

ATTORNEYS' EXAMINATION

PART 2 ESTATES

17 MARCH 2021

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 answer book 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.

QUESTION 1**[18]**

You are approached by Ada West and Mark West to draw their Will. They are married in community of property. Their only child is a married woman with two minor children. They want their entire joint estate worth approximately R4,5 million to devolve directly upon their daughter as the sole heir at the death of the first dying of them, but that provision (other than the creation of a trust) must be made for the survivor until his/her death. Mark West indicates that he is illiterate and that he will be signing the Will by making a mark.

- 1.1 What is massing in relation to a Will? Explain fully. (4)
- 1.2 Draft the required certificate by a Commissioner of Oaths where the Testator signs the Will by making a mark. (3)
- 1.3 When must the Commissioner of Oaths make the certificate? (2)
- 1.4 Who is competent to witness a Will? (2)
- 1.5 Who is competent to make a Will? (2)
- 1.6 In relation to a Will what is a legacy? (2)
- 1.7 Must a Will be dated to be valid? (1)
- 1.8 What is the meaning of collation (*collatio*) in relation to an estate? (2)

QUESTION 2**[8]**

Tom Snow is 67 years old and dies intestate from natural causes on the 1st January 2021. Tom Snow was divorced on the 2nd February 2019 and had married his second wife on the 3rd June 2019. They are married out of community of property without the application of the accrual system. At the time of his death, Tom's Estate was worth R5 000 000.00 and he is survived by:

- 2.1 His second wife, Jill Snow;
- 2.2 His brother, Jack Snow;
- 2.3 His ex-wife, Lynn Winter (previously Snow);
- 2.4 His two adult children from his first marriage, Ed Snow and Samantha Snow; and
- 2.5 His minor child from his second marriage, Craig Snow.

How will Tom's Estate devolve?

Piet Venter died on 5 November 2020. He is survived by his wife Jane to whom he was married out of community of property without the accrual system. He is also survived by his sister Eva and his father Graham. Piet made a Will leaving his entire estate to his wife Jane. Eva, who is not a VAT vendor, was nominated by Piet in his Will as the executrix and the estate consists of the following:

- 3.1 A farm Morula on which a *bona fide* farming undertaking is carried, which has been valued by an appraiser at R2 300 000.00.
- 3.2 The farm implements with a total value of R190 000.00.
- 3.3 His holiday house in Gauteng has a Municipal value of R380 000.00. An estate agent has valued the fair market value of the house for R530 000.00, but the executrix manages to sell the house for R450 000.00. The agreed estate agents' valuation costs amount to R25 000.00.
- 3.4 Piet owned a 100% share in Cows (Pty) Ltd. His sister worked for him. He and his sister, Eva, entered into an agreement that, on his death, Eva would buy all his shares in the business for R1 100 000.00. The executrix contacted the auditors of the company and they valued the company shares at R1 000 000.00 (SARS accepted their valuation).
- 3.5 Eva took out an Old Mutual Life Insurance Policy on Piet's life with a maturity value of R1 100 000.00. She is obliged in terms of the agreement between her and Piet to use the proceeds from this policy to buy his shares in Cows (Pty)Ltd. Up to date of death she has paid R100 000.00 in premiums on this policy (interest at 6% p.a. compounded annually, included in the R100 000.00).
- 3.6 A loan to the Venter Family Trust in the amount of R280 000.00. Piet formed this Trust in 2010 and sold some of his possessions to the Trust for R2 million (on loan account). The Trust repaid part of the loan every year and the outstanding balance at Piet's death was R280 000.00.
- 3.7 A BMW in the deceased's name valued by the appraiser at R215 000.00. The executrix sold this vehicle out of hand for R209 000.00 on 3 February 2021 and the proceeds were paid into the estate banking account on the same day.
- 3.8 The deceased's 1200 shares in Milk Ltd, a company listed on the JSE, which are valued by a stockbroker as at the date of death at R146 000.00. A dividend of R45 per share was declared and paid on 26 January 2021.
- 3.9 The deceased had an investment of R200 000.00 at ABC Bank. The executrix realises this investment for R235 000.00, of which R10 000.00 is in respect of interest accrued after date of death.
- 3.10 The proceeds of Liberty Life Insurance Policy on the life of the deceased in the amount of R300 000.00. There was a loan of R30 000.00 against this

policy and the executrix received a cheque from Liberty Life for the balance of R270 000.00.

- 3.11 Pension Fund which provides for a lump sum to be paid to his father Graham upon Piet's death in the amount of R900 000.00.

The total liabilities (i.e. administration expenses and claims against the estate) amount to R400 000.00.

REQUIRED:

Draft the entire Liquidation and Distribution Account in the estate of the late Piet Venter to be submitted to the Master of the High Court. Specify the necessary expenses. Use imaginary information where necessary. You may ignore any capital gains tax (CGT) implications.

QUESTION 4 **[10]**

With regard to the duty of an executor to place notices when administering a deceased estate, explain the following:

- 4.1 Which notices must be placed? (2)
- 4.2 When should these notices be placed? (2)
- 4.3 Where must the notices be placed? (2)
- 4.4 What is the duration of the respective notices? (2)
- 4.5 What is the aim of the notices? (2)

QUESTION 5 **[5]**

You are administering the estate of the second dying spouse. After all the calculations the net value of the estate in the estate duty addendum is R7 000 000,00:

The estate duty addendum in the first dying spouse's estate shows that the net value of the estate was R2 500 000,00.

Show the calculation for estate duty payable (if any) in the estate of the second dying spouse.

- THE END -
