



Department of Finance and Investment Management

Estate Planning

EST8x02

LAST ASSESSMENT OPPORTUNITY

NOVEMBER 2021

Time: 4.5 hours

Marks: 100

Assessor: Ms C Venter

Internal Moderator: Mrs S Naidu

External Moderator: Mrs H Vorster

INSTRUCTIONS:

- Answer ALL questions
- This is an open booked, online exam. The time allocated to the exam is determined on the basis that you have studied all the required material prior to this assessment. There may not be sufficient time to complete the assessment if time is expended searching and consulting material to obtain the answers
- **Please note further that committing plagiarism is to ...**
 - present the ideas, words, or results of another person as your own, without giving appropriate recognition of the origin;
 - use the ideas or words of a person without giving appropriate credit to the person or source;
 - use sentences, paragraphs or parts of articles and books without quotation marks and appropriate acknowledgement;
 - download and/or copy and paste sentences, paragraphs, or sections of writings from the Internet and other academic sources and present these as your own. This applies equally to past assessments and exams;
 - use a person's direct words, without quotation marks, even when you credit the source;
 - use ideas without making them properly your own, although you might still have credited the original source; and/or
 - formulate your words so closely to the original that you could not have written them without having had the source next to you, i.e. your paraphrase of the author's words is too close to the original author's use of the words, even if you cited your source.

Collusion: Collusion is unauthorised collaboration with another person or persons.

- **Where there are reasonable grounds for believing that intentional plagiarism or collusion has occurred, this matter will be reported and may result in disciplinary action being taken.**

Further, I understand and agree to the following:

- I have read the UJ Plagiarism Policy posted on the institutional website.
- I understand that plagiarism means presenting the ideas and words of someone else as my own, without appropriate recognition of the source;
- I confirm that the work that I submit for this assessment is my own and;
- I am aware that the university views plagiarism as a serious punishable offence

QUESTION 1 (TOTAL 23 MARKS)

Susan and Keith are married with the accrual system applicable to their marriage. The CPI at the time of marriage was 10 and upon the **termination** of the marriage is 6. Susan had a net value of R5 000 000 and Keith had a net value of R2 500 000. Susan excluded from the accrual the holiday home in the USA as this was an inheritance from her Father. The value of the holiday home at the time of marriage was R1 200 000. This amount has already been factored into the net amount reflected above.

Susan's assets and liabilities are as follows

ASSET	VALUE	NOTES
BMW	250 000	
Artwork	2 450 000	
Holiday home in the USA	6 900 000	Her father provided that this asset not be included in any joint estate. Her father was a resident in SA all his life.
Bank account	200 000	
Collective Investment scheme	450 000	
Share in ZXY Pty Ltd	1 700 000	A buy and sell arrangement is in place. It is funded by life Insurance Policy 1
LIABILITIES	VALUE	NOTES
Credit card	46 000	

Keith's assets and liabilities are as follows:

ASSET	VALUE	NOTES
Primary residence in Cape Town	4 900 800	This house has been in Keith's family for years. To ensure that it remains in the family, a fideicommissum was created by Keith's parents. When Keith dies, the residence must go to his sister Patricia who is 32 years. After the death of Patricia, the fideicommissum must go to the other sister Gen and after Gen's death it must go to their cousin Jim.
Audi	459 100	
Household content	612 900	
Share portfolio	312 560	
LIABILITIES	VALUE	NOTES
Credit card	66 000	

In their ante-nuptial agreement, Susan agreed to donate an amount of R 650 000 to Keith within a period of 10 years. She has still not made this donation to Keith.

LIFE INSURANCE SCHEDULE

Product	Life insured	Beneficiary	Values	Notes
Life insurance 1	Susan	Partner Geoff	Death Cover: R1 700 000	For the buy and sell arrangement
Life Insurance 2	Susan	Keith	Death Cover: R2 100 000	

Endowment	Keith	Children in equal shares	Death Value: R600 500 Surrender value: R500 900	
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Question 1.1 (5 marks)

Comment on whether it was necessary for Susan to make specific provisions in the ante-nuptial contract to exclude the holiday home in the USA considering that it was an inheritance from her father. Make reference to legislation

Question 1.2 (6 marks)

The primary residence in Cape Town given to Keith is subject to a fideicommissum. Explain the concept of a fideicommissum and given the provisions in the Keith's parent's Will (refer to the notes next to this asset in the schedule above), whether the fideicommissum could possibly fail. In your explanation include what would, happen in the event of the death of each nominated fiduciary.

Question 1.3 (12 marks)

For the purpose of this question, **assume that Susan has died.** Calculate the accrual claim and indicate who will be the spouse that will claim. In this calculation, show all items that you feel should not be included and motivate your reason. If the item is merely left out of the calculation with no explanation or motivation, no marks will be awarded.

QUESTION 2 (TOTAL 19 MARKS)

Jack aged 59 years, died on the 29th June 2020. He was married to Sandra out of community of property. At the date of death, the inventory was as follows:

Assets	Value	Notes
Cash in a bank account	R212 000	
Shares on the JSE	R315 900	At date of death dividends of R45 000 was declared and not yet paid
A farm	R2 500 760	The executor continued trading and by the time the estate liquidation was finalised, the deceased estate had received R 213 000 in gross income. The executor incurred expenses of R80 000 as a result of this trade.
Farming equipment	R799 800	
A loan owed by Tom, a friend of Jack's	R100 000	Tom wanted to get married and asked for a loan. The loan has no interest charged. Tom had not settled this loan by the time that Jack died.
Total liabilities at time of death	R312 000	

Jack had the following provisions in his Will:

1. His assets must not be realised
2. His liabilities should be settled out of the cash he had in the bank account and
3. Any surplus cash is bequeathed to his wife Sandra.
4. Gill his sister, must inherit the loan that Tom owes him

5. All remaining assets must be bequeathed equally among his wife Sandra and his two adult daughters Talya and Madison.

Question 2.1 (9 Marks)

Calculate the liquidity surplus that Jack's wife will receive by completing a recapitulation and an income and expense account. For the purpose of this example, assume executor fees on the gross estate is R203 100 and estate duty amounts to R100 900. Executor fees on income has not as yet been factored in the calculations.

(Note: if you reflect a total amount without showing your full calculation, marks could be forfeited)

Question 2.2 (5 Marks)

If one assumes that there is a cash shortfall of R300 000 in the estate, briefly explain the process that the executor has to follow taking into account the provision that Jack has in his Will.

Question 2.3 (5 Marks)

Critically comment on the bequest of the farm and farming equipment to his wife and children. Include in your comment any possible solution that can assist them in addressing Jack's wishes.

QUESTION 3 (TOTAL 5 MARKS)

Jack and Jill are married with the accrual system applicable to their marriage.

The result of your accrual claim was a claim in favour of Jack for an amount of R1 500 000. This is in the event that Jill dies. Jill's assets on death consist only of a primary residence which will have to be sold to cover a liquidity shortfall of R 2 000 000. The shortfall of R2 000 000 includes the accrual claim of R1 500 000 (Section 41A deduction). There is no Section 4q deduction in the deceased estate.

A financial planner advised Jack and Jill that the only solution to the liquidity shortfall in the deceased estate is to implement a life insurance policy on the life of Jill, payable to the deceased estate. If the financial planner implemented a policy to cover only the shortfall of R2 000 000, the following situation will arise: **Select the incorrect statement/s and motivate your reason fully.**

- a. There would be a problem in that the original accrual claim will increase as a result of the policy which is payable to the deceased estate.
- b. There would be a problem as executor fees will not be taken into account in the cover of the new policy.
- c. There would be a problem in that the accrual claim, executor fees and estate duty will not be addressed in the amount of cover in the new policy.
- d. There would be a problem as the additional estate duty will not be taken into account in the cover of the new policy.
- e. All of the above statements are incorrect.

QUESTION 4 (TOTAL 10 MARKS)

Garth is married to Katy and they have 3 children who are Harry, Dick and Tom. The children are all adults. Garth gives you a copy of his Will and Testament which provides as follows

LAST WILL AND TESTAMENT OF: Garth Vadar an adult male married to Katy Vadar with the accrual system applicable.

1. I revoke all previous testamentary writings and declare this to be my Last Will and Testament.
2. I hereby nominate my spouse Katy to be the Executors and Administrators of my Estate.
3. I hereby bequeath the following to my spouse:
My primary residence and my rare wine collection and, my spouse and I agree that the one of us who outlives the other will be the first dying person's only heir with regards to these assets. In the event of our simultaneous deaths, I hereby bequeath my entire estate to my children in equal shares.
4. I hereby bequeath as follows: My rare wine collection to my son Harry, R4 000 000 in cash to a special testamentary trust held for Tom and the remainder of my residue to Dick and Harry and they have to pay their Mom an amount of R100 000. My holiday home is to devolve upon my children with the use of the holiday home being granted to my wife until she remarries. I grant to my wife the power to sell the holiday home if it is so needed.
5. No benefit accruing to any Beneficiary under my Will shall fall into the community of property or of profit and loss arising from any marriage of such beneficiary, nor subject to the marital power of any husband of such beneficiary, and shall be excluded from the operation of any accrual system, whether in terms of Act 88 of 1984, or otherwise.
6. Any inheritance vested in me and not yet paid to me, shall in its entirety devolve upon my spouse Katy or failing her, my other heirs.
7. I hereby direct that my Executor and/or Administrator shall not be required to furnish security to the Master of the High Court of South Africa.

Signed at Johannesburg on this day of June the 10th of the year 2019 in the presence of the undersigned witnesses, all being present at the same time

AS WITNESSES:

__JOHN DOE signed

TESTATOR

__Jilly Vadar_signed__

__Garth Vadar signed____

John Doe is the neighbour and Jilly Vadar is Harry's wife .

Kathy Vadar wrote the Will for Garth and the witnesses to sign.

Question 4.1 (10 Marks)

After reading and analysing Garth's Will, you have some concerns and reservations. Critically comment on the provisions that Garth has set out, explain your reason for concern and provide him with recommendations on how it can be resolved. Name 5 concerns and recommendations. (1 mark for identifying the concern and 1 mark for a possible solution)

QUESTION 5 (TOTAL 33 MARKS)

Jody Black runs a business in a Close Corporation which has become very profitable over the last 5 years. Jody is the sole member of the Close Corporation. An advisor has told him that it is time to discuss some estate planning.

The net value of the Close Corporation is currently R15 million. The Close Corporation has a member's loan account to the value of R790 000 which is a loan that Jody made to the Close Corporation many years ago.

Jody is married out of community of property subject to the accrual system, to Gail and they have 3 children who are all married. When Jody and Gail entered into the accrual system, they set the initial values of their separate estates at nil. Apart from her interest and loan account in the CC, Jody has net assets valued at R6 750 000. The main assets are a house and shares. Jody is of the opinion that the CC is likely to double every 10 years and that the shares will double every 8 years.

Gail has net assets of R6 540 000.

Jody has 2 insurance policies on her life. The first one will pay R750 000 to Gail on Jody's death and the second policy to the value of R 1 000 000 was taken out as keyman policy on the life of Jody. The premiums paid by the CC on policy 2 amounted to R68 900.

Question 5.1 (13 marks)

Gail would like to know, in the event that Jody were to die today, the estate duty that the deceased estate would be liable for. Show in your calculation the estate duty that is to be paid by third parties if applicable. Assume that the executor is VAT registered.

Question 5.2 (8 Marks)

Jody is now thinking of forming a trust and transferring all of her growth assets into the trust. The beneficiaries of the trust will be Jody, Gail and their 3 children. Jody feels that she should be the only trustee of the Trust with a provision that in the event of her death, the eldest child will become the sole trustee. Jody is however not sure what rights the beneficiaries should have.

In terms of Jody's Will all of his assets are left in equal shares to her three children subject to a usufruct over the house in favour of Gail. The house originally cost R976 000 and has a current market value of R4 612 000. Jody is 55 years old and Gail is 50 years old

Name 2 advantages and 2 disadvantages should Jody transfers all her assets into a trust if, one assumes that Jody will live for another 20 years? Motivate fully.

Question 5.3 (4 marks)

Jody wants to set up an Inter Vivos Trust. Briefly explain to Jody whether any problems could arise if she, Jody, is the sole trustee of the trust. Make reference to legislation.

Question 5.4 (8 marks)

Briefly discuss whether or not the trust should be fully discretionary or should provide for income and capital to vest in the beneficiaries and make a recommendation on how it should be set up.

QUESTION 6 (TOTAL 10 MARKS)

Jenny and Graham are married in community of property. Jenny has various investments that she has made over the years. She was recently asked to be a witness to a wedding of some very close friends. As a wedding gift, she will cede one of her investments, an endowment policy worth R 513 000, to the groom and bride.

Question 6.1 (4 marks)

Discuss whether Jenny is able to cede the endowment policy to her friends as a wedding gift. Motivate your answer fully and make reference to legislation.

Question 6.2 (4 marks)

Assume that Jenny did cede the endowment to the bride and the groom. Bev, the bride, surrendered the endowment one month after getting married and bought furniture with the proceeds of the policy. Graham discovered these transactions when he bumped into the groom, Ted who thanked Graham for the wedding gift.

Graham wants the policy proceeds refunded to his joint estate. Explain whether Bev and Ted, the bride and groom, are obligated to refund the proceeds considering that Graham had not consented to the cession of the endowment. Make reference to legislation.

Question 6.3 (2 marks)

Graham is concerned that Jenny may have entered into other transactions without his consent. He is afraid that if she continues in this manner, it will prejudice the joint estate which will result in the reduction of his share of the estate.

Advise Graham whether he has any form of recourse that may address his concerns. Motivate fully and make reference to legislation if applicable.