

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

16AUGUSTUS 2005

09:00-12:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 3 uur volg dan.

1. Kandidate moet al die vrae beantwoord.
2. Die vrae mag in Afrikaans of Engels beantwoord word.
3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
4. Waar nodig, moet kandidate hulle eie feite versin.
5. Skryf asseblief slegs in pen op die regterkantse bladsye.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

16AUGUST 2005

09:00-12:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 3 hours then follows.

1. Candidates must answer all the questions.
2. The questions may be answered in English or Afrikaans.
3. Candidates must remember that marks are awarded for good draftsmanship.
4. Candidates must invent their own facts wherever necessary.
5. Please write only in pen on the right-hand pages.
6. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1 [12]

Peter Smith, terwyl hy werk toe bestuur het, was erg beseer in 'n motorbotsing wat op 1 Junie 2004 plaasgevind het.

Hy was gehospitaliseer, maar is op 25 Junie 2004 oorlede.

'n Geregtelike doodsondersoek wat gehou was, bevind dat die bestuurder van die ander voertuig alleenlik vir die ongeluk aanspreeklik was.

Die weduwee konsulteer met u. Daar is drie minderjarige kinders uit die huwelik gebore. Haar man was die hoof uitvoerende beampte van 'n IT maatskappy.

Sy verskaf die volgende verdere besonderdhede:

1. Sy is die enigste erfgenaam en sal R300 000,00 erf;
2. Die oorledene het 'n versekeringspolis op sy lewe uitgeneem waarvan sy die enigste begunstigde is, van hierdie bron sal sy 'n verdere R400 000,00 ontvang;
3. Sy het 'n bedrag van R400 000,00 van haar man se werkgewers ontvang, synde 'n spesiale weduwee se pensioen voordeel.
4. Gedurende die huwelik was dit nie nodig vir haar om te werk nie.

Die oorledene was 50 jaar oud ten tyde van sy sterfte en sou op die ouderdom van 65 jaar aftree. Sy is 46 jaar oud, en hulle drie kinders is 14, 12, en 10 jaar oud respektiewelik. Hulle is gesond. U kan aanneem dat al die kinders vir 4 jaar op universiteit sal studeer.

Question 1 [12]

Peter Smith, whilst driving to work was severely injured in a motor vehicle collision that occurred on 1st June 2004.

He was hospitalised and died on the 25th June 2004.

At an inquest that was held, it was found that the driver of the other vehicle was solely to blame for the collision.

You are consulted by his widow. There are three minor children born of their marriage. Her husband was the chief executive officer in an IT company.

She furnishes the following information:-

1. She is the sole heir and will inherit R300 000,00;
2. The deceased had an insurance policy on his life, in which she was nominated the sole beneficiary and will be receiving R400 000,00 from this source;
3. She received the sum of R400 000,00 from her husband's employers being a special widow's pension benefit.
4. She was not obliged to work during her marriage.

The deceased was 50 years old at the time of his death and would have retired at the age of 65 years. His widow is 46 years old and their three minor children are aged 14, 12 and 10 years respectively. The children are in good health. You may assume that all the children would study for 4 years at a university.

Vrae

- 1.1 Vir watter periode sal die weduwee onderhoudsverlies kan eis? (1)
- 1.2 Vir watter periode sal elkeen van die kinders onderhoudsverlies kan eis? (2)
- 1.3 Om die eis vir onderhoudsverlies te bereken, hoe sal u die oorledene se inkomste tussen sy afhanklikes verdeel? (2)
- 1.4 Sal die pensioenvoordeel en die opbrengs van die versekeringspolis in ag geneem word by die berekening van verlies van onderhoud? Motiveer u antwoord. (2)
- 1.5 Sal die erfenis wat die weduwee van die boedel sal ontvang, in ag geneem word wanneer die onderhoudsverlies bereken word? Motiveer u antwoord. (1)
- 1.6 Wanneer sal Mev Smith se eis vir haar eie onderhoudsverlies eis verjaar? (1)
- 1.7 Aan welke deskundige sal u opdrag gee om die eise vir onderhoudsverlies te bereken? (1)
- 1.8 Die weduwee begin werk nadat haar man oorlede is, en verdien R5 000,00 per maand. Sal hierdie inkomste in ag geneem word wanneer haar en haar kinders se eise vir onderhoudsverlies bereken word? (2)

VRAAG 2 [3]

U tree op namens 'n kliënt, wie u konsulteer een dag voordat sy skadevergoedingseis teen die Fonds sal verjaar. Die eisvorm en stawende dokumentasie is voltooi en onderteken. U praktiseer te Polokwane en moet die eis dokumentasie aan die P.O.F. kantore te Pretoria indien.

Questions

- 1.1 For what period will the widow be able to claim for loss of support? (1)
- 1.2 For what period, will each of the minor children be able to claim loss of support? (2)
- 1.3 For the purpose of calculating the claim for loss of support, how will you apportion the income of the deceased amongst the dependants? (2)
- 1.4 Will the proceeds of the pension benefit and insurance policy be taken into account when calculating the loss of support? Motivate your answer. (2)
- 1.5 Will the inheritance which the widow will receive from the estate be taken into account when calculating her loss of support? Motivate your answer. (1)
- 1.6 On which date will the claim of Mrs Smith in her personal capacity for her own loss of support prescribe? (1)
- 1.7 Which expert would you brief to calculate the client's claims for loss of support? (1)
- 1.8 The widow commences work after the death of her husband and earns R5 000,00 per month. Will this income be taken into account when calculating the loss of support in respect of her and the children's claim? (2)

QUESTION 2 [3]

You are acting on behalf of a claimant who consults you a day before his claim for damages against the RAF will prescribe. The claim form and all supporting documentation have been completed and signed. You practice in Polokwane and have to submit the documents to the R.A.F. offices in Pretoria.

2.1 Hoe sal u die dokumentasie betyds indien in terme van die Wet? (1)

2.2 Wanneer word dit verneem dat die dokumentasie in hierdie omstandighede afgelewer is? (1)

2.3 Hoe sal u geldige aflewering bewys? (1)

VRAAG 3 [5]

U Kliënt, 'n volwasse manlike tegnikus is erg beseer in 'n ongeluk wanneer die kombi taxi waarin hy 'n passassier was, die pad verlaat het en oor en oor gerol het. Die ongeluk is alleenlik te wyte aan die nalatigheid van die taxibestuurder wat teen 'n hoë spoed bestuur het, en versuim het om die taxi onder behoorlike beheer te hou. U kliënt het R10,00 aan die taxi bestuurder betaal om hom van sy huis na sy werkplek te vervoer.

3.1 Het u kliënt 'n eis teen die Pad Ongelukke Fonds? Motiveer u antwoord volledig met verwysing na enige spesiale ondersoek wat gemaak moet word om vas te stel watter eise ten behoeve van u kliënt gemaak kan word. Is daar enige beperkings in verband met die bedrag wat u kliënt kan eis? (3)

3.2 Mag u kliënt ook vanaf die bestuurder/eienaar van die taxi eis? Motiveer u antwoord ten volle. (2)

VRAAG 4 [1]

U tree namens 'n kliënt op, wie beseer is as gevolg van 'n "trefen trap" ongeluk. Dagvaarding is uitgereik en is op die Fonds beteken (m.a.w. aksie is ingestel). Die Pad Ongelukke Fonds versoek nou dat u kliënt 'n interrogasie moet bywoon i.t.v. Regulasie 2(6) van die P.O.F. Wet No. 56 van 1996 en verder dat hy 'n beëdigde verklaring moet maak waarin die omstandighede van die gebeurtenis uiteengesit is. Is u kliënt verplig om aan hierdie versoek te voldoen?

2.1 How will you submit the documents timeously in terms of the Act? (1)

2.2 When are the documents deemed to have been delivered in these circumstances? (1)

2.3 How will you prove proper delivery? (1)

QUESTION 3 [5]

Your client, an adult male technician, is severely injured in an accident when the kombi taxi in which he was a passenger left the road and somersaulted. The accident was due solely to the negligence of the driver of the taxi in that he failed to keep the taxi under proper control and was driving at an excessive speed. Your client tells you that he paid the driver R10,00 to convey him from his home to his place of business.

3.1 Does your client have a claim against the Road Accident Fund? Motivate your answer fully dealing with any special investigations that have to be made to establish what can be claimed on behalf of your client. Are there any limitations in respect of the amount your client may claim? (3)

3.2 Would your client be entitled to claim against the driver/owner of the taxi? Motivate your answer fully. (2)

QUESTION 4 [1]

You act for a client who was injured as a result of "a hit and run" accident. Summons was issued and served on the Road Accident Fund (in other words, action has been instituted). The Road Accident Fund now requests your client to attend an interrogation in terms of Regulation 2(6) of the RAF Act No. 56 of 1996 and to make a sworn statement fully setting out the circumstances of the occurrence concerned. Is your client obliged to comply?

VRAAG 5 [4]

U is gekonsulteer deur die vader van sy minderjarige seun, 7 jaar oud, wie beseer is wanneer die taxi waarin hy 'n betalende passassier was, teen 'n boom vasgery het, as gevolg van die uitsluitlike nalatigheid van die bestuurder van die taxi. U kan aanvaar dat die bestuurder nalatig was. 'n Geldige permit is t.o.v. die taxi uitgereik i.t.v. die Padverkeerswet.

- a) Die vader gee vir u volledige rekeningstate van die hospitaal en verskeie mediese praktisyns ten bedrae van R28 000,00.
- b) U kan aanvaar dat as gevolg van die erns van die kind se beserings, sy algemene skade om en by R40 000,00 sal wees.
- c) Die minderjarige se ouers is wettig getroud en hy is uit die huwelik gebore.

Watter bedrae kan van die Pad Ongelukke Fonds geëis word en deur wie? Motiveer u antwoord.

VRAAG 6 [12]

6.1 Mnr A is toegelaat as 'n prokureur in die Transvaalse Provinsiale Afdeling van die Hooggeregshof en praktiseer te Pretoria. Hy het verskyningsbevoegdheid in die Hooggeregshof. Mnr A reik 'n dagvaarding uit in die Provinsiale Afdeling van die Kaap de Goede Hoop van die Hooggeregshof namens 'n kliënt en teken die besonderhede van vordering as 'n prokureur met verskyningsbevoegdheid. Is hierdie 'n reëlmatige stap?

Motiveer u antwoord. (2)

QUESTION 5 [4]

You are consulted by the father of a minor child whose son, aged 7, was injured when the taxi in which he was a fare paying passenger crashed into a tree due to the sole negligence of the driver of the taxi. You may assume that the taxi driver was negligent. The taxi had a valid permit issued to it in terms of the Road Transportation Act.

- a) The father furnishes you with properly detailed statements of account from a hospital and various medical practitioners totaling R28 000,00.
- b) Assume that because of the severity of the injuries sustained by the minor child, his general damages will be assessed at R40 000,00.
- c) The parents of the minor child are validly married and the minor child was born of the said marriage.

What amount/s can be claimed from the Road Accident Fund and by whom? Motivate your answer.

QUESTION 6 [12]

6.1 Mr A is admitted as an attorney in the Transvaal Provincial Division and practises at Pretoria. He has the right of appearance in the High Court. Mr A issues summons in the Cape of Good Hope Provincial Division of the High Court on behalf of a client and signs the particulars of claim as an attorney with the right of appearance. Is this a regular proceeding?

Motivate your answer. (2)

6.2 'n Prokureur wat optree vir die verweerder in 'n Hooggeregshof aangeleentheid liasseer 'n eksepsie tot die eiser se besonderhede van vordering op grond daarvan dat die besonderhede vaag en verwarrend is. Die eksepsie word van die hand gewys. Is hierdie uitspraak appeleerbaar? Motiveer u antwoord. (2)

6.2 The attorney acting for the defendant in a High Court matter files an exception to the plaintiff's particulars of claim on the basis that the particulars are vague and embarrassing. The exception is dismissed. Is this judgment appealable? Motivate your answer. (2)

6.3 U ontvang opdrag om dagvaarding uit te reik teen die bestorwe boedel van Peter Bloom wat op 10 Mei 2001 te Vereeniging gesterf het. Die eksekuteur in die boedel is Jeff Madebe wat as sulks aangestel is deur die Meester van die Hooggeregshof op 6 Julie 2001. Hoe word die verweerder gesitueer in die dagvaarding? (2)

6.3 You are instructed to issue summons against the deceased estate of Peter Bloom who died at Vereeniging on 10 May 2001. The executor in the estate is Jeff Madebe who was appointed as such by the Master of the High Court on 6 July 2001. How would the defendant be cited in the summons? (2)

6.4 Jake White en Gert Koekemoer het 'n geskrewe boukontrak met mekaar aangegaan. Klousule 10 van die kontrak maak voorsiening vir enige geskil om na 'n genomineerde arbiter verwys te word. Jake White lewer 'n rekening aan Gert Koekemoer vir R150 000,00 welke bedrag in dispuut geplaas word deur Gert Koekemoer. Nieteenstaande die dispuut, reik Jake White 'n dagvaarding uit teen Gert Koekemoer vir verhaling van hierdie bedrag. Stel die spesiale pleit op tot die dagvaarding. (4)

6.4 Jake White and Gert Koekemoer entered into a written building contract. Clause 10 of the contract provides for any dispute to be referred to a nominated arbitrator. Jake White renders an account to Gert Koekemoer for R150 000,00, which amount is disputed by Gert Koekemoer. Notwithstanding the dispute, Jake White issues summons against Gert Koekemoer for recovery of this amount. Draw the special plea to the summons. (4)

6.5 Pamela Gordon is 'n krediteur van XYZ (Edms) Bpk. Sy reik 'n aansoek uit vir likwidasie van die maatskappy. Op welke partye/instansies moet die aansoek beteken word? (2)

6.5 Pamela Gordon is a creditor of XYZ (Pty) Ltd. She files an application for the liquidation of the company. On which parties/entities must the application be served? (2)

VRAAG 7 [13]

U is gekonsulteer deur 'n tandarts, Mnr AB, woonagtig te Gold Avenue 10, Morningside, Johannesburg, Gauteng. Kliënt was die eienaar van 'n 2001 Mercedes Benz 230E met 'n markwaarde van R220 000,00.

QUESTION 7 [13]

You are consulted by Mr AB, a dentist, who is resident at 10 Gold Avenue, Morningside, Johannesburg, Gauteng. Client is the owner of a 2001 Mercedes Benz 230E with a market value of R220 000,00.

Kliënt deel u mee dat hy die voertuig gereeld elke Saterdag oggend na Sunshine Wash & Wax (Edms) Bpk geleë te Ultra City Centre te Sandton geneem het om te laat was.

