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

a) 1. There is a claim for loss of support on behalf of the widow and the children and the claimant is Mrs Smith (1), who also has a claim for the payment of the past medical and hospital expenses, and the funeral expenses (1).

(2)

b) 1. The claim for loss of support:

i) Death certificate; (½)

ii) Marriage certificate; (½)

iii) Birth certificate of the children; (½)

iv) Post-mortem report; (½)

v) Salary certificate of deceased. (½)

2. Vouchers in respect of the past medical and hospital expenses and the funeral expenses. (½)

(3)

c) The Plaintiff is Mrs Mary Smith who acts herein in her personal capacity and in her capacity as mother and natural guardian of the minor children. (1)

d) Children: either age 18, 21 or self sufficient (1)

Widow: until the date of deceased’s retirement i.e. for 20 years (1)

(2)

e) The income will be apportioned as to 2 parts to each parent and 1 part per child. (2)
f) No. The inheritance in terms of the will is excluded in terms of the Assessment of Damages Act. (2)

g) No. Same as above. (1)
h) 14th April 2008. (1)
i) No. Need only prove 1% to succeed 100% with all the claims. The claimants are regarded in law as being "innocent claimants". (1)

QUESTION 2

Prior to Bezuidenhout vs Road Accident Fund 2003 (6) SA 61(SCA) the client had to prove an actual collision between the unidentified motor vehicle and himself. Bezuidenhout's case states that there does not have to be physical contact with an unidentified vehicle. The Regulation promulgated pursuant to the Road Accident Fund Act falls outside the object and purpose of the Act and is therefore ultra vires. Our client has a case.

QUESTION 3

3.1 Hand delivery; (½)
3.2 Postage by registered mail; (½)

To the Road Accident Fund.

QUESTION 4

Yes. Client has a claim under the Road Accident Fund Act. Client's claim arises from the negligent driving of vehicle "B" and as the trailer is attached to that vehicle the negligence of the driver of that vehicle attracts liability of the Road Accident Fund.

QUESTION 5

Yes. Claims may duly be lodged by the claimant by his/her attorney or any person in the Public Service.

QUESTION 6

You can have the claimant examined by a medical practitioner who has fully satisfied himself regarding the nature and treatment of the bodily injuries in respect of which the claim is made and to then prepare a medical report.
Candidates should be all allocated 1 mark for any 10 of the following mistakes:

1. Wrong form of summons used.
   The plaintiff's claim is for damages. A simple summons (form 9) can only be used for claims for payment of a debt or liquidated demand. A combined summons (form 10) and particulars of claim should have been used.

2. Lack of jurisdiction.
   The defendant resides in Durban and the cause of action occurred in Durban. The Transvaal Provincial Division has no jurisdiction.

3. Plaintiff has no locus standi.
   The plaintiff is a minor and sues unassisted by a parent/guardian.

4. Description of the plaintiff is wrong.
   Full names, occupation and gender are required (i.t.o. Rule 19(3)).

5. No cause of action.
   The plaintiff fails to allege negligence by the defendant or some form of vicarious liability.

6. Lack of locus standi
   The fact that plaintiff drove the vehicle is irrelevant (there should be an allegation that he was the owner or that the risk of loss in the vehicle has passed to him.

7. Likewise the fact that defendant was the owner of the vehicle is irrelevant – it should be mentioned that he drove the vehicle in a negligent way.

8. Damages should be set out in such a manner as to enable defendant to reasonably assess the quantum thereof Rule 18(10).

9. The percentage of interest is wrong – it should be 15.5% and not 18.5%.

10. The date from which interest run is wrong i.e. not date of accident but date of service of summons or from date by which payment was demanded i.t.o. a letter demand.

11. The dies are insufficient – the defendant who resides outside the jurisdiction of the court should have been given 21 days (Durban being more than 100 kilometres) from Pretoria.

12. The defendant is to supply an address within 8 kilometres – not 80 kilometres from the registrar's office.

13. The address of plaintiff's attorneys being a Johannesburg address is further than 8 kilometres from the seat of the court.
PARTICULARS OF CLAIM

1. Plaintiff is JJ Printing Supplies (Pty) Ltd, a company incorporated with limited liability according to the laws of the Republic of South Africa (1), with its principal place of business at 21 Albert Road, Salt River, Cape Town (1). [2]

2. Defendant is Peter Smith, an adult male, who resides at 10 Main Road, Plumstead, Cape Town, and whose full and further particulars are to Plaintiff unknown. [1]

3. On 14 August 2006, and at Cape Town, defendant entered into a Deed of Suretyship, in terms whereof defendant bound himself as surety for Print-a-Plan CC in respect of the indebtedness of Print-a-Plan CC to plaintiff up to an amount of R200,000.00. A true copy of the said deed of suretyship is annexed marked “A”. [3]

4. In terms of the said suretyship, defendant waived his right to the benefit of excussion. [1]

5. During the period September 2006 plaintiff sold and delivered goods to Print-a-Plan CC for a purchase price of R180,000 which amount remains unpaid. [1]

6. Print-a-Plan CC was placed in final liquidation in January 2007. [1]

7. Despite demand, defendant has failed and/or omitted and/or refused to pay to plaintiff the aforesaid sum of R180,000.00. [1]

WHEREFORE PLAINTIFF CLAIMS:

(a) Payment of the sum of R180,000.00 [½]

(b) Interest on the aforesaid sum of R180,000.00, calculated at the rate of 15½% per annum, a tempore morae. [½]

(c) Further and/or alternative relief. [½]

(d) Costs of suit. [½]

QUESTION 9

Distinction between appeal and review:

9.1 In case of appeal, appellant bound by record.

9.2 In case of review applicant not so bound - often objections concern conduct on the side of the presiding officer not evident from record.

Legal Education and Development: [L.E.A.D]
9.3 Appeal to be noted within prescribed time limit.

9.4 No fixed period for review – must be brought within reasonable period.

9.5 On appeal it is contended the presiding officer came to a wrong conclusion on the facts and/or the law.

9.6 Grounds for review Lower Court judgment are limited. There are many other grounds on which reviews in respect of other decisions or proceedings are brought.

9.7 Permission for leave to appeal is required in some appeals.

9.8 No permission is required for review procedures.

QUESTION 10

Representations can be made to the Senior Public Prosecutor requesting that he withdraw the charge or discontinue criminal proceedings against your client. Detailed representations in writing will have to be made and sometimes a personal consultation with the SPP will be suitable. The factors which can be mentioned in the representations are:

The age of the accused, his state of health, the fact that he has been married to the deceased his lifelong partner, the mental anguish which he has already suffered which is more than any sentence that can be imposed on him. It is also not in the interests of the community to proceed against an elderly gentleman in these circumstances.

QUESTION 11

11.1 Right to remain silent (Sections 35 (1) (a) and 35 (3) (h) of the Constitution);
Right to a fair trial (Section 35 (3) of the Constitution);
Right to legal representation at arrest, during detention and during trial;
The right to be brought before a Court within 48 hours (Section 50 of the CPA)
The right to a speedy trial (Section 35(3) (d))
The right to be released on bail at any stage preceding his/her conviction if the Court is satisfied that the interest of justice so permit (Section 60 of the CPA).
The above is not exhaustive. Vide Section 35 of the Constitution.

11.2 No.

11.3 Yes.

QUESTION 12

Section 300 of the CPA provides that any convicted person who has caused damage to or loss of property of another person through his action may be ordered to compensate the victim. The Court may in terms of Section 300 only when requested to do so by the injured party or the Prosecutor acting on instructions of the injured party act in terms of Section 300.
A separate enquiry into the amount of damages, which is civil in nature, is made and the Court must explain to the parties what is taking place and must afford them the opportunity to lead evidence and to present argument. The usual calculation of the amount of damages applies as in civil claims and evidence already led at the criminal trial is also taken into consideration and damages must be proved. The compensation order may be given only in respect of direct loss of damage. The order has the effect of a civil judgment. Client will accordingly be advised to make such an application during his evidence or alternatively to authorize the Prosecutor, in writing, to make same on his behalf.

QUESTION 13

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA HELD AT PRETORIA

Case No. 123/07/2006

In the matter between:

THE STATE

And

JOHN SMITH

STATEMENT IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT.

I, JOHN SMITH, do hereby declare that:

1. I am the accused in this matter and I understand the nature of the charge against me.

2. I admit that on the 3rd of June 2006 I was the driver of motor vehicle CBX 123 NC in Schoeman Street, Pretoria.

3. I admit that whilst driving the said vehicle I lost control thereof as a consequence of a blackout and the vehicle collided with the deceased, XYZ, who was injured and who died as a consequence of injuries he sustained in the collision.

4. I deny that the said collision was occasioned by any negligence on my part as same was caused by a physical medical condition beyond my control, namely a blackout.
5. I admit the contents of the post-mortem medico-legal report relating to the identity of the deceased, the injuries which he sustained as well as the cause of death. I furthermore admit that the deceased did not suffer any further injuries from the time of the collision until such time as the post-mortem was carried out.

6. I further admit the contents of the following documents:
   Photo album and plan of the scene compiled by Inspector Jacobs;
   Vehicle inspection document compiled by Inspector Mpofo.

7. The admissions referred to above can be noted in terms of Section 220 of the Criminal Procedure Act.

DATED at PRETORIA this the 6th day of July 2006.

JOHN SMITH

QUESTION 14

In the Magistrate’s Court for the district of Johannesburg held in Johannesburg

Case No. 12/2007

ABC Loan Sharks

Plaintiff

Bernice Zondo

Defendant

Plea

1

Ad Paras 1 & 2
Defendant admits the parties are as alleged

2

Ad para 3
Defendant admits entering into the loan agreement, annexure A to Plaintiff’s particulars of claim, and of receiving the amount alleged.

Legal Education and Development: [L.E.A.D]
3

Ad para 4
Defendant avers that on 31st December 2000 she repaid the amount of the loan and interest thereon in the sum of R25 000.00 [2]

4

The Defendant pleads that the above Honourable Court does not have jurisdiction in this matter in that the defendant does not reside or work in the area of jurisdiction of the Johannesburg court and the purported consent to its jurisdiction is invalid. [2]

5

The Defendant pleads that the claim is prescribed in that more than 3 years has expired between the due date of the loan and date of service of summons. [2]

Wherefore Defendant prays that the Plaintiff's claim be dismissed with costs.

Dated at Johannesburg 1 February 2007

__________________________
A B
Defendant's attorneys

Address

QUESTION 15

I would apply to the Court for an order compelling the plaintiff to supply the further particulars within a specified time and failing compliance, for an order dismissing the action [Rule 60].

QUESTION 16

16.1 The summons, sheriff's return and affidavit to prove the amount of damages. (3)

16.2 The affidavit for proving the amount of the damages by an expert should cover the following points:

(i) Description of deponent, qualifications qualifying him as an expert as well as his experience in the field of motor vehicle repairs and assessment of repair costs. (1)

(ii) He examined the particular motor vehicle and assessed the repair costs / or compared the damages which he found, to an existing quotation. (1)

(iii) He compiles the quotation which is annexed or he confirms the existing quotation. (1)
(iv) He gives an opinion that the total amount of the quotation is fair and reasonable. (1)

(v) He gives an opinion that the cost of repair is less than the difference between the pre accident value and post accident value. (2)

**QUESTION 17**

17.1 The plaintiff abandons the sum of R10,000 (3)

17.2 Judgment would be given for R80,000 (the reduction is applied firstly to the abandoned amount and thus an answer of R70,000 is incorrect). (2)

**TOTAL: [100]**
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

See answer to Question one on next page (page 2).
<table>
<thead>
<tr>
<th>LIQUIDATION ACCOUNT</th>
<th>R</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A Immovable property awarded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The farm GOEDEHOOP 125, district</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welkom, Free State Province;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>measuring 1 000 hectares;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>held by the deceased by virtue of</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Deed of Transfer T3065/1998</td>
<td>(1)</td>
<td></td>
<td>3 000 000,00</td>
</tr>
<tr>
<td>Awarded to the deceased's nephew ANDRE SMIT in terms of</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 SMIT in terms of the will</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B Movable property awarded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Livestock comprising 800 head of cattle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 and 1 000 sheep</td>
<td>(2)</td>
<td></td>
<td>1 000 000,00</td>
</tr>
<tr>
<td>2 Vehicles and implements comprising 5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>tractors, 5 ploughs, 1 combine harvester</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 and a 1999 Isuzu bakkie</td>
<td>(2)</td>
<td></td>
<td>1 200 000,00</td>
</tr>
<tr>
<td>The above movable property is awarded to the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>deceased's nephew ANDRE SMIT in terms of</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 the will</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Investment and assets realised</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Proceeds of fixed deposit with ABC Bank:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Capital</td>
<td>(3)</td>
<td></td>
<td>900 000,00</td>
</tr>
<tr>
<td>2 Accrued interest to date of death</td>
<td>(3)</td>
<td></td>
<td>22 500,00</td>
</tr>
<tr>
<td>2 Proceeds of Erf 207 Welkom which was</td>
<td>(4)</td>
<td></td>
<td>600 000,00</td>
</tr>
<tr>
<td>2 sold to GEORGE BOTHA for</td>
<td></td>
<td></td>
<td>1 522 500,00</td>
</tr>
<tr>
<td>TOTAL ASSETS</td>
<td></td>
<td></td>
<td>6 722 500,00</td>
</tr>
</tbody>
</table>

LEGAL EDUCATION AND DEVELOPMENT: [L.E.A.D]
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>R</th>
<th>R</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>Administration expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Notice to Creditors</td>
<td>(5)</td>
<td>24,20</td>
</tr>
<tr>
<td></td>
<td>1 Government Gazette</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Volksblad</td>
<td>(6)</td>
<td>300,05</td>
</tr>
<tr>
<td></td>
<td>2 Advertisement of this account:</td>
<td>(7)</td>
<td>24,20</td>
</tr>
<tr>
<td></td>
<td>1 Government Gazette</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Volksblad</td>
<td>(8)</td>
<td>300,05</td>
</tr>
<tr>
<td></td>
<td>2 Master's fees (maximum)</td>
<td></td>
<td>600,00</td>
</tr>
<tr>
<td></td>
<td>4 Executor's remuneration</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 3,5% on R6 722 500,00</td>
<td></td>
<td>235,287,50</td>
</tr>
<tr>
<td></td>
<td>5 Spies &amp; Plessis for transfer costs of the farm</td>
<td>(9)</td>
<td>12,000,00</td>
</tr>
<tr>
<td></td>
<td>6 Pierre Pienaar for valuation of the farm, livestock, vehicles and implements</td>
<td>(10)</td>
<td>3,000,00</td>
</tr>
<tr>
<td></td>
<td>1 7 Provision for bank charges</td>
<td></td>
<td>364,00</td>
</tr>
<tr>
<td></td>
<td>1 8 H Strydom (executor) for postages and petties</td>
<td>(11)</td>
<td>100,00</td>
</tr>
<tr>
<td></td>
<td>E Claims against the estate</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 1 Last Breath Undertakers for funeral costs</td>
<td></td>
<td>10,000,00</td>
</tr>
<tr>
<td></td>
<td>1 2 SARS for final income tax assessment</td>
<td></td>
<td>15,000,00</td>
</tr>
<tr>
<td></td>
<td>1 3 Estate duty</td>
<td></td>
<td>609,100,00</td>
</tr>
<tr>
<td></td>
<td>TOTAL LIABILITIES</td>
<td></td>
<td>886,100,00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5,836,400,00</td>
</tr>
<tr>
<td></td>
<td>2 4 Balance for distribution</td>
<td></td>
<td>6,722,500,00</td>
</tr>
</tbody>
</table>
### INCOME AND EXPENDITURE ACCOUNT

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Interest paid on fixed deposit with ABC Bank on 30 September 2006</td>
<td>R45 000,00</td>
<td>(13)</td>
</tr>
<tr>
<td>LESS amount accrued to date of death</td>
<td>R22 500,00</td>
<td></td>
</tr>
<tr>
<td>2 Occupation rental paid by GEORGE BOTHA for October and November 2006</td>
<td>(14)</td>
<td></td>
</tr>
<tr>
<td>3 Paid municipality rates and taxes for the period 1 July 2006 to 30 November 2006</td>
<td>(15)</td>
<td>3 500,00</td>
</tr>
<tr>
<td>4 Paid municipality for water and light for the period 1 July 2006 to 30 September 2006</td>
<td>(16)</td>
<td>2 000,00</td>
</tr>
<tr>
<td>5 Executor's remuneration @ 6% on R28 500,00</td>
<td>1 710,00</td>
<td></td>
</tr>
<tr>
<td>6 Balance awarded to ANDRE SMIT, the sole heir in terms of the will</td>
<td>21 290,00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>28 500,00</td>
<td>28 500,00</td>
</tr>
</tbody>
</table>

### ESTATE DUTY

Property of the deceased

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Assets per liquidation account</td>
<td>6 722 500,00</td>
<td></td>
</tr>
<tr>
<td>LESS 30% on value of farm</td>
<td></td>
<td>900 000,00</td>
</tr>
<tr>
<td>LESS deductions</td>
<td></td>
<td>5 822 500,00</td>
</tr>
<tr>
<td>1 Administration expenses</td>
<td>252 000,00</td>
<td></td>
</tr>
<tr>
<td>1 Claims against the estate</td>
<td>25 000,00</td>
<td>277 000,00</td>
</tr>
<tr>
<td>NET VALUE</td>
<td></td>
<td>5 545 500,00</td>
</tr>
<tr>
<td>2 LESS section 4A deduction</td>
<td></td>
<td>2 500 000,00</td>
</tr>
<tr>
<td>DUTIABLE AMOUNT</td>
<td></td>
<td>3 045 500,00</td>
</tr>
<tr>
<td>2 Estate duty on R3 045 500,00 @20%</td>
<td></td>
<td>609 100,00</td>
</tr>
</tbody>
</table>
CERTIFICATE

I hereby declare that the above account is to the best of my knowledge and belief a true and proper account of the liquidation and distribution of the estate

and that all the assets of the deceased

and income collected subsequent to the death of the deceased to date hereof... have been disclosed

Dated at Welkom on 31 December 2006.

"J B JORDAAN"

EXECUTOR

[59]

QUESTION 2

1 The estate devolves in accordance with the law on intestate succession.

Mrs A receives a half share (R200 000,00) by virtue of her marriage in community of property to the deceased.

Mrs A inherits, in terms of section 1(1)(c) of the Intestate Succession Act, a child's share (R100 000,00) or R125 000,00, whichever is the greater. She therefore inherits R125 000,00.

1 The child B inherits the balance of R75 000,00.

2 C inherits nothing because she is not a spouse or blood relation of the deceased.
LAST WILL AND TESTAMENT

This is the last will and testament of GEORGE BAKER, unmarried and residing at Uitenhage.

I, the testator, hereby revoke all wills previously made by me.

I leave my entire estate to the children of my brother, JAMES BAKER in equal shares.

Should any one or more of my heirs not yet have attained the age of 25 years at the time of my death, I leave the share of such heir to my Trustee in trust for such heir, subject to the following terms and conditions:

(a) Powers of trustee (not asked)

(b) My Trustee shall in his sole discretion apply the income of the Trust after payment of legitimate debts due by the Trust, towards the maintenance, education and general well-being of my heir.

Any income not expended on these purposes shall be capitalised.

(c) The Trust shall terminate upon my heir attaining the age of 25 years. My Trustee shall then be obliged to pay and deliver the heir's inheritance to him or her.

AS WITNESSES:

PETER KOK in the presence of the Testator and by his direction

THABO MOHAPI
COMMISSIONER OF OATHS
As Executor of this my will and as Trustee of the Trust created in paragraph 2 above, I nominate my brother JAMES BAKER.

I grant unto my Executor and Trustee all such powers as are allowed by law, including the power of assumption, and I direct that it shall not be necessary for my Executor and Trustee to furnish security for the due performance of his functions.

No benefit accruing to any person in terms of this my will shall form part of the joint estate or the accrual of any marriage of the beneficiary and any present or future spouse of his or hers.

Signed at Bloemfontein on 15 January 2007 by PETER KOK by the Testator's direction and in the Testator's presence and in the presence of the undersigned witnesses.

AS WITNESSES:

__________________________

__________________________

__________________________

PETER KOK in the presence of the Testator and by his direction

I hereby certify that I have satisfied myself as to the identity of GEORGE BAKER and that the above will, signed by PETER KOK on his behalf, is the will of GEORGE BAKER.

__________________________

THABO MOHAPI
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
20 VOORTREKKER STREET
BLOEMFONTEIN

QUESTION 4

B is entitled to her inheritance in terms of the will, because A died after 3 months since the divorce. If he had died within 3 months of the divorce, B could not inherit - section 2B of the Wills Act.

TOTAL: [100]
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.

This is an answer guide only and examiners are advised to use their own knowledge and expertise in assessing the candidates’ answers.

QUESTION 1

1.1 The appointment of such a person is normal 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 adhered to.
QUESTION 3

Candidates must show insight into the applicable Law Society's rules on marketing as opposed to touting.

3.1 It is acceptable to reduce fees in the case of large volumes of work. The fee must still be reasonable.

3.2 Attorneys may not share fees with non-professionals. Paying for mandates is an extreme form of touting.

3.3 Supporting a client is in order if it is done in good taste. Neither the publicity, nor the prizes may be excessive or extravagant.

3.4 Accepting secret commissions is against common law rules and could also constitute touting and sharing of fees. Declare commission.

QUESTION 4

The practitioner should feel free to accept the mandate. It is a fairly routine matter and will assist in gaining experience. It is in order to consult an experienced colleague. It is not wrong to seek help from an experienced colleague and to ask for precedents but own research is essential. Inform the client that you wish to study the legal position and procedure.

Firstly study a text book on the topic and available authority (e.g. previous judgements) which clarify the rules. If you experience problems, use further assistance in a good library such as a note-up. As guide to the drafting of the relevant documents consult practice guides (Forms and Precedents, etc). The most important requirement is that the documents are thoroughly and carefully drafted and that the attorney properly prepares and qualifies himself. Be careful of negligence.

QUESTION 5

The introduction of FICA impinges upon the traditional role and independence of the attorneys' profession and upon the confidentiality of all communications between attorneys and their clients. Apart from having the duty to establish and verify the identity of clients and of their authority, they are obliged to keep detailed records of clients, business relationships, and of transactions for a specified period; they are also under an obligation:

5.1 to make such records available to the Financial Intelligence Centre on the strength of a warrant;

5.2 to inform the centre on request of the existence of a current or past mandate;

5.3 to report cash transactions above a prescribed amount to the Centre; and;

5.4 to report to the Centre the conveyance in terms of a transaction with a client of cash above a prescribed amount to or through a specified account or institution.
QUESTION 6

There will be a number of ways of answering this question. You must allocate up to 20 marks for correct legal issues at the rate of 2 marks each. The appended list is not necessarily comprehensive. There may also be others that are raised and may be accepted. The additional 5 marks go for style, clarity, comprehension and presentation.

6.1 Why a CC rather than a company?

- Cost of procedure
- Simplicity to arrange
- Quicker to establish
- Ease of future management and administration
- Less outside administration in future
- Less expense in future administration
- Easy to make contributions in kind and value
- Simplicity of changing membership interest or agreement

6.2 Why not a partnership?

All of the above (1 – 8) are relevant to a greater or lesser degree. The following are essential elements:

Separate personality which means

- Possible non personal liability and
- Continued existence after death of member
- Something about insolvency / liquidation
- more flexible tax position

QUESTION 7

Legal professional privilege applies to communications between you and your client:

7.1 where the communication relates to your professional or intended professional relationship;

7.2 made for the dominant purpose of seeking or giving legal advice or for use in existing or anticipated legal proceedings;

7.3 whether written or oral and even;

7.4 where the client confesses to you the commission of a prior crime or fraud.

