



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



**UNIVERSITY OF THE FREE STATE**

**CENTRUM FOR FINANCIAL PLANNING  
LAW**

**ADMINISTRATION OF DECEASED  
ESTATES**

**EXAMINATION REPORT: FPSA BOARD  
EXAMS**

**NOVEMBER 2014**

**General comments:**

**PLEASE NOTE THAT THIS IS NOT A MEMORANDUM. THIS IS SUGGESTED ANSWERS. MARKERS MARKED WITH MISTAKES. THE EFFECT OF RELEVANT ASSUMPTIONS WAS TAKEN INTO CONSIDERATION.**

It was very clear that candidates did not adequately prepare for this examination. Some questions could have been answered directly from the prescribed study material. The examination guidelines were also very precise. This is not a subject that candidates can write on general knowledge. A lot of candidates did not refer to authority or just wrote down sections of the various acts without applying it to the set of facts.

**QUESTION 1**

Jack Dunlop died on 20 April 2014. He was not married. The only asset in his estate was the house he lived in at the time of his death. The market value of the house was R3 500 000 as at date of death. Jack had acquired this house on 15 December 2001 for R1 000 000.

The executor awarded the property to the heir, at a market value of R3 500 000.

Jack's marginal tax rate was 35%.

Calculate the capital gain. Show all your calculations and refer to authority. **[2]**

Candidates answered this question well.

**Candidates should have done the following calculation:**

**Calculation:**

Sale Price:	R 3 500 000
Less: Base Cost	<u>(R 1 000 000)</u>
	R 2 500 000
Less: Primary Residence Exclusion	<u>(R 2 000 000)</u>
	R 500 000
Less: Year of Death Annual Exclusion	<u>(R 300 000)</u>
Capital Gain	R 200 000

Candidates should have referred to the 8<sup>th</sup> Schedule of the Income Tax Act, with regard to the Primary Residence exclusion and the Annual of R 300 000.

**QUESTION 2**

Mr X dies without leaving a will. Explain the process and mention the 2 most important documents that must be presented to the Master to:

2.1 appoint an executor; and **(2)**

2.2 determine the heirs to the estate. **(1)**

**[3]**

Candidates should have mentioned the following:

- 2.1 Nomination of Executor Form / Letter – to make the appointment of Executor
- 2.2 Next of Kin Affidavit - to determine the heirs to the estate.

The nomination of Executor is presented in writing (there is a standard Form on the Masters Website that can be used in need) to the Master nominating an Executor and signed by parties with an interest in the estate( such as the spouse / heirs / creditors) and requesting the Master to appoint such person as Executor. The Master is guided by Section 19 of the Administration of Estates Act, 66 of 1965, as amended, as to whom to appoint if there is competition for the Office of Executor. The Master may call for a meeting with interested parties to determine whom to appoint, and in need may appoint co-executors.

As the heirs are determined in accordance with the Intestate Succession Act, 81 of 1987 as amended, the “Next of Kin Affidavit” of the deceased and perhaps separately, additional” Next of Kin” Affidavits for predeceased parents or descendants will be required to confirm the heirs to the estate.

### QUESTION 3

David Jones died on 16 September 2014. He bequeathed his fixed property to his children, Dianna and Michael (both majors), subject to a *usufruct* in favour of his girlfriend, Daphne, until her death. Daphne has been staying in the property for several months at no cost whilst the deceased was at home and subsequently whilst he was in a frail care facility of a local old age home. She moved out of the property on the date of his death.

After the death of David Jones, Daphne received the monthly rates and taxes account (which is now several months in arrears) and handed it to the executor of the estate for payment.

Explain, with reference to authority, who is responsible for the monthly rates and taxes on this property:

3.1 while the property is in the name of the deceased, and (1)

3.2 once the property has been transferred from the deceased’s name to the residuary heir’s name, subject to the “*usufruct*”. (2)

**[3]**

Candidates did not answer this question sufficiently.

