

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

6 FEBRUARIE 2018

14:00-16:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.

1. Kandidate moet al die vrae beantwoord.
2. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
3. Waar nodig, moet kandidate hulle eie feite versin.
4. Skryf asseblief slegs in pen op die regterkantse bladsye.
5. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% of meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 2 ESTATES

6 FEBRUARY 2018

14:00-16:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1 [60]

Deon Nel en Bion Nel (gebore Kent) was binne gemeenskap van goed getroud. Deon sterf intestaat op 13 Maart 2016 en word oorleef deur Bion en twee kinders: Cassi Nel, 'n minderjarige, en Carla Nel (26 jaar), 'n kind uit Deon se vorige huwelik. Bion nader u om die boedel te beredder. U vind die volgende bates en laste:

1. Die plaas Vula waarop 'n *bona fide* boerdery bedryf is, waardasie R4 000 000.00;
2. Trekkers en implemente, waardasie R800 000.00;
3. Beeste wat deur die eksekuteur teen waardasie van R1 500 000.00 verkoop word;
4. 'n Verbandoordie plaas van R1 800 000.00 ten gunste van Land Bank;
5. 'n Vakansiehuise in Ballito, Kwazulu-Natal waardasie R850 000.00;
6. 'n Vuurwapen waardasie R24 000.00;
7. 'n Versekeringspolis op Deon se lewe by Sanlam vir R1 000 000.00, betaalbaar aan Carla;
8. 'n Versekeringspolis op Deon se lewe by Ou Mutual vir R600 000.00. Geen begunstigde is benoem nie. Ou Mutual betaal R590 000.00 uit, aangesien daar 'n lening van R10 000.00 teen die polis was;
9. 'n Momentum polis vir R800 000.00 op Bion se lewe. Deon het die premies betaal. Die afkoopwaarde is R250 000.00 wat die eksekuteur aanvaar;
10. 2000 aandele in Agriblock (Edms) Bpk waardasie R16 000.00, maar deur die eksekuteur vir R24 000.00 verkoop;

QUESTION 1 [60]

Deon Nel and Bion Nel (born Kent) were married in Community of Property. Deon died intestate on 13 March 2016 and is survived by Bion and two children Cassi Nel, a minor, and Carla Nel, aged 26, a child from Deon's former marriage. Bion approaches you to administer the estate. You find the following assets and liabilities.

1. A Farm Vula on which *bona fide* farming operations were conducted, valued at R4 000 000,00;
2. Tractors and farming implements valued at R800 000,00;
3. Cattle valued at R1 500 000,00 which were sold by the Executor at valuation;
4. A bond in favour of Land Bank for R1 800 000,00 over the farm;
5. A holiday cottage in Ballito, Kwazulu-Natal valued at R850 000,00;
6. Firearm valued at R24 000,00;
7. An insurance policy on Deon's life with Sanlam for R1 000 000,00 payable to Carla;
8. An insurance policy on Deon's life with Old Mutual for R600 000,00. No beneficiary was appointed. Old Mutual paid out R590 000,00 as there was a loan against the policy for R10 000,00;
9. A Momentum policy for R800 000,00 on Bion's life. Deon paid the premiums. The surrender value was R250 000,00 which the Executor accepts;
10. 2000 shares in Agriblock (Pty) Ltd valued at R16 000,00 but sold by the executor for R24 000,00;

11. 1000 aandele in Sasol Bpk gewaardeer teen R41 000.00, maar vir R45 000.00 verkoop. Die makelaar se kommissie bedra R1 500.00;
12. SARS se finale aanslag vir R176 000.00;
13. Begrafniskoste van R36 000.00;
14. Meubels en huishoudelike goedere waardasie R241 000.00;
15. Lopende rekening by Absa Bank: R166 000.00 wat insluit rente van R4 200.00 wat tot 13 Maart 2016 opgehoop het. 'n Bedrag van R164 000.00 is inbetaal by die boedelbankrekening.
16. Waardasiekoste: R3 000.00;
17. Verbandkansellasië- en oordragkoste: R76 000.00;
18. Ander administrasiekoste uitgesonderd Meestersgelde en eksekuteursloon: R8 000.00.

11. 1000 shares in Sasol Ltd valued at R41 000,00 sold for R45 000,00. The broker charged a fee of R1 500,00.
12. SARS final assessment for R176 000,00.
13. Funeral expenses of R36 000,00.
14. Furniture & Household effects valued at R241 000,00.
15. Current Account with Absa Bank: R166 000,00 which included R4 200,00 interest accrued up to 13 March 2016. An amount of R164 000,00 was paid into the estate bank account.
16. Valuation costs: R3 000,00.
17. Bond Cancellation and Transfer costs: R76 000,00.
18. Other administration expenses excluding Master's fees and Executor's fees: R8 000,00.

Daar word van u verlang om die hele likwidasië- en distribusierekening op te stel, behalwe die inkomste- en uitgawerekening. Moet nie meld waaruit die toekennings in die distribusierekening bestaan nie. Gebruik jou eie inligting waar nodig. Ignoreer BTW en kapitaalwinstbelasting.

You are required to Draft the entire Liquidation and Distribution Account except the Income and expenditure account. Do not state what the awards consist of in the Distribution Account. Provide your own information where necessary. You may ignore Vat and Capital Gains Tax.

VRAAG 2

[7]

U word deur Frank genader om sy testament op te stel. Hy het bedenkinge oor die sukses van sy seun, Sam se besigheid. Frank wil Sam se erfenis beskerm teen Sam se moontlike sekwestrasie voordat hy sy erfenis ontvang. Sam is getroud en het twee kinders.

- 2.1 Stel slegs die klousule van die testament op wat uitvoering aan Frank se wense gee. Moet nie 'n trust oprig nie. (4)

QUESTION 2

[7]

You are approached by Frank to draft his Will. He has doubts about the success of his son Sam's business. Frank wants to safeguard Sam's inheritance if he is declared insolvent. Sam is married and has two children.

- 2.1 Draft only that clause of the Will to give effect to Frank's wishes. Do not create a Trust. (4)

2.2 Indien Frank sy testament deur middel van 'n merk onderteken, welke verdere formaliteite moet aan voldoen word om te verseker dat die testament geldig is?
(3)

2.2 If Frank signs the Will by the making of a mark what other formality must the Will comply with to be valid.
(3)

VRAAG 3 [10]

QUESTION 3 [10]

Lawrence Zulu sterfintestaat op 20 September 2016. Hy word oorleef deur:

Lawrence Zulu died intestate on 20 September 2016. He is survived by:

- i) Sy twee eggenotes, Grace en Precious, met wie hy kragtens gewoontereg buite gemeenskap van goed getroud was.
- ii) David, sy seun uit sy huwelik met Precious.
- iii) David se twee seuns, Ernest en Lennox.
- iv) Linda, sy dogter uit sy huwelik met Grace.
- v) Max, sy vader.
- vi) Simon, sy kleinseun. Simon se vader is voor Lawrence oorlede.
- vii) Lawrence se vorige vrou, Pilani.

- i) His two spouses Grace and Precious whom he married according to customary law out of community of property.
- ii) David, his son from his marriage to Precious.
- iii) David's two sons Ernest and Lennox.
- iv) Linda, his daughter from his marriage to Grace.
- v) Max, his father.
- vi) Simon his grandson. Simon's father pre-deceased Lawrence.
- vii) Lawrence's ex-wife Pilani.

Lawrencese netto boedel bedra R4 500 000,00.

Lawrence's net estate is worth R4 500 000,00.

Hoe sal Lawrence se boedel vererf?

How will his estate devolve?

