

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

15 FEBRUARIE 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 drup.

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

15 FEBRUARY 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 [10]

Die pleitstuk hieronder bevat verskeie foute. Bestudeer die dokument krities en identifiseer tien van die foute.

INDIE HOOGGEREGSHOF VAN SUID
AFRIKA
(WITWATERSRANDSE PLAASLIKE
AFDELING)

Saak no: 1258/2004

In die saak tussen:

J P Naidoo	Eiser
Anna de Wet	1ste Verweerder
Altyd Lente BK	2de Verweerder

EISER SE DEKLARASIE

1.

Eiser is J P Naidoo, 'n meerderjarige man woonagtig te Moskeeweg 8, Lenasia, Johannesburg en werksaam as 'n konsultant te Pillay en Naidoo Versekeringskonsultante, Lovedaystraat 78, Johannesburg.

2.

1ste Verweerder is Anna de Wet, 'n meerderjarige vrou, woonagtig te Wesstraat 12, Pretoria Noord, Pretoria en werksaam as 'n bloemiste te Altyd Lente BK, Schoemanstraat 325, Pretoria.

3.

Die 2de Verweerder is Altyd Lente BK, Reg no CK98/2016, 'n beslote korporasie behoorlik geregistreer kragtens die wet op Beslote Korporasies, met geregistreerde adres te Schoemanstraat 325, Pretoria.

Question 1 [10]

The pleading hereunder contains numerous mistakes. Peruse the document critically and identify ten of the mistakes.

IN THE HIGH COURT OF SOUTH AFRICA
WITWATERSRAND LOCAL DIVISION

CASE NO: 1258/2004

In the matter between

J P Naidoo	Plaintiff
Anna de Wet	1 st Defendant
Forever Spring CC	2 nd Defendant

PLAINTIFF'S DECLARATION

1.

Plaintiff is JP Naidoo, an adult male, residing at 8 Mosque Road, Lenasia, Johannesburg and employed as a consultant at Pillay & Naidoo Insurance Brokers, 78 Loveday Street, Johannesburg.

2.

1st Defendant is Anna de Wet, an adult female, residing at 12 West Street, Pretoria North, Pretoria and employed as a florist at Forever Spring CC., 325 Schoeman Street, Pretoria.

3.

The 2nd defendant is Forever Spring CC Reg No CK98/2016, a close corporation, duly registered in terms of the Close Corporations Act with registered address at 325 Schoeman Street Pretoria.

4.

Die bogemelde agbare hof het jurisdiksie om die aangeleentheid aan te hoor aangesien dit konkurrente jurisdiksie met die Transvaalse Provinsiale Afdeling het.

5.

Op die 26ste Augustus 2003, en te die kruising van Grosvenor en Kerkstrate, Pretoria het 'n botsing plaasgevind tussen 'n Toyota Corolla motorvoertuig NKT364GP, die eiendom van die Eiser en voertuig BMW 530i, KSJ456GP, bestuur deur die 1ste Verweerder, welke voertuig die eiendom is van die 2de Verweerder, die werkgewer van 1ste Verweerder.

6.

As gevolg van die botsing is Eiser se voertuig beskadig en het die noodsaaklike en billike herstelkoste die bedrag van R115 000 beloop.

7.

Ten spyte van aanmaning weier of versuim 1ste en 2de Verweerders om te betaal.

WESHALWE versoek Eiser vonnis teen 1ste en 2de Verweerders vir:

1. Betaling van die bedrag van R115 000;
2. Rente @ 18,5% vanaf 26 Augustus 2003 tot datum van betaling;
3. Koste op die skaal tussen prokureur en kliënt;
4. Verdere of alternatiewe regshulp.

4.

The above honourable court has jurisdiction to hear the matter by virtue of the fact that it has concurrent jurisdiction with the Transvaal Provincial Division.

5.

On the 26th of August 2003 and at the intersection of Grosvenor and Church Streets, Pretoria a collision occurred between a Toyota Corolla motor vehicle with registration number NKT364GP, the property of the plaintiff and a BMW 530i motor vehicle with registration number KSJ456GP, driven by the 1st defendant. The latter vehicle is the property of the 2nd defendant who is the employer of the 1st defendant.

6.

As a result of the collision plaintiff's vehicle was damaged and the necessary and reasonable costs of repair amount to R115 000.

7.

Despite demand 1st and 2nd defendant refuse or neglect to pay.

WHEREFORE plaintiff claims judgment against 1st and 2nd defendant for:

1. Payment of the amount of R115 000.
2. Interest @ 18,5% from 26 August 2003 to date of payment.
3. Costs as between attorney and client.
4. Further or alternative relief.

Geteken te Johannesburg hierdie dag 12de dag van Januarie 2004.

A Lovemore J B Patel
Eiser se Advokaat Prokureur van die Eiser

Vraag 2 **[15]**

U word gekonsulteer deur Mnr Jack Jones wat woonagtig is te Villagelaan no. 1, Bloemfontein. U kliënt se woning is geleë in 'n residensiële woonbuurt. Hy deel u mee dat 'n Mnr Buckle ongeveer twee weke gelede by die naburige huis no.3 ingetrek het. Mnr Buckle bedryf sedertdien 'n paneelkloppery vanuit die perseel. Volgens u kliënt gaan die paneelklop bedrywighede aan tot in die vroeë oggendure gepaard met buitensporige geraas wat vir u kliënt, sy vrou en skoolgaande kinders slapelose nagte en 'n hoë graad van stres veroorsaak.

U kliënt het Mnr Buckle genader en gevra dat hy sy aktiwiteite moet staak, maar Mnr Buckle het versuim om dit te doen. U kliënt het vasgestel dat Mnr Buckle se eiendom slegs gesoneer is vir residensiële gebruik en dat geen handelslisensie deur die relevante owerheid aan hom uitgereik is wat hom magtig om as 'n paneelklopper handel te dryf nie.

Mnr Jones versoek u advies teen Mnr Buckle.

- a) adviseer u kliënt ten aansien van die stappe wat hy moet neem en die prosedure wat nodig is om die nodige regshulp in die Hooggereshof te bekom. [½]
- b) stel die nodige stukke op om gevolg te gee aan u advies. [14 ½]

Signed at Johannesburg on this 12th day of January 2004.