- A) As there are no other agreements mentioned in the question, the deceased estate is liable for the rates and Taxes until date of transfer of the property from the estate to the heirs.
- B) Once the property is transferred into the name of the heirs and becomes subject to the “*Usufruct*”, Daphne, the holder of the *Usufruct* will become responsible for the rates and taxes.

#### QUESTION 4

You are in the process of administering the estate of Thulani Mabusa. You have recently submitted the relevant death claim forms to Sanlam, the life insurance company, to obtain payment under the life insurance policy for the value of R2 000 000 payable to her estate. Sanlam contact you in response to your letter reporting the death, requesting you to furnish them with the Form BI-1663 (Notification of Death).

Compare the Notification of Death Document (Form BI-1663) to the Death Certificate that is issued by Home Affairs, and explain why you believe Sanlam has requested this document, in addition to the death certificate. **[2]**

Candidates should have discussed the that the Department of Home Affairs will only issue a Death Certificate after they have received:

- Notification of Death Form BI-1663 and the Death Report (Form BI-1680).

The Notification of Death Form (BI-1663), issued for every death and normally handed over to the Executor together with the Death certificate by the Funeral home, has many sub components to it, including a portion to be signed by a medical practitioner, and signed by the District Surgeon or Forensic pathologist setting out cause of death, and indicating whether it is their opinion whether the person died of Natural causes or whether they cannot certify whether the person died exclusively due to natural causes. In the latter case, there is space to indicate whether the death was Unnatural or Under Investigation.

Sanlam can use this Form to quickly ascertain whether there is a possibility of foul play or whether the cause of death was Natural causes, and then decide whether to accept the claim or do further investigation before accepting the claim. The Death Certificate does not have this information disclosed on it.

#### QUESTION 5

You have determined the following information in the estate of Mr Ian Lonely that you are administering:

Mr I Lonely died on 03/05/2014.

Mr I Lonely was single, had never married and had no children.

In his will he left the residue of his estate in equal shares to his brother and sister, who both survived him.

The gross value of property disclosed in the liquidation account is R4 500 000.  
Liabilities as per the account are R500 000.

Additional information:

He has the following policies:

Life policy A:	Paid to his estate –	R2 000 000
Endowment policy B:	Paid to his sister –	R1 000 000
Pension provident fund C:	Lump sum paid to his brother –	R1 000 000

He has the following offshore assets:

- a) HSBC bank account containing Pounds, converted to ZAR R4 000 000 on the date of death.

He inherited these funds in the HSBC account from his mother, a South African resident who died a year ago. She had inherited the funds from her mother, a citizen of the United Kingdom, who was never ordinarily resident in South Africa. The balance now reflecting in his HSBC account had grown substantially since his mother inherited the funds, and such growth was mainly from reinvested interest received on the funds.

- b) Cottage on the Scottish Inner Hebrides Islands, R1 000 000.

He inherited this cottage from his aunt, a Scottish citizen who was never ordinarily resident in South Africa.

You are required to:

Prepare the estate duty addendum. Show all your calculations.

[10]

Estate Duty addendum requires pro rata calculation of estate duty payable. Not well answered. Perhaps a text book understanding of estate duty but no experience in completing the Estate duty Addendum portion of an Estate account which requires the pro rata calculation to be shown.

Candidates should have done the calculation as follows:

Gross value of property disclosed in Liquidation account		R 4 500 000
Add: Deemed property not included in Liquidation account:		
Endowment Policy B: Paid to Sister		R 1 000 000
Offshore Asset – HSBC Bank account		R 4 000 000
Offshore Asset – Cottage in Scotland		<u>R 1 000 000</u>
Total value of Estate		R10 500 000
Less: Deductions		
Liabilities as per Liquidation account		R 500 000
Section 4 (e) Deduction for Cottage in Scotland		<u>R 1 000 000</u>
Net value of Estate		<b>R 9 000 000</b>
Less: Section 4A Abatement		<u>R 3 500 000</u>
Dutiable Estate		R 5 500 000
<b>Estate Duty Payable @ 20%</b>		<b>R 1 100 000</b>

Apportionment of Estate Duty:

Sister	<u>R 1 000 000</u>	x R 1 100 000	R 122 222
	R 9 000 000		
Estate	<u>R 8 000 000</u>	x R 1 100 000	R 977 778
	R 9 000 000		
<b>Total Estate Duty Payable</b>			<b>R 1 100 000</b>

Notes:

- 1) The Life Policy paid to the estate will be included in the Gross value of all property reflected in the Liquidation account
- 2) The Preservation Pension Fund falls to be determined under Section 37 C of the Pension Fund Act, and does not form part of the Estate for Estate duty purposes.
- 3) The HSBC Bank account was inherited from his mother, who was a SA Resident at the time of her death. It is therefore included and the exemptions under Section 4 (e) ii do not apply.

## QUESTION 6

Annmarie van Wyk, married out of community of property, with the exclusion of the accrual system, died on 6 June 2014. You are the executor of her estate and are preparing the estate duty return to lodge together with the first and final liquidation and distribution account, for approval with the local Master of the High Court. Annmarie was not previously married.

In terms of her Last Will and testament she leaves a legacy of R4 000 000 to her only son and the residue of her estate to her spouse.

You have derived the following information:

The net value of the estate is R9 000 000  
She leaves a legacy of R4 000 000 to her son  
Estate duty payable is R100 000  
Residue for distribution to the spouse (the residuary heir) is therefore R4 900 000

You are required to calculate and explain the following:

The section 4 (q) deduction applicable to the estate as a result of the husband inheriting the residue of the estate. Motivate your answer with reference to case law.

**[3]**

Candidates should have mentioned and discussed the relevant case of *CSARS v Estate Frith* 63 SATC 77, and the application of the Section 4 Q Deduction. It was determined to be the amount the spouse is entitled to from the Will, not her ultimate cash receipt. In other words, the inheritance due to her before it has been reduced by the amount of estate duty that must be paid out of such residue.

The Section 4 Q Deduction is therefore R 5 000 000.

*For further reference and example utilised see South African Financial Planning Handbook 2013 page 505 and 506.*

## QUESTION 7

Skyla, aged 58, and David, aged 57, were married in community of property on 8 July 1983.

David died on 6 June 2014.

David had been previously married, and his first wife, Mary-Anne, had died tragically in a car accident after giving birth to twin sons, Jason and Jonathon. They were 2 years old at the date of their mother's death and are both now majors.

David and his sons ran "Movies Unlimited", a close corporation (in which the 3 of them were equal owners). There was no association agreement.

Skyla runs "Skyla's Accounting Services", a sole proprietorship that she had built up to a busy tax practice over the years.

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

House (in which Skyla and David lived)	Note 1	R2 000 000
Investments in Skyla's name	Note 2	R2 000 000
Investments in David's name	Note 3	R200 000
Bank account in Skyla's name		R200 000
Bank account in David's name		R100 000
Movies Unlimited	Note 4	
Loan account due to David from "Movies Unlimited"		R100 000
Skyla's Accounting Services	Note 5	
Bond	Note 6	(R500 000)
HSBC bank account in Guernsey	Note 7	R1 200 000

### Notes:

- 1) The fixed property is registered in Skyla's name as she acquired it before marriage.
- 2) The investments in Skyla's name are money market funds available on demand.
- 3) The investments in David's name are money market funds available on demand.
- 4) Movies Unlimited is a close corporation. 33,33% of the member's interest is registered in David's name (he started the business before he was married to Skyla), and only he and the sons are registered as members on the CK2 forms. The assets and liabilities of the business as at the date of death, comprise of the following:

• Technology equipment	5 000 000
• Toyota Prado (which David drove on a daily basis)	250 000
• Cash in bank	250 000
• Asset finance loan due to bank	(3 000 000)
• Total member's interest (excluding loan accounts) approved valuation at date of death	3 000 000
• Member's loan account – David	100 000
• Member's loan account – Jason	100 000
• Member's loan account – Jonathon	100 000

- 5) Skyla's Accounting Services is a sole proprietorship. The assets and liabilities of the business, as at the date of death, comprise:
- Mercedes Coupe (which Skyla drove on a daily basis, recently sold) R nil
  - Credit card (100 000)
  - Cash in bank 1 000 000
  - Bank loan (for motor vehicle Skyla drives, recently paid off) R nil
- 6) The bond is over the property and is in Skyla's name (500 000)
- 7) The HSBC bank account is in David's name and comprises his offshore investment allowance.

