



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



FPSA® BOARD EXAMINATION

Examination date	3 September 2015
Time:	11:15 – 13:30 (2 hours and 15 minutes)
Total marks:	50
Examination Paper:	WILLS CONSULTATION AND DRAFTING

This examination paper comprises 8 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.

Question 1

Choose the correct answer:

T dies on 1 May 2014. Her husband, P, died in 2001. At the time of his death he was married to T and Z and in his will he left cash legacies totalling R1 million to his children and the residue of his estate to T and Z. T's estate is entitled to a sec 4A rebate of:

(2)

- a) R3 500 000
- b) R6 000 000
- c) R4 750 000
- d) None of the above.

Question 2

The estate of a deceased person who was a South African resident pays estate duty in South Africa on foreign assets. Choose the **correct** answer. (2)

- a) True, all assets are subject to estate duty without exception.
- b) True, but some assets are excluded.
- c) True, but some assets are excluded and there are certain deductions available for foreign property.
- d) None of the above.

Question 3

Tom and Linda were married out of community of property. Tom died in 1980. In his will he bequeathed his farm to his son, Darryn, subject to a lifelong usufruct in favour of Linda. Linda dies in 2015. Indicate the correct treatment of the usufruct in Linda's estate for estate duty purposes by choosing the most **correct** option. (2)

- a) The value of the usufruct will be included as property and the full usufruct value will be dutiable.
- b) The value of the usufruct will be included as property in Linda's estate but will qualify for a deduction under section 4 (m) of the *Estate Duty act 45 of 1955*.
- c) The value of the usufruct will be included as deemed property and valued in terms of section 5 of the *Estate Duty Act 45 of 1955*.
- d) None of the above.

Question 4

Choose the **correct** answer

When Bill died, he bequeathed a cash amount of R250 000 to his daughter, Raine (aged 9 years at the time of his death), in his will. In the absence of any specific provision as to how the inheritance should be dealt with, briefly indicate how the executor must deal with it. (2)

- a) The bequest must be handed to Raine's guardian as she is a minor.
- b) The bequest must be paid into the Guardian's Fund on behalf of Raine.
- c) The executor can pay the bequest to an inter vivos trust that was set up for Raine by her grandfather when she was born.
- d) None of the above.

Question 5

Choose the **correct** answer

Leon du Preez has died and his family cannot find an original will. They do however find amongst his documents a certified copy of an original will executed by Leon. Can the Master accept the certified copy of the will? (2)

- a) Yes, because it was clearly intended to be Leon's last will.
- b) No, because the Master does not have the necessary jurisdiction.
- c) Yes, if the court orders the Master to do so.
- d) None of the above.

Question 6

Choose the **correct** answer.

Bianca's will dated 3 February 2010 provides that the residue of her estate devolved on her sisters, Amy and Rosemary. The witnesses to the will are Paul, her friend, and Andrew, a friend of Rosemary.

Bianca dies on 16 April 2015. By this time, Rosemary has married Andrew. Indicate how Bianca's estate will devolve: (2)

- a) On Amy and Rosemary in equal shares.
- b) On Rosemary only as Amy is disqualified in terms of section 4A(1) of the *Wills Act 7 of 1953*.
- c) Amy will inherit so much as she would have inherited on intestacy and the balance will devolve on Rosemary in terms of section 4A(2)(b) of the *Wills Act 7 of 1953*.
- d) None of the above.

Question 7

Choose the **correct** answer.

Sarel's will provides that he leaves the residue of his estate to his brothers, Johan and Karel. Johan has 2 children and Karel has 1 child. If Johan predeceases Sarel and Sarel dies without having changed his will, how will Johan's share of the estate devolve? (2)

- a) On Johan's children in terms of section 2C(2) of the *Wills Act 7 of 1953*.
- b) On Sarel's intestate heirs in terms of intestacy.
- c) On Karel in terms of the rules of accrual.
- d) None of the above.