Oor die jare het hy die voertuig gereeld na die motorwassery geneem en het 'n gebruik ontstaan in terme waarvan:

- i) Hysyvoertuig in die tou van motorvoertuie wat gewas moes word, gelaat het;
- ii) Hy sou waai vir ene Eric Smith, 'n werknemer van die motorwassery wat dan verstaan het dat die voertuig 'n was benodig;
- iii) Hy die sleutels in die aansitter sou laat en daarna sy inkopies by 'n nabygeleë winkelsentrum gaan doen en met sy terugkeer hy die voertuig sou afhaal en vir die was daarvan betaal.

Hierdie prosedure is gevolg op Saterdag 5 Junie 2004. Toe hy egter terugkeer na die motorwassery was sy voertuig nêrens te sien nie.

Hy het die saak met Eric Smith bespreek wie hom meegedeel het dat terwyl hy besig was om aandag te gee aan ander voertuie u kliënt se voertuig gesteel is. Hy het dit by sy werkgewer en die Suid-Afrikaanse Polisie aangemeld. Die voertuig kon nie gevind word nie en u kliënt is nie verseker teen die verlies nie.

U het aan Sunshine Wash & Wax (Edms) Bpk geskryf en teruggawe van die voertuig geëis, alternatiewelik, betaling van die waarde daarvan in die bedrag van R220 000,00 en hulle het nie op die aanmaning gereageer nie.

- a) Stel die nodige besonderhede van vordering op insluitende die situasie van die partye en die regshulp aangevra. U moet staatmaak op die kontrak as basis van u kliënt se eis. (12)

Client informs you that he on a regular basis took his motor vehicle to be washed every Saturday morning at Sunshine Wash & Wax (Pty) Ltd situated at the Ultra City Centre at Sandton.

Over the years he had regularly taken his vehicle to the car wash and a usage had developed in terms of which he would:

- i) Leave his vehicle in the queue of vehicles in the car wash;
- ii) Wave at one Eric Smith, an employee of the car wash, who then understood that the vehicle needed to be washed;
- iii) Leave the keys in the ignition, go and do his shopping at an adjacent shopping centre and on his return collect the vehicle and pay the usual fee charged for the washing of the vehicle.

This procedure was followed on the 5th of June 2004 but on his return he was dismayed to find that his vehicle was nowhere to be found.

He discussed the matter with Eric Smith who informed him that whilst he was busy attending to other vehicles, the vehicle had been stolen and that he had reported the matter to his employers and to the South African Police Services. The vehicle could not be located and your client was not insured against the loss.

You have written to Sunshine Wash & Wax (Pty) Ltd demanding return of the vehicle, alternatively, payment of its value in the amount of R220 000,00 and they have not responded to your letter of demand.

- a) Draft the necessary particulars of claim, including the citation of the parties and the prayers for relief, relying on the contract as the basis of your client's claim. (12)

- b) Uit watter Hooggeregshof (howe) kan u 'n dagvaarding uitreik?
Motiveer u antwoord. (1)

- b) Out of which High Court(s) can summons be issued?
Motivate your answer. (1)

VRAAG 8 [15]

QUESTION 8 [15]

- 8.1 U kliënt stop nie by 'n stopstraat nie en bots in die kruising met 'n ander voertuig wat die dood van die ander bestuurder tot gevolg het. Gemelde ongeluk vind plaas ongeveer 3 uur in die oggend op 'n onbeligte plaaslike pad. Hy pleit skuldig en word gevolglik skuldig bevind aan strafbare manslag en die Streekslanddros vonnis hom tot 10 jaar direkte gevangenisstraf. Hy is 35 jaar oud, 'n eerste oortreder, is getroud en onderhou 'n vrou en drie skoolgaande kinders. Hy het 'n vaste werk.

- 8.1 Your client fails to bring the vehicle that he is driving to a halt at a stop street and enters an intersection causing a collision with another vehicle which results in the death of the other driver. The collision occurred at approximately 3a.m. on a dark rural road. He pleads guilty and is convicted of culpable homicide and the Regional Magistrate sentences him to 10 years imprisonment. He is 35 years of age, a first offender, married and supports his wife and three school-going minor children. He is furthermore in fixed employment.

Stel 'n kennisgewing van appél op waarmee hy appelleer teen die vonnis en handel met die verskeie alternatiewe vonnisse wat 'n hof kon oorweeg het ten opsigte van die beskuldigde (insluitende die kopstuk). (10)

Draw the Notice of Appeal against the sentence and refer to the various alternative sentences which the Court could have imposed on the accused. (Include the Heading.) (10)

- 8.2 Watter ander dokument moet saam met die kennisgewing van appél by die hof ingehandig word? (1)

- 8.2 What other document must accompany the notice of appeal? (1)

- 8.3 By wie en binne hoeveel dae na die datum van die vonnis moet die appél dokumentasie geliasseer word? (2)

- 8.3 Within what period of time subsequent to the date of sentence must the appeal documents be lodged and with whom? (2)

- 8.4 Watter prosedure sal u verplig wees om te volg en watter dokumentasie sal u ter ondersteuning daarvan gebruik indien die periode soos na verwys in 8.3 hierbo verstryk het? (2)

- 8.4 What procedure would you be obliged to follow if the period referred to in 8.3 above has expired and what documentation will be required? (2)

VRAAG 9 [5]

Bespreek die prosedurele fases gedurende 'n strafszaak vanaf die begin tot en met afhandeling daarvan.

VRAAG 10 [1]

Is die staat by magte om 'n beskuldigde weereens aan te kla van dieselfde oortreding wat teen hom/haar teruggetrek is op 'n vorige stadium?

VRAAG 11 [4]

U kliënt deel u mee dat hy skuldig gepleit het op 'n aanklag van aanranding en dat hy gevolglik skuldig bevind is. Hy versoek u nou om hom te verteenwoordig en by te staan met die vonnis. Hy deel u verder mee dat hy die klaer in selfverdediging met 'n mes gesteek het. By nalees van die hofrekord blyk dit dat die beskuldigde geen melding van gemelde feit aan die hof genoem het toe hy skuldig gepleit het nie.

Bespreek die toepaslike regsreëls wat hier ter sprake is en die stappe wat u sal neem namens die kliënt by sy volgende verskyning.

VRAAG 12 [3]

Jy het drie dagvaardigings uitgereik in die Landdroshof. In elke aksie is verskyning om te verdedig aangeteken. Is u geregtig om aansoek te doen vir summierse vonnis waar die eis gebasseer is op:

- a) 'n Bedrag verskuldig ingevolge 'n verband; (1)
- b) Die kostes van 'n paneelkloppersfirma vir die herstelwerk verrig aan die verweerder se voertuig; (1)

QUESTION 9 [5]

Describe the procedural phases of a criminal trial from the commencement to the finalisation thereof.

QUESTION 10 [1]

Is the State entitled to re-charge an accused with a similar offence to that which has already been withdrawn against him?

QUESTION 11 [4]

Your client advises you that he has pleaded guilty to a charge of assault and has been duly convicted. He now requests you to assist him with sentence. He advises that he stabbed the complainant in circumstances that amount to self defence. On perusing the court record it appears that the accused however, at the previous hearing when he pleaded guilty, did not make mention of this fact to the court.

Discuss the applicable law and describe the procedure you will follow on behalf of your client at the next hearing.

QUESTION 12 [3]

You have issued three summonses in the Magistrate's Court and you have received an appearance to defend in each one. Are you entitled to apply for summary judgment where the claim is based on:

- a) The amount owing under a mortgage bond. (1)
- b) A claim by a firm of panel beaters for the cost of repairs to the defendant's vehicle; (1)

- c) Die bedrag betaal deur jou kliënt aan 'n tandarts om die swak werk verrig deur die verweerder aan jou kliënt se tande te herstel. (1)

Geen redes hoef gegee te word nie.

VRAAG 13 [7]

Jy word gekonsulteer deur P Smit wie aan jou opdrag gee om Z Winkel BK, die huurder van sy winkelpersale in Durban, uit te sit. Hy gee vir jou 'n huurooreenkoms wat al die gebruikelike terme bevat en deel u mee dat Z Winkel BK twee maande agterstallig is met die huur van R15 000,00 per maand.

Stel die besonderhede van vordering en bede(s) op wat jy sal insluit in 'n dagvaardiging wat u sal voorberei. Maak u eie feite op na goeddunke. Laat die opskrif en die beskrywing van die partye uit.

VRAAG 14 [5]

U het 'n verweerder gedagvaar vir R30 000,00 synde 2 maande se agterstallige huur wat hy aan u kliënt skuld ten opsigte van die huur van 'n winkel. Sy prokureur het verskyning om te verdedig aangeteken. Jy besef later dat die huur in werklikheid R30 000,00 per maand beloop.

- (i) Watter prosedure sal jy volg ten einde jou fout reg te stel? (1)
- (ii) Indien die verweerder beswaar maak teen jou optrede, wat staan hom te doen? Sonder om enige dokument op te stel wat namens die verweerder geliasseer moet word, dui aan wat so 'n dokument moet bevat? (3)
- (iii) Indien die verweerder nie beswaar maak nie, wat moet die eiser doen ten einde sy prosedure te voltooi? (1)

- c) The amount that your client paid to a dentist to repair badly executed dental work that the defendant had carried out on your client's teeth. (1)

No reasons need to be given.

QUESTION 13 [7]

You are consulted by P Smit, who instructs you to evict Z Shop CC, the tenant of his shop premises in Durban. He hands you an agreement of lease which contains all the usual provisions and he tells you that Z Shop CC is in arrear with its rental of R15 000,00 per month for two months.

Draw the particulars of claim and prayer(s) that you would include in a summons you would prepare, making up any facts you require. Omit the heading and the description of the parties.

QUESTION 14 [5]

You have sued a defendant for R30 000,00, being two month's arrear rental owed by him to your client for the lease of a shop. His attorney has entered an appearance to defend. You then realise that the rental is in fact R30 000,00 per month.

- i) What procedure would you follow to correct your mistake? (1)
- ii) Assume the defendant objects to your action, what must he do? Without drawing any document that must be filed on behalf of the defendant, indicate what such document should contain. (3)
- iii) Assume defendant did not object, what must the plaintiff do to complete his procedure? (1)

VRAAG 15 [4]

Dui aan of die Landdroshofjurisdiksie het in die volgende omstandighede:

- 15.1 'n eis vir die lewering van 'n motorvoertuig ten bedrae van R140 000,00 in terme van 'n verkoopsooreenkoms; (½)
- 15.2 'n aansoek vir die likwidasië van 'n beslote korporasie; (½)
- 15.3 'n eis gebaseer op 'n dishonoreerde tjek ten bedrae van R100 000,00; (½)
- 15.4 'n aksie vir 'n onverdedigde egskeiding; (½)
- 15.5 'n aansoek vir die aanstelling van 'n curator bonis vir 'n persoon met breinskade; (½)
- 15.6 'n aansoek vir die aanstelling van 'n curator ad litem; (½)
- 15.7 'n aansoek vir die sekwestrasie van die boedel van 'n individu; (½)
- 15.8 'n aansoek vir die heraanstelling van 'n werknemer wat onregmatig afgedank is. (½)

VRAAG 16 [2]

- 16.1 'n Verweerder teken verskyning om te verdedig aan na uitreiking van u kliënt se dagvaardiging. Daarna verstryk meer as tien dae. Die verweerder doen niks nie. Wat is die volgende prosesregtelike stap wat u kan neem? (1)
- 16.2 Aanvaar dat u die stap (na verwys in 16.1) geneem het en die verweerder doen steeds niks nie. Wat is die volgende stap wat u kan neem? (1)

QUESTION 15 [4]

Does the Magistrate's Court have jurisdiction in following matters:

- 15.1 a claim for delivery of a motor car valued to R140 000,00 in terms of an agreement of sale; (½)
- 15.2 an application for the liquidation of a close corporation; (½)
- 15.3 a claim based on a dishonoured cheque for the sum R100 000,00; (½)
- 15.4 an action for an unopposed divorce; (½)
- 15.5 an application for the appointment of a curator bonis to a brain damaged person; (½)
- 15.6 an application for the appointment of a curator ad litem; (½)
- 15.7 an application to sequestrate the estate of an individual; (½)
- 15.8 an application for the reinstatement of a wrongfully dismissed employee. (½)

QUESTION 16 [2]

- 16.1 A Defendant enters an appearance to defend your client's summons. More than ten days then elapse. The Defendant does nothing. What is the next procedural step you can take? (1)
- 16.2 Assuming you have taken the step referred to in 16.1 and the Defendant still does nothing, what is the next step can you take? (1)

VRAAG 17 [3]

U kliënt deel u mee dat 'n skuldenaar, wie R60 000,00 aan hom verskuldig is, stilweg sy bates verkoop het en 'n eenrigting kaartjie na 'n oorsese bestemming gekoop het en van voorneme is om volgende week die land te verlaat. Wat is die gepaste regsstap wat u teen die skuldenaarsal neem? Beskryf die dokumente wat u sal opstel.

VRAAG 18 [1]

Indien u kliënt u meedeel dat die balju op u kliënt se voertuig beslag gelê het ter uitvoering van 'n vonnis geneem teen u kliënt se broer, watter tipe prosedure sal u instel?

QUESTION 17 [3]

You are told by your client that a debtor, who owes him R60 000,00, has quietly sold his assets and bought a one way ticket to an overseas destination and intends to leave the country next week. What is the appropriate legal action to take against the debtor and list the documents you would prepare?

QUESTION 18 [1]

If your client tells you the sheriff has attached his motorcar in respect of a judgment obtained against his brother, what type of procedure would you institute?

DIE EINDE

THE END

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

16AUGUSTUS 2005

14:00-16:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.

1. Kandidate moet al die vrae beantwoord.
2. Die vrae mag in Afrikaans of Engels beantwoord word.
3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
4. Waar nodig, moet kandidate hulle eie feite versin.
5. Skryf assebliefslegs in pen op die regterkantse bladsye.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 2 ESTATES

16AUGUST 2005

14:00-16:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. The questions may be answered in English or Afrikaans.
3. Candidates must remember that marks are awarded for good draftsmanship.
4. Candidates must invent their own facts wherever necessary.
5. Please write only in pen on the right-hand pages.
6. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1

[56]

Moses Steyn sterf skielik as gevolg van 'n hartaanval op 18 Januarie 2004. Hy word oorleef deur sy eggenote, Sophie, met wie hy buite gemeenskap van goed met uitsluiting van aanwasbedeling getroud was. Hy word ook oorleef deur sy meerderjarige ongetroude seun, David.

A DIE ONDERSTAANDE BATES WORD IN SY BOEDEL GEVIND:

1. Die plaas Mariko in die distrik Tshwane gewaardeer vir R1 400 000,00 [Die eksekuteur het 'n Landbank waardasie van R1 200 000,00 gekies vir boedelbelasting doeleindes]
2. Meubels en toebehore, gewaardeer vir R90 000,00.
3. 'n Trekker, gewaardeer teen R110 000,00.
4. 'n FNB-vaste deposito vir die bedrag van R100 000,00, tegelike gemaak [by die bedrag van R100 000,00 is ingesluit rente in die bedrag van R6 000,00 tot 18 Januarie 2004, asook rente in die bedrag van R4 000,00 vir die periode 19 Januarie 2004 tot op die datum van tegeldemaking].
5. Die opbrengs van 'n Sanlam lewenspolis op die lewe van die oorledene het R200 000,00 beloop. Daar was 'n lening van R20 000,00 teen die polis en die eksekuteur het 'n tjek van Sanlam ontvang ten bedrae van R180 000,00
6. Die opbrengs van 'n Ou Mutual-polis ten bedrae van R25 000,00 wat ingevolge die huweliksvoorwaardeskontrak aan die nagelate eggenote uitbetaal moet word.

QUESTION 1

[56]

Moses Steyn died suddenly of a heart attack on 18 January 2004. He was survived by his spouse, Sophie, to whom he was married out of community of property excluding the accrual system. He was also survived by his major unmarried son, David.

A THE UNDERMENTIONED ASSETS WERE FOUND IN HIS ESTATE:

1. A certain farm Mariko in the district Tshwane valued at R1 400 000,00 [The executor chose a Land Bank valuation of R1 200 000,00 for estate duty purposes]
2. Furniture and Fittings - valued at R90 000,00.
3. A tractor - valued at R110 000,00.
4. FNB - fixed deposit recovered, for the amount of R100 000,00 [Included in this amount of R100 000,00 was interest to the amount of R6 000,00 up to 18 January 2004, as well as interest in the amount of R4 000,00 for the period 19 January 2004 to date of redemption].
5. The proceeds of a Sanlam policy on the life of the deceased amounted to R200 000,00. There was a loan of R20 000,00 against this policy and the executor received a cheque from Sanlam for the balance of R180 000,00
6. The proceeds of an Old Mutual policy in the amount of R25 000,00 which must, in terms of the ante-nuptial contract, be paid to the surviving spouse.

B DIE VOLGENDE UITBETALINGS IS GEMAAK:

1. Afrikanerbank - uitstaande verband op die plaas Mariko: R40 000,00
2. Saffas - begrafniskoste: R5 400,00
3. Ontvanger van Inkomste - finale aanslag: R1 000,00
4. Die totale administrasiekoste: R136 700,00

C DIE OORLEDENE HET IN SY TESTAMENT SOOS VOLG OOR SY BOEDEL BESKIK:

1. Aan sy nagelate eggenote:
 - (a) Die plaas
 - (b) Meubels en toebehore
 - (c) 'n Kontantlegaat van R10 000,00
 - (d) Die trekker
2. Aan die Tshwane Munisipaliteit, 'n kontantlegaat van R5 000,00.
3. Aan die Oxford-Universiteit in Londen, 'n kontantlegaat van R10 000,00.
4. Die restant van sy boedel aan sy seun.

U word as eksekuteur van die boedel benoem en u is vir BTW geregistreer.

Stel die volledige likwidasië- en distribusierekening op (uitgesonder die opskrif en die eksekuteur se sertifikaat), vir indiening by die Meester van die Hooggeregshof.

B THE FOLLOWING PAYMENTS WERE MADE:

1. African Bank - outstanding bond on farm Mariko: R40 000,00
2. Saffas - funeral expenses: R5 400,00
3. Receiver of Revenue - final assessment: R1 000,00
4. The administration costs, amounted in total to: R136 700,00

C THE DECEASED DEALT WITH HIS ESTATE IN HIS WILL AS FOLLOWS:

1. To his surviving spouse:
 - (a) The farm
 - (b) Furniture and Fittings
 - (c) A cash bequest of R10 000,00
 - (d) The tractor
2. To Tshwane Municipality a cash legacy of R5 000,00.
3. To Oxford University in London a cash legacy of R10 000,00.
4. He bequeathed the residue of his estate to his son.

You are nominated as the executor of the estate and you are a registered VAT vendor.

Draw the complete liquidation and distribution account [excluding the heading and the concluding certificate] to be lodged with the Master of the High Court.

VRAAG 2

[25]

H en W is buite gemeenskap van goed met mekaar getroud. Hulle het 'n 3-jarige seun, Peter, en is van plan om nog kinders te hê.

Hulle gee aan jou as prokureur opdrag om hulle testament op te stel. Hulle wil hê dat die langlewende van hulle die enigste erfgenaam van die eerssterwende moet wees. Indien hulle gelyktydig te sterwe sou kom, moet hulle kinders hulle erfgename wees. As enige kind benede die ouderdom van 25 jaar is, moet daardie kind se deel aan 'n trust onderhewig wees.

Dit is die uitdruklike wens van H en W dat geen huweliksmaat van enige kind van hulle uit hoofde van die huwelik enige regte met betrekking tot die erfenis van die kind moet verkry nie.

Hulle benoem u as hulle eksekuteur en trustee.

Stel 'n testament op om aan bogemelde gevolg te gee. Laat weg die klousule wat met die bevoegdheid van die trustee handel.

VRAAG 3

[7]

Peter verly 'n testament waarin hy R600 000,00 in kontant aan sy vriendin Anna bemaak.

Nege maande later, na 'n hewige argument, trek Peter 'n streep deur Anna se naam in die testament en skryf hy die naam van sy nuwe vriendin, Elsie, bokant die deurgehaalde naam. Hy teken sy naam langs die wysiging.

Peter kom 'n jaar later te sterwe en Anna, wat van die bemaking aan haar geweet het, nader u met die vraag of sy of Elsie op die bemaking geregtig is.

Adviseer u klient volledig.

QUESTION 2

[25]

H and W are married to each other out of community of property. They have a 3 year old son, Peter, and intend having further children.

They instruct you as their attorney to draw their will. They wish the surviving spouse to be the sole heir of the first-dying. However, should they die simultaneously, their children are to be their heirs. If any child is under the age of 25 years, then that child's portion is to be subject to a trust.

It is the express wish of both H and W that no spouse of any child of theirs would, by virtue of the marriage, acquire any rights to the inheritance of the child.

They appoint you to be their executor and trustee.

Draw a will giving effect to the above. Omit the clause dealing with the powers of the trustee.

QUESTION 3

[7]

Peter executed a Will in which he bequeathed a cash legacy of R600 000,00 to his girlfriend Anna.

Nine months later they had a serious disagreement and Peter drew a line through the name of Anna in his Will and wrote his new girlfriend - Elsie's name above Anna's deleted name. He signed next to it.

Peter died a year later and Anna, who knew about the bequest to her, now approaches you with the question as to whether she or Elsie is entitled to the legacy.

Advise your client fully.

VRAAG 4 [7]

Simon verly 'n testament op 14 Januarie 2004 in terme waarvan hy sy boedel aan sy vrou Susan nalaat. Simon en Susan, wat buite gemeenskap van goed met mekaar getroud was, skei op 13 Junie 2004.

Simon trou met Mary op 13 Julie 2004 en hy sterf kinderloos op 11 Augustus 2004.

Hoe sal Simon se boedel verdeel word?

VRAAG 5 [5]

A sterf op 5 Februarie 2004.

Hy was binne gemeenskap van goed met mev A getroud. In sy testament bemaak hy R100 000,00 in kontant aan sy dogter B, en laat hy die restant van sy boedel aan sy seun C na.

Die netto waarde van die gesamentlike boedel is R600 000,00.

Welke bedrag sal eike bevoordeelde ontvang?

QUESTION 4 [7]

Simon executed a Will on 14 January 2004 in terms of which he left his estate to his wife, Susan. Simon and Susan who were married out of community of property, were divorced on 13 June 2004.

Simon married Mary on the 13th July 2004 and died childless on 11th August 2004.

How will Simon's estate be distributed?

QUESTION 5 [5]

A dies on 5 February 2004.

He was married in community of property to Mrs A. In his will he bequeaths R100 000,00 in cash to his daughter B, and leaves the residue of his estate to his son, C.

The net value of the joint estate is R600 000,00.

What amount will each beneficiary receive?

DIE EINDE

THE END

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

17 AUGUSTUS 2005

09:00-11:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.

1. Kandidate moet al die vrae beantwoord.
2. Die vrae mag in Afrikaans of Engels beantwoord word.
3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
4. Waar nodig, moet kandidate hulle eie feite versin.
5. Skryf asseblief slegs in pen op die regterkantse bladsye.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% of meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 3 ATTORNEY'S PRACTICE

17 AUGUST 2005

09:00-11:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. The questions may be answered in English or Afrikaans.
3. Candidates must remember that marks are awarded for good draftsmanship.
4. Candidates must invent their own facts wherever necessary.
5. Please write only in pen on the right-hand pages.
6. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1 [30]

U word geraadpleeg deur 'n bestaande kliënt A, vergesel van eierdomsagent X oor die opstel van 'n koopkontrak vir die verkoop van A se woonstelblok aan B. Die finansies is ingewikkeld. U hou dus verdere samesprekings met A, X en B asook B se prokureur. Die bepalinge van die transaksie word in fyn besonderhede ooreengekom.

Dui aan hoe u as prokureur die volgende situasies wat uit die genoemde feitestel kan ontstaan, sal hanteer.

1.1 U stel 'n koopakte op presies in lyn met die mondelinge afspraak en kliënt se opdrag en stuur dit aan B se prokureur wat dit deur B laat onderteken en aan u terugstuur. Wanneer u A versoek om te teken, deel hy u mee dat hy nie meer wil verkoop nie, want hy dink hy kan dalk 'n hoër prys kry. Hy vra u of hy verplig is om te teken. Skryf 'n kort memo waarin u u kliënt adviseer oor die regposisie.

(8)

1.2 Gestel dat die koopakte word wel onderteken deur albei en bepaal dat B die koste moet betaal. Watter faktore sou u in ag neem in die vasstelling van u gelde (fooi)?

(5)

1.3 B moet 'n deposito van R100 000,00 in u trustrekening plaas hangende transport. B weet transport gaan lank neem en is ontevrede oor die renteverlies. Watter oplossing kan u aan die hand doen en hoe behoort daaraan u voorstel uitvoering gegee te word?

(3)

QUESTION 1 [30]

You are consulted by an existing client A, accompanied by estate agent X regarding the drafting a deed of sale in respect of the sale of a small block of flats by A to B. The financing of the transaction is complex. You accordingly attend further negotiations with A, X and the purchaser B, assisted by B's own attorney. The terms of the transaction are agreed upon in great detail.

Indicate how you would deal as attorney with the following possible developments arising from the above facts.

1.1 You draft a deed of sale strictly in accordance with the verbal agreement and your client's instructions. You send the agreement to B's attorney who has it signed by B and returns it to you. When you request A to sign he informs you that he no longer wants to sell because he thinks he might get a higher price. He asks you whether he is obliged to sign. Write a short memo advising your client of the legal position.

(8)

1.2 Suppose that the deed of sale is signed by both parties and that B must pay the costs thereof. What factors do you take into account in arriving at a fee?

(5)

1.3 B must pay a deposit of R100 000,00 into your trust account. B knows the conveyancing will take months and is unhappy with the loss of interest. What solution can you propose and how must your proposal be implemented?

(3)

1.4 Agent X is bewus dat die transaksie 'n lang tyd sal neem en wil sy kommissie vooruit vorder. X vra u om die bedrag dadelik te betaal of voort te skiet. U weier en in ruil bied hy aan om toekomstige akteswerk na u te verwys. Sal u nou toestem of nie? Motiveer. (4)

1.5 A het reeds in 1980 transport geneem en wel in sy eie naam. Wat is sy regte om met die eiendom te handel as hy binne gemeenskap van goedere getroud is in:

- a) 1979
- b) 1999,

In elke geval is dit sy enigste huwelik wat nog bestaan? (4)

1.6 Stel 'n klousule op wat voorsiening maak vir die aflewering van kennisgewings en 'n domicilium. (6)

VRAAG 2 [18]

U klient het ingestem om 'n bedrag van R30 000,00 aan 'n vriend te leen en gee u opdrag om 'n skulderkenning op te stel, waarin voorsiening gemaak moet word vir terugbetaling van die kapitaal en rente teen 10% per jaar in maandelikse paaimente oor 36 maande en 'n bepaling dat die volle uitstaande balans opeisbaar en betaalbaar sal wees in die geval van wanbetaling of kortbetaling van enige paaiment.

Stel die Skulderkenning op, en maak voorsiening vir sodanige verdere terme as wat u toepaslik ag.

1.4 Agent X, knowing that the transaction may take some time, wishes to collect the commission in advance. X asks you to advance the amount and when you refuse he offers, in exchange for an advance, to channel future work to you. Will you now agree or not? Motivate. (4)

1.5 A took transfer of the property in his own name in 1980. What are his rights to deal with the property if he was married in community of property in:

- a) 1979
- b) 1999

In each case, is it his only marriage which still subsists? (4)

1.6 Draw a clause providing for the delivery of notices and a domicilium. (6)

QUESTION 2 [18]

Your client has agreed to lend an amount of R30 000,00 to a friend and instructs you to prepare an acknowledgement of debt, which has to provide for repayment of the capital and interest at 10% per annum in monthly instalments over 36 months, with a provision that the full outstanding balance will become due and payable in the event of non-payment or short-payment of any instalment.

Draft the Acknowledgement of Debt, providing such further provisions as you consider appropriate.

VRAAG 3 [5]

U kliënt gee u opdrag om 'n aksie in te stel vir skadevergoeding teen 'n persoon wie u kliënt voel hom belasterhet. Nadat u volledige opdragte geneem het adviseer u u kliënt dat hy nie 'n saak het nie en hy behoort nie 'n aksie in te stel nie. Desnieteenstaande volhou u kliënt met sy opdrag en dring aan dat u dagvaarding moet uitreik. Wat sou u doen in die omstandighede?

VRAAG 4 [6]

'n Welgestelde kliënt vra u advies met betrekking tot 'n bedrag van R150 000,00 wat hy wil belê.

Toevallig benodig u 'n aansienlike bedrag geld om 'n nuwe rekenaarstelsel te installeer.

Mag u die bedrag wat u benodig van u kliënt leen? Motiveer u antwoord.

VRAAG 5 [8]

U word geraadpleeg deur u kliënt wie 'n besigheid wil koop, maar voordat hy dit doen wil hy seker wees dat hy 'n huurkontrak kan bekom ten opsigte van die perseel waarin die besigheid bedryf word op dieselfde voorwaardes as die verkoper se huurkontrak. Hy handig u 'n konsepooreenkoms opgestel deur die verkoper se prokureur wat nie voorsiening maak vir hierdie gebeurlikheid nie.

Stel die klousule op wat u, u kliënt adviseer in die koopkontrak opgeneem moet word.

VRAAG 6 [18]

'n Geskeide dame raadpleeg u en oorhandig aan u die egskedingsbevel waarby 'n skikkingsakte tussen haar en haar voormalige eggenoot X ingelyf is.

QUESTION 3 [5]

Your client instructs you to institute an action for damages against a person who your client feels has defamed him. After taking full instructions you advise your client that he has no case and that he should not institute action. He nevertheless instructs you to issue summons. What should you do in the circumstances?

QUESTION 4 [6]

A wealthy client seeks your advice in regard to an amount of R150 000,00 which he wants to invest.

Coincidentally you require a substantial amount of money to install a new computer system.

May you borrow the money you require from your client? Motivate your answer.

QUESTION 5 [8]

You are consulted by a client who wishes to purchase a business but before he does so, he wants to be sure that he will obtain a lease for the premises in which the business is conducted on the same terms as the seller. He hands you a draft agreement drawn by the seller's attorney which does not make provision for this situation.

Draft the clause which you advise your client should be included in the Deed of Sale.

QUESTION 6 [18]

A divorced woman consults you and hands you a divorce order incorporating a deed of settlement between her and her previous spouse X.

Sy deel u mee dat X agterstallig is met die onderhoudsbetaling aan die twee minderjarige kinders wat in die hofbevel vervat is en dat sy in elk geval nie kan uitkom op die onderhoud wat X gelas is om te betaal nie. X se houding is dat sy toegangsregte tot die kinders deur u kliënt ontsê word en dat hy om daardie rede onderhoudsbetalings gestaak het.

Stel 'n geskrewe advies aan u kliënt op met betrekking tot die volgende:

- 6.1 Wat sy moet doen om X te verplig om die agterstallige betalings te maak? (7)
- 6.2 Watgedoen kan word in verband met die onvoldoende onderhoud? (7)
- 6.3 Of X se houding dat hy betaling gestaak het omdat sy toegangsregte ontsê is, regtens geregverdig is. (4)

VRAAG 7 [15]

U kliënt, 'n klein sakeman, hoor by 'n buurman dat dit beter is om 'n BK of 'n maatskappy of 'n trust of iets dergeliks te gebruik om sake te doen. U kliënt maak 'n afspraak met u en vra u advies hieroor. Met inagneming van u kliënt se behoeftes, kom u tot die gevolgtrekking dat dit meer sinvol sal wees dat hy 'n beslote korporasie oprig eerder as een van die ander regsentiteite.

Adviseer u kliënt kortliks en gee hom die redes vir u advies.

She tells you that X is in arrears with payment of maintenance for the two minor children as contained in the court order and that she is in any case not able to subsist on the maintenance X was ordered to pay. X's attitude is that his rights of access to the children are refused by your client and for that reason maintenance payments have been stopped.

Draft a written advice to your client in regard to the following:

- 6.1 What she should do to compel X to pay the outstanding maintenance? (7)
- 6.2 What can be done in regard to the insufficient maintenance? (7)
- 6.3 Whether X's action in stopping payment of maintenance because his rights of access had been refused, is valid in law. (4)

QUESTION 7 [15]

Your client, a small business man, has been told by a neighbour that it is advisable to do business through the vehicle of either a close corporation or a company or a trust or something similar. Your client makes an appointment with you and asks your advice in this regard. Given your client's particular requirements you come to the conclusion that it is advisable that he establishes close corporation in preference to the other legal entities.

Advise your client briefly and give him reasons for your advice.

DIE EINDE

THE END

PROKUREURSEKSAMEN

DEEL 4 BOEKHOU

17 AUGUSTUS 2005

14:00-16:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.

1. Die vrae mag in Afrikaans of Engels beantwoord word.
2. Kandidate mag sakrekenaars gebruik.
3. By beantwoording van vrae moet die betrokke inskrywings duidelik geïdentifiseer, omskryf en uiteengesit word.
4. Afsonderlike besigheids- en trustkasboeke, asook kliëntegrootboekrekeninge moet geopen word en moet nie gekombineer word nie. Joemaalinskrywings moet behoorlik beskryf en geïdentifiseer word.
5. Skryf asseblief slegs in pen op die regterkantse bladsye.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% of meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 4 BOOKKEEPING

17 AUGUST 2005

14:00-16:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. The questions may be answered in English or Afrikaans.
2. Candidates may use calculators.
3. In answering the questions you should ensure that the relevant entries are clearly identified, narrated and detailed.
4. Separate business and trust cash books and clients' ledger accounts must be opened and are not to be combined. Journal entries must be properly identified and narrated.
5. Please write only in pen on the right-hand pages.
6. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1 [15]

U besigheidskasboek soos op 30 Junie 2004 toon 'n oortrokke saldo van R30 000,00.

'n Vergelyking van die kasboek en die bankstaat toon die volgende:

1. 'n Tjek vir R6 000 gemerk "verwys na trekker", is nie in die kasboek aangeteken nie.
2. Bankkoste van R600 is nie in die kasboek aangeteken nie.
3. Rente van R3 400 op die oortrokke saldo is nie in die kasboek aangeteken nie.
4. 'n Elektroniese oorplasing van 'n kliënt ter betaling van u fooirekening van R5700 is nie in die kasboek aangeteken nie.
5. Die bank het u rekening foutiewelik gedebiteer met R5 000.
6. 'n Trusttjek van R16 000 is deur die bank foutiewelik uit die besighedsrekening betaal.
7. 'n Deposito van R6 883 is verkeerdlik in die kasboek as R6 338 aangeteken.
8. Tjeks ter waarde van R8 000 is nog nie by die bank vir betaling aangebied nie.
9. 'n Aftrekorder van R2 700 vir die huurpaalement op u motorvoertuig is nie in die kasboek aangeteken nie.

U word gevra om:

1. Die aanvullende kasboek op 30 Junie 2004 op te stel.
2. Die bankstaatsaldo te bereken deur die bankrekonsiliasie staat op te stel.

QUESTION 1 [15]

Your business cash book as at 30 June 2004 reflects an overdrawn balance of R30 000,00.

A comparison of your cash book and the bank statement reveals the following:

1. A cheque for R6 000 marked "refer to drawer" has not been entered in the cash book.
2. Bank charges of R600 have not been entered in the cash book.
3. Interest of R3400 on the overdraft has not been entered in the cash book.
4. An electronic transfer from a client in payment of your fee account of R5 700 has not been entered in your cash book.
5. The bank has incorrectly debited your account with R5 000.
6. A trust cheque for R16 000 has been incorrectly paid by the bank from your business account.
7. A deposit of R6 883 has been incorrectly entered in your cash book as R 6 338.
8. Cheques totalling R8 000 have not yet been presented to the bank for payment.
9. A stop order of R2700 for the lease instalment on your motor vehicle, has not been entered in the cash book.

You are required to:

1. Prepare a supplementary cash book at 30 June 2004.
2. Calculate the bank statement balance by preparing the bank reconciliation statement.

VRAAG 2 [40]

U kliënt Jan Smith het die volgende transaksies met u firma gedurende September 2003 gehad:

- a) Smith het u opdrag gegee om R1000 van 'n skuldenaar te vorder. U stuur 'n aanmaningsbrief op 1 September en hef 'n fooi van R50. Op 6 September 2003 ontvang u R1000 in kontant en u debiteer invorderingskommissie van R100.
- b) Op 7 September 2003 verkoop Smith sy huis aan Black vir R150 000. U word opdrag gegee om die oordrag te doen. Die koste van die transport is vir die koper se rekening. Op dieselfde dag ontvang u R50 000 van die koper, synde die deposito van die koopprys. Die balans van die koopprys is gewaarborg deur 'n bank. U kry Black se skriftelike magtiging om die deposito namens hom te belê tot registrasie van oordrag.
- c) Op 8 September 2003 betaal u R5000 in kontant vir hereregte aan die Ontvanger van Inkomste.
- d) Op 10 September 2003 betaal Black u die bedrag van R5000 in kontant tesame met 'n addisionele R3420 op rekening vir u oordragfooie.
- e) Op 11 September 2003 konsulteer Smith u in verband met sy egskeding. Hy magtig u om die gelde gevorder van die skuldenaar te gebruik as deel van die deposito op rekening van u fooie. Hy gee u 'n verdere tjek van R500 getrek deur Green in sy guns en deur hom geëndoseer as addisionele deposito.
- f) U gee opdrag aan advokaat en op 15 September 2003 ontvang u die besonderhede van vordering in die egskedingsaangeleentheid tesame met advokaat se rekening vir R285 wat BTW teen 14% insluit, en u betaal die rekening.

QUESTION 2 [40]

Your client John Smith had the following transactions with you during September 2003:

- a) Smith had instructed you to collect an amount of R1 000 from a debtor. You write a letter of demand on 1 September 2003, debiting a fee of R50 and on 6 September 2003 you receive payment of R1 000 in cash. You debit R100 collection commission.
- b) On 7 September 2003 Smith sells his house for R150 000 to Black and instructs you to pass the transfer, the purchaser being responsible for all costs of transfer. On the same day you receive R50 000 from the purchaser being the deposit on account of the purchase price. The balance of the purchase price is guaranteed by a bank. You obtain written authority from Black to invest the deposit on his behalf until registration of transfer.
- c) On 8 September 2003 you pay transfer duty of R5 000 in cash to the Receiver of Revenue.
- d) On 10 September 2003 Black repays you the sum of R5 000 in cash together with a further R3 420 on account of your transfer fees.
- e) On 11 September 2003 Smith sees you about a divorce. He agrees to leave the money collected from the debtor as part deposit on account of your fees and gives you a further cheque of R 500 drawn by Green in his favour and endorsed by him as an additional deposit.
- f) You brief Counsel and on 15 September 2003 you receive particulars of claim in the divorce matter together with counsel's account for R285 which includes VAT at 14%, and you pay the account.

- g) Op 16 September 2003 word die tjek in die bedrag van R500 onteer en gemerk "verwys na trekker"
- h) Op 27 September 2003 word die oordrag aan Black geregistreer. U ontvang R100 000,00 by aanbieding van die bankwaarborg vir betaling en u debiteer fooie in die bedrag van R3420 vir die oordrag. Uit onttrek die trustbelegging en ontvang rente in die bedrag van R780 daarop.
- i) Op 29 September 2003 vertel Smith u dat hy en sy vrou versoen geraak het. U debiteer gelde in die bedrag van R228 en sluit Smith se leer.
- j) Op 30 September 2003 verreken u aan beide Smith en Black.

- g) On 16 September 2003 the bank returns the cheque for the amount of R500 marked "R/D".
- h) On 27 September 2003 the transfer to Black is registered. You receive R100 000,00 on presentation of the bank guarantee for payment and you debit a fee of R3 420 for the transfer. You withdraw the trust investment and receive R780 interest thereon.
- i) On 29 September 2003 Smith tells you that he has become reconciled with his wife. You debit a fee for R228 and close your file
- j) On 30 September 2003 you account to both Smith and Black

Teken die transaksies soos hulle sal verskyn, in u rekeningboeke aan. Fondse moet slegs eenkeer oorgedra word van u trust na u besigheidsrekening naamlik aan die einde van die maand. Maak voorsiening, waar van toepassing, vir BTW teen die toepaslike koers. Dit is nodig dat u verrekeningstate aan beide Smith en Black moet opstel.

Record all the transactions as they would appear in your books of account. Funds must be transferred from your trust to your business account only once namely at the end of the month. Make provision where applicable for VAT at the appropriate rates. It is necessary to prepare accounting statements to both Smith and Black.

VRAAG 3

[45]

U ontvang opdrag van 'n korrespondent om 'n aksie namens 'n kliënt in te stel. U kom ooreen om 'n prokureur/kliënt tarief te gebruik as basis vir u fooie.

- a) Tydens uitvoering van die aksie het u die volgende uitgawes aangegaan:
- | | |
|---|---------|
| Seël op Dagvaarding | R50,00 |
| Betaal advokaat vir opstel van besonderhede van vordering | R450,00 |
| Betaal balju | R50,00 |
| Betaal advokaat vir bywoning van voorverhoor konferensie | R300,00 |

QUESTION 3

[45]

You receive instructions from a correspondent to institute action on behalf of a client. You agree on an attorney/client tariff for the basis of your charges.

- a) In the course of the action you incur the following disbursements:
- | | |
|--|----------|
| Stamp on summons | R 50,00 |
| Pay Counsel for drafting particulars of claim | R 450,00 |
| Pay Sheriff | R 50,00 |
| Pay Counsel for attending pre trial conference | R 300,00 |

Betaal advokaat vir verhoor
eerste dag R3 300,00
Betaal advokaat vir verhoor
tweede dag R2 200,00
Betaal deskundige getuie
sy fooi R3 500,00

Pay Counsel for trial first day R3 300,00
Pay Counsel for trial second
day R2 200,00
Pay Expert Witness his fee R3 500,00

b) U hef 'n tussentydse fooi van R2 400.

b) You debit an interim fee of R2 400.

c) U ontvang betaling van u korrespondent vir die uitgawes en tussentydse fooi soos hierbo uiteengesit.

c) You receive payment from your correspondent for the disbursements and interim fees as set out above.

d) Aan die einde van die verhoor, debiteer u 'n verdere prokureur en kliënt fooi van R3600.

d) At the end of the trial you debit further attorney and client fees in the amount of R3 600.

e) Die hof gee uitspraak in die guns van u kliënt en gelas die verweerder om party en party koste te betaal.

e) Judgment is granted in favour of your client and the court orders the Defendant to pay party and party costs.

f) U stel u eie en u korrespondent se kosterekening op en met taksasie laat die takseermeester slegs die volgende toe:

f) You draw your and your correspondent's bill of costs and on taxation the taxing master only allows:

- R2 000 ten opsigte van deskundige getuie fooie
- R2 400 vir advokaatsfooie vir die eerste dag en R1 600 vir die tweede dag
- R4 500 vir u fooie en R1 500 vir u korrespondent se fooie.

- R2 000 in respect of the expert's fees;
- R2 400 for counsel's fees for the first day and R1 600 in respect of the second day;
- R4 500 for your fees and R1 500 for your correspondent's fees.

g) Die getakseerde kosterekening word betaal.

g) The amount of the taxed bill is paid

Teken die bovermelde transaksies in u korrespondent se rekening in u trust en besigheids boeke aan en verreken volledig aan u korrespondent. Die gewone een derde toelaag tussen uself en u korrespondent is van toepassing. Sluit BTW uit. Berei die verrekeningstaat voor.

Record the above transactions in your correspondent's account in your trust and business books of account and then account fully to your correspondent. The usual one third allowances as between yourself and your correspondent applies. Exclude VAT. Draw the statement of account.

DIE EINDE

THE END