



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



### FPSA® BOARD EXAMINATION

Examination date	7 September 2015
Time:	9:00 – 11:15 (2 hours and 15 minutes)
Total marks:	50
Examination Paper:	<b>TRUST ADMINISTRATION</b>

This examination paper comprises 6 pages. 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.

### SECTION A: MULTIPLE CHOICE

#### INSTRUCTIONS

Please complete this section by marking the correct letter on the **separate answer sheet in pencil**. Only **one answer** per question can be marked on the answer sheet. No answers given in the examination book will be taken into consideration. Please **read the question carefully** and ensure that you take the relevant facts into consideration for each question.

**Choose the incorrect answer for question 1 – 10.**

1. A trustee may at any time be removed from his office by the Master— (2)
- a) If the trustee has been convicted anywhere of an offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine.
  - b) Upon the Master learning that the trustee has failed to clearly indicate in his book-keeping the property which he holds in his capacity as trustee to be that of the trust.
  - c) If the Master is satisfied that such removal shall be in the best interest of the trust and its beneficiaries.
  - d) Upon it being reported to the Master that the trustee has been declared by a competent court to be mentally ill or incapable of managing his own affairs.
  - e) None of the above.

2. Indicate which one of the following statements is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)
- a) Only a beneficiary capable of understanding what he is doing can accept benefits under a trust deed.
  - b) A clear and definite expression of his intent to accept benefits under a trust deed must be conveyed, preferably in writing, by the beneficiary to the trustees.
  - c) Prior to a beneficiary's acceptance of benefits under the trust deed, the donor and trustees may amend the trust deed, even to the detriment of such a beneficiary.
  - d) A beneficiary can renounce his rights acquired after acceptance of benefits under the trust deed.
  - e) None of the above.
3. Indicate which one of the following statements is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)
- a) A trust protector is not recognised by, or dealt with in the *Trust Property Control Act 57 of 1988*.
  - b) A trust founder of a resident trust may in the trust deed specify the proper law of the trust and appoint a protector.
  - c) A protector is not a trustee but can normally appoint trustees, usually has a veto right regarding substantial distributions and is employed to address the founder's concerns after having relinquished control to the trustees.
  - d) There is nothing preventing empowering beneficiaries in a resident RSA trust with the same powers as the protector.
  - e) None of the above.
4. The following regarding trusts *inter vivos* are contractual issues to be resolved in accordance with the legal rules applicable to the *stipulatio alteri* or contract for the benefit of third parties: (2)
- a) The creation of the trust.
  - b) The amendment of the trust deed.
  - c) The termination of the trust.
  - d) The office of the trustee.
  - e) None of the above.
5. Indicate which one of the following statements is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)
- a) A trust is void if it is created with a fraudulent, illegal or immoral purpose.
  - b) The legality of an *inter vivos* trust is not determined by the Master or any other state authority.
  - c) A trust created for an unlawful purpose may cause agreements concluded afterwards to be void or voidable.
  - d) A testamentary trust falls under the Master's scrutiny for validity.
  - e) None of the above.

6. Indicate which one of the following statements is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)
- a) Charitable trusts must be registered under S.30 of the *Income Tax Act 58 of 1962* through the Tax Exemption Unit at SARS as a tax exempt non-profit organisation also known as a Public Benefit Organisation (PBO).
  - b) PBO trust's tax exemption only applies to income tax and capital gains tax and not to value added tax.
  - c) A trading charitable trust registered as a PBO as need not be registered for income tax purposes.
  - d) Excess income of PBO trusts are taxed at company tax rates and not trust tax rates.
  - e) None of the above.
7. Indicate which one of the following statements pertaining to trusts and income tax is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)
- a) Income retained in a trust will be taxed either in the hands of the trust under S.25B(1) or in the hands of the donor under S.7(5) in terms of the *Income Tax Act 58 of 1962*.
  - b) Income derived from a donation to the trust by the founder, and where the founder retained in the trust deed the right to veto any distributions to beneficiaries, will trigger S.7(6) of the *Income Tax Act 58 of 1962* even though the beneficiary benefited by the income is major and not related to the founder.
  - c) For the purposes of S.7(2) of the *Income Tax Act 58 of 1962* all other marriages, in addition to marriages concluded under the *Matrimonial Property Act 88 of 1984* with a duly registered ante-nuptial contract, are also to be treated as out of community of property marriages.
  - d) If a donation of an income-generating asset was made to a trust to save estate duty, the anti-avoidance rules of the *Income Tax Act 58 of 1962* will find application on the income in the trust because even though the sole or main purpose of the donor was not to achieve an income tax saving.
  - e) None of the above.
8. Indicate which one of the following statements pertaining to the fiduciary duties of trustees is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)
- a) Trustees owe a fiduciary duty to the trust founder by virtue of their contractual obligations under the trust deed as a type of *stipulatio alteri*.
  - b) To enable the Master order to safeguard the interests of trust beneficiaries, a trustee wishing to resign, must also resign to the Master of the High Court.
  - c) Breach of trust by a co-trustee results in exposure to joint and several delictual liability of all trustees who were at fault in committing the breach.
  - d) The principle that co-trustees must always act jointly is derived from the fact that trustees are the co-owners of trust property.
  - e) None of the above.

9. Indicate which one of the following statements pertaining to personal liability claims by trust beneficiaries against trustees having committed breach of trust is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)

- a) Claims may be instituted by beneficiaries having suffered actual patrimonial loss sustained through loss of or diminution in the value of trust property.
- b) Claims may even be instituted by beneficiaries for future loss of profit.
- c) Claims may be instituted for losses suffered by beneficiaries holding vested rights as well as by contingent beneficiaries.
- d) Beneficiaries may claim for the recovery of damages to place them in the same position they would have been in had the trustees not committed breach of trust.
- e) None of the above.

10. Indicate which one of the following statements pertaining to the rights of trust beneficiaries is incorrect by writing down the number of the incorrect statement in your answer to the question: (2)

- a) In a personal trust inter vivos the founder, trustees and sole beneficiary who accepted benefits may amend a trust deed even if it were to be to the detriment of those beneficiaries who have not yet accepted benefits.
- b) The *stipulatio alteri* finds no application on a charitable trust and the participation of those beneficiaries who accepted benefits in a charitable trust have no rights to participate in the variation of the charitable trust.
- c) Major beneficiaries with vested rights in a discretionary trust that has reached the stage where trust property is due to be distributed to them, can vary or even terminate the trust.
- d) As the executor, appointed in a last will to administer a deceased estate, generally cannot acquire fixed property from such deceased estate, he will also be disqualified as a capital beneficiary of a testamentary trust under the will to receive fixed property from the trust.
- e) None of the above.

[20]

## SECTION B

### QUESTION 1

Answer the following questions by stating if they are true or false. Motivate your answer. Please note that no marks will be awarded if there are no motivation.

- 1.1 As trust property must be defined with sufficient certainty for a valid trust to come into existence, a mistake in the description of the trust property shall cause the trust to be invalid. (2)
- 1.2 A company, close corporation and another trust, may all be simultaneous beneficiaries of a trust. (2)
- 1.3 As income tax paid by a donor under S.7(5) of the *Income Tax Act 58 of 1962* is on deemed income only, it is advisable that the donor recoups the tax paid by him from the trust. (2)
- 1.4 The Master's powers to appoint trustees under the *Trust Property Control Act 57 of 1988* is subject to consulting with interested parties, such as the trust beneficiaries, before carrying out its statutory powers. (2)
- 1.5 Judges may, under the SA constitution, decide cases on the validity of trust deed amendments under the law of contract on what they regard as reasonable and fair. (2)

[10]

### QUESTION 2

#### Question 2.1

Your primary client lacks contractual capacity. Briefly explain the resulting benefits of accepting the offer of your client's younger brother for him (the younger brother) to be the founder of a discretionary family trust *inter vivos* in which your client and the younger brother are also contingent beneficiaries of the trust. (3)

#### Question .2.2

Mr X, a local resident, donated R 1 000 000 to a local discretionary trust on 01 March 2014. The trustees invested the money on which interest of R 90 000 for the 2015 tax year will be earned. The trustees decided to allocate R 30 000 of interest to each of Miss Y (minor daughter of Mr X) and to Mr Z (major son of Mr X) and retain R 30 000 of interest in the trust.

Indicate the tax liabilities as a result of the trustees' decisions and refer to appropriate legislation to support your answers. (6 x ½ = 3)

[6]

### QUESTION 3

#### Question 3.1

In an effort to ensure sufficient functional separation between control and enjoyment, also called the essential notion of trust law, the Court ruled in *Land and Agricultural Bank of SA v Parker and others* 2005 (2) SA 77 (SCA) that an independent outsider trustee should be appointed to *inter alia* protect third parties when dealing with a trust. Yet, despite the appointment and presence in office of an independent trustee, there had

been important cases, such as *Badenhorst v Badenhorst* 2006 2 SA 255 (SCA), where third parties were not successfully protected. Some leading commentators on trust law and practice are of the opinion that a particular legal rule applicable to corporate entities, if made applicable to trusts, may afford better protection to third parties engaging with trusts.

3.1.1 Name the rule. (1)

3.1.2 Explain why the said rule should afford third parties better protection. (3)

3.1.3 Propose further desirable changes to trust law to enable third parties to apply the said rule more effectively. (2)

**[6]**

#### **QUESTION 4**

It is 27 February 2015.

Douglas Stone, age 55, is married to Linda, age 48, and they have three children: Matt, age 23, financially independent and the single parent of Menno, age 2; John, age 19, has just started his studies; Sally, age 15, is a learner. Douglas earns a salary of R 550 000, and employs Linda as administrative manager for R 70 000. The mentioned Stone family members are the contingent beneficiaries of a discretionary family trust Douglas had established as the founder in 2010.

Douglas had transferred R 2 100 000 against a zero-interest loan account to the trust, which had vested unconditionally in the trustees who had used it on 01 March 2010 to purchase a rental office for R 850 000 and invested the balance in a share portfolio.

Douglas's loan account has since been reduced to R 1 000 000, a balance it maintained as from 01 March 2014.

Linda's father, who had passed away just more than a year ago, had bequeathed an amount of R 1 200 000 to the trust, currently invested in a money market account.

The following revenue in the trust is available for distribution in the 2015 tax year:

R 225 000 rental income from the office block.

R126 000 dividends from the share portfolio net of withholding tax.

R 51 000 interest from the share portfolio.

R 72 000 interest from the money market account.

#### **Question 4.1**

The trustees consider distributing all the revenue to Menno, John and Sally in equal shares. Douglas would like to know what the tax implications would be.

Use the following to assist you in your calculations:

- Primary overdraft rate: 9.5% pa. (Constant since 01 March 2014.)
- Interest exemption for persons younger than 65 years of age: R 23 800.

Determine the taxable income amounts for each of the tax payers only. Show all calculations up till then. (You don't have to apply the tax tables.) **[8]**

**(Total 50 Marks)**