



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



### **FPSA FISA BOARD EXAMINATION**

Examination date/Eksamendatum: 21 NOVEMBER 2013  
Time/Tyd: 9:00 – 11:15 (2 hours/ure 15 min)  
Total marks/Totale punte: 50

Examination Paper: Wills Consultation and Drafting

This examination paper comprises 7 pages and 7 main questions. Answer all the questions. The examiners are aware that there is not necessarily only one correct answer to certain questions in this examination paper. You are therefore expected to fully motivate all your answers, where applicable.

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

#### **QUESTION 1**

Barbara Brody recently approached you for advice and assistance in drafting her will. She is suffering from cancer and is very weak. The doctors expect that she will live another month at most.

She is a widow with three major children: two daughters, Pauline Brody and Margaret May as well as a son, Ben Brody.

Barbara's husband, John, passed away 7 years ago and her son, Ben, inherited the family farm.

As Ben has already inherited the family farm from his father, Barbara wants to bequeath her estate to her two daughters in equal shares.

Barbara's current will was apparently handwritten by Margaret May on her mother's instruction, but a family friend has advised Barbara to obtain advice from a fiduciary practitioner rather than attempt to draft the will herself. Barbara subsequently approached you and supplied you with a copy of her will.

You notice the following while perusing the will:

The will consists of two pages and is signed on the last page by Barbara and two friends Steve Walsh and his 15 year old daughter Maureen.

Last will of Barbara Brody

1. I, Barbara Brody, hereby state that this is my last will and I revoke all previous wills made by me.
2. I bequeath the residue of my estate to my two daughters, Pauline Brody and Margaret May, in equal shares.
3. As executor of my estate I appoint my daughter Margaret May who shall not be required to furnish security.
4. I further direct that the benefit that any beneficiary may receive in terms of my will shall not be attachable by creditors nor form part of any insolvent estate of such beneficiary.

**Signed at Vredendal on 23 May 2013 in the presence of the undersigned witnesses all being present at the same time.**

Signed B Brody

Testatrix

Signed Steve Walsh

Signed Maureen Walsh

Barbara's estate consists of the following assets..

Cash in bank account	R 400 000
Unit trusts	<u>R3 800 000</u>
Total estate:	<u>R4 200 000</u>

Barbara has no liabilities.

### Question 1.1

1.1.1. In view of the fact that Maureen Walsh is a minor, is the will compliant with the formalities required in the execution of a will as prescribed by the Wills Act 7 of 1953? Briefly explain your answer by referring to the relevant section of the Act. (2)

1.1.2. Two days after your original consultation you return to the hospital with Barbara's new will. You find her to be of sound mind, however, she is physically too weak to “**sign**” the will. Barbara assumes that this means she cannot make a valid will. Is this correct? Explain your response by referring to the relevant section of the Wills Act 7 of 1953. (2)

**[4]**

### Question 1.2

Barbara is not sure in terms of which marital regime Margaret is married, but she thinks Margaret is married out of community of property subject to the accrual system.

1.2.1. Should this be correct, what claim, if any, does Margaret May's husband potentially have on an inheritance that she may receive from her mother? Refer to the relevant legislation as authority for your answer. (2)

1.2.2. Some research shows that Barbara's daughter, Margaret May, is in fact married in community of property. Draft a clause to exclude any inheritance that Barbara's heirs may receive from their community estate. (2)

- 1.2.3. What protection, if any, would the clause drafted in 1.2.2 provide in the scenario where a couple who are married in community of property, are sequestrated? Refer to case law. (3)
- 1.2.4. Is clause 4 in Barbara's hand drawn will valid and would it provide an heir any protection from his creditors? Refer to relevant case law as authority for your answer. (2)
- 1.2.5. Draft a clause that is legally acceptable and which would provide the sought after protection for the beneficiaries and the bequeathed assets in the case of a beneficiary's sequestration? (3)

[16]

## QUESTION 2

Discuss the legal constraints on Margaret May's ability to benefit in terms of Barbara's hand drawn will.

What options are available to ensure that Margaret May receives her intended inheritance? [5]

## QUESTION 3

3.1. What is meant by the term *ius accrescendi*? (3)

3.2. Paul is married to Susan and has three major children John, James and Mary. He also has two grandsons - his son James' children.