A Lovemore J B Patel
Plaintiff's Advocate Attorney for Plaintiff

Question 2 **[15]**

You are consulted by Mr Jack Jones who resides at 1 Village Avenue, Bloemfontein. Your client's house is situated in a residential suburb. He informs you that about two weeks ago a Mr Buckle moved into the house next door to him situated at no.3 Village Avenue. Mr Buckle has since then been running a panel-beating business from the premises. According to your client the panel-beating activities which carry on until the early hours of the morning are accompanied by excessive noise which has caused your client, his wife, and school going children sleepless nights and a high degree of stress.

Your client has approached Mr Buckle and requested him to cease the activities, but Mr Buckle has failed to do so. Your client has established that Mr Buckle's property is only zoned for residential purposes and no business licence authorizing him to trade as a panel-beater, has been granted by the relevant authority.

Mr Jones requests your advice as against Mr Buckle.

- a) Advise your client on the steps that should be taken and the proceedings that are necessary to obtain the relief sought in the High Court. [½]
- b) Draft the necessary papers to give effect to your advice. [14 ½]

VRAAG 3

[4]

Weens 'n oorsig aan u kant, het u 'n kennisgewing van ter rolle plasing van 'n verhoor in 'n Landdroshofaksie, en wat op u kantoor bedien is, misgekyk as gevolg waarvan u versuim het om u kliënt in te lig van die verhoordatum en het u ook versuim om die Hof by te woon. Die eiser se prokureur het op die verhoordatum en in u afwesigheid, vonnis by verstek verkry.

1. Watter prosedure moet u volg ten einde te probeer om die posisie reg te stel. [1]
2. Sonder om enige dokument op te stel, meld die essensiële beweringe wat u kliënt sal moet maak in enige aansoek wat hy geadviseer mag word om te maak. [3]

VRAAG 4

[6]

1. U het vonnis namens u kliënt teen die verweerder in die Landdroshof bekom. Die getuienis het getoon dat die verweerder 'n aansienlike bedrag geld op vaste deposito by XYZ Bank belê het. Watter prosedure sal u volg ten einde te probeer om die vonnis te bevredig deur middel van hierdie belegging? [2]
2. U het vonnis verkry teen die verweerder in 'n Landdroshofaksie na betekening van die dagvaardiging op die verweerder by sy domicilium citandi et executandi. U kliënt het bewus daarvan geword dat die verweerder skielik Engeland toe ge-emigreer het maar het sy adres in Engeland bekom. Die verweerder het 'n eiendomsagent opdrag gegee om sy woning in Suid Afrika te verkoop. Watter stappe behoort u te neem ten einde die vonnis te bevredig? [3]

QUESTION 3

[4]

Because of an oversight on your part, you overlooked a notice of set down of a trial in a Magistrate's Court action which had been served on your office and, as a consequence you failed to notify your client of the trial date and you failed to attend Court. The plaintiff's attorney obtained default judgment in your absence on the trial date.

1. What procedure should you adopt to endeavour to rectify the position? [1]
2. Without drawing any document, state the essential averments your client will have to make in any application he might be advised to make. [3]

QUESTION 4

[6]

1. You have obtained judgment for your client in the Magistrate's Court against the defendant. The evidence disclosed that the defendant has invested a substantial sum of money on fixed deposit with XYZ Bank. What procedure would you follow to try and get the judgment satisfied from this investment? [2]
2. You have obtained judgment against the defendant in the Magistrate's Court following service of summons on the defendant at his domicilium citandi et executandi. Your client has become aware that the defendant has suddenly immigrated to England but has obtained his English address. The defendant has placed his house in South Africa in the hands of an estate agent for sale. What steps should you take to satisfy the judgment? [3]

3. U kliënt het vonnis verkry in die Landdroshof teen 'n verweerder wie 'n vaste betrekking beklee by 'n plaaslike fabriek. Dit is nie bekend waar hy woon nie. Watter stappe sal u neem ten einde die vonnis af te dwing? [1]

VRAAG 5 [3]

1. U is seker dat die teenparty nie volledig blootgelê het in 'n verdedigde aksie in die Landdroshof nie. Watter stappe sal u neem in die omstandighede? [1]
2. U opponent wil 'n dokument as getuienis aanvoer tydens die verhoor van 'n aksie. Hierdie dokument is nie blootgelê nie. Mag dit gebruik word en, indien wel, in welke omstandighede? [2]

VRAAG 6 [4]

Indien die eiser in 'n motorbotsingsaak in die Landdroshof sy getuienis eerste aanbied en, na die sluit van sy saak, die verweerder met sukses aan die Hof toon dat die eiser versuim het om te bewys dat die verweerder nalatig was.

1. Watter uitspraak behoort die Landdroshof te gee? [1]
2. Is so 'n uitspraak appéleerbaar? [1]
3. Indien die eiser nuwe getuienis bekom wat hom in staat stel om die verweerder se nalatigheid te bewys, kan die eiser sy huidige aksie her-open na so 'n uitspraak? [1]
4. Watter ander opsies is op daardie stadium tot eiser se beskikking? [1]

3. Your client has obtained judgment in the Magistrate's Court against a defendant who is in fixed employment at a local factory. It is not known where he lives. What steps would you take to enforce the judgment? [1]

QUESTION 5 [3]

1. You are certain that the other side has not made complete discovery in a defended Magistrate's Court action. What action would you take under the circumstances? [1]
2. Your opponent produces a document at the trial which he intends to use in evidence. This document has not been discovered. May the document be used and if so, under what circumstances? [2]

QUESTION 6 [4]

If the plaintiff in a motor collision case leads his evidence first and, at the close of his case, the defendant successfully contends to the Court that the plaintiff has failed to prove the defendant was negligent:

1. What judgment ought the Magistrate to deliver? [1]
2. Is such judgment appealable? [1]
3. Should the Plaintiff obtain new evidence to enable him to prove Defendant's negligence, can the plaintiff re-open his existing action after such judgment? [1]
4. What other options are open to the plaintiff at that time? [1]

VRAAG 7 [4]

Watter opsies is beskikbaar aan 'n verweerder wat bereid is om 'n gedeelte van die bedrag geëis deur 'n eiser in 'n Lanndroshofgeding, te betaal?

VRAAG 8 [4]

U word gekonsulteer deur mnr Piet Smit wie aan jou 'n dagvaardiging oorhandig wat op hom bedien is en uitgereik is deur XYZ Bk. Mnr Smith versoek u om hom in die aksie te verteenwoordig en alle regstappe te neem ten einde die aksie namens hom te verdedig. Watter prosesregtelike stappe kan u neem nadat verskyning om te verdedig aangeteken is, maar alvorens verweerder se pleit geliasseer word.

VRAAG 9 [14]

U word gekonsulteer deur Piet Smal, 'n Telkom-werknemer, wie u meedeel dat op die 15de Maart 2004, hy 'n voorsittende passasier was in 'n Telkom-voertuig bestuur deur Joe White, 'n medwerknemer, wat in 'n botsing met 'n ander motorvoertuig bestuur deur John Black betrokke was.

Beide u kliënt en Joe White was op diens ten tye van die ongeluk en u kliënt deel u mee dat hy ook nie sy sitplekgordel aangehad het nie. Dit is alreeds vasgestel dat die ongeluk te wyte was aan die uitsluitlike nalatigheid van John Black.

As gevolg van die ongeluk het u kliënt die volgende beserings opgedoen:

- (1) frakture van die regsydige tibia en fibula;
- (2) 'n ernstige kopbesering.
- (3) 'n gebreekte neus en veelsydige snye en skaafwonde aan sy gesig.

QUESTION 7 [4]

What are the options for a defendant who is prepared to pay a portion of the amount claimed by a plaintiff in an action instituted in the Magistrate's Court?

QUESTION 8 [4]

You are consulted by Mr Piet Smith who hands you a summons served on him and issued out of the Magistrate's Court by XYZ CC. Mr. Smith wants you to represent him in the action and take all legal steps necessary to defend the action on his behalf. What procedural steps can you take after filing an appearance to defend, but before filing defendant's plea?

QUESTION 9 [14]

You are consulted by Piet Smal, a Telkom employee who advises you that on the 15th March 2004 he was a front seat passenger in a Telkom vehicle driven by a co-employee, Joe White, when it was involved in a collision with another motor vehicle driven by John Black.

Both your client and Joe White were on duty and he tells you that he was not wearing his seat belt at the time of the collision. It has been established that the sole cause of this collision was the negligence of John Black.

As a result of the collision your client sustained the following injuries:

- (1) fractures of the right tibia and fibula;
- (2) a severe head injury;
- (3) a fractured nose and multiple cuts and abrasions to his face.

Hy het nie gewerk vir drie maande na die ongeluk nie maar het net een maand se salaris van Telkom ontvang. By terugkeer na sy werk, is bevind dat hy niemeers sy pligte kon nakom nie, as gevolg waarvan hy ongeskik vir werk verklaar is en het medies uitgetree.

Hy vertel dat hy nie meer met sy vriende sosialiseer nie, dat hy emosionele uitbarstings ondervind en sy verhouding met sy vrou en kinders ontbreek. Aansienlike hospitaal en mediese onkoste is aangegaan vir sy behandeling. In terme van die Wet op Vergoeding vir Beroepsbeserings en Siektes (COIDA) is 'n finale toekenning deur die Vergoedings-kommissaris gemaak.

Vrae

- 9.1 Benoem die hoofde van skadevergoeding waaronder u kliënt van die Padongelukke Fonds mag eis. [4]
- 9.2 Word enige van hierdie hoofde van skadevergoeding beïnvloed deur die feit dat u kliënt nie sy sitplekgordel aangehad het nie? Indien so, welke? Motiveer u antwoord. [2]
- 9.3 Van welke deskundiges sal u verslae verkry om u kliënt se skadevergoeding te bewys? [3]
- 9.4 Mag die onkoste van hierdie deskundiges van die POF verhaal word, en indien wel, wanneer en hoe? [2]
- 9.5 Neem aan dat dit bevind word dat Joe White die alleen oorsaak van die ongeluk was.
- 9.5.1 Hoe sal dit u kliënt se eis beïnvloed? Motiveer u antwoord. [1]
- 9.5.2 Kan u kliënt enige van sy skadevergoeding vanaf Joe White en /of Telkom verhaal? Motiveer u antwoord. [2]

He was off work for 3 months but only received one month's salary from Telkom. When he returned to work it was found that he could no longer cope with his duties as a result of which he was declared unfit to work and was medically boarded.

He tells you that he no longer socializes with his friends, has emotional outbursts and this is affecting his relationship with his wife and children. Considerable hospital and medical expenses were incurred in his treatment. In terms of the Compensation of Occupational Injuries and Diseases Act (COIDA) a final award was made by the Compensation Commissioner.

Questions

- 9.1 Name the heads of damages under which your client may claim against the R.A.F. [4]
- 9.2 Does the fact that your client was not wearing a seatbelt affect any of these heads of damages? If so, which? Motivate your answer. [2]
- 9.3 From which experts should you obtain reports to prove your client's damages? [3]
- 9.4 May the costs of these experts be recovered from the R.A.F.? And if so, when and how? [2]
- 9.5 Assume that Joe White was found to have been the sole cause of the collision.
- 9.5.1 How will this affect your client's claim. Motivate your answer. [1]
- 9.5.2 Can your client recover any of his damages from Joe White and/or Telkom? Motivate your answer. [2]

VRAAG 10

[6]

10.1 U kliënt is beseer toe sy motor wat hy bestuur het, in 'n botsing betrokke was met 'n perdekar getrek deur twee perde, onder die beheer van 'n plaaswerker wie se nalatigheid die uitsluitlike oorsaak van die botsing was.

Het u kliënt 'n eis teen die Padongelukke Fonds? Motiveer u antwoord. [2]

10.2 U kliënt ry op sy motorfiets sonder 'n lisensie, terwyl hy onder die invloed van drank is. 'n Ander voertuig, wat op 'n nalatige manier bestuur word, bots met u kliënt. Neem aan dat die ander bestuurder alleen nalatig was. Sal u u kliënt aanbeveel om 'n skadevergoedingseis in te stel ten opsigte van die beserings wat hy in die botsing opgedoen het? Motiveer u antwoord.

[2]

10.3 Op 1 Julie 2004 is u kliënt amper deur 'n motorvoertuig omgery. Slegs deur uit die voertuig se pad te spring, het hy verhoed dat hy deur die voertuig getref was. As gevolg daarvan val hy in 'n sloot en is hy erg beseer. Die voertuig hou nie stil nie, en nog die voertuig, nog die bestuurder kan opgespoor word. Het u kliënt 'n eis teen die Padongelukke Fonds? Motiveer u antwoord.

[2]

VRAAG 11

[2]

U is bekommerd ten opsigte van die meriete van u kliënt se derdeparty eis. 'n Verhoordatum is vasgestel. In antwoord op u brief weier die polisie om u insig in die dossier te gee voordat die siviele verhoor begin. Watter prosedure sal u volg ten einde die dokumente in die dossier te inspekteer voordat die derdeparty saak in die hof begin?

Question 10

[6]

10.1 Your client was injured when his motor vehicle which he was driving collided with a cart drawn by two horses under the supervision of a farm worker whose negligence was the sole cause of the collision.

Does your client have a claim for damages against the Road Accident Fund? Motivate your answer. [2]

10.2 Your client was driving his motorcycle whilst under the influence of liquor and without a driver's license. Another motor vehicle, which is being driven in a negligent manner, collides with your client. You may assume that the other driver was solely to blame for the collision. Will you advise your client to institute a claim for damages arising from the injuries which he suffered in the collision? Motivate your answer.

[2]

10.3 On 1st July 2004 your client is almost run over by a motor vehicle. He only avoids being hit by jumping out of the way. As a result thereof he falls into a ditch and is seriously injured. The said vehicle does not stop and neither the vehicle nor the driver can be traced. Does your client have a claim for compensation against the Road Accident Fund? Motivate your answer.

[2]

Question 11

[2]

You are concerned about the merits of your client's third party claim. A trial date has been allocated. In reply to your letter the police refuse to allow you access to the docket before the civil trial commences in the High Court. What procedure can you follow in order to inspect the contents of this docket before the trial of your client's third party claim?

VRAAG 12 [1½]

Teen watter groepe van persone loop verjaring nie in terme van die Padongelukke Fonds Wet?

VRAAG 13 [1½]

13.1 'n Minderjarige is in 'n tref-en-trap ongeluk op die 24ste Julie 2004 beseer. Voor watter datum met die eisvorm by die Fonds ingedien word ten einde te voorkom dat die eis verjaar? [1]

13.2 Is daar enige verskil in 'n soortgelyke eis deur 'n dertigjarige persoon? [½]

VRAAG 14 [4]

14.1 Noem twee feite, in terme van Artikel 60(11B) van die Strafproseswet, wat 'n beskuldigde verplig is om aan die Hof te meld by 'n aansoek om borgtog. [2]

14.2 Wat is die moontlike gevolge vir 'n beskuldigde wat opsetlik nalaat om gemelde feite aan die Hof te openbaar? [2]

VRAAG 15 [6]

15.1 Bespreek, met spesifieke verwysing na regspraak, die beskuldigde se regte tot insae tot die inhoud van die polisdossier en die regte van die Staat in hierdie verband. [4]

15.2 Watter remedies is beskikbaar vir 'n beskuldigde indien die Staat blootlegging van gemelde dokumentasie weier? [2]

Question 12 [1½]

Against which classes of persons does prescription not run in terms of the R.A.F. Act?

Question 13 [1½]

13.1 A minor is injured in a "hit and run" accident on 24th July 2004. Before what date must the claim form be lodged with the Fund to prevent the claim from prescribing? [1]

13.2 Is there any difference in the case of a similar claim by a 30 year old person? [½]

QUESTION 14 [4]

14.1 Name the two disclosures, in terms of Section 60(11B) of the Criminal Procedure Act, which an accused is compelled to make to the Court at a bail application. [2]

14.2 What are the possible consequences of an accused wilfully failing to make such disclosures? [2]

QUESTION 15 [6]

15.1 Discuss with reference to case law the rights of an accused to have access to the contents of the police docket and the rights of the State in this regard. [4]

15.2 What remedies are available to an accused should the state refuse to furnish the required documentation. [2]

VRAAG 16

[15]

U kliënt word aangekla van moord. Daar word beweer dat hy op 'n sekere Saterdag by die plaaslike kroeg 'n medekroegganger A met 'n mes gesteek het waarna A gesterf het. Alhoewel u kliënt u inlig dat hy wel op gemelde aand by die kroeg was kan hy nie die voorval onthou nie alhoewel dit moontlik is dat hy die oordelede met die mes gesteek het. Nadat u afskrifte bekom het van die staatsgetuies se verklarings kom u tot die gevolgtrekking dat die staat nie in posisie is om 'n saak teen u kliënt te bewys nie.

- 16.1 Is u geregtig om u kliënt te adviseer om onskuldig te pleit? [1]
- 16.2 In die geval waar u kliënt besluit om onskuldig te pleit, verduidelik die etiese beginsels wat van toepassing is. [1]
- 16.3 Watter prosedure sal u volg indien die staat in die voer van hulle saak getuies aanbied wat bewys dat dit wel u klient was wat die oordelede met 'n mes gesteek het. [5]
- 16.4 Gedurende die afloop van die verhoor hoor die beskuldigde getuies van verskeie staatsgetuies dat die geveg wel plaasgevind het tussen homself en die oordelede en hy wel, in selfverdediging, die grense van noodweer opgetree het t o e hy die mes gebruik het om homself te verdedig. Hy onthou nou dat die geveg wel plaasgevind het en hy dui aan dat hy wil skuldig pleit op 'n klagte van strafbare manslag. Stel sy verklaring in terme van Artikel 112 (2) op wat insluit die kopstuk en alle relevante erkennings. [8]

DIE EINDE

QUESTION 16

[15]

Your client is charged with murder, it being alleged that on a certain Saturday and at the local pub, he stabbed a fellow-patron, A, with a knife thus causing his death. Whilst your client confirms that he was at the pub on this particular night, he is unable to remember the incident although he states that it is possible that he stabbed the deceased. Having obtained copies of the statements of state witnesses you come to the conclusion that the state is not in a position to prove a case against your client.

- 16.1 Are you entitled to advise your client to plead not guilty? [1]
- 16.2 In the event of your client deciding to plead not guilty what ethical principles are applicable? [1]
- 16.3 What procedure will you follow should the state during the course of the trial present evidence which proves that it was indeed your client who stabbed the deceased? [5]
- 16.4 During the trial the accused hears the evidence of the various state witnesses to the effect that a fight took place between himself and the deceased and that the accused, in defending himself, clearly exceeded the bounds of self-defence by using a knife. He now recalls that the fight took place as described by the state witnesses and intends pleading guilty to culpable homicide. Draw his statement in terms of Section 112 (2) including the heading and all relevant admissions. [8]

THE END

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

15 FEBRUARIE 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 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 druipe.

ATTORNEYS' EXAMINATION

PART 2 ESTATES

15 FEBRUARY 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

[50]

Peter Jones kom te sterwe en word oorleef deur sy vrou Jane, met wie hy binne gemeenskap van goed getroud was en een meerderjarige seun. Die gemeenskaplike boedel bestaan uit die volgende bates:

- 1 'n Woonhuis in Potchefstroom wat vir R880 000.00 gewaardeer is. Daar is geen verband op die eiendom nie.
- 2 'n Plaas in die Noordwes-provinsie, wat vir R1 800 000.00 gewaardeer is.
- 3 Lewende hawe, bestaande uit vee en twee ryperde, wat gesamentlik vir R160 400.00 gewaardeer is.
- 4 Plaasimplimente wat gesamentlik vir R247 500.00 gewaardeer is.
- 5 Twee motorkarre wat gesamentlik vir R340 000.00 gewaardeer is.
- 6 Meubels en huishoudelike toebehore wat vir R140 400.00 gewaardeer is.
- 7 Daar was op datum van afsterwe 'n kredietbalans van R35 100.00 in die oorledene se tjekrekening.
- 8 Daar is R150 000.00 op 'n spaarrekening in die naam van die langselewende gade. Rente ten bedrae van R3 500.00 is op die kapitaal verdien tot die datum van die oorledene se afsterwe.
- 9 Die oorledene het ook 'n vaste belegging ter waarde van R500 000.00 by 'n bankinstelling gehad en waarop rente ten bedrae van R12 500.00 tot datum van afsterwe verdien is. Die belegging word nie opgeëis nie.

Question 1

[50]

Peter Jones dies and is survived by his wife Jane, to whom he was married in community of property, and a major son. The joint estate comprises the following assets:

- 1 A house in Potchefstroom, valued at R880 000.00. There is no mortgage bond on the property.
- 2 A farm in the Northwest Province, valued at R1 800 000.00.
- 3 Livestock comprising cattle and two riding horses with a total value of R160 400.00.
- 4 Farm implements with a total valuation of R247 500.00.
- 5 Two motor cars with a joint value of R340 000.00.
- 6 Furniture and household effects, jointly valued at R140 400.00.
- 7 At the date of the deceased's death, there was a credit balance of R35 100.00 in his current (cheque) account.
- 8 There is a savings account in the amount of R150 000.00 in the name of the surviving spouse, upon which interest in the amount of R3 500.00 had accrued to date of death.
- 9 The deceased had a fixed deposit of R500 000.00 with a banking institution and interest in the amount of R12 500.00 had accrued until date of death. The deposit is not redeemed.

10 Daar was 'n lewenspolis op die oorledene se lewe ten opsigte waarvan 'n begunstigde nie benoem is nie en die eksekuteur het die opbrengs van R950 500.00 in die boedelbankrekening inbetaal.

10 There was a life assurance policy on the life of the deceased. No beneficiary was nominated in the policy document and the proceeds of R950 500.00 were paid into the estate bank account.

11 Administrasiekoste, uitgesonderd die eksekuteursvergoeding en meestersgelde, bedra R50 606.00. Die Ontvanger van Inkomste se aanslag vir inkomstebelasting beloop R16 460.00 en die begrafniskoste was R8 000.00. Daar is geen verdere laste nie en geen boedelbelasting is betaalbaar nie.

11 Administration costs, excluding the executor's remuneration and Master's fees, amounts to R50 606.00. The assessment of the Receiver of Revenue in respect of income tax amounts to R16 460.00 and the account for funeral expenses is R8 000.00. There are no further liabilities and no estate duty is payable.

Die oorledene en sy nagelate eggenote het 'n gesamentlike testament verly ingevolge waarvan die plaaseiendom, die plaasimplemente en die lewende hawe aan hulle seun bemaak word en die langlewende eggenote is die restant erfgenaam. Die nagelate eggenote het die bepalings van die testament geadieer.

The deceased and his surviving spouse had executed a joint will in terms of which the farm, the farm implements and the livestock are bequeathed to their son. The surviving spouse, who adiated the will, is the residuary heir.

GEVRA:

REQUIRED:

Stel die volgende onderafdelings van die eerste en finale likwidasierekening op en verstrek waar nodig u eie denkbeeldige besonderhede sodat die rekening volledig en korrek is ooreenkomstig die toepaslike regulasies van die Boedelwet:

Draw the following sections of the first and final liquidation and distribution account and supply your own fictitious particulars where necessary, so that the account is complete and correct in accordance with the relevant regulations in terms of the Administration of Estates Act:

1. Die Opskrif [5]
2. Die Likwidasierekening. U moet die administrasiekoste spesifiseer en die bedrag van R50 606.00 dien ooreenkomstig allokeer. [30]
3. Die Rekapitulatie-opgawe [3]
4. Die Distribusierekening [12]

1. The Heading [5]
2. The Liquidation account. You must specify the administration costs and allocate the amount of R50 606.00 accordingly. [30]
3. The Recapitulation Statement [3]
4. The Distribution Account [12]

VRAAG 2

[30]

H, wat binne gemeenskap van goed getroud was, sterf op 15 Maart 2004 in 'n motorongeluk.

Die bates volgens die likwidasierekening beloop R7 000 000,00, waarby 'n lewenspolis van R800 000,00 ingesluit is.

Administrasiekoste en laste [boedelbelasting uitgesluit] beloop R1 000 000,00.

Kragtens die rekening van fidusiêre bates, word bates met 'n netto markwaarde van R500 000,00 toegeken aan die fideikommissêre erfgenaam [F], 'n manlike persoon wat op 17 Februarie 1939 gebore is.