### David's Will

- a) He bequeaths his interest (member's interest and loan account) in Movies Unlimited together with a cash amount of R1 000 000 to Skyla.
- b) He leaves his Toyota Prado to his friend Toni.
- c) He leaves a cash amount of R1 000 000 to each of his sons.
- d) He bequeaths the residue of his estate to his wife, Skyla.
- e) He limits the will to deal with his South African estate only and specifically excludes any assets found elsewhere from falling under the terms of this will or from being disposed of in terms of this will.
- f) He directs that the inheritances due to heirs can be made in whichever assets or combination of assets they choose.

### Information gathered during a meeting with the family

- You ask the family whether there is another will dealing with assets outside SA. They confirm that their father had been looking at creating one as they were about to enter into a distribution agreement of their movies in India, but he never actually signed one as the deal had not yet been finalised.
- The sons advise you that they do not wish their stepmother, Skyla, to take ownership of the member's interest that was bequeathed to her and that they will take whatever legal steps are necessary to prevent this. They strongly believe that this was a very personal business that was run by them and their father and she has no knowledge of what the business entails.
- On further discussion the sons confirm that the process they use to edit movies, is cutting-edge world-leading technology and that they are in negotiations with Bollywood producers around it.

When answering the following question, do not make use of a redistribution agreement in any answer, and show all calculations.

Also, only use the information provided in the detail above. Do not assume or include information outside the details provided.

### Question 7.1

Discuss the situation regarding the sons' directive that they will take whatever action necessary to prevent the spouse from taking ownership of the deceased's member's interest and explain how this will impact on the administration of the estate. Refer to authority. (2)

Candidates did not apply this section correctly.

The duties of the Executor of a deceased estate to dispose of the member's interest of the deceased member in terms of his Will or in Intestacy, must be exercised subject to the Association Agreement. In the absence of an Association agreement, as is the case in this question, certain rules automatically apply. In terms of Section 35 of the Close Corporations Act, 1984, the Executor may only transfer the member's interest to an heir, if the heir qualifies to become a member and if the remaining members have given their consent. If they refuse to consent, the Executor is forced to sell the members interest to the close corporation, the remaining members or an outsider. This can, and does in this instance leave an heir in a position whereby he qualifies to act as a member but is being refused the opportunity to act as such by the other member's failure to consent, with the result that the interest is sold contrary to the wishes of the deceased.

In terms of the Close Corporation Act , 1984, Section 35 Disposal of Interest of the Deceased, states – subject to any other arrangement in an association agreement, an executor of the estate of a member of a close corporation who is deceased shall, in the performance of his duties (a)....cause the deceased's members interest to be transferred to.....if the remaining members consent to such transfer.....at para (b) states that “ if any consent is not given within 28 days after it was requested by the Executor, the executor shall sell the members interest to the corporation or any other remaining members or member of the corporation or to any other person who qualifies for membership which the remaining members approve of.

So, the Executor needs to write to the Close Corporation at its registered address, under copy to the sons, and ask for their consent to the award in terms of the Will and give them 28 days to respond. If they don't respond or state that they do not give their consent then the member's interest is to be sold.

In reality, this is the time to negotiate the sale price and reduce the sale to writing as to payment and price with the funds normally secured and released on transfer of ownership to the CC or in this case probably the sons..

## Question 7.2

You are advised, in writing, by Skyla that she does not want to take ownership of the member's interest in "Movies Unlimited" as long as she is appropriately compensated. She agrees that the value of the business is as per the accountant's valuation.

Using the information provided, prepare the **liquidation account** (given that there is no estate duty payable) portion of the first and final liquidation and distribution account. (7)

Business interests was clearly not well understood by the candidates. The question separated knowledge and application from administration.

The question specifically states that the spouse is happy with the decision and the valuation of the interest.