Evaluate the following bequests in Paul's will. In each case indicate whether or not accrual will be applicable and how the bequeathed asset/s will devolve. (Briefly motivate your answer.) **Read each question as a separate question not influencing each other..**

3.2.1. "I bequeath my house at 12 Belmont Street to my wife Susan and my daughter Mary." Mary renounces her right to inherit. (2)

3.2.2. "I bequeath my house at 42 Lagoon Drive to my sons John and James in equal shares." John renounces his right to inherit. (3)

3.2.3. "I bequeath my farm Soetfontein to my children." James passed away in the same motor vehicle accident as Paul and is unable to inherit. (2)

3.2.4. "I bequeath my Mercedes Benz 500 SLK to my son John." Later in the same will he bequeaths as follows: "I bequeath my Mercedes Benz 500 SLK to my son James." John renounces his right to inherit. (2)

**[12]**

#### **QUESTION 4**

You are approached by your client, Pieter Venter, in regards to a farm which he inherited from his father.

The farm, *portion 4 of the Farm 269*, was originally bought by Pieter's great grandfather who bequeathed it to Pieter's grandfather, Oupa Kobus. Oupa Kobus received the farm in 1954, subject to the following condition which was endorsed on the title deed:

*"I bequeath my farm portion 4 of the Farm 269, division of Vredendal, to my eldest surviving child subject thereto that upon such child's death the farm shall devolve upon his or her eldest surviving child to be repeated for four generations."*

In terms of this condition the farm has since been passed from Pieter's grandfather Oupa Kobus to Pieter's father, Pa Jan, in 1968 and most recently to Pieter himself in 2006.

4.1. What is this legal construct called? (1)

4.2. Is this condition valid and enforceable? In what way is Ben constrained from dealing with the farm? Refer to any relevant authority. (2)

**[3]**

## QUESTION 5

Freek du Toit, executed a will in November 2006. The complete will reads as follows:

The will of Freek du Toit

1. I hereby revoke all previous wills and codicils made by me.
  
2. I bequeath my estate as follows:
  - a. I bequeath my Sanlam Personal Portfolio to my wife Cynthia Du Toit;
  - b. I bequeath my house situated at nr. 7 Bokmakierie Laan and my Volkswagen Golf 3, CJ 123 456 to my son Derick;
  - c. I bequeath the remainder of my estate to my daughters Nelri and Chrismari.

Signed 13 November 2006.

A couple of months later, in May 2007, he executed another will. The complete 2007 will reads as follows:

Will of Freek du Toit

1. I bequeath my estate as follows:
  - a. I bequeath my house situated at nr. 7 Bokmakierie Laan, Paarl and my Volkswagen Golf 3, CJ 123 456 to my son Derick;
  - b. I bequeath my house situated at 24 Boekenhout Street, Bellville to my daughter Nelri Pienaar;
  - c. I bequeath my house situated at 77 Carl Cronje Rylaan, Kenridge to my daughter Chrismari Stevens;
  - d. I bequeath the remainder of my estate to my daughters Nelri and Chrismari.

Signed 25 May 2007.

**You can accept that all formality requirements in respect of both these wills have been complied with. Question on next page.....**

The executor is unsure how to deal with the Sanlam Personal Portfolio which is not specifically mentioned in the second will. Advise the executor how the two wills should be interpreted and how the Sanlam Portfolio should be dealt with. Refer to case law to support your answer. **[4]**

### **QUESTION 6**

6.1. Explain what you understand by the terms *dies cedit* and *dies venit*. (2)

6.2. Explain when *dies cedit* and *dies venit* will occur in respect of the following bequests:

6.2.1. I bequeath R500 000 to my daughter Nelri Pienaar. (1)

6.2.2. I bequeath my house situated at nr. 7 Bokmakierie Laan, Paarl to my son Derick subject to the lifelong usufruct of my wife Cynthia du Toit. (2)

6.2.3. I bequeath R100 000 to my daughter Nelri should she complete her LLB degree. (2)

**[7]**

### **QUESTION 7**

Your client Jan de Wet comes to you with the following problem.

His father Johannes de Wet passed away after having committed suicide. He left a document which was, on the face of it, handwritten by himself, entitled “my last will and testament”. In this document he gives detailed instructions on how his estate is to devolve. In this document Jan is appointed as executor of his father’s estate.

It is dated the evening of his death and was found placed on a table next to him. No witnessing or other formality requirements have been complied with.

7.1. Refer to the case of *Smith v Parsons* and advise Jan whether, in your opinion, the court would accept the document as Johannes’ will? Refer to the relevant section of the Wills Act and the requirements that have to be met in such instances. **[3]**

**[TOTAL 50]**