is a tax resident of the country on which stock exchange the shares are listed. (1)
- 2.6 The trustees of a trust can distribute a capital loss that has arisen in the trust to a beneficiary of the trust as long as the following requirements are met:
- a) the beneficiary is registered for tax
 - b) the beneficiary has carried on a trade during the financial year of assessment. (1)
- 2.7 The siblings of a beneficiary who suffers from a mental illness (as defined in the Mental Health Act, 1973) can become beneficiaries of the special trust after the death of the beneficiary with the mental illness, but the trust will lose the “special trust status”. (1)
- [7]**

QUESTION 3

Your high net worth client, Mrs Hettie Hoogenboezem, approaches you to assist her in establishing and registering a charitable trust. She has a few million Rand that she wants to donate to the trust once it is up and running. She wants the trust to qualify as a Public Benefit Organisation (PBO) and to benefit in all aspects from all available tax relief available to PBOs. She also wants to encourage donations from other potential donors and therefore she wants it to be set-up and registered in accordance with all the relevant requirements. Her attorney has prepared a draft trust deed. Advise her as to the validity/correctness of the salient clauses listed below. In your answer you should refer to the requirements for a charitable trust to qualify as a PBO and explain the correct way for the trust to be structured to obtain all available tax relief.

Refer to relevant authority, including applicable sections in the *Income Tax Act, 58 of 1962*.

The aforementioned salient clauses that she wants you to comment on are listed below:

PURPOSE

The sole object for which the trust is created, is to carry on one or more public benefit activities with the main focus on the prevention of HIV infection and to provide preventative and education programmes relating to HIV/aids.

BENEFICIARIES

The capital and income beneficiaries of the trust are Hettie Hoogenboezem, her issue per stirpes and any persons, institutions or trusts identified by the trustees to qualify as beneficiaries of the trust.

TRUSTEES

HETTIE HOOGENBOEZEM;

RICHARD HOOGENBOEZEM (son of Hettie Hoogenboezem)

JOHN JANSEN (attorney)

CONCERNING THE MINIMUM OF TRUSTEES

The Trust shall, at all relevant times, be required to have at least 2 (two) trustees.

TERMINATION/DISSOLUTION OF THE TRUST

On dissolution of the trust, the remaining assets will be transferred to Hettie Hoogenboezem, her issue or any person, institution or trust identified by Hettie Hoogenboezem.

[15]

QUESTION 4

Tom and Katie Krause are the only trustees of the Krause Property Trust. The trust deed contains the following provisions:

TRUSTEES

Tom and Katie shall be the only trustees of the trust for as long as they deem it fit.

Tom and Katie will each have the power to appoint additional trustees.

If additional trustees are appointed, Tom and/or Katie will have the power to remove other trustees from office, but neither Tom nor Katie can be removed from office as trustee.

BENEFICIARIES OF THE TRUST

Tom Krause, Katie Krause, their descendants and any trust created for their benefit.

RESOLUTIONS BY TRUSTEES

Decisions by the trustees will be taken:

If only two trustees are in office, by way of unanimous decision; or

If more than two trustees are in office, by way of majority decision.

Discuss the potential pitfalls pertaining to:

- a) the protection of the trust assets against creditors in the event that the estate of Tom and/or Katie is sequestrated, and
- b) if the creditors of their personal estates will be able to attach the trust assets.

In your answer you should refer to whether the clauses of their trust deed can influence the abovementioned situation. Refer to relevant case law where appropriate. [6]

QUESTION 5

Dan has set up the BIG D's ONE TRUST in 2006. The trustees of the trust are Dan, his wife Sarah and his lawyer Clive.

The beneficiaries of the trust are Dan, Sarah, their children, namely Joe (27 years old) and Gill (17 years old) and their children's descendants. Dan is the CEO of a listed company and Sarah is involved in various upliftment projects in their community and she does not earn a salary.

Dan made a loan to the value of R2 000 000 to the trust in 2006. The loan is interest-bearing (SA prime plus 2%). The trust used the R2 000 000 to purchase a townhouse. The current market value of the townhouse is R2 500 000. The full loan amount is still outstanding.

Dan made a further loan to the value of R5 000 000 to the trust in 2008. This loan is interest-free.

The trust invested the R5 000 000 that they received from Dan as follows:

- R1 000 000 in a money market account (initial investment amount). The current value of the money market account is R1 350 000; and
- R4 000 000 in a direct share portfolio (initial investment amount). The current value of the portfolio is R10 000 000.

The trustees of the trust are considering the sale of the townhouse and/or the share portfolio and they seek your advice on who will be liable for the tax should they distribute the capital gain as follows:

(Assume the market-related interest rate applicable for the trust is prime plus 2%. Assume prime is 9%.)

Note that no calculations are required – just explain in whose hands a tax liability may arise and refer to applicable legislation.)

- 5.1. Full capital gain realised on the sale of the townhouse to be divided between Dan's two children in equal shares (50% Gill, 50% Joe). (3)
- 5.2 Full capital gain realised on the sale of the share portfolio to be divided between Dan's wife Sarah, Joe, Joe's minor child, and Gill in equal shares. (4)
- 5.3 Explain how the tax consequences will be different if Joe had emigrated from South Africa the year prior to the distribution and is no longer a South African tax resident. Refer to authority in your answer. (2)

[9]

[TOTAL: 50 MARKS]

SECTION E: ESTATE PLANNING (50 MARKS)

QUESTION 1

Question 1.1

Indicate whether the following statement is **true** or **false** and motivate your answer, mentioning relevant authority:

Joe and Susan are married out of community of property, with the inclusion of the accrual system. If Susan dies without leaving anything to Joe in terms of her will, he will not have any recourse against her estate. (2)

Question 1.2

In 2009, William Young created the WHY Trust, which was registered with the Master of the High Court with reference number IT127/2009. Due to an oversight by the attorney who drafted the trust deed, no provision was made for the amendment of the trust deed. William approaches you to enquire whether the deed can be amended.

Advise William on a course of action and list 2 court cases that you would refer to in order to motivate your answer. (2)

Question 1.3

Steve and Bill are members of a close corporation (CC). After attending a seminar on small businesses, they realised that they have not made provision for the continuation of the CC after either of their deaths. They then decided to enter into a buy-and-sell agreement. They agreed that Steve would take out life cover with Bill as the nominated beneficiary. Bill, however, has an existing policy on his life and would prefer to cede this policy to Steve rather than take out another policy.

Explain to Bill the estate duty implications if he cedes the existing policy to Steve, with reference to applicable authority. (2)

Question 1.4

David dies on 29 May 2012. His net estate before the section 4A deduction in terms of the *Estate Duty Act, 45 of 1955* is R3 600 000 and includes a Sanlam policy of R200 000 that was paid to his sister, Janine, in terms of a beneficiary nomination. In terms of his will, he bequeathed the residue of his estate to his brother, Sam.

Assuming that the estate duty is R20 000, advise who will be liable for the payment of the estate duty and show all calculations. (2)

Question 1.5

Russell died on 12 May 2012. A policy on his life was payable to his daughter, Gail, in terms of a post-nuptial contract entered into between him and his wife.

Indicate how the proceeds of this policy will be treated in his estate. Refer to relevant authority. (2)

[10]

QUESTION 2

Question 2.1

On 1 April 2012 the Mervyn Simpkins Family Trust acquired a share in Groprop (Pty) Ltd, a private company whose only assets are seven residential properties. The value of the share is R7 million.

The income and capital beneficiary of the trust is Gillian Simpkins, Mervyn's major daughter, who is mentally handicapped and completely dependent on the trust for maintenance as she cannot earn sufficient income or manage her own affairs.

Discuss the transfer duty implications of this acquisition. (2)

Question 2.2

Ingrid's estate consists of assets in South Africa (R4 000 000) and a fixed property in New Zealand (R1 600 000), which she inherited from her aunt who lived in New Zealand and who was a New Zealand resident. Ingrid has debts of R1 430 000 in South Africa and R1 700 000 in New Zealand.

Briefly explain how Ingrid's New Zealand debt will be treated in South Africa for estate duty purposes. (2)

Question 2.3

Clive is the founder of the CCW Family Trust. The trust currently owes him R2 500 000 on a loan account. He is not sure how to provide for this in terms of his will and approaches you for advice. He has done some reading in this regard and indicates that he is considering one of the following options in his will:

- a. I bequeath any loan account owed to me at the time of my death by the CCW Family Trust to the said trust.
- b. I bequeath an amount equal to any loan account owed to me at the time of my death by the CCW Family Trust to the said trust.
- c. I bequeath the residue of my estate to the trustees of the CCW Family trust to be administered for the benefit of the beneficiaries of the said trust, according to the terms and conditions contained in the trust deed.

Briefly discuss the capital gains tax implications of the 3 options with reference to applicable court cases. Advise Clive on two possible solutions to avoid capital gains tax. (7)

Question 2.4

Dean and Diana Watts have decided to divorce. In terms of the deed of settlement entered into by them, they agreed that Diana will not receive any maintenance and that Dean will pay her a once-off lump sum of R80 000 to assist her with buying furniture. The deed further provides that Dean will set up a trust and pay a once-off amount of R3 million to the trust as maintenance for their two minor children. The deed of settlement expressly provides that, should the trust for any reason be unable to accept the maintenance amount, the obligation will fall back on Dean.

Dean created the required trust in order to give effect to the stipulation of the deed. The trust is a discretionary trust and the income and capital beneficiaries are Dean, Diana and their two minor children.

Dean approaches you for advice as SARS has levied donations tax on him in respect of the amount of R3 000 000 he settled on the trust. Advise him with reference to the applicable authority whether SARS was acting correctly. (4)

[15]

QUESTION 3

Jeremy Claxon was a Zimbabwean citizen who moved to South Africa 15 years ago. At the time of his death on 28 May 2012, he was 45 years old and married to Joanna, out of community of property in terms of Zimbabwean law. They had 2 major children, Richard and Cindy. His estate consists of the following:

Farm in Zimbabwe ¹	R1 800 000
House in Zimbabwe ²	R 300 000
Farm Verlorenrivier in Polokwane ³	R6 100 000
Beach house in Jeffreys Bay	R2 200 000
Anglo American shares ¹⁰	R1 000 000
Motor vehicles	R 600 000
Money market investment	R3 000 000
Sanlam policy – Joanna is the nominated beneficiary	R1 400 000
Momentum policy – Richard is the nominated beneficiary	R 600 000

Notes:

1. Jeremy bought the farm in Zimbabwe 15 years ago before moving to South Africa. Due to extensive borrowings on the bond, he currently owes R2 900 000 on the farm.
2. He bought the house in Zimbabwe 3 years ago and still owes R300 000 on the bond.
3. He inherited the farm Verlorenrivier from his father, Paul.
4. In addition to the above assets, he has usufruct over a farm Berg en Dal, a *bona fide* farming operation, in Muldersdrift. The farm is valued at R3 800 000. His late grandfather left the farm to Jeremy's mother, Anne, who donated the usufruct to Jeremy. Anne is 72 years old. Assume that Jeremy's life expectancy factor is 7,891924.
5. Jeremy also receives income from the Claxon Family Trust, a discretionary testamentary trust set up by his late grandfather. The trust is valued at R10 000 000.
6. His SA liabilities amount to R800 000.
7. Assume that administration costs and Master's fees amount to R22 000.
8. His wife paid for his funeral and does not want to claim a refund from the estate.
9. His will provides that his entire estate devolves on his two children.
10. The will provides that his executor must sell the Anglo American shares.
11. The will further provides that executor's fees will be limited to 2,5% plus VAT.
12. He had a predeceased spouse who left a bequest of R1 million to a charity and the residue of her estate to Jeremy.

Question 3.1

Calculate the executor's fee payable should Jeremy die today.
Show all your calculations. (3)

Question 3.2

Calculate the estate duty payable should Jeremy die today. Show all your calculations. (14)

Question 3.3

Calculate whether there is sufficient liquidity in Jeremy's estate. (3)

Question 3.4

Make 5 estate planning recommendations to Jeremy.
Motivate each recommendation and refer to applicable authority where relevant. (5)
[25]

[TOTAL: 50 MARKS]