In sy testament het H R100 000,00 aan sy vrou en R200 000,00 aan die Weduwees en Weesfonds wat 'n geregistreerde openbare weldaadsorganisasie is, bemaak. Die restant van H se boedel laat hy aan sy kinders Z en Y na.

Stel die volledige boedelbelastingaddendum op. Die tabelle vir die berekening van beperkte regte is by die vraestel aangeheg.

VRAAG 3

[10]

Verduidelik die volgende met betrekking to 'n testament wat uit meer as een bladsy bestaan:

- 3.1 Wie mag 'n geldige testament verly? (2)
- 3.2 Waar moet die getuies op die testament teken? (2)
- 3.3 Indien die Testateur by wyse van 'n merk teken, moet 'n sertifikaat ooreenkomstig

QUESTION 2

[30]

H, who was married in community of property, dies in a motor accident on 15 March 2004.

The assets, according to the liquidation account, amount to R7 000 000,00, which include the proceeds of a life policy of R800 000,00.

Administration expenses and liabilities [excluding estate duty] amount to R1 000 000,00.

In terms of the fiduciary assets account, assets with a net market value of R500 000,00 are awarded to the fideicommissary heir [F], a male born on 17 February 1939.

In his will, H bequeaths R100 000,00 to his wife, and R200 000,00 to the Widows' and Orphans Fund, which is a public benefit organisation. He leaves the residue of his estate to his children Z and Y.

Draw the complete estate duty addendum. The tables for calculating limited interests are attached to the question paper.

QUESTION 3

[10]

With regard to the execution of a will which consists of more than one page, explain the following:

- 3.1 Who can execute a valid will? (2)
- 3.2 Where on the will must the witnesses sign? (2)
- 3.3 If the testator signs by means of a mark, then a certificate in terms of section

artikel 2(1)(a)(v) van die Wet op Testamente, 7 van 1953, aangebring word:

- (a) deur wie? (1)
- (b) waar op die testament? (2)
- (c) waar moet die sertifiserende beampte teken? (1)
- (d) wat moet gesertifiseer word? (2)

QUESTION 4 [10]

X sterf intestaat. Hy was binne gemeenskap van goed getroud met mev X. Hy word deur mev X en hulle twee meerderjarige kinders, A en B, oorleef. A en B is albei ongetroud.

Die netto waarde van die gemeenskaplike boedel is R610 000,00.

B doen afstand van sy erfenis.

Hoe sal die oorledene se boedel vererf?

DIE EINDE

2(1)(a)(v) of the Wills Act, 7 of 1953, should be appended:

- (a) by whom? (1)
- (b) where on the will? (2)
- (c) where must the certifying officer sign? (1)
- (d) what must be certified? (2)

QUESTION 4 [10]

X dies intestate. He was married in community of property to Mrs X. He is survived by Mrs X and their two major children, A and B, who are both unmarried.

The net joint estate has a value of R610 000,00.

B renounces his inheritance.

How will the estate of the deceased devolve?

THE END

TABLES FOR CALCULATING LIMITED INTERESTS
 THE EXPECTATION OF LIFE AND THE PRESENT VALUE OF RI
 PER ANNUM FOR LIFE CAPITALISED AT 12 PER CENT
 OVER THE EXPECTATION OF LIFE OF MALES AND FEMALES
 OF VARIOUS AGES

Age	Expectation of life		Present value of RI per annum for life		Age	Age	Expectation of life		Present value of RI per annum for life		Age
	Male	Female	Male	Female			Male	Female	Male	Female	
0	64.74	72.36	8.32791	8.33105	0	46	24.58	30.14	7.81924	8.05956	46
1	65.37	72.74	8.32828	8.33114	1	47	23.79	29.27	7.77109	8.03119	47
2	64.50	71.87	8.32776	8.33091	2	48	23.00	28.41	7.71843	8.00026	48
3	63.57	70.93	8.32714	8.33064	3	49	22.23	27.55	7.66236	7.96617	49
4	62.63	69.97	8.32644	8.33033	4	50	21.47	26.71	7.60201	7.92950	50
5	61.69	69.02	8.32567	8.32999	5	51	20.72	25.88	7.53713	7.88967	51
6	60.74	68.06	8.32480	8.32961	6	52	19.98	25.06	7.46748	7.84646	52
7	59.78	67.09	8.32381	8.32918	7	53	19.26	24.25	7.39387	7.79965	53
8	58.81	66.11	8.32271	8.32869	8	54	18.56	23.44	7.31631	7.74834	54
9	57.83	65.14	8.32146	8.32815	9	55	17.86	22.65	7.23234	7.69355	55
10	56.85	64.15	8.32007	8.32753	10	56	17.18	21.86	7.14414	7.63363	56
11	55.86	63.16	8.31849	8.32684	11	57	16.52	21.08	7.05178	7.56896	57
12	54.87	62.18	8.31673	8.32608	12	58	15.86	20.31	6.95225	7.49927	58
13	53.90	61.19	8.31480	8.32522	13	59	15.23	19.54	6.85004	7.42321	59
14	52.93	60.21	8.31265	8.32427	14	60	14.61	18.78	6.74206	7.34135	60
15	51.98	59.23	8.31029	8.32320	15	61	14.01	18.04	6.63010	7.25457	61
16	51.04	58.26	8.30770	8.32203	16	62	13.42	17.30	6.51232	7.16020	62
17	50.12	57.29	8.30489	8.32071	17	63	12.86	16.58	6.39301	7.06046	63
18	49.21	56.33	8.30180	8.31926	18	64	12.31	15.88	6.26822	6.95537	64
19	48.31	55.37	8.29841	8.31764	19	65	11.77	15.18	6.13789	6.84161	65
20	47.42	54.41	8.29471	8.31584	20	66	11.26	14.51	6.00726	6.72393	66
21	46.53	53.45	8.29061	8.31383	21	67	10.76	13.85	5.87165	6.59893	67
22	45.65	52.50	8.28613	8.31161	22	68	10.28	13.20	5.73403	6.46635	68
23	44.77	51.54	8.28117	8.30912	23	69	9.81	12.57	5.59182	6.32818	69
24	43.88	50.58	8.27564	8.30633	24	70	9.37	11.96	5.45165	6.18466	70
25	43.00	49.63	8.26959	8.30326	25	71	8.94	11.37	5.30775	6.03607	71
26	42.10	48.67	8.26274	8.29981	26	72	8.54	10.80	5.16744	5.88278	72
27	41.20	47.71	8.25516	8.29595	27	73	8.15	10.24	5.02437	5.72222	73
28	40.30	46.76	8.24677	8.29171	28	74	7.77	9.70	4.87876	5.55743	74
29	39.39	45.81	8.23737	8.28697	29	75	7.41	9.18	4.73490	5.38893	75
30	38.48	44.86	8.22694	8.28170	30	76	7.07	8.68	4.59354	5.21727	76
31	37.57	43.91	8.21538	8.27583	31	77	6.73	8.21	4.44663	5.04679	77
32	36.66	42.96	8.20257	8.26930	32	78	6.41	7.75	4.30309	4.87092	78
33	35.75	42.02	8.18836	8.26210	33	79	6.10	7.31	4.15898	4.69389	79
34	34.84	41.07	8.17262	8.25400	34	80	5.82	6.89	4.02440	4.51647	80
35	33.94	40.13	8.15536	8.24509	35	81	5.55	6.50	3.89051	4.34399	81
36	33.05	39.19	8.13647	8.23517	36	82	5.31	6.13	3.76802	4.17315	82
37	32.16	38.26	8.11558	8.22426	37	83	5.09	5.78	3.65276	4.00482	83
38	31.28	37.32	8.09274	8.21199	38	84	4.89	5.45	3.54546	3.83988	84
39	30.41	36.40	8.06781	8.19866	39	85	4.72	5.14	3.45232	3.67921	85
40	29.54	35.48	8.04030	8.18386	40	86	4.57	4.85	3.36864	3.52371	86
41	28.69	34.57	8.01067	8.16762	41	87	4.45	4.58	3.30066	3.37426	87
42	27.85	33.67	7.97844	8.14983	42	88	4.36	4.33	3.24907	3.23175	88
43	27.02	32.77	7.94344	8.13012	43	89	4.32	4.11	3.22597	3.10296	89
44	26.20	31.89	7.90547	8.10881	44	90	4.30	3.92	3.21438	2.98912	90
45	25.38	31.01	7.86380	8.08527	45						

* Ages above 90 are to be taken as 90. This footnote was intended but was inadvertently omitted in the Gazette notice.

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

16 FEBRUARIE 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% 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 3 ATTORNEY'S PRACTICE

16 FEBRUARY 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 [40]

Mnr Handelaar gee 'n groot aantal skulde vir invordering aan u oor. Alle eise val binne die jurisdiksie van die landdroshof. Mnr Handelaar verwag nie dat enige skuldenaar die eise sal teenstaan nie.

- 1.1 Watter reëlings kan u met Handelaar oor u gelde (fooie) tref? Is daar 'n toepaslike tarief? mag u op 'n gebeurlikheidsbasis (contingency) in terme van toepaslike wetgewing werk en indien wel, wat is die vereistes? (8)
- 1.2 Watter fooie en uitgawes mag u van skuldenaars verhaal as u verstekvonnis kry? (4)
- 1.3 Een skuldenaar kan wel niks betaal nie maar u kry 'n borgakke deur die skuldenaar se broer onderteken. Die borgakke maak voorsiening vir twee broers om gesamentlik en afsonderlik as borge te teken. Teen wie:
- a) mag; en
b) sou
u optree? Verduidelik. (6)
- 1.4 In verskeie gevalle is die skuldenaar se huidige adres onbekend. Hoe word die probleem gewoonlik hanteer en hoe verhaal u die betrokke koste? (4)
- 1.5 Skuldenaar X was 'n vennootskap. Na die skuld ontstaan het, het vennoot A sy belang aan vennoot B verkoop. Kan u nog teen A verhaal? (2)
- 1.6 Dit blyk dat skuldenaar Abe's Motors oorspronklik aan Abe behoort het en dat Abe die onderneming 3 maande gelede aan Ben verkoop het en intussen gesekwestreer is. In welke omstandighede

Question 1 [40]

Mr Merchant hands you a large number of debts to collect. All the claims fall within the jurisdiction of the magistrate's court. Mr Merchant does not think that any debtor will defend the claims.

- 1.1 What arrangements can you make with the creditor regarding fees? Is there an applicable tariff? may you work on a contingency basis in terms of applicable legislation and if so what are the requirements? (8)
- 1.2 What fees and disbursements may you recover from the debtor if you get default judgement? (4)
- 1.3 A specific debtor is known to be unable to pay but you are given a deed of surety-ship signed by the debtor's one brother. The deed provides for two brothers to sign jointly and severally as sureties. Against whom
- a) may;
b) would
you proceed? Explain. (6)
- 1.4 In several cases the debtor's present address is unknown. How is this problem normally dealt with and how would you recover the costs involved? (4)
- 1.5 Debtor X was a partnership. After the debt arose partner A sold his interest to partner B. Can you act against A for recovery of the debt? (2)
- 1.6 It appears that debtor "Abe's Motors" originally belonged to Abe who sold the business to Ben three months ago and has since been sequestrated. In what circumstances could the assets of the

kan nog na die bates van die onderneming gekyk word vir die verhaal van die eis teen Abe se insolvente boedel? Hoe kon Ben homself beskerm het? (6)

business still be looked to for recovery of the claim against Abe's insolvent estate? How could Ben have protected himself? (6)

1.7 Skuldenaar D het reeds 'n skuldbewys onderteken om R50 000.00 plus rente in maandelikse paaiemente van R5 000.00 elk te betaal. Dit bepaal ook dat as 'n paaiement nie betyds betaal word nie, "moet die Skuldeiser 14 dae skriftelik kennis gee om betaling te eis en indien D versuim om te betaal, hy die volle uitstaande bedrag mag opeis." Geen paaiement is ooit betaal nie. Stel die toepaslike aanmaningsbrief op. (5)

1.7 Debtor D has already signed an acknowledgment of debt which provides for payment of R50 000.00 and interest in instalments of R5 000.00 each and that on failure to pay any instalment, "the creditor shall give 14 days notice in writing demanding payment and should D fail to pay he shall be entitled to claim the full outstanding balance". No instalment was ever paid. Draft the required letter of demand. (5)

1.8 U verkry vonnis by verstek teen Skuldenaar O wat 'n goeie salaris verdien, eienaar is van 'n betaalde motor en 'n eis teen sy broer het vir gelde geleen en voorgeskiet. Watter verhaalsmoontlikhede bestaan teenoor O? (5)

1.8 You obtain default judgement against Debtor O. O earns a good salary, owns a fully paid motor vehicle and has a claim against his brother for money lent and advanced. What possible methods of recovery of the judgement debt apply in respect of O? (5)

Vraag 2 [20]

Question 2 [20]

U kliënt is die enigste lid van 'n Beslote Korporasie, ABC Groothandelaars BK en vertel u dat die Beslote Korporasie se bank 'n sessie verlang van boekskulde as sekuriteit vir die oortrokke fasiliteit wat verleen is aan die Beslote Korporasie. Hy gee u opdrag om die nodige sessie op te stel op so 'n manier dat die Beslote Korporasie die maksimum beskerming sal geniet.

Your client is the sole member of a Close Corporation, ABC Wholesalers CC and tells you that the Close Corporation's bank requires a cession of book debts as security for overdraft facilities granted to the Close Corporation. He instructs you to draft such a cession in a way that gives the Close Corporation maximum protection.

Stel 'n Akte van Sessie op.

Draw the Deed of Cession.

Vraag 3 [15]

Question 3 [15]

ABC (Edms) Bpk (in likwidasie) skuld u kliënt XYZ (Edms) Bpk 'n bedrag van R100 000.00 vir goedere verkoop en gelewer. U kliënt het geen sekuriteit vir betaling van die bedrag nie. U word 'n brief getoon wat u kliënt van die likwidateur

ABC (Pty) Ltd (in liquidation) owes your client XYZ (Pty) Ltd an amount of R100 000,00 in respect of goods sold and delivered. Your client has no security for payment of the amount. You are shown a letter that your client received from

ontvang het wat meld dat die laste van die maatskappy in likwidasië sy bates ver oorskry.

- 3.1 Adviseer u klient omtrent die wenslikheid om 'n eis teen die gelikwideerde maatskappy te bewys; (5)
- 3.2 Indien u klient besluit om 'n eis te bewys, noem die dokumente wat u sal moet opstel vir hierdie doel. (4)
- 3.3 Skryf 'n brief aan u klient en beskryf die prosedure wat sal volg op voltooiing van die eisvorms totdat u klient 'n dividend ontvang. (6)

Vraag 4 [10]

In welke omstandighede mag 'n prokureur weier om 'n mandaat te aanvaar? Wanneer is hy verplig om 'n mandaat te weier en is hy ooit verplig om 'n mandaat te aanvaar?

Vraag 5 [15]

Skryf kort antwoorde op die volgende vrae:

- 5.1 Indien u nie seker is of een of ander stap wat u wil neem eties toelaatbaar is nie, hoe sou u te werk gaan om die antwoord te kry? (3)
- 5.2 Sal dit toelaatbaar wees om vooraf met 'n advokaat op sy fooi vir verskyning in die hof ooreen te kom? (2)
- 5.3 Welke dokumente mag slegs deur 'n prokureur opgestel word in die verwagting van enige besoldiging, voordeel of beloning? (5)
- 5.4 U het 'n konsultasie gereël tussen u kliente en 'n advokaat en besef daarna dat u nie self die konsultasie sal kan bywoon nie. Mag die konsultasie in u afwesigheid plaasvind? (5)

the liquidator stating that the liabilities of the company in liquidation exceed its assets by far.

- 3.1 Advise your client as to the desirability of proving a claim against the liquidated company. (5)
- 3.2 If your client decides to prove a claim, name the documents you will have to prepare for this purpose. (4)
- 3.3 Write a letter to your client explaining the procedure that will follow from completing the claim forms to the point when your client receives a dividend. (6)

Question 4 [10]

Under what circumstances may an attorney refuse to undertake a mandate? When is the attorney obliged to refuse a mandate and is he ever obliged to accept a mandate?

Question 5 [15]

Write short answers to the following questions:

- 5.1 If you are not sure whether a step you propose taking is ethically permissible, how would you go about getting an answer? (3)
- 5.2 Will it be in order to agree with counsel in advance on a fee for the latter's appearance in a court? (2)
- 5.3 What documents may only be prepared by an attorney with the expectation of a fee, gain or reward? (5)
- 5.4 You have arranged a consultation between your client and an advocate and subsequently discover that you are unable to attend the consultation. May the consultation take place without you? (5)

PROKUREURSEKSAMEN

DEEL 4 BOEKHOU

16 FEBRUARIE 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. Joernaalinskrywings moet behoorlik beskryf en geïdentifiseer word.
5. Skryfasseblief 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

16 FEBRUARY 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

[30]

U kliënt Marcus gee u opdrag om R5000 te verhaal van Thomas en gee u 'n deposito van R1000 in kontant. U gee opdrag en betaal 'n opsporingsagent R250. U hef 'n fooi van R300 vir die aanmaningsbrief en dagvaarding. Thomas betaal 'n bedrag van R2000 en u hef 'n invorderingsfooi van R200.

GEVRA:

Teken al die bovermelde transaksies in u rekeningboeke aan. Plaas oor die bedrag waarop u geregtig is, vanuit u trust na u besigheidsbankrekening en verreken volledig aan u kliënt, maar die deposito moet teruggehou word vir toekomstige fooie en uitgawes. Stel 'n verrekeningstaat op en maak voorsiening vir BTW op u fooie teen 14%.

VRAAG 2

[20]

U hou 'n bedrag van R400 000 op trust vir u kliënt Mev. Ryk. Sy gee vir u 'n tjek uitgereik deur Mnr Arm ten gunste van haar, in die bedrag van R100 000.

Sy gee u die volgende opdragte:-

- U moet die tjek vir R100 000 deponeer; (U moet aanvaar dat die tjek behoorlik ge-endoseer is in u guns).
- R200 000 moet belê word in 'n rentedraende rekening tot haar voordeel; en
- Die tjek in die bedrag van R100 000, van Mnr. Arm, moet gebruik word om effekte trusts te koop.

Twee weke nadat u die belegging gemaak het, is Mnr. Arm se tjek onteