



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



FPSA FISA BOARD EXAMINATION

Examination date/Eksamendatum:	18 NOVEMBER 2013
Time/Tyd:	9:00 – 11:15 (2 hours/ure en 15 min.)
Total marks/Totale punte:	50
Examination Paper:	TRUST ADMINISTRATION

This examination paper comprises 7 pages and 5 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

- 1.1 A court can terminate a trust in terms of section 13 of the Trust Property Control Act (57 of 1988). List 4 other principle ways in which a trust can come to an end. (4)
- 1.2 Discuss whether a foreign person may act as a trustee for a South African trust. Motivate your answer. (2)
- 1.3 Briefly discuss whether the essential elements at the moment the trust administration commences, differ from the essential elements when the trust is validly constituted. Motivate your answer. (4)
- 1.4 List the documents that are required for the registration of a new trust. (3)

[13]

QUESTION 2: TRUE OR FALSE

Answer True or False. Motivate each answer.

- 2.1 John, a Trustee of a discretionary trust had to undergo an urgent, but non-life threatening operation during the period the trustees were set to have a trustee meeting. As a result, John granted a power of attorney to his brother in law to authorise him to attend the trustee meeting in his place. The trust deed specifically provided that a trustee may appoint a nominee and the power of attorney empowers John's brother in Law to vote at meetings of the Trust as he "may deem fit". However, the morning of the meeting John called his brother in law from the hospital and instructed him to vote "no" on a specific matter that is on the agenda. His brother in law is therefore bound to follow John's instructions and vote "no" on the matter during the trustee meeting. (1)
- 2.2 Once the trust deed has been duly signed, but prior to a letter of authority confirming the trusteeship being issued by the Master, there is no risk for the trustees if they act in their capacity as trustees. (1)
- 2.3 A trustee notifies the beneficiaries of the trust of his resignation in writing and requests his messenger to hand deliver the resignation letter to the Master of the High Court. When the messenger arrives at the Master's office, they are about to close the doors, but he nevertheless hands the letter to the security guard who takes the letter and then close the door. Is the trustee, subsequent to the resignation being hand delivered to the Masters office, relieved of all his responsibilities as trustee. (1)
- 2.4 A South African trust can freely invest in Namibian assets, provided the necessary South Africa exchange control permission and a tax clearance certificate have been obtained. (1)
- 2.5 Distributions made by discretionary trusts will always be exempt from donations tax, whether these distributions are made to the trust beneficiaries or to third parties. (1)

2.6 In his budget speech this year, the Minister of Finance announced that certain reforms on the taxation of trusts will be undertaken. These reforms included the proposal that the conduit principle/flow through mechanism will no longer be applicable to the taxation of distributions made from discretionary and special trusts. (1)

2.7 A capital beneficiary of a discretionary trust has the power to nominate any other person or persons in his Last Will and Testament to succeed him as a beneficiary of the trust. (1)

2.8 Where a trust deed stipulates that the trustees can pass resolutions by way of majority vote, it is essential that the minority be allowed to participate in the proceedings that lead to that resolution. (1)

[8]

QUESTION 3

3.1 What is the position if all the beneficiaries of a trust have died and no provision has been made in the trust deed to appoint succeeding beneficiaries? (2)

3.2 Your client, Mrs Stubble, made a loan of R6 000 000 (six million Rand) to the Stubble Family Trust. The trust used the loan to acquire a game farm in Blinkwater. The trust does not have any other assets and therefore does not have the funds to repay the loan to her. Mrs Stubble has included a provision in her will that any amount owed by the Stubble Family Trust to her on the date of her death, is bequeathed to the Stubble Family Trust. Early in 2012, her accountant mentioned to her that this may have certain capital gains tax consequences.

Explain the position regarding the forgiveness of debt in relation to Mrs Stubble's position, and whether it may give rise to punitive capital gains tax consequences. In your answer you should refer to any recent changes in legislation that may have an influence. (4)

3.3 Your client, Michelangelo, owns a range of extremely valuable pieces of artwork. He approaches you to advise him whether he should transfer the artworks to the Michelangelo Family Trust. Please explain to him what the benefits will be. Refer to any potential estate duty and/or capital gains tax implications. (4)

[10]

QUESTION 4

Name of the trust: The Greentea Trust, IT number 2012/6000.

The trustees are: John Swart, Jane Black and Jack White.

The meeting was held at 15 Blue Avenue, Cape Town, at 14h00 on 16 July 2013, and the minutes and resolutions were to be prepared for signature shortly after the meeting.

The trustees called a meeting to discuss the sale of 13 Jade Lane, Parkhurst, to Michael Johnson, which realised an amount of R3 000 000 (three million Rand) including a capital gain of R2 000 000 (two million Rand). During the meeting, the trustees decided and agreed unanimously to distribute R500 000 of the gain to beneficiary A and R750 000 to beneficiary B. The balance was to be retained in the trust as trust capital. It was also agreed that beneficiary A's distribution will be paid to him in cash and that beneficiary B's distribution will be credited to his loan account.

Prepare the minutes of the meeting and the resolution similarly to the templates provided as guidance in **Annexure A** (use as example of format) at the end of the paper. **[7]**

QUESTION 5: TRUST MANAGEMENT AND CONTROL

5.1 Our courts have clarified certain instances where the alter ego principle in relation to trust assets can be applied.

Discuss whether the alter ego principle could be applicable in relation to the following circumstances and refer to relevant case law to substantiate your answer.

5.1.1 A trust deed stipulates that the Founder (as a trustee) can enter into transactions without deliberating with the other trustees and the deed further provides him with the power to remove and appoint trustees. **(2)**

5.1.2 The Founder, (who is also a beneficiary of a discretionary trust) is party to a divorce and his wife alleges that the trust assets should be taken into consideration as part of the accrual claim. The founder has no assets in his personal name and has channeled all his personal business income into the trust in order to obtain assets. A large percentage of his household expenditure is also paid for by the trust. Will the Wife stand a reasonable chance to succeed in her claim? **(2)**

5.1.3 Mr Blom, a discretionary beneficiary of a discretionary trust transfers whatever funds he receives to the trust and expensive assets are bought in the Trust, which he uses and enjoys as if it is his own. He has no assets in his personal name, yet, without any hesitation he bound himself as surety and co-principle debtor for the liability of the trust and certain companies owned by the trust. Will the person/s to whom Mr Blom stood surety and/or co-principle debtor have a reasonable chance of success in obtaining a court order to attach the trust assets? **(2)**

5.1.4 A husband sued his wife for divorce after a marriage of 25 years. During their marriage a discretionary family trust was established. The wife alleged that the trust assets had to form part of the assets for purposes of section 7(3) (redistribution) of the Divorce Act. On analyzing the trust, it is evident that separate financial records and annual financial statements were maintained and prepared, a clear trail of transactions was evident especially where funds were transferred from the trust to the husband and vice versa. The loan accounts and any movements thereon were clearly provided for in the financial statements and were also documented clearly and backed by the relevant explanations. Is it likely, based on these facts, that the wife will succeed in her claim? **(2)**

5.2 To determine whether the alter ego principle may be applicable, consideration must be given to both the terms of the trust deed and the circumstantial facts of each case. Discuss 4 powers generally provided for in terms of discretionary trust deeds which can be viewed as providing too much control to the relevant trustee/founder **[4]**

[12]

[TOTAL 50]

ANNEXURE A

MINUTES OF MEETING

**THE TRUST
IT/.....**

Meeting held at..... on this day of 20.....

Attended by:

	Minutes compiled by:

<u>AGENDA</u>	<u>ACTIONED BY</u>
1.	
2.	
3.	
4.	
5.	

SIGNED AT ON THIS DAY OF July20.....

Trustee:

Trustee:

Trustee:

**THE TRUST
REFERENCE IT
RESOLUTION OF TRUSTEES**

Passed on the
The Trustees resolved

SIGNED AT ON THIS DAY OF 20....

Trustee:

Trustee:

Trustee: