

**FIDUCIARY INSTITUTE OF SOUTH AFRICA
FIDUSIËRE INSTITUUT VAN SUID AFRIKA**

Examination date / Eksamen Datum: 24 NOVEMBER 2011
Time / Tyd: 8:30 – 12:45 (4 hours/ure 15 minutes/minute)
Total marks / Totale Punte: 150

You are expected to answer three sections of 50 marks each.

Section A is compulsory for everybody.

Only answers in your own handwriting in the official answer book will be considered.

SECTION A: LAW AND ETHICS IN FIDUCIARY SERVICES

Compulsory Section

QUESTION 1

For each of the following multiple choice questions, write down the correct option in your answer book (For example 1.5 iv).

- 1.1 The Fiduciary Institute of South Africa (FISA) Code of Ethics and of Professional Responsible Conduct is based on a commitment to the following broad principles:
- a. Integrity and Competence
 - b. Objectivity, Honesty and Competence
 - c. Diligence and Integrity
 - d. Knowledge and Honesty
 - e. Integrity, Independence of thought and Diligence

Which of the following options is correct?

- i. a and c
- ii. c
- iii. e and b
- iv. e
- v. d

(1)

- 1.2 Jack Naidoo, unmarried, dies while on a 2 year work contract in Cape Town. He owns a house in Durban. Jack's father, being his next-of-kin, lives in Jack's house in Durban. Jack regularly returned to Durban to visit his father, do household maintenance and attend to his personal matters. Jack's death must be reported in the prescribed format:
- a. Within 14 days from the date of his death, by the executor nominated in his will to the Master of the High Court, Pietermaritzburg.
 - b. Within 14 days from the date of his death, by his employer to the Master of the High Court, Cape Town.
 - c. Within 21 days from the date of his death, by his appointed executor to the Master of the High Court, Cape Town.
 - d. Within 14 days from the date of his death, by his father to the Master of the High Court, Pietermaritzburg.
 - e. Within 14 days from the date of his death, by the executor nominated in his will to the Master of the High Court, Cape Town. (1)

- 1.3 Which of the following statement(s) is/are false? Note that more than one statement can be false.

The FISA Disciplinary Committee receives a complaint regarding a member and decides to proceed with the disciplinary process against the member. The Chairman of the Disciplinary Committee must proceed as follows:

- a. Informs the member of the complaint lodged against him/her and requests him/her to respond in writing within 10 days to the chairman of FISA.
 - b. Informs the member of the complaint lodged against him/her and that disciplinary steps may be followed.
 - c. After informing the member of the complaint, request the member to respond to the Chairman of the Disciplinary Committee within 21 days.
 - d. Inform the member that only written responses from the member will be used as evidence at a disciplinary hearing.
 - e. Inform the member that he/she may also elect not to respond to the allegations. (1)
- 1.4 Only certain persons may liquidate or distribute the estate of a deceased person without the provision of security. Letters of Executorship may not be issued, without the provision of security, to the following persons:
- a. A parent, child or surviving spouse.
 - b. A trust company that has been exempted from providing security by the testator in his will.
 - c. A duly appointed nominee who is employed by a corporation nominated by the testator in his will.
 - d. The assumed executor (who has satisfied the requirements of section 15 of the Administration of Estates Act, 66 of 1965) of the testator's surviving partner of a registered civil union.
 - e. Any person or their spouse related, by consanguinity or affinity up to and including the second degree, to the deceased.

The following option is correct:

- i. All of the above
- ii. a and e
- iii. c and d
- iv. c and e

- v. b and d (1)
- 1.5 The Tribunal, which is established by the Disciplinary Committee for the purpose of conducting a disciplinary hearing, will in case of finding a member (of FISA) guilty impose an appropriate sentence. Which of the following is not an appropriate sentence in terms of FISA's Disciplinary Regulations?
- a. A fine not exceeding R15 000.
 - b. A suspension of membership for a period not exceeding six months.
 - c. A life ban on membership.
 - d. An admonishment.
 - e. All of the above are appropriate sentences. (1)
- [5]**

QUESTION 2

State whether the following statements are "True" or "False" and **motivate** your choice. No marks will be allocated if no motivation or an incorrect motivation is given. Where quoting case law, always refer to the most recent judgements.

- 2.1 The Constitution of FISA states that the Institution shall be a body corporate and shall have the authority to arbitrate disputes between members. (1)
- 2.2 Adherence to and upholding off the specific provisions of the FISA Code of Ethics form the cornerstone of all members' dealings exclusively with clients and each other. (1)
- 2.3 The following heading of a Liquidation & Distribution Account meets the requirements of Regulation 5(1)(a) of the Administration of Estates Act, 66 of 1965 (section103):
- Supplementary Liquidation and Distribution Account in the Testate Estate of the late Donald Duck (Identity number 2309235056089) of 2 Leafy Lane, Green Meadows, Durban, who died on 16 December 2008 and who was unmarried.*
- (1)
- 2.4 Jimmy Joubert is a trustee of the Sweet Family Trust. Jimmy, an attorney and member of FISA, acts as a trustee and administers trusts as a regular feature of his business. Jimmy's wife, Janneke, an estate agent, sold a property to the Sweet Family Trust at an above market price and earned good commission on the transaction. Jimmy and the other trustees approved the purchase. Jimmy exercised his powers as trustee *bona fide*, despite him not advising the other trustees of his interest in the transaction. (1)
- 2.5 Janet is nominated as a trustee in terms of a will in which the testator directs the Master of the High Court to dispense with the requirement of furnishing security by executors and trustees. The Master decides to exercise his discretion and calls for security from Janet. The Master may authorise Janet in writing to perform certain acts with regard to the trust property, pending the furnishing of security by Janet. (1)
- [5]**

QUESTION 3

A natural or juristic person, in their capacity as a trustee of an *inter vivos* trust, may be a member of a close corporation subject to certain conditions. List the conditions with reference to legislation.

