



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



FPSA FISA BOARD EXAMINATION

Examination date/Eksamendatum:	14 NOVEMBER 2013
Time/Tyd:	9:00 – 11:15 (2 hours/ure 15 min)
Total marks/Totale punte:	50
Examination Paper:	Law and Ethics in the Fiduciary Services
Eksamen Vraestel:	Reg en Etiek in die Fidusiëre Dienste

This examination paper comprises 5 pages and 11 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.

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QUESTION 1

There are three levels of ethical standards faced by business. Name the three. **[3]**

QUESTION 2

The company you work for knows that you are writing the Fiduciary Institute of Southern Africa's professional examinations. As a result they asked you to prepare a presentation for your colleagues. In the presentation you must explain how adherence to the FISA Code, specifically on the aspects relating to the principle of diligence, will assist in protecting the interest of clients. **[6]**

QUESTION 3

Mr. Tom Jones has an LL B degree but was never admitted as an attorney. He worked for a trust company the past 20 years before retirement in 2012. Tom considers getting involved as a consultant with the drafting of wills and the administration of deceased estates in the town he retired in. He wants to know the following from you:

- 3.1 Whether he can advertise his services as consultant in the local news paper; (3)
- 3.2 Whether he will be able to charge fees for the drafting of wills? (1)
- 3.3 What alternatives exist for him if wants to be remunerated for work done on drafting and preparation of wills? (2)

To get full marks motivate your answers by referring to legislation. **[6]**

QUESTION 4

Ben Visser appointed Koos Appelgryn his auditor who attended to his personal finances during his life time as executor and administrator of his deceased estate. As executor Koos was afforded extremely wide powers and rights. For example in paragraph 4.1.1 he was granted the specific powers:

"to deal with any shares and other assets in my estate or forming part of any trust created hereunder in such manner as if he was the absolute owner of the assets and/or income flowing there from and, in this connection to do all such things relating to or concerning the assets and on behalf of the estate and/or any such trust, as he may in his discretion deem fit, subject always to the express provisions of this my Will."

Richter, Ben's son, was very unhappy with some of the bequests made by his father in his will and the conditions attached thereto. He was also not happy with the fact that Koos as executor, appointed himself as director of two of his father's companies for purposes of administering the deceased estate. Richter decided to launch an application to court in order to remove Koos Appelgryn as the executor.

Although the relationship between Richter and Koos was hostile it was clear that Koos had at all times dealt with Richter in a most courteous and co-operative way. Koos had gone out of his way to provide Richter with relevant formation and providing full and unfettered access to the accounts of the companies and the underlying documentation. All accounting processing were reported to the beneficiaries.

Discuss whether Richter will be successful in removing Koos as executor of his father's estate. Accept for your answer that Koos Appelgryn conducted himself diligently and with the integrity required from executors. Motivate your answer by referring to the Administration of Estates Act and relevant court case(s). **[5]**

QUESTION 5

From the below list identify who shall not be able to liquidate or distribute the estate of a deceased person. Write only the letters of your answer(s) down. Motivate your answer with reference to applicable legislation and or regulations.

- a. A notary and conveyancer as defined in terms of the Attorneys, Notaries and Conveyancers Administration Act (23 of 1934);
- b. The surviving spouse of or any person related by consanguinity or affinity up to and including the third degree to a deceased person;

- c Any person in the full-time services of a trade union as defined in the Industrial Conciliation Act (28 of 1956), and registered under the Act, in so far as he is liquidating or distributing, otherwise than for or in expectation of any direct or indirect reward to himself or any other person, the estate of a deceased person who was, at time of death, a member of such trade union;
- d. Any person liquidating or distributing the estate of a deceased person in pursuance of directions given by the executor appointed under section 18(3) of the administration act 66 of 1965), in so far as he is liquidating or distributing such estate in pursuance of such directions. **[3]**

QUESTION 6

There are no prescribed qualifications and or requirements for persons who want to function as trustees. It is logical that persons who are insolvent, do not have contractual capacity, or who was convicted for offences where dishonesty is an element, cannot be trustees.

Apart from those given above and those mentioned in section 20 of the Trust Property Control Act give two other scenarios where persons will be disqualified to be appointed as trustee of a trust. **[2]**

QUESTION 7

Adam is a trustee of the EVE 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 and alleges that certain irregularities have taken place regarding the disposal of a share portfolio of the trust.

What steps can the Master take in terms of the Trust Property control Act, 57 of 1988, to remedy the situation and prevent further maladministration, prior to applying for a Court order to remove Adam. **[4]**

QUESTION 8

OUR Bank Trustees is an established trust company providing the following fiduciary services: drafting of wills and trust deeds, estate planning, administration of trusts and deceased estates.

- 8.1 Must OUR Bank Trustees register with the Financial Intelligence Centre as an “accountable institution”? Motivate your answer. (2)
- 8.2 Is OUR Bank Trustees exempt from complying with Part 1 (duty to identify clients) and Part 2 (duty to keep records) of Chapter 3 of the Financial Intelligence Centre Act, 38 of 2001, in respect of certain transactions? If your answer is yes, list the transactions for which OUR Bank Trustees is exempt. If your answer is no, provide reasons therefore. (4x½=2)
- 8.3 Which trustees are not required to register as an “accountable institution” with the Financial Intelligence Centre? (1)
[5]

QUESTION 9

During the Administration of an Estate, you, as Executor, with the heirs consent, sell a motor vehicle for R 85 000. The purchaser pays you personally in cash which you deposit into the estate bank account.

Explain the implications of the Financial Intelligence Centre Act 38 of 2001, as amended, on you as Executor, and the actions required of you, having received the cash detailed in the transaction above. **[3]**

QUESTION 10

Give 5 requirements (in terms of a Masters Directive issued) which an estate representative must meet when making an electronic fund transfer (EFT). **[5]**

QUESTION 11

- 11.1 Who can claim money from the guardian’s fund and how much can be claimed if the money paid in was that inherited by a minor? (3)
- 11.2 When can an account holder claim the invested money from the guardian fund, how will it be claimed, and how can payments be made by the guardians fund? (5)
[8]

[TOTAL 50]