Question 8

Choose the **correct** answer

Russell urgently needs some money and asks his dad, Fred, for a loan. Fred agrees on condition that Russell will bequeath his house to his step-brother Reinhardt. Russell agrees and they enter into an agreement to this effect. Is this agreement legally enforceable? (2)

- a) Yes, provided Russell is a major and mentally competent to understand the consequences of his actions.
- b) Yes, because Reinhardt, still has the option on Fred's death to adiae or repudiate any inheritance that Fred may have left him.
- c) No, the agreement constitutes a pactum successorum and is not legally enforceable.
- d) None of the above.

Question 9

Choose the **correct** answer.

Peggy was adopted by John and Sara when she was 3 months old. When she attained majority, she traced her biological mother, Susan, and they have had regular contact since then. Susan tells her that she had married Frank a few years after Peggy was born and a son, Mike, was born from the marriage. Frank died in 2007 and Mike died in a tragic accident a few months after Frank. Mike had an illegitimate child, Ben.

Susan dies when Peggy is 30 years old. What legislation will be applied to determine how Susan's estate will devolve? (2)

- i. Section 1(7) of the *Intestate Succession Act 81 of 1987*.
- ii. Sections 1(1)(c) and 1(7) of the *Intestate Succession Act 81 of 1987*.
- iii. Sections 1(1)(c) and 1(4)(e) of the *Intestate Succession Act 81 of 1987*.
- iv. None of the above.

Question 10

Choose the **correct** answer.

Gary and Helen are married in community of property. Gary dies on 1 August 2015. He is survived by Helen and 3 sons, Harold, Ben and David. Harold is married and has 2 children, Amy and Ross. Ben and David are not married and neither has any children. Gary dies without a valid will. The net value of his and Helen's joint estate is R2 600 000. Harold is concerned about his mother's welfare and renounces his right to inherit. Choosing from the options below, advise Helen how much she will inherit from Gary's estate. (2)

- a) R1 950 000
- b) R325 000
- c) R650 000
- d) None of the above.

Question 11

Choose the **correct** answer.

Denise wants to execute her will and asks her neighbours, Warren and Lenore, to act as witnesses. Warren asks her to show them the contents of the will, so that they can determine if it is in order before they sign it. Is this correct? (2)

- a) Yes, witnesses must understand the contents of the will as they attest to its contents.
- b) No, witnesses only attest to the signature of the testator.
- c) No, witnesses only attest to the competency of the testator and his signature.
- d) None of the above.

Question 12

Choose the **correct** statement: (2)

- a) There is no common law limit on the duration of a fideicommissum.
- b) A joint life policy on the lives of C and H is payable on the death of the survivor. When C dies, the policy will be deemed property in the estate of H.
- c) Ken has 48% shareholding in XYZ company which is worth R10 000 000. Ken also has a loan account of R5 000 000. The other shareholder, Jan, has a 52% shareholding and no loan account. The XYZ Company does not constitute a family company in relation to Ken.
- d) The definition of "resident" is the same for purposes of exchange control, income tax and estate duty.
- e) None of the above.

Question 13

Select the **incorrect** answer: (2)

The following persons are under common law disqualified from taking benefits:

- a) A person who has unduly influenced the testator to appoint him as executor under the will.
- b) A person who has unlawfully caused the death of the testator.
- c) Where spouses are married in community of property and one spouse wrongfully causes the other's death the former is not disqualified from receiving his or her half share of the joint estate as it existed at the time of the death.
- d) A person who has led another into an immoral life and indirectly caused the latter's death.
- e) A person who has concealed the will of the testator.
- f) A person who has sought to defraud persons of their rightful inheritance by forging a will.
- g) None of the above.