[8 x ½ = 4]

QUESTION 4

Chief Master's Directive 3 of 2006 states that a Next-of-kin Affidavit, in respect of deceased estates, must be lodged in certain circumstances. List these circumstances and discuss the formalities for completion of the Next-of-kin Affidavit.

[6 x ½ = 3]

QUESTION 5

Bakkies, Bryan and Schalk are all trustees of the Pinot Trust, which is a discretionary trust. The trustees unanimously and verbally agree that Schalk may purchase a piece of prime property that has just come onto the market, in the name of the trust and they provide Schalk with verbal authorisation. The next day, Schalk signs the contract to purchase the prime property. The decision providing Schalk with authorisation is ratified in writing by the trustees one week later. A week later, the seller advises the trustees that after consulting with his attorney, he is cancelling the deal as he has received a higher offer. Discuss whether the seller may cancel the contract. Refer to relevant legislation and case law in your answer.

[5]

QUESTION 6

Hannah, aged seventeen, marries Justin, aged 21. Hannah wishes to claim funds being held on her behalf in the Guardian's Fund. Advise Hannah, with reference to the applicable legislation, how to proceed to claim these funds.

[6 x ½ = 3]

QUESTION 7

John is employed by the ABC Corporation whose main business is the administration of deceased estates. By virtue of his office in the corporation, John may be an executor. The corporation has lodged the necessary documents with the Master to appoint John as a nominee of the corporation.

- 7.1 List the documents, necessary to appoint John as a nominee of ABC Corporation that must be lodged with the Master. (2)
- 7.2 Should there be a conflict of interest between his duties to his employer and the administration of the estate, is John's role as executor subservient to his duties as employee? (1)
- 7.3 John dies 3 months later. Must ABC Corporation reapply for Letters of Executorship with a different nominee? Motivate your answer. (2)

[5]

QUESTION 8

The Administration of Estates Act, 66 of 1965, empowers the Master to remove an executor from the office of administering a deceased estate, in certain circumstances.

8.1 Briefly discuss what formalities the master must comply with before removing the executor. (4 x ½ = 2)

8.2 Briefly mention the grounds for the removal of an executor by the Master. (6 x ½ = 3)
[5]

QUESTION 9

Section 28(1)(c) of the Administration of Estates Act, 66 of 1965, authorises executors to deposit estate funds into interest-bearing accounts with banks. Executors are often offered the payment of an administrative fee by banks, for administering these funds. Often the bank will offer the executor a higher interest rate on pooled funds.

9.1 State the official position with regard to this practice. Refer to relevant authority in your answer. (4 x ½ = 2)

9.2 Explain the steps that the executor must take to ensure that he is not in breach of his fiduciary duty in respect of the above practice? (3)
[5]

QUESTION 10

List 5 objectives of FISA. **[5]**

QUESTION 11

OUR Bank Trustees is an established trust company that provides the following fiduciary services: drafting of wills and trust deeds, estate planning, administration of trusts and deceased estates.

11.1 Must OUR Bank Trustees register with the Financial Intelligence Centre as an “accountable institution”? Motivate your answer. (2)

11.2 Is OUR Bank Trustees exempt, in respect of certain transactions, from complying with Part 1 (duty to identify clients) and Part 2 (duty to keep records) of Chapter 3 of the Financial Intelligence Centre Act, 38 of 2001? If your answer is yes, list the transactions for which OUR Bank Trustees is exempt. If your answer is no, provide reasons therefore. (2)

11.3 Which trustees are not required to register as an “accountable institution” with the Financial Intelligence Centre? (1)
[5]

[TOTAL 50]

SECTION B - ADMINISTRATION OF DECEASED ESTATES – (50 MARKS)

QUESTION 1

Select the correct answer. No motivation needed.

1.1 Executor's remuneration can be recovered:

- a) At any time during the administration process.
- b) On receipt of the Query Sheet from the Master of the High Court.
- c) As required to make budget or assist with the Executor's cash flow.
- d) Once the estate account has expired and no objections were received.
- e) All of the above.
- f) None of the above.

(1)

1.2 Who must value and approve a deceased's share in a private company to ensure that it is acceptable for Estate Duty purposes?

- a) The accountant in terms of GAAP.
- b) In terms of GAAP the accountant if the spouse is the sole heiress and only when they were married in community of property.
- c) A sworn appraiser.
- d) The commissioner.
- e) a and d.
- f) b and d.

(1)

1.3 In order to make use of the deduction in terms of Section 4A(2) of the Estate Duty Act 45 of 1955, as amended, the Executor is required to:

- a) Lodge a copy of the Will of the predeceased spouse.
- b) Lodge a copy of the Liquidation and Distribution Account of the predeceased spouse.
- c) Lodge a copy of the Estate Duty return of the predeceased spouse.
- d) Lodge a certified copy of the payment made to the now deceased spouse claiming deduction under Section 4(q) and this amount may not exceed R3.5 million.
- e) All of the above.
- f) None of the above.

(1)

1.4 There will be no Capital Gains Tax payable in an estate where:

- a) The only growth asset in the estate is a house (primary residence) and the growth from inception of CGT to date of death is R1.6 million.
- b) The surviving spouse is the sole heiress and the base costs of the assets inherited by her roll over at the value of the assets at date of death of the deceased.
- c) The only assets in the estate are furniture, motor vehicles and personal effects.
- d) The estate is administered in terms of Section 18(3) of the Administration of Deceased Estate Act.
- e) a and c.
- f) b and d. (1)

1.5 After the estate is finalized, a 5 year fixed deposit of R50,000 is identified as an estate asset:

- a) There is no need to advise the Master of the High Court as the estate has been finalized.
 - b) The amount should be simply distributed to the residual heirs.
 - c) A Second and Final account dealing with the asset should be lodged with the Master of the High Court.
 - d) The Executor should deal with the asset and lodge a Supplementary account with the Master of the High Court.
 - e) All of the above.
 - f) None of the above. (1)
- [5]**

QUESTION 2

Briefly discuss the following statement

An Executor appoints an estate agent, auctioneer and conveyancer to attend to various functions required to administer the estate. In terms of an agreement between the professionals and the executor, the professionals pay the executor a percentage of the fee that they receive from the estate funds for introducing the business to them. Such an agreement is simply good business practice to improve profitability of the executor's business and the heirs do not have to be advised of the arrangement under the Consumer Protection Act 68 of 2008 or any other legislation. **[2]**

QUESTION 3

John, aged 45 and Melissa, aged 42 are in a relationship. John has 2 children, Megan, aged 15 and Justin, aged 19. Melissa has no children but was divorced in 1999, remarried and was widowed in 2005. John died on the 3rd of March 2011.

John's assets at the date of his death:

House (which they both live in)	R	1,500,000
Mercedes Benz	R	100,000
Investments	R	400,000
Total assets	R	2,000,000

Melissa's assets at the date of John's death:

Penthouse	R	1,800,000
Mercedes Benz SLK	R	200,000
Share Portfolio	R	8,000,000
Total assets	R	10,000,000

At the start of each relationship described in the questions below, the opening value of their estates were as follows:

John's assets

House (which they both live in)	R	1,500,000
Mercedes Benz	R	100,000
Investments	R	400,000
Total assets	R	2,000,000

Melissa's assets

Penthouse	R	1,800,000
Mercedes Benz SLK	R	200,000
Share Portfolio	R	4,000,000
Total assets	R	6,000,000

Neither John nor Melissa had any liabilities at the time of John's death.

3.1 The following scenarios set out the ways John and Mellissa had been discussing how they should take their relationship forward.

Discuss each scenario as though it was the actual position at the date of John's death, distinguishing in each scenario between:

- A) The extent of the total inheritance Melissa will receive, if any, and
- B) Any claim or entitlement that may arise against the estate of a spouse

Calculations should be done where possible and no administration costs need to be taken into account.

3.1.1 John and Melissa were married in community of property. John left 50% of the estate to his ill mother and the remaining 50% to his children in equal shares. (3)

- 3.1.2 John and Melissa were married out of community of property with an Ante Nuptial Contract which excludes the accrual system. John bequeathed the net value of his investments to Melissa and the residue of his estate to his two children in equal shares. (2)
- 3.1.3 John and Melissa were married out of community of property with the accrual system. The Ante Nuptial Contract excludes the current motor vehicles, house and penthouse from the accrual calculation. Melissa inherits 50% of the estate and John's ill mother the other 50%. (5)
- 3.1.4 John and Melissa registered their relationship as a 'Civil Union' in terms of the Civil Unions Act, 17 of 2006. John left 50% of the residue of his estate to Melissa and the remaining 50% to his ill mother. (3)
- 3.1.5 John and Melissa are simply living together. John left 50% of the residue of his estate to his ill mother and the remaining 50% to his children in equal shares. (2)
- 3.2 Explain the role and responsibilities of the executor to reflect any maintenance claim in the Liquidation and Distribution Account as well as the factors that will be taken into account when calculating such claim. (5)
- [20]**

QUESTION 4

Don, aged 52, is married out of community of property without the accrual system to Cathy, aged 52. Don has 3 children, Kyla, Anthony and Dominique, all over the age of 18, from a prior marriage and who are alive at the date of his death.

Cathy has one child from a previous marriage, Alex who is 19 and alive at the date of Don's death.

Don died on 6 June 2011.

Don was previously married to Pauline who died in 2005. Don inherited R2,500,000 from Pauline's estate and this amount was allowed as a deduction under Section 4(q) of the Estate Duty Act 65 of 1955. The residue of her estate, which amounted to R1,000,000 was bequeathed to a Family Trust for the benefit of her children. Due to the deductions under Sections 4A and 4(q) of the Estate Duty Act 65 of 1955, no estate duty was payable in her estate.

The following assets were reflected in the Inventory which was lodged with the Master of the High Court. These values were also approved by the Commissioner.

House (which Don and Cathy lived in)	<i>Note 1</i>	R	3,000,000
Donprop (Pty) Ltd - 100% shareholding	<i>Note 2</i>	R	1,500,000
Swazifarm Sugars (Pty) Ltd – 100 & shareholding	<i>Note 3</i>	R	10,000,000
Swiss share portfolio managed by UBS	<i>Note 4</i>	R	10,000,000
Investec Investment Account comprising of Nedbank rainmaker pension fund A	<i>Note 5</i>	R	3,000,000

RSA Retail Savings Bond – no nominated beneficiary	R	500,000
RSA Retail Savings Bond – his wife is the nominated beneficiary	R	500,000
ABSA Current Account held in Don's name	R	52,475
ABSA Current Account in Donprop (Pty) Ltd and Don has signing powers on the account	R	50,000
ABSA Money Market 1	R	485,000
ABSA Money Market 1 interest earned from 1/3/2011 to date of death	R	600
ABSA Money Market 1 accrued interest but not paid at 6/6/2011	R	100

The Don Family Trust -

Loan account due to Don from the Trust	<i>Note 6</i>	R	1,000,000
Shares in Don's name not yet transferred to the trust		R	5,000,000
Cash in Don's bank account being payment for the shares to be Transferred to the Don Family Trust		R	5,000,000
Alexander Forbes – Preservation Fund	<i>Note 7</i>	R	5,000,000
Learn to sell Insurance (Pty) Ltd – 50% Shareholding	<i>Note 8, Note 9</i>	R	1,000,000
Cars, boats, furniture and personal effects		R	500,000
Proceeds of life policy on Don's life payable to Anthony		R	1,000,000

Notes

1. The house in which they live is owned by Donprop (Pty) Ltd
2. Don has a negative loan account in Donprop (Pty) Ltd for R100,000
3. The Swazifarm asset is a company registered in Swaziland whose main business is farming sugar cane. For income tax purposes it is regarded as a controlled foreign entity.
4. The Swiss share portfolio was inherited from his late mother who died in 1995 and who was, and always had been, a resident of Switzerland. Don inherited 10% of the residue of his late mom's estate, which assets have always been in Switzerland and never brought to South Africa.
5. The Investec investment account is a Living Annuity.
6. Don had recently entered into an agreement with the Don Family Trust to sell shares to the Trust. He had been paid for the shares from the Trust but the shares had not yet been transferred out of his name. Don is a trustee as well as an income and capital beneficiary in the Trust.
7. The Alexander Forbes investment is a pension fund arising from long term employment Don had with a large corporate who ran their own, in-house pension fund. Don had been retrenched from the corporate and decided to take his pension and place it with Alexander Forbes. He has taken no amount from the pension payment.
8. Don was a 50% shareholder in the business *Learn to sell Insurance (Pty) Ltd*. Don had entered into a Buy and Sell agreement with his son, Anthony, who owns the other 50% of the business. In terms of the poorly drafted Buy and Sell agreement, each shareholder had taken out a life policy on their own lives, nominating the other shareholder to receive the proceeds on the death of the first dying. Such payment was made with the express reason to purchase the other shareholder's shares, for the value of the policy. The value of the business was agreed to by the Commissioner to be the same amount as the proceeds of the policy payable to Anthony.
9. Each shareholder paid the premiums on their own policy and SARS confirmed that it is a family business.

Don's Will

Don quickly had a will drafted and signed when he started with his estate planning exercise in order to ensure that he had a valid will in case he died before he finalized his estate plan and all the structures were in place. The residential home had to be transferred into the name of Donprop (Pty) Ltd at the time and he made it clear to his estate planner and Cathy that he had no intention of bequeathing the residential home to Cathy once the company was registered as she will be a capital and income beneficiary of the Family Trust once it was registered with the Master of the High Court. Don never updated his will and in terms of his will he bequeathed the following:

The house that he and Cathy lived in to Cathy.

The residue of his estate::

- 25% to his wife Cathy
- 25% to his daughter Kyla
- 25% to his son Anthony

Notes:

On reading the will, you as Executor note that a quarter share of the residue has not been dealt with. When calling for copies of the documentation used in preparation of the will, or any prior will, you are advised by the family and the person that drafted the will that there are no such documents or records to be found anywhere and that these documents should be regarded as destroyed.

Cathy has decided to accept the terms of the will and not to follow up on any claim that she may be entitled to in terms of legislation.

For the purposes of the questions below:

- i) No Income Tax / CGT is payable by the estate.
- ii) The total Estate Duty payable in the estate is given as R1, 000, 000.

- 4.1 Draft the Assets and Liabilities Accounts of the First and Final Liquidation and Distribution Account
Your answers should identify, amongst others,
The extent of the Executor's remuneration to be collected, and
The amount to be carried forward to the Distribution account.
Do not calculate or take any other administration costs into account. (14)
- 4.2 Calculate the amount of the Section 4(A)2 deduction that can be claimed in Don's estate? (1)
- 4.3 Prepare a table reflecting the assets regarded as deemed assets in the Estate Duty Addendum which will be excluded for Estate Duty purposes under the various subsections of Section 4 of the Estate Duty Act 66 of 1965, as amended. (4)
- 4.4 Prepare a schedule defining all the heirs in the estate and the various special bequests or percentages / proportions of the residue of the estate that each beneficiary will receive. No calculation of actual inheritances is required, but you need to explain why each person will inherit each asset or percentage of residue as stated. (4)

[23]

[TOTAL 50]

SECTION C - WILLS DRAFTING AND CONSULTATION – (50 MARKS)

QUESTION 1

John West is a widower, 50 years of age. He has two children, **Jacob** (age 26) and **Sarah** (age 12). His predeceased wife was their mother. His assets are as follows:

<u>Item</u>	<u>Amount</u>
Cash in bank account	R1,400,000
Investment in unit trusts	R900,000
Shares in Jowe (Pty) Ltd	R1,600,000
Loan account against Jowe (Pty) Ltd	R Nil
Mazda motor vehicle	R60,000
Furniture	R40,000
Total :	R4,000,000

John has no liabilities.

You are a senior fiduciary advisor in the employment of a well established trust company, Endurance Trust Limited. John consults you on his will and related matters. Answer the following questions:

- 1.1 John asks you about the meaning and purpose of the clause revoking previous testamentary documents. (2)
- 1.1.1 Explain the purpose and effect of the revocation clause to John. (1)
- 1.1.2 Draft (only) the revocation clause in John's will. (1)
- [3]**
- 1.2 The company Jowe (Pty) Ltd has no liabilities. The house where John stays (and has been staying for 10 years), is the only asset registered in the name of the company. The value of the house is R1,600,000. It is John's wish that Jacob inherits the home after John's death.
- 1.2.1 Explain if it is possible to draft a clause in his will to give effect to his wish? Motivate your answer. (2)
- 1.2.2 Advise John on different possibilities to deal with his wish. (2)
- [4]**
- 1.3 John wants Jacob and the company you are working for (Endurance Trust Limited) to be the executors of his deceased estate. Draft the clause in terms of which the executor(s) is/are appointed and include all provisions you deem necessary in such a clause. (4)
- 1.4 John is worried about Sarah, who is only 12 years of age. If he dies while she is still a minor, he would like her to receive the benefits of the cash amount of R1,400,000 to enable her to complete her school career and commence with her studies.
- 1.4.1 Explain and discuss the provisions which, in your view, should be included in John's will to provide for Sarah. **Do not** draft the clauses. Motivate your answer fully and explain what the consequences would be if these provisions are not included in the will. (6)
- 1.4.2 At what age does a minor reach majority? (1)
- [7]**

- 1.5 John wants to sign his will at home.
- 1.5.1 Explain briefly to John how the will should be signed to comply with the formal requirements of signing a will. (4)
- 1.5.2 What will the consequences be if Jacob signs John's will as witness? (2)
- 1.5.3 What will the consequences be if Sarah signs John's will as witness? (2)

[8]
[26]

QUESTION 2

- 2.1 Peter and Mary are **married in community** of property. Peter asks you to draft his own will, without Mary's knowledge. Is it legally possible for Peter to have his own will, independently of Mary? Motivate your answer. (2)
- 2.2 If Peter dies before Mary, with which estate will Peter's executor deal when drafting the liquidation and distribution account? (1)

[3]

QUESTION 3

If you are in possession of an originally signed will of a client, and you hear that the client has passed away, what are your legal obligations in terms of the Administration of Estates Act, 66 of 1965? [2]

QUESTION 4

Mr Greg Hughes and Mrs Ida Hughes, married to each other in community of property, were divorced on 1 May 2007. Greg married Janet out of community of property, on 1 June 2007. Greg was tragically killed in a car accident on 8 June 2007, one week after his wedding to Janet. Janet was pregnant with Greg's child at the time of the accident.

Greg left a will executed in 2005 which provided for "*R30 000 to my son, Kevin and the residue of my estate to Ida*". On the date of his death, Kevin (who was born out of his marriage to Ida), was 14 years old. Seven months after the accident, Janet gave birth to a healthy boy, Greg Jnr.

Assume Greg's estate for distribution (after all claims, administration costs and estate duty has been dealt with) is a cash amount of R630 000. Answer the following questions.

- 4.1 How much will each of the following receive?

Ida

Janet

Greg Jnr

Kevin

(4X½=2)

- 4.2 Assume that Greg died on 1 December 2007 and not on 8 June 2007, but all the other facts mentioned above remain the same. How much will each of the following receive?

Ida

Janet

Greg Jnr

Kevin

(4X½=2)

[4]

QUESTION 5

Malcolm Brown (age 50) consults you with regards to his mother's will. She is Mary Brown, a widow who was born on 25 May 1926 and is now 85 years of age. Malcolm tells you that he assists Mary with all her financial and personal matters. She has recently been admitted to a frail care centre. Her health deteriorated after the illness and death of her daughter Monique.

Malcolm informs you that Mary requested him a few months ago to consult an expert on her will, and if necessary, to have it changed. Unfortunately he did not do as requested, up to now. He now wants to discuss the will with you as requested by Mary. He wants to understand her current will, and also considers assisting her to sign a new will, despite her frail condition, if her current will is not in order.

Carefully read through the current will of Mary Brown:.

WILL

1. This is the will of me, Mary Brown (born 3 May 1926), married out of community of property to Peter Brown. I revoke all previous wills.
2. I bequeath a cash amount of R200 000 (two hundred thousand rand) to my husband, Peter Brown.
3. I bequeath my house to my son, Malcolm Brown, and my daughter, Monique Marais.
4. I bequeath my Living Annuity with the company known as Excelsior Life to my sister, Anne Shaw.

SIGNED this 30th day of September 2002 at Cape Town.

AS WITNESSES:

[signed by Anne Shaw as witness]

[signed by Mary Brown as Testatrix]

[signed by Lydia Vosloo as witness]

It was drafted by Mary Brown herself, three years before her husband's death a few years ago. Take note that the will consists of only the four clauses. It is duly and correctly signed by the two witnesses and by Mary. Answer the following questions:

- 5.1 Mary did not know how to draft a will correctly. She omitted dealing with some important matters in her will. Identify any two of these matters and discuss the consequences if she dies without these matters being dealt with in her will. (4)
- 5.2 Discuss each of the clauses 2, 3 and 4 of the will by explaining what the effect of each of these three clauses will have on the winding up of her estate. Please note that you have not been given all the essential facts and information in this question. For your answer also identify and discuss the facts and information you need from Malcolm to advise him properly. (8)
- 5.3 Malcolm tells you that Mary is weak at present, and will find it very difficult to sign a document. Discuss the matters to be considered when advising on the valid execution of a will for Mary in these circumstances. (3)

[15]

[TOTAL 50]

SECTION D - TRUST ADMINISTRATION – (50 MARKS)

QUESTION 1

- 1.1 A trustee has invested in certain speculative investments as a percentage of the trust's portfolio. These investments have diminished in value. Can the trustee rely on a provision included in a trust instrument to indemnify him from liability for breach of trust where he has failed to do so? Motivate your answer. (1)
- 1.2 The beneficiaries of an *inter vivos* trust are dissatisfied with the administration of a trust and wish the trustees removed from office. Discuss under what circumstances the trustees can be removed? (2)
- 1.3 The trustees of an *inter vivos* trust conclude a contract after lodging the trust for registration with the Master of the High Court but before receiving the Letter of Authority. Is the contract valid and enforceable? Motivate your answer. (1)
- 1.4 Jane is the nominee of B, a Trust Company, and as such a trustee together with others of the AAA Trust. It is the policy of B, the Trust Company, to invest trust assets in its own in-house products. Is this permissible? (1)
- 1.5 John is an estate agent as well as a trustee of the XXX Trust. The trust disposes of a fixed property to a buyer introduced by John. Can John retain the normal agent's commission? Give reasons for your answer. (1)
- 1.6 Give two examples of records a trustee must retain? (1)
- 1.7 When are trustees personally liable for legal expenses? (1)
- 1.8 Is there a hindrance in a husband and wife being the only trustees of an *inter vivos* trust? (1)
- 1.9 Can a spouse protect his estate upon divorce by holding his assets in an *inter vivos* trust? (1)
- 1.10 Can the provisions of a *mortis causa* trust be amended? Motivate your answer. (1)
- 1.11 Is it true that the annual financial statements of a trust must be audited? Motivate your answer. (1)
- 1.12 If a bequest has been made to a charitable institution in terms of a will and the charity no longer exists at the time of the testator's death, would the bequest fall to the residue of the estate? Briefly explain your answer. (1)
- 1.13 If an award has been made to a trust in terms of a will with a charity being the ultimate beneficiary and that charity no longer exists at the time of termination of the trust, what remedy does the trustee have? [1]

[14]

QUESTION 2

You have been approached by a client who wishes to purchase a coastal holiday property. After discussion, you recommend to the client that the property should be held by an *inter vivos* trust.

Discuss step-by-step how the client should proceed to create this trust and to obtain registration of the property into the trust. [½ x 12]

QUESTION 3

The will of Mr Jones provides for a substantial share portfolio to be bequeathed to a *mortis causa* trust to provide income for his wife, with the capital to devolve upon his three children on the death of Mrs Jones.

Several years after her husband's death (Mr. Jones) Mrs Jones emigrates and soon finds that her living expenses in her new country is substantially higher than before. Mrs Jones now requests the trustees that the share portfolio in the trust be switched into government bonds and preference shares in order to maximise the income that may be exported to her.

Discuss how the trustees should react?

[5]

QUESTION 4

Mrs Elizabeth Browne is in an unhappy marriage and has consulted with you. She has no knowledge of trusts or of the management of trusts. She suspects that information regarding the trust may be withheld from her. You have been asked to comment and give recommendations as to the following family arrangement.

The Browne Family Trust was created by her husband, Howard Browne 15 years ago. The first trustees are Howard Browne, Elizabeth Browne, their eldest son Keith Browne and an attorney Hadley James Marcus. Letters of Authority have been issued and Hadley has been mandated to maintain the trust records.

The Trustees have the discretion to pay capital and/or income amongst the beneficiaries being Mr & Mrs Browne and their adult children Keith Browne, Gillian Smith, Gerald Browne and also their respective issue.

Trust assets

	R
The farm "Bedford" (note 2)	22,000,000
Standing crops	5,000,000
Livestock	800,000
Residential property "Rustig" (note 1)	6,000,000
Share portfolio (note 3)	18,000,000
Cash	600,000
Property Syndication (in liquidation) (note 5)	value uncertain

Notes:

1. Howard & Elizabeth live in the residential property.
2. Keith lives on the farm Bedford and conducts all the farming activities.
3. Howard manages the share portfolio.
4. Hadley recently emigrated but furnished a power of attorney in favour of Gerald before he left as he is not yet finally settled.
5. Hadley had also recommended the property syndication investment just before he emigrated.
6. For income tax reasons, Keith has not reflected all the income from farming operations in the annual financial statements as there have been certain cash transactions and Keith has used this cash to effect improvements to the farm dwelling and has purchased a vehicle for his wife.

7. Howard has recently signed an offer to purchase a flat for R500,000 in the name of the trust so that Gillian's child, Peter may stay there whilst studying further.
8. Gerald, the youngest son, receives a monthly allowance from the trust but is aggrieved in that he feels he is kept in the dark regarding the trust and the trust assets. Gerald also feels that his brother and sister are receiving greater benefit from the trust than he is.

The following is an extract of the trust deed, which is broadly standard:-

The Trustees shall have the power to appoint further trustees in addition to those in office or to replace those who have ceased to hold office in terms of clause 9.1.12 hereunder, whether they are resident in South Africa or not. Any beneficiary may be a trustee, however, where a beneficiary is a trustee, there shall always be not less than four trustees. Any vacancy in the trusteeship shall be filled as soon as practicable after it occurs. Should at any time any beneficiary become the sole trustee, all of his powers other than that of assumption and appointment shall be suspended.

The Trustees may appoint an administrative trustee and authorise by resolution such administrative trustee to sign all documents relating to the administration and investment of the trust fund on behalf of the Trustees. Such trustee shall be entitled to charge its normal fees for acting in such capacity. The Trustees, whether they be natural or legal persons, shall be entitled to act for the trust in the normal course of their business and their professional capacities, and to recover their customary fees when acting in any of these capacities, and shall be entitled to retain any commissions paid to them.

The Trustees shall convene and regulate their meetings and the manner of conducting their business as they think fit, subject to the provisions of the trust.

A trustee may at any time summon a meeting of trustees on not less than seven days' written notice to the remaining trustees, or on such shorter notice as may be agreed by all the trustees.

A resolution in writing signed by all the Trustees shall be as valid and effective as if it had been passed at a meeting of the Trustees duly called and constituted.

At any time there should be more than three Trustees, and a quorum shall be not less than two thirds of the Trustees in office, provided that proper notice of such meeting has been given. The Trustees shall not conduct any business at any meeting unless there is a quorum present. In the event that the number of Trustees falls below the required quorum, the remaining Trustees must act within a reasonable period to appoint a further Trustee or Trustees to achieve a quorum. During this reasonable time the actions of the remaining Trustees shall be valid and binding.

The Trustees shall cause to be kept proper record and accounts which may be wholly or partially computerised, reflecting truly and correctly their administration of the trust fund and they shall ensure that a statement of the assets and liabilities of the trust fund be prepared annually in respect of each year.

No Trustee shall be liable to make good any loss to the trust or to any beneficiary arising from the administration of the trust or from the exercise of his discretions granted to him provided that the trustee has in the performance of his duties and the exercise of his powers acted with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.

Decisions may be arrived at on the telephone, by facsimile or by any means of communications, electronic or otherwise and such decisions shall be confirmed thereafter in writing by resolution signed by at least as many Trustees as comprise a quorum. A resolution in writing signed by at least as many Trustees as comprise a quorum shall be valid and binding notwithstanding that a meeting of Trustees has not been held.

The Trustees may allow any beneficiary free use and enjoyment of any property controlled by them or forming part of the trust fund, whether movable or immovable, upon such conditions, if any, as to maintenance, insurance, rates and taxes and other expenses as they may deem fit.

Discuss and comment on each of the following statements:

- 4.1 Mrs E Browne is in an unhappy marriage and has consulted with you. She is not familiar with trusts and feels that information may be being withheld from her. (3)
- 4.2 and Hadley has been mandated to maintain the trust records. (2)
- 4.3 Howard & Elizabeth live in the residential property. (2)
- 4.4 Keith lives on Bedford and conducts all the farming activities. (1)
- 4.5 Howard manages the share portfolio. (2)
- 4.6 Hadley recently emigrated but furnished a power of attorney in favour of Gerald before he left as he is not yet finally settled. (4)
- 4.7 Hadley had also recommended the property syndication investment just before he emigrated. (3)
- 4.8 For income tax reasons, Keith has not reflected all the income from farming operations in the annual financial statements as there have been certain cash transactions and Keith has used this cash to effect improvements to the farm dwelling and has purchased a vehicle for his wife. (2)
- 4.9 Howard has recently signed an offer to purchase a flat for R500,000 in the name of the trust so that Gillian's child, Peter may stay there whilst studying further. (2)
- 4.10 Gerald receives a monthly allowance from the trust but is aggrieved in that he feels he is kept in the dark regarding the trust and the trust assets. (2)
- 4.11 Gerald also feels that his brother and sister are receiving greater benefit from the trust than he is. (2)

[25]

[TOTAL 50]

SECTION E - ESTATE PLANNING – (50 MARKS)

QUESTION 1

- 1.1 John sold his holiday home to an *inter vivos* trust for R1,800,000 on 2 April 2011 in an attempt to eliminate any potential future growth of this asset in his estate.
Calculate the transfer duty payable and indicate who will be responsible for it. (2)
- 1.2 John Doe has a vested right in the capital assets of the How-do-you-do Trust. The trust owns only immovable property. During the 2010 year of assessment a property with a base cost of R1,000,000 was sold by the trust to a third party at its market value of R5,000,000.
Explain who will be liable for payment of the Capital Gains Tax that the sale of the asset will attract. Refer to relevant authority. (2)
- 1.3 Harry bequeaths his entire estate to a testamentary trust. This trust has a clause that reads as follows: “My trustees shall be entitled to pay so much of the net income of the trust as they deem necessary, to my wife, Sally. Any surplus income must be capitalised. After Sally’s death the trust will terminate and the capital, as it then stands, will be distributed to my children.”
Explain if this bequest will qualify as a deduction in terms of section 4(q) of the Estate Duty Act 45 of 1955. (2)
- 1.4 John and Jolene were divorced in 2009. They have since reconciled and are currently living together. Jolene has 2 children from a previous relationship.
Advise John as to how his relationship with Jolene will be regarded for tax purposes with specific reference to all applicable legislation. (2)
- 1.5 At Mike’s death the proceeds of a policy on his life (R100,000) is paid to the PTY company of which he owns 80% of the shares. The total value of the shareholding in the company amounts to R1 400 000. The proceeds of the policy are included in this valuation. The policy complied with the provisions of section 11(w) of the Income Tax Act 58 of 1962.
Discuss how the proceeds of this policy will be dealt with for estate duty purposes. Show calculations and refer to relevant authority. (2)

[10]

QUESTION 2

- 2.1 Mr Adventure purchased a piece of land a few years ago. He died on 31 March 2011 without having done any development to the property.

Assuming that he had a tax rate of 40%, calculate the Capital Gains Tax implications in the following scenarios:

Purchase price	1 October 2001	31 March 2011
(a) R350 000	R400 000	R450 000 (1)
(b) Lost in fire	Unknown	R450 000 (2)

[3]

2.2 Jane died in November 2010. The value of her estate was R8,000,000. She was married to John in terms of a customary marriage. At the time of John's death in 2006, he was also married to Caroline in terms of a customary marriage.

A deduction of R500,000 was used in John's estate in terms of section 4A of the Estate Duty Act 45 of 1955.

Calculate the value of the section 4A deduction in Jane's estate. **[3]**

2.3 John lived in South Africa for 27 years after which he decided to emigrate to Namibia. After living in Namibia for 10 years, he returned to SA in 2001. He died in 2004 whilst living in South Africa. The following assets were reflected in the Inventory at his death:

Farm in Namibia (valuation)	R 3,000,000
Cash in Bank of Namibia	R 500,000
Assets in SA	R10,000,000

(a) Which of these assets will be subject to estate duty? Motivate your answer. (2)

(b) Will there be any deduction of estate duty with regard to the Namibian assets? Refer to relevant authority. (1)

[3]

2.4 Peter bequeathed his entire estate to an *inter vivos* charitable trust. The executor is unsure of how to deal with such a bequest for estate duty purposes.

(a) Explain under what circumstances the estate can claim a deduction for estate duty and, if so, what proof the Master would require. (1)

(b) Explain to the executor the process he should follow to qualify for a deduction if the bequest was made to a testamentary trust with charitable objectives. (1)

[2]

2.5 Steve's grandfather bequeathed his farm to his daughter Jenny, subject to a usufruct in favour of Steve's. The grandfather died on 12 February 2007. On 20 March 2010 Steve decides to waive his right to the usufruct as he had recently won the lottery and no longer needs the income from the farm.

Advise Steve on the tax consequences of his waiver. Refer to relevant authority. **[2]**

2.6 John's family home where he and his family reside is owned by his family trust. He was the founder of the trust and is also a beneficiary. The other assets owned by the trust include a share portfolio and cash. John is unsure on how to deal with his family home.

Explain his options as well as how to execute these options to him. Refer to relevant authority.

[2]

[15]

QUESTION 3

John Smith is 62 years old and married to Jane. Their matrimonial property system is out of community of property with exclusion of the accrual system. They have 2 major children.

His estate consists of the following:

Assets	
Residence in Cape Town	2,000,000
Furniture and equipment	100,000
Motor vehicles	400,000
Boat (8 meters)	450,000
Listed shares	550,000
Cash	250,000
50% member's interest in Equipt CC	2,000,000
Life assurance payable to son	1,000,000
Life assurance payable to Peter (previous member of Equipt CC)	2,020,000
Bank account in Jersey (Rand value)	800,000
Liabilities	
Credit card (debit balance)	50,000
Outstanding income tax due to SARS	50,000

John and his best friend, Peter, were members of Equipt CC. They entered into a buy and sell agreement and took out policies on each other's lives. On 31 October 2010 Peter retired and sold his member's interest to Paul. No amendment was made to the policy agreement.

In terms of John's will, he bequeaths his residence, furniture and equipment and vehicles to Jane. The rest of his estate is bequeathed to his children.

Jane owns no assets of her own other than a vehicle and a small bank account.

Answer the following questions as if John has just passed away:

3.1 Calculate the executor's fee (including VAT). Select the correct answer and show your calculations:

- a. R310,023
- b. R225,435
- c. R229,425
- d. R201,250

[1]

3.2 Calculate the taxable capital gain in the estate. You can assume the following base costs

Residence	R400,000
Boat	R350,000
Listed shares	R200,000

[4]

3.3 Calculate the estate duty payable. You can assume that the total administration costs (Master's fees, funeral costs etc.) amount to R30,000. Show all calculations. **[7]**

3.4.1 Calculate the liquidity position of the estate. (2)

3.4.2 Explain what effect a possible liquidity shortfall will have on the estate and how this can be addressed. (3)

3.4.3 What could John have done during his lifetime to ensure that there is sufficient liquidity in his estate on his death? (2)

[7]

3.5 John is worried that Jane might not be adequately taken care of and he is considering leaving more assets to her.

Explain what the consequences will be if John bequeaths his entire estate to Jane. [3]

3.6 Discuss three estate planning techniques that will reduce John's liability for estate duty. [3]

[25]

[TOTAL 50]