



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



UNIVERSITY OF THE FREE STATE

**CENTRUM FOR FINANCIAL PLANNING
LAW**

ESTATE PLANNING

**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.**

QUESTION 1

Indicate for each of the following statements whether they are true or false, and refer to the applicable legislation and/or court case to motivate your answer. If there is no motivation, no marks will be allocated.

Question 1.1

Kobus and Karen are married out of community of property. In terms of their joint will, they mass the separate shares that they own in the family home and bequeath the house to their son, Anton, subject to a usufruct in favour of the survivor of them. Kobus dies, and Karen adiates the terms of the will.

No transfer duty will be payable when the property is transferred to Anton as the transfer is exempt from transfer duty in terms of section 9(1)(e) of the *Transfer Duty Act, 40 of 1949*. (2)

False

The exemption in section 9(1)(e) of the Transfer Duty Act 40 of 1949 applies to property of the deceased acquired by an heir or legatee. It does not apply to the survivor's share of the property, as it is not regarded as "property of the deceased".

Question 1.2

John is married out of community of property, with the accrual system. During the subsistence of his marriage, he receives an inheritance from his father's estate. This inheritance is not necessarily excluded from the accrual calculation. (2)

True

Section 5(1) of the Matrimonial Property Act 88 of 1984 provides that an inheritance will be excluded except in so far as the spouses may agree otherwise in their antenuptial contract or in so far as the testator may stipulate otherwise.

Question 1.3

Tim and Jenna have been living together as husband and wife, but have not married or entered into a civil union partnership. No children have been born from the relationship and neither of them have children from other relationships.

If Tim dies, Jenna will be regarded as Tim's spouse for the purposes of the *Intestate Succession Act, 81 of 1987*. (2)

False

Heterosexual life partners are not included in the definition of "spouse" in the Intestate Succession Act 81 of 1987. The courts have also not recognised them as such – *Volks v Robinson* 2005 (5) BCLR 446 (CC) refers.

Question 1.4

Mark, a resident of SA, bought a small flat in London in 1990 whilst living in South Africa. In 2000 he emigrated to Britain. After 10 years in Britain, he decided to return to South Africa in 2010 and has been a South African resident since that time.

He dies in 2014. The assets listed in his inventory include the following:

- Flat in London, United Kingdom (UK)
- House in Brentwood, Essex, UK, purchased in 2003
- Barclays UK savings account opened in 2000

All the above mentioned assets will be included as assets in the estate duty addendum, but a deduction for all the assets will be granted in terms of section 4(e) of the *Estate Duty Act, 45 of 1955*. (Disregard any UK inheritance tax implications when answering the question.) (2)

False.

Section 4(e) applies to assets acquired in a foreign currency before the deceased first became resident in South Africa. None of the assets therefore qualify as they were all acquired after he first became resident in South Africa.

[8]

QUESTION 2

Question 2.1

Vivienne makes the following donations:

- 28 February 2013: R20 000 to her parents, Joe and Elaine.
- 8 August 2013: R100 000 to her life partner, Jenny.
- 30 November 2013: R20 000 to Imbeyizo Foundation (NPO 123-9000; PBO 1218/329/12), an organisation that cares for orphaned and neglected children.
- 1 December 2013: R10 000 to her domestic worker, Doris.
- 5 February 2014: R10 000 to a soup kitchen run by a few of her friends from the premises of her church.

Calculate the donations tax payable by Vivienne in the tax year ending 28 February 2014. Discuss all the above mentioned transactions and motivate why you will include or exclude a particular transaction in the calculation. Principal (7)

Candidates should have referred to the following:

Exempt/not included donations

R100 000 to her life partner, Jenny – exempt from donations tax.

Donations to a spouse are exempt from donations tax in terms of section 56(1)(b) of the Income Tax Act 58 of 1962 and Jenny qualifies as a spouse in terms of section 1 of the Income Tax Act.

R20 000 to Imbeyizo Foundation (NPO 123-9000; PBO 1218/329/12), an organisation that cares for orphaned and neglected children - exempt from donations tax as Imbeyizo is a registered Public Benefit Organisation in terms of section 30 of the Income Tax Act.

In terms of section 56(1)(h) a donation to a person referred to in section 10(1)(cN) of the Income Tax Act is exempt from donations tax. Section 10(1)(cN) refers to a public benefit organisation that is approved by the Commissioner of Inland Revenue in terms of section 30 of the Income Tax Act.

R20 000 to her parents are excluded as it did not happen in the 2014 tax year.

Taxable donations

R 10 000 to domestic worker – no exemptions

R 10 000 to soup kitchen – no exemption as it is not a registered public benefit organisation

R 20 000

Less: R100 000 annual exemption

Nil

@ 20% = Nil

Question 2.2

Your client, Anton, asks you to draw up an estate plan for him. He is divorced from his former spouse, Brenda, and pays maintenance to her in terms of their divorce order. You note from the divorce order that Anton and Brenda had not entered into an agreement regarding maintenance and the court therefore issued an order in terms of which Anton has to pay Brenda an amount of R10 000 per month until her death or remarriage.

Advise Anton how the maintenance issue will be dealt with if he dies before Brenda. (3)

Candidates should have referred to section 7(2) of the Divorce Act 70 of 1979 and the following case law: *Hodges v Coubrough NO 1991 (3) SA 58 (D)* and *Kruger NO v Goss and another 2010 (2) SA 507 (SCA)* and apply it to the facts. [10]

QUESTION 3

Question 3.1

The Jones Family Trust, IT 489/2008, is a discretionary trust set up by James Jones for his son and his family. In terms of the trust deed, the trustees may pay so much of the income as they decide to any one or more of the following beneficiaries:

Joe Jones (James's son)

Leslene Jones (Joe's spouse)

Iain Jones (Joe and Leslene's son)

Melissa Jones (Joe and Leslene's daughter)

Any trust set up for any of the aforementioned beneficiaries

In the 2013/2014 tax year, the trust disposes of 500 Bidvest shares at a price of 28990 cents per share.

The trust acquired these 500 shares in 2008 when the price was 9020 cents per share. There has been no change in the shareholding since acquisition.

3.1.1 Calculate the capital gains tax payable by the trust. Assume that the trust made no other gains in the relevant tax year and that no commission was payable on either the acquisition or the sale of the shares. (3)

Proceeds: $500 \times 28990 \text{ cents} = \text{R}144\,950$

Base cost: $500 \times 9020 \text{ cents} = \text{R}45\,100$

Proceeds – base cost = R99 850

Capital gain	99 850
Less annual exclusion	<u>0</u> <i>Not applicable to trust</i>
Total gain	99 850

@ Inclusion rate 66.6% = 66 500

@40% = 26 600

3.1.2 The trustees decide to distribute the capital gain on the Bidvest shares to Joe and Leslene and they sign the necessary resolution before the end of the tax year. Briefly discuss what the capital gains tax implication is for the trust and provide authority for your answer. (2)

No CGT will be payable by the trust as the trustees have exercised their discretion and have vested the gain in Joe and Leslene.

Paragraph 80 of the Eighth Schedule of the Income Tax Act 58 of 1962 refers.

The gain will therefore be taxed in Joe and Leslene's hands.

3.1.3 Assume that the trust was funded in 2008 by a loan of R100 000 from James and that he has not charged the trust any interest on this loan. The trust has not repaid any part of the loan. Advise whether any capital gains tax would be payable by James and, if so, calculate the amount. You may assume that a market related interest for the period since the loan was made is 10% and that James' tax rate is 32%. Motivate your answer with reference to authority. (5)

The interest free loan is regarded as a donation, settlement of other disposition, therefore paragraph 70 of the Eighth Schedule of the Income Tax Act 58 of 1962 applies.

James will be taxed on the portion of the capital gain that was generated as a result of the interest that he did not charge on the loan.

Interest

2008 R10 000 (R100 000 x 10%)

2009 R10 000 (R100 000 x 10%)

2010 R10 000 (R100 000 x 10%)

2011 R10 000 (R100 000 x 10%)

2012 R10 000 (R100 000 x 10%)

2013 R10 000 (R100 000 x 10%)

Total R60 000

R60 000 will be taxed in James' hands, i.e. R60 000 – R30 000 (annual exclusion)

= R30 000

33.3% included = R9 990

R9 990 x 32% = R3196.80.

Question 3.2

Zoe set up the Norman Family Trust in 2012. In terms of a sale agreement between her and the trustees of the trust, she sold her share portfolio to the trust for R4 500 000. This amount would be credited to a loan account bearing interest at 5% per annum in her name and would be repaid by the trust as and when it had funds to do so.

Zoe dies on 6 April 2014. At the time of her death, she was married in community of property to Stephen and had 2 children. According to the annual financial statements of the trust for the year ending 28 February 2014, the value of the loan account is R3 420 000. No repayments of the loan were done since that date.

Zoe's will provides as follows:

"I bequeath any loan account owing to me by the Norman Family Trust, IT485/2012, to the said trust.

I bequeath the residue of my estate to my spouse, Stephen, failing whom, my children and failing the children, to the Norman Family Trust, IT485/2012.”

Indicate whether the bequest of the loan account and the bequest of the residue will be subject to Capital Gains Tax in Zoe’s hands (i.e. in her date-of-death tax return). Refer to relevant authority. (4)

The loan forms part of Zoe’s estate and is subject to estate duty, so the bequest thereof will not trigger CGT.

Paragraph 12A of the Eighth Schedule of the Income Tax Act 58 of 1962 refers.

The bequest of the residue of the estate to her spouse qualifies for rollover relief.

Paragraph 67 of the Eighth Schedule of the Income Tax Act refers.

[14]

QUESTION 4

Derek and Olivia have been married for 28 years, out of community of property with the exclusion of the accrual system. They have 3 children, twins Ben and Rachel (26) and Kevin (23). All 3 children completed their tertiary education and are employed.

Derek is an entrepreneur and has been involved in a series of reasonably successful business enterprises. His current business, Petpaws (Pty) Ltd, is a company that distributes pet food and products. He holds 70% of the shares and the other 30% shares are held by his business partner, Anthony.

Olivia is a very successful actuary, employed by a big life insurance company. She earns a big salary and she owns a 50% share in a consulting business.

Derek and Olivia realise that they have become estranged and that the best option for them would be to get a divorce. They are able to discuss the details of the divorce in an amicable manner and agree on the following terms:

1. Each will retain his or her separate assets.
2. The family home, which is registered in both Derek and Olivia’s names, will be retained by Olivia. Derek will take the necessary steps to transfer his 50% share of the property to Olivia within 3 months from the date of the finalization of the divorce.
3. Olivia will pay Derek a cash amount, equal to 50% of the market value of the property at the time of the divorce, on the day that she becomes the full owner of the property (i.e. on the day that Derek’s 50% share is transferred to her). They agree that the full market value of the house at the time of the divorce is R3 million.
4. All the children are self-sufficient and have no maintenance requirements.
5. Olivia will pay Derek an amount of R100 000 to assist him with re-settling costs for a new property. This amount is to be paid within 1 month of the finalization of the divorce.
6. Both parties agree not to institute a maintenance claim against the other party.

The above agreement is incorporated into the divorce order, which is granted on 2 March 2014. On 1 May 2014, Derek approaches you to draw up an estate plan for him as he would like to understand his financial position, even though this will change in a few months after all the terms of the divorce agreement have been complied with.

His **estate** consists of the following:

50% share of family home	Market value of house (as agreed) is R3 million
70% share in Petpaws (Pty) Ltd	Latest financial statements reflect the full value of the business at R2 million
Ford Courier bakkie	R400 000
Motor vehicle (VW Passat)	R204 000
Nedbank current account	R30 000
300 Old Mutual shares	Current market price is 3521 cents per share
250 Sanlam shares	Current market price is 5620 cents per share
Nedbank savings account	R96 000
PSG portfolio	R1 600 000
Momentum policy 169842	R1 400 000
Loan to Petpaws (Pty) Ltd	R200 000
Momentum policy 17623A	R1 000 000 – Anthony is the beneficiary
Personal loan from Nedbank	R100 000
Instalment sale agreement Wesbank	R300 000

His **will**, dated 20 August 2012, contains the following provisions:

- “1. I bequeath my share in Petpaws (Pty) Ltd to my children, Ben, Rachel and Kevin.*
- 2. I bequeath an amount of R200 000 to each of my children, Ben, Rachel and Kevin.*
- 3. I bequeath the residue of my estate to my wife, Olivia, failing whom, to my children. Failing a child, his or her share will devolve on his or her children.*
- 4. If any beneficiary should be under the age of 18 years, his or her inheritance will be held in trust by my trustees until such beneficiary attains the age of 18 years, at which time the capital in the trust, as well as accrued income, will devolve on such beneficiary.*
- 5. I appoint my accountant, Joe Beane, who is a VAT vendor, as the executor of my estate and direct that the executor’s fee charged by him shall amount to 2,5%. Joe shall be exempt from lodging security for the fulfilment of his duties to the Master of the High Court.”*