### Liquidation Account

#### Assets

##### Immovable Property Awarded

House in which they live R 2 000 000

Awarded as per Distribution account

#### Claims in Favour of the Estate collected

Investment in Skyla's name R 2 000 000

Investments in David's name R 200 000

Bank account in Skyla's name R 200 000

Bank account in David's name R 100 000

Movies Unlimited –

33.33% Members Interest sold to existing members R 1 000 000

Loan account due to deceased collected R 100 000

#### Skyla Accounting Services

(Balance in Sole prop Bank account) R 1 000 000 R 4 600 000

Total Assets R 6 600 000

#### Liabilities

##### Claims against the Estate

Bond over Fixed Property R 500 000

Skyla Accounting Services

(Credit Card) R 100 000 R 600 000

Total Liabilities R 600 000

Estate Duty payable R 0

Balance Carried forward to the Distribution Account R 6 000 000

Total Assets R 6 600 000

#### Notes:

- 1) The Toyota Prado is an Asset of the cc so it cannot be an asset in the estate.

### Question 7.3

Evaluate the information available and apply it in creating the **recapitulation statement** portion of the first and final liquidation and distribution account. (7)

The concept of marriage in community of property and abatement is not well understood practically. The question tested the candidates understanding and application. Asked differently candidates will probably have explained both concepts but most could not apply the concept to an actual outcome. Also, the answers of several indicated they had never drafted an estate account or understood how to put a cash reconciliation statement together. These are basic concepts used in each and every estate. Some candidates even put offshore assets into the local estate account.

#### RECAPITULATION STATEMENT

Total Assets realised (comprising cash and property)		R 4 600 000
Made up of:		
Skyla's Accounting Services proceeds of Bank account	R 1 000 000	
Movies Unlimited Members Interest sale proceeds	R 1 000 000	
Movies Unlimited Loan account proceeds received	R 100 000	
Bank account in Skyla's name	R 200 000	
Bank account in David's name	R 100 000	
Investments in Skyla's name	R 2 000 000	
Investments in David's name	<u>R 200 000</u>	
Less:		
<b>Liabilities</b>		R 600 000
Made up of:		
Bond settled	R 500 000	
Skyla's Accounting Services credit card	<u>R 100 000</u>	
<b>Legacies</b>		R 3 000 000
Skyla (see calculation in Distribution account)	R1 285 800	
Jason (see calculation in Distribution account)	R 857 140	
Jonathon (see calculation in Distribution account)	<u>R 857 140</u>	
Estate Duty		R 0
<b>Cash available for Distribution</b>		<u>R1 000 000</u>
		<u>R4 600 000R 4 600 000</u>

#### Notes:

- 1) The Legacies from his portion of the estate abate due to the amounts exceeding the 50% share of David. See marks allocated in the Distribution account. The total for distribution can only be R 3 000 000.

### Question 7.4

Evaluate the information available and apply it to create the **distribution account** portion of the first and final liquidation and distribution account.

*(In answering this, there is no need to reflect the full award descriptions but simply reflect the heir, the amount of the inheritance, and the makeup of the inheritance, for example Mr Adam, Legacy R500.)* (6)

The concept of marriage in community of property and abatement is not well understood practically by the candidates. The question tested understanding and application. Asked differently candidates will probably have explained both concepts but most could not apply the concept to an actual outcome. Also, the answers of several indicated they had never drafted an estate account or understood how to put a cash reconciliation statement together. These are basic concepts used in each and every estate. Some candidates even put offshore assets into the local estate account.

**DISTRIBUTION ACCOUNT**

Balance brought forward from Liquidation Account **R 6 000 000**

**Skyla**

Inherits 50% by virtue of the marriage in Community of property **R 3 000 000**

Comprises:

House R 2 000 000

Cash – comprising: R 1 000 000

Her 50% members interest paid in cash R 500 000

Remaining cash available R 500 000

**David’s 50% (R 3 000 000) of the estate distributed as follows: Care – Abatement applies as insufficient funds/ assets to give effect to total bequest**

Total Bequests/Legacies

Skyla (His 50% of Members Interest and R 1 000 000) = R 1 500 000

Jason – Legacy = R 1 000 000

Jonathon – Legacy = R 1 000 000

Total Bequests R 3 500 000

BUT: His half share of the estate is only = R 3 000 000

**Skyla**

Bequest of his 50% share in Business now reduced to cash R 500 000

Legacy of R 1 000 000 R 1 500 000

Her inheritance is therefore reduced proportionately to the funds available as a percentage of the total bequests.

Total bequests amount to R 3 500 000

Her bequest R 1 500 000

She benefits therefore from

R1 500 000 x.....R 3 000 000 (being David’s half share of the estate) = 42.86%

R3 500 000

She is therefore entitled to 42.86% of the R 3 000 000 available for distribution

Which is **R 1 285 800**

**Jason**

Legacy of R 1 000 000

His inheritance is therefore reduced proportionately to the funds available as a percentage of the total bequests.

Total bequests amount to R 3 500 000  
His legacy R 1 000 000

He benefits therefore from

$$\frac{R1\ 000\ 000}{R3\ 500\ 000} \times \dots R\ 3\ 000\ 000 \text{ (being David's half share of the estate)} = 28.57\%$$

He is therefore entitled to 28.57% of the R 3 000 000 available for distribution  
Which is R 857 100

**Jonathon**

Legacy of R 1 000 000

His inheritance is therefore reduced proportionately to the funds available as a percentage of the total bequests.

Total bequests amount to R 3 500 000  
His legacy R 1 000 000

He benefits therefore from

$$\frac{R1\ 000\ 000}{R3\ 500\ 000} \times \dots R\ 3\ 000\ 000 \text{ (being David's half share of the estate)} = 28.57\%$$

He is therefore entitled to 28.57% of the R 3 000 000 available for distribution  
Which is R 857 100

Total amount Distributed therefore:

<b>Skyla - Residue</b>	<b>R 3 000 000</b>
<b>Skyla Bequest/ Legacy</b>	<b>R 1 285 800</b>
<b>Skyla Bequest/ Legacy</b>	<b>R 857 100</b>
<b>Skyla Bequest/ Legacy</b>	<b><u>R 857 100</u></b>
	<b><u>R 6 000 000</u></b>

## Question 7.5

Adequately answered.

### Question 7.5.1

Discuss the implications that the facts of the matter have on the HSBC bank account in Guernsey and explain what steps the executor will need to take in this regard. (2)

Candidates should have referred to the following facts:

As the non SA Asset is significant you will in any event need to have an offshore Executor appointed to deal with the assets in that Jurisdiction.

That Executor will, on the face of it, not be able to utilise the South African Will as the worldwide will as it specifically excludes its use outside SA.

The Non SA estate (the HSBC Bank account in Guernsey) will therefore devolve in intestacy.

### Question 7.5.2

Calculate the inheritances payable from the HSBC account, and explain how you have arrived at these outcomes. Show all calculations. (3)

[27]

Candidates should have applied the Intestate Succession Act, 81 of 1987, as amended, the inheritances will devolve as follows:

Surviving spouse, Skyla 50% by virtue of the marriage in community of property  
Surviving spouse, Skyla, a child's share of the remaining balance or R 125 000, whichever is the greater, in terms of Section 1(1) c (i) of the Intestate Succession Act.  
Descendants, shall inherit the residue after the above in terms of Section 1 (1) C (II) of the said Act

**Total Non SA Assets value** **R 1 200 000**

50% share in terms of Marriage in community of property = R 600 000

A child's share then with spouse and 2 children = 3

A child's share is therefore R 200 000 which is greater than R 125 000

**Skyla therefore inherits:**

50% share	= R 600 000
A child's share	= <u>R 200 000</u>
	<u>R 800 000</u>

**Jason therefore inherits:**

A child's share (50% of what remains after above)	= <u>R 200 000</u>
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**Jonathon therefore inherits:**

A child's share (50% of what remains after above)	= <u>R 200 000</u>
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**Total Distributed** **R 1 200 000**

[TOTAL 50]