NOTE TO EXAMINER: This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

QUESTION 1

1.1 The appointment of such a person is common practice. However, the practitioner must supervise the work and remains ultimately responsible for whatever is done. (3)

1.2 Clients may be seen and new matters accepted only in the field of expertise of the non-professional. (2)

1.3 These activities fall within the normal duties of a collection assistant but the practitioner must supervise the results and give guidance on what should be done. (2)

1.4 Legal-advice is a professional activity and may not be given by support staff. (2)

1.5 High Court matters are always specialised and professional work and must be attended to by professionals. (3)

1.6 No. This entails abandoning control of trust funds. At most he/she can be a co-signatory. (2)

QUESTION 2

It is normal that the attorney will not be familiar with accounting systems or computer programmes. This does not mean that trust books must be written up by hand if that is what the attorney knows. Attorneys must find out enough to ensure that the computer systems entail compliance with the Act and Rules and must be able to check that the system is being adhered to.
QUESTION 3

The various law societies have prescribed attorney-and-client fees for debt collection. You may enter into a contingency fee agreement. The agreement must be in writing in the prescribed form, stating on what contingency you become entitled to a fee and how it is calculated and that your client was informed of all options. You may not recover more than double your normal fee or more than 25% of the amount recovered (whichever is lower).

QUESTION 4

The lessor gives the lessee an option to extend the lease contract for a further period of three years on condition that:

1. a written notice of such exercising of the option reaches the lessor not later than three months before the termination of the lease period;

2. the rental as prescribed in the lease agreement is increased by 10% in regard to every year of such extended lease period starting on the date when the extended lease period comes into operation;

3. all the remaining provisions of the lease contract save the right to extend remain applicable to such extended lease period;

4. this option is granted on the express condition that the lessee strictly and faithfully complies with the provisions of the contract.

QUESTION 5

Cession of Book Debts

Made and entered into by and between:

ABC WHOLESALERS CC
herein represented by ABC the managing member thereof he being duly
authorised hereto
(hereinafter called the CEDENT)

AND

XYZ BANK LTD
(hereinafter called the CESSIONARY)

WHEREAS the CEDENT has agreed to grant security for its indebtedness to the CESSIONARY arising out of an overdraft facility granted to it by the CESSIONARY;

and

WHEREAS the CEDENT has agreed to cede as security to the CESSIONARY all its book debts present and future
NOW THEREFORE:

1. The CEDENT hereby cedes to the CESSIONARY all its right, title and interest in and to all the book debts of the CEDENT, both present and future from whatsoever cause arising as security for the above indebtedness of the CEDENT to the CESSIONARY arising from the obligation set out in the recital hereto.

2. This cession shall be of force and effect until the whole of the CEDENT’S indebtedness to the CESSIONARY shall have been extinguished by payment or other form of discharge.

3. The CEDENT shall while the cession is in force and when required to do so by the CESSIONARY deliver to the CESSIONARY a list of all the CEDENT’S debtors which shall reflect the names and addresses of such debtor and the amount of the indebtedness of each of them.

4. The CESSIONARY agrees:

4.1 that it will not cede the rights ceded to it in terms hereof further;

4.2 that it will not notify the debtors of the cession until the CEDENT’S debt falls due and he is unable to pay the same;

4.3 that it will pay any surplus of the claims against the CEDENT’S debtors to the CEDENT after he has satisfied its claim against the CEDENT;

4.4 that it will cede back to the CEDENT all remaining rights after all the CESSIONARY’S claims against the CEDENT have been settled.

5. Subject to what is said above, the CEDENT authorises the CESSIONARY, during the currency of this cession, to give notice of the cession to both present and future debtors of the CEDENT.

SIGNED AT ....................... ON THIS THE ........ DAY OF ......................... 2004

..........................................................
for ABC WHOLESALERS CC

ACCEPTED AT ....................... ON THIS THE ........ DAY OF ......................... 2004

..........................................................
for XYZ BANK LTD

QUESTION 6

6.1 DRAWINGS AND DIVISION OF PROFIT AND LOSS:

6.1.1 The partners shall share equally in all profit and loss;
6.1.2 The partners shall be entitled to draw an agreed monthly amount as remuneration for their services, which amount shall be determined from time to time;

6.1.3 Profits remaining after payment of monthly drawings as determined by the auditors of the partnership shall accrue to partners every six months.

6.2 CONTRIBUTIONS BY PARTNERS

The first and second partner shall each contribute R25 000 in cash to the capital of the partnership, payable within seven days of the signing of the agreement.

6.3 DISSOLUTION

6.3.1 The partnership shall automatically be dissolved on:

6.3.1.1 the death of a partner;
6.3.1.2 the voluntary or compulsory sequestration of a partner’s estate.

6.3.2 Each partner shall be entitled to dissolve the partnership by giving three months written notice of termination to the other party without stating any reasons;

6.3.3 Either partner can summarily terminate the partnership in the event of:

6.3.3.1 breach of a material term of this agreement by the other partner; or
6.3.3.2 misconduct by the other party which breaches the utmost good faith between partners; or
6.3.3.3 conviction of the other party of theft, fraud, forging or uttering; or
6.3.3.4 mental or physical incapacity of the other party to perform his duties.

QUESTION 7

Dear X

I confirm to you my advice regarding the fact that your attorney’s bookkeeper appears to have stolen some of your trust money deposited with them. Since she was in their employ, your attorneys are liable to replace this amount to your trust account, which they must do the moment they have established the exact amount. They have to report the trust shortfall to the law society which will also exercise supervision that they act correctly in this matter. If it appears that they are unable to pay the amount you will be entitled to recover any shortfall as well as your reasonable costs and reasonable interest from the Attorneys Fidelity Fund. They will require you to have given timely notice of the possibility of a claim and will want to be satisfied that you were unable to recover from the attorneys or from any other source. Whatever the position, you should not suffer any loss. The Fidelity Fund is a fund of last resort and may require you to issue summons in prosecuting your claim against the attorneys.
QUESTION 8

The candidate’s answer to this question must reflect that he is aware that the property together with the seller’s letting business are sold lock, stock and barrel as a going concern and that both parties must be VAT vendors in order for the transaction to be zero rated for VAT and thus escape the liability to pay transfer duty. The possible clause would read along the following lines:

a) The purchaser purchases the property and the letting business from the seller as a going concern.

b) In order to comply with the Value Added Tax Act it is recorded and agreed that:

b) (1) The sale relates to an income producing business as a going concern and not merely the sale of property;

(2) Both the purchaser and the seller are registered vendors for VAT;

(3) The shops on the property are let and the letting business shall continue as a going concern and will be an income earning activity at the transfer of ownership;

(4) Accordingly, VAT will be levied on the sale of the business (including the property) at the rate of zero percent.

If VAT is levied at a rate other than 0%, the seller shall be entitled to recover such VAT from the purchaser.

QUESTION 9

A conflict of interest is anything which adversely affects your judgement or loyalty in representing or advising your client. Examiners can judge the examples given.

TOTAL: [100]