During the consultation with Derek, you determine the following:

- Olivia has already paid him the R100 000 as per the settlement agreement. He has used it to reduce his loan at the bank.
- He assumes that Olivia will not be entitled to anything from his estate as they are divorced.
- Rachel's husband, Declan, is not very responsible when dealing with money. Derek is concerned that Declan may negatively influence Rachel to spend her inheritance and wants to know whether there is a way to make sure that Declan does not access her money.
- None of the children have ever indicated any interest in getting involved with Petpaws (Pty) Ltd. Derek is also not sure whether they and Anthony, his business partner, will be able to work together. He has full confidence in Anthony's ability to run the business, but would like the children to benefit from it in some way, which is why he bequeathed his interest in it to them.
- Derek is an animal lover and often gives money to animal charities.

Answer the following questions:

- 4.1 Calculate the executor's fees and estate duty in Derek's estate as at the date of the consultation. You may assume the following:
- There is no CGT or income tax payable
 - Funeral costs amount to R20 000
 - Conveyancing fees amount to R30 000
 - Master's fees and advertisements (s29 and s35) amount to R1 000. (12)

Assets

50% Family home	1 500 000	Included as not yet transferred.
70% share Petpaws	1 400 000	
Ford	400 000	
Passat	204 000	
Current account	30 000	
Old Mutual shares	10 563	Mark for calculating value correctly.
Sanlam shares	14 050	Mark for calculating value correctly.
Savings account	96 000	
PSG portfolio	1 600 000	
Momentum policy 169842	1 400 000	
Loan	200 000	
Claim against Olivia	1 500 000	Mark for including this from divorce order.
	8 354 613	

Deemed assets

Momentum 17623A	1 000 000	mark for including it as there's no reference to buy and sell agreement/key man policy
	1 000 000	

Liabilities

Executor's fees	238 106	
Claim by Olivia for 50% of house	1 500 000	mark for including claim
Personal loan	100 000	
Instalment sale Wesbank	300 000	
Funeral costs	20 000	
Conveyancing fees	30 000	
Masters fees/ads	1 000	
	2 189 106	

Executor's fee

Assets = 8 354 613

@2.5% = 208 865
VAT @ 14% = 29 241
238 106

4g

Nil – 1 mark for this – in terms of s4A of Wills Act 7 of 1953 Olivia is regarded as predeceased as 3 months since the divorce has not yet passed.

Summary

Assets		8 354 613	
Deemed assets		1 000 000	9 354 613
Liabilities	2 189 106		
Section 4(q)	0		2 189 106
Net estate			7 165 506
Less: section 4A(1)			3 500 000
Dutiable estate			3 665 506

Duty @ 20% = 733 101

4.2 Calculate the liquidity in Derek's estate and motivate why you include or exclude any assets or liabilities. (The assumptions in 4.1 still apply.) (3)

Cash assets		
Current account	30 000	
Savings account	96 000	
Momentum policy 169842	1 400 000	
Claim against Olivia	1 500 000	mark for including this as it must be settled in cash (order refers to "an amount")
Total	3 026 000	

Liabilities		
Liabilities	2 189 106	
Estate duty	733 101	
Cash legacies	600 000	
Total	3 522 207	

Cash assets – liabilities = 3 026 000 – 3 522 207 = -496 207 shortfall

4.3 Advise Derek on 3 (three) steps he should take to ensure that his estate devolves according to his wishes/assumptions mentioned during the consultation. (3)

1. Derek should change his will to exclude Olivia – if he dies after 2 June 2014, it will be assumed that he wanted her to inherit.
Section 4A of the Wills Act 7 of 1953 refers.
2. He should enter into a buy and sell agreement with Anthony, in terms of which either party has the right of first refusal to the other party's shares in the company on the death of the other partner.
Each should take out life assurance with the other party as beneficiary to provide the other party with the necessary funds to purchase the deceased party's share of the business.
3. He should consider providing for any inheritance due to Rachel to rather be awarded to trustees in trust as this will protect the assets from Declan.

Marker used discretion. Any other valid options also taken into account.

[18]

[TOTAL 50]