

ATTORNEYS' EXAMINATION

PART 2 ESTATES

15 MARCH 2023

09:00-12:15

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 3 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 if 50% or more is attained. If a candidate achieves a score from 40% and below 50% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1**[61]**

Sarel and Elaine Botha were married in community of property to each other. Sarel died intestate on the 16th October 2022. He is survived by his wife, Elaine, and his mother Eva. You are appointed to administer Sarel's estate, and you are not registered for VAT.

You find the following in the joint estate:

1. A dwelling house situated at 621 Ridge Road, Newcastle. The market value is R3 500 000.00.
2. An Isuzu bakkie valued at R350 000.00.
3. There is a mortgage bond over the aforementioned dwelling in favour of S.A. Home Loans. The balance as at the date of death was R850 000.00.
4. Sarel had a Life Insurance Policy with Momentum that paid out R1 250 000.00. There was no nominated beneficiary.
5. As at the date of his death, there was an amount of R65 000.00 owing to Wheels Bank on the Isuzu Bakkie.
6. 1000 shares in Big End (Pty) Limited, whose market value (as per the auditor's valuation and accepted by SARS) as at the date of death was R94 000.00, and sold by the Executor during the administration of the estate for R90 000.00.
7. 200 shares in Kula Limited valued by the stockbrokers at R16 000.00 and sold by the Executor during the administration of the estate for R20 000.00.
8. A Life Insurance Policy with Sanlam. The maturity value was R2 000 000.00, and the surrender value was R865 000.00. Elaine was the nominated beneficiary.
9. Furniture and household goods valued at R310 000.00.
10. A fixed deposit of R150 000.00 with Capitec, who paid the Executor R186 000.00, which included interest of R20 000.00 upon the date of death.
11. SARS final tax assessment due by the deceased in the sum of R110 000.00.
12. Valuation expenses for immovable and movable assets amounted to R36 000.00.
13. Attorneys bond cancellation costs and transfer costs for the aforementioned dwelling amounted to R54 000.00.
14. Administration expenses amounted to R26 000.00. This amount excluded Executor's and Master's fees (to be calculated).
15. Sarel owed ABSA Bank R29 000.00 on his credit card when he died.
16. Stamp collection valued at R17 000.00 and sold by the Executor for R20 000.00.
17. Elaine's jewellery is valued at R50 000.00.

Draft the entire Liquidation and Distribution Account in the estate of the late Sarel Botha to be submitted to the Master of the High Court. Do not break-down the administration expenses already calculated. Specify the necessary expenses and claims against the estate mentioned above. Use imaginary information where necessary. (61)

QUESTION 2

[10]

2.1 Which of the following statements is incorrect? (2)

- a) a surviving spouse shall have a claim against the estate of the deceased spouse for reasonable maintenance.
- b) a surviving spouse is entitled to claim reasonable maintenance from the estate of the deceased spouse until his / her death or re-marriage.
- c) if a surviving spouse is able to provide for himself / herself from his / her own means and earnings, he/she is not entitled to claim maintenance from the estate of the deceased spouse.
- d) none of the above.

2.2 Which of the following statements is incorrect? (2)

- a) the Executor must submit the Liquidation and Distribution Account to the Master within 6 (six) months after the Letters of Executorship have been issued or within such further period as the Master may allow.
- b) the period in the notice published in the Gazette and newspaper calling upon creditors to file their claims against an estate can vary between 30 (thirty) days and 3 (three) months from the latest date of publication of the notices.
- c) a creditor who fails to lodge his claim against an estate within the period specified in the notice given by the Executor in the newspaper and gazette loses his right to claim from the estate.
- d) every estate account shall, after it has been examined, lie open for inspection by any person interested in the estate, for a period of not less than 21 (twenty-one) days, at the Master's office and at the Magistrate's office in the district where the deceased ordinarily resided.

2.3 Which of the following statements is incorrect? (2)

Before the Master will consent to a take-over of property by the surviving spouse in the estate, he must be satisfied that:

- a) no interested person would be prejudiced by the take-over.
- b) all major heirs and creditors of the estate consent.
- c) there is no provision to the contrary in the Will of the deceased.

- d) none of the above.
- 2.4 A was married to B. A makes a Will in which he appoints B as a beneficiary. Within 4 (four) months, A and B get divorced. A dies 2 (two) months after the date of divorce from Covid.**

Which of the following statements is correct? (2)

- a) B inherits from A's estate.
- b) B has a claim for reasonable maintenance against A's estate.
- c) B does not inherit from A's estate.
- d) B can approach the High Court for relief.

- 2.5 Justin signs a Will by making a mark.**

Which of the following statements is incorrect? (2)

- a) the Commissioner of Oaths certifies that he has satisfied himself as to the identity of the testator.
- b) the Will so signed is the Will of the testator.
- c) two competent witnesses must also sign the Will.
- d) the Commissioner of Oaths must make his certificate on the Will before Justin dies.

QUESTION 3

[12]

You are consulted by Faith Ndlovu in connection with her Will. She is unmarried and resides in a big house in Kanana, of which she is the registered owner. She bought the house in cash 10 (ten) years ago. Her elderly mother, Sarah Ndlovu, who is financially independent, resides with her. Faith wants to bequeath the immovable property to her sister, Mary Ndlovu, but she has two concerns. Mary is engaged to be married to a man, who in Faith's opinion, is irresponsible when it comes to financial matters. Secondly, if Mary should predecease her mother, her mother would have no place to stay. Faith wants to bequeath the rest of her estate to the Nelson Mandela Children's Fund.

Draft a valid simple Will for Faith which also have the following clauses:

- 1. Revocation clause.**
- 2. Nomination of Executor.**
- 3. Protection of Mary's inheritance.**
- 4. Make provision for Faith's mother to reside in the immovable property. Faith is not in favour of the creation of a Trust. (12)**

QUESTION 4**[11]**

Sizwe Shinga died intestate on the 14th of February 2023. He is survived by his wife Pearl, to whom he was married in community of property, and the following persons:

- 4.1 His major son, Linda, who murdered him (Sizwe);
- 4.2 Linda's son, Sthembiso;
- 4.3 His illegitimate major daughter, Cynthia, who had no contact with Sizwe and has renounced her inheritance;
- 4.4 Cynthia's son, Fano;
- 4.5 His major adopted daughter, Gladys, who died two years before her father;
- 4.6 Gladys' adopted son, Harry.

The joint estate amounts to R1 650 500.00, consisting of cash only.

Who are the beneficiaries in the estate of Sizwe, and how much will each get?

Provide an explanation for each inheritance. Also, state who will not inherit and explain why. (11)

QUESTION 5**[6]**

You are administering the estate of **B**, the second dying spouse of **A**. The net value of **A's** property in the Estate Duty Addendum is R2 000 000.00. The net value of **B's** property in the Estate Duty Addendum is R5 800 000.00.

How much estate duty, if any, is payable in B's estate? Show your calculations. (6)

- THE END -