VRAAG 4 [12]

QUESTION 4 [12]

Dunstan Cele sterf intestaat op 13 Oktober 2016. Hy word oorleef deur sy vrou Xolo Cele met wie hy buite gemeenskap van goed getroud was en sy twee meerderjarige kinders, Bongani en Nobile. Die bates in sy boedel is:

Dunstan Cele died intestate on 13 October 2016. He is survived by his wife Xolo Cele to whom he was married out of community of property and two major children Bongani and Nobile. The assets in his estate are:

- 1. Onroerende eiendom R3 000 000,00
- 2. Kontant van R1 000 000,00
- 3. Roerende bates R1 500 000,00

- 1. Immovable property R3 000 000,00
- 2. Cash R1 000 000,00
- 3. Movable Assets : R1 500 000,00

Die boedellaste bedra R1 000 000,00.

The Liabilities amount to R1 000 000,00.

Die erfgename wil hulle erfenisse herverdeel sodat Xolo die roerende bates erf, en Bongani en Nobile die restant van die bates in gelyke dele erf.

The heirs wish to redistribute their inheritance so that Xolo inherits the movable assets and Bongani and Nobile inherit the balance of the assets equally.

Stel die dokument op wat aan die erfgenamese wense gevolg gee.

Draw the document to give effect to the heirs' wishes.

VRAAG 5 [11]

Dui aan of die volgende stellings reg of verkeerd is.

Verduidelik kortliks u antwoorde deur na die tersaaklike wetgewing, waar toepaslik, te verwys.

1. 'n Bevoegde getuie kragtens die Wet op Testamente No.7 van 1953 beteken 'n persoon ouer as 16 jaar wat op die tydstip wanneer hy die testament as getuie teken nie onbevoeg is om getuie in 'n hof af te lê nie. (2)
2. 'n Kennisgewing deur 'n eksekuteur in terme van artikel 29 van Wet 66 van 1965 gepubliseer, mag persone wat eise teen die boedel het oproep om sodanige eise by die eksekuteur in te dien binne 31 dae vanaf datum van die jongste publikasie. (2)
3. Collatio (inbring) beteken dat die waarde van voordele deur 'n afstammeling gedurende die leeftyd van die oorledene ontvang, in berekening gebring moet word om die bedrag te bereken wat aan die afstammeling toegeken word. (2)
4. In terme van artikel 1(2) van die Wet op Intestate Erfopvolging is 'n onwettige kind wat buite die huwelik gebore word onbevoeg om van sy biologiese vader en sy vader se bloedverwante te erf. (2)
5. Boedelsamesmelting in terme van artikel 37 van Wet 66 van 1965 vind plaas wanneer twee of meer persone 'n gesamentlike testament verly waarin:
 - hulle gesamentlik oor hul boedels aan uiteindelijke bevoorreedes beskik;
 - die langsliewende testateur 'n beperkte reg oor die saamgesmelte eiendom ontvang; en
 - die langsliewende testateur die voordeel repudieër. (3)

QUESTION 5 [11]

Indicate whether of the following statements are true or false.

Briefly explain your answer by reference to the relevant legislation, where applicable.

1. A competent witness in terms of the Wills Act No. 7 of 1953 means a person over the age of sixteen or over who at the time he witnesses a will is not incompetent to give evidence in a Court of law. (2)
2. A notice published by Executor in terms of Section 29 of Act No. 66 of 1965 may call upon all persons having claims against the estate to lodge such claims with him/her within thirty one days from date of the latest publication. (2)
3. Collation means that the value of benefits given to a descendant during the deceased's life time must be taken into account in determining the amount to be awarded to such descendant. (2)
4. In terms of Section 1(2) of the Intestate Succession Act an illegitimate child born out of wedlock is incapable of inheriting from his biological father as well as from his father's blood relations. (2)
5. Massing in terms of Section 37 of Act 66 of 1965 occurs when any two or more persons execute a joint will in which:
 - they jointly dispose of their joint estate to ultimate beneficiaries;
 - the surviving testator receives a limited interest over massed property; and
 - the surviving testator repudiates the benefit. (3)

- DIE EINDE -

- THE END -