Bear in mind that it is information that is protected by privilege. If such information is contained in a document, the document is privileged. If, however, the document is contained in a file containing a number of documents, the entire file does not become immune to protection.
Professional privilege does not apply to

- documents which are not otherwise privileged. They do not become privileged merely because your client hands them to you;

- communications made for the purpose of facilitating a crime or fraud, Harksen v Attorney-General Cape and Others 1999(1) SA 718(C), Waste Products Utilisation (Pty) Ltd v Wilks and Anther 2003 (2) SA 515 (W);

- the name of your client -- you can be compelled to disclose it;

- facts learned by you with your own senses and;

- where a statute expressly or by implication provides that the privilege is inapplicable.

TOTAL: [100]
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. Balance the cash book at the end of the month.
2. On receipt of the Bank Statement, compare the entries in the Bank Statement with the entries in the Cash Book.
3. Tick off the common entries.
4. Open a Supplementary Cash Book.
5. Enter all the entries that appear in the Bank Statement but not in the Cash Book in a Supplementary Cash Book.
7. Proceed with the Bank Reconciliation Statement with the Balance as per Bank Statement.
8. Adjust the Bank Balance by either adding or subtracting entries that appear in the Cash Book but not in a Bank Statement.
9. Also add/subtract errors that have been made by the Bank.
10. The final adjusted balance reconciles with the Supplementary Cash Book Balance.

QUESTION 2

<table>
<thead>
<tr>
<th>TRUST CASH BOOK</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Attorney</td>
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<table>
<thead>
<tr>
<th>BUSINESS CASH BOOK</th>
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<tbody>
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<td>Transfer</td>
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<table>
<thead>
<tr>
<th>WHITE ATTORNEYS TRUST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
</tr>
<tr>
<td>Transfer</td>
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</tbody>
</table>
WHITE ATTORNEYS BUSINESS

Fees 1 140  
Transfer 1 140

BLACK TRUST

White 4 001  
Cash 7 999  
White 12 000

FEES

White 1 000

VAT

Green 140

JOURNAL (T)

Black (Fees & disbursements) 4 001
White Attorneys 4 001
Being summons fee, disbursements and collection commission
White Attorneys 12 000
Black 12 000
Being amount received from debtor

JOURNAL - BUSINESS

White Attorneys Fees 1 140
VAT 1 000
Being allowance 140

TRANSFER JOURNAL

White Attorneys 1 140
White Trust 1 140
Being transfer

(1 mark for each entry; 4 marks for each entry for R4191)
QUESTION 3

a) Cash book (Trust) Cash Book (Business)
   Journal (Trust) Journal (Business)
   Ledger (Trust) Ledger (Business) (3)

b) 1) Cash Book to record all cash received and paid out
    2) Journals to record all non cash transactions
    3) Ledger to record all the transactions of individual clients, debtors and creditors. (3)

c) Trust account to record ALL transactions in respect of client’s affairs.
   Business account to record all transactions of the practice.
   Each account to be identified as "Trust Account" or "Business Account". (4)

d) i) Debit Trust Cash Book (Trust account) (1)
    ii) Debit Trust Cash Book (Trust account) (1)
    iii) Deposit in the Estate Banking account (2)
    iv) Debit Trust Cash Book (Trust account)
        Credit Business Cash Book (Business Account)
        Transfer from Trust to Business (4)
    v) Debit Trust Cash Book (Trust account) (1)

QUESTION 4

TRUST CASH BOOK

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
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<tbody>
<tr>
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<tr>
<td>Van Rensburg</td>
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<tr>
<td>Ndlovu</td>
<td>90 000</td>
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<tr>
<td>Kennedy</td>
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<tr>
<td>Msomi</td>
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<td>FNB</td>
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<tr>
<td>Albert</td>
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<tr>
<td>FNB</td>
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<tr>
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<td>Balance</td>
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Section 78(2)(A) Nedbank (Chetty)

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### Section 78(2)(a) FNB (Fidelity Fund)

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<table>
<thead>
<tr>
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<th>Cash</th>
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</thead>
<tbody>
<tr>
<td>KENNEDY</td>
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<table>
<thead>
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<tbody>
<tr>
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</table>

1 mark each

### TRUST RECONCILIATION

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<tr>
<td>Cash Book balance</td>
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<table>
<thead>
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<th>Trust Creditors</th>
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<tbody>
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<td>Ndlovu</td>
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<tr>
<td>Kennedy</td>
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440 000 440 000

5 marks