[26]

SECTION B

QUESTION 1

Question 1.1

Paul's will provides that his estate devolves on his children by representation. He has 3 children, A, B and C. C predeceased Paul, leaving 2 children, D & E. Assume Paul dies today without having changed his will. Indicate how his estate will devolve if his will provides that representation is *per capita*. (2)

Question 1.2

C leaves the entire residue of his estate to his trustees, to hold for the benefit of his wife G, and his children. His will provides that the trustees may pay so much of the income as they deem necessary to G. Briefly explain the estate duty position and refer to authority. (2)

Question 1.3

Paul, a wealthy bachelor aged 66, is looking for ways to reduce his exposure to estate duty. His estate is valued at R13 million and he plans to leave it to his nieces and nephews. He is not interested in setting up a trust, so decides to rather make a lump sum contribution of R10 million to a retirement annuity, as he recalls having read an article that mentioned that a retirement annuity is not subject to estate duty. He makes the contribution, but dies unexpectedly 4 months later on 13 September 2014. His nieces and nephews approach you for advice because the executor has told them that the retirement annuity is subject to estate duty, resulting in a considerable amount of estate duty and there's not enough cash in the estate to settle the duty. They ask you if the executor is correct.

1.3.1 What will your response to them be? (1)

1.3.2 Assuming that the proposals made by Minister Nene in his budget speech were accepted, would your response differ if Paul dies in September 2015? Explain why? (2)

Question 1.4

A leaves his estate of R120 000 to his children and grandchildren. At the time of his death, he has two children, B and C, and one grandchild, D (B's son).

During his lifetime A donated money to the following persons:

B – 40 000

C – 20 000

D – 10 000

Applying the principle of collation, indicate who must collate and calculate what B, C and D will receive from the estate. (6)

Question 1.5

Arnie executed his will in August 2006. In March 2009 he executed another will. The 2009 will did not include a revocation clause.

In the 2006 will he leaves his share portfolio to his friend, Brenda and the residue of his estate to his children. In the 2009 will he leaves his immovable property to Brenda and the residue of this estate to his children. No mention is made of the share portfolio.

Arnie's children come to you for advice. They are of the opinion that the 2009 will revoked the 2006 will and that the share portfolio will therefore form part of the residue of the estate.

Write a short opinion on this matter and refer to relevant authority.

(3)

[16]

QUESTION 2

Answer the following questions by stating true or false. Motivate your answer. No motivation will result in no marks being awarded.

- 2.1 Section 2B of the *Wills Act 7 of 1953* states that a previous spouse will always be deemed to have died before the date of the dissolution of the marriage, unless it appears from the will that the testator intended to benefit his previous spouse. (2)
- 2.2 The *Recognition of Customary Marriages Act 120 of 1998* is only applicable to marriages concluded in accordance with customary law entered into after the commencement of this Act. (2)
- 2.3 An ex-spouse can have a claim, in terms of the *Maintenance of the Surviving Spouses Act 27 of 1990*, against the estate of deceased if he dies within 3 months after the divorce. (2)
- 2.4 The claim that a surviving spouse has against the estate of the deceased shall have the same order of preference in respect of other claims against the estate of the deceased spouse as a claim for maintenance of a dependent child of the deceased spouse. (2)

[8]

(Total 50 Marks)

Annexure

Table A

The Expectation of Life and the Present Value of R1 per Annum for Life Capitalised at 12 per cent over the Expectation of Life of Males and Females of Various Ages

Age.	Expectation of Life		Present value of R1 per Annum for Life		Age.
	Males.	Females.	Males.	Females.	
0	64,74	72,36	8,327 91	8,331 05	0
1	65,37	72,74	8,328 28	8,331 14	1
2	64,50	71,87	8,327 76	8,330 91	2
71	8,94	11,37	5,307 75	6,036 07	71
72	8,54	10,80	5,167 44	5,882 78	72
73	8,15	10,24	5,024 37	5,722 22	73
74	7,77	9,70	4,878 76	5,557 43	74
75	7,41	9,18	4,734 90	5,388 93	75
76	7,07	8,68	4,593 54	5,217 27	76
77	6,73	8,21	4,446 63	5,046 79	77
78	6,41	7,75	4,303 09	4,870 92	78
79	6,10	7,31	4,158 98	4,693 89	79
80	5,82	6,89	4,024 40	4,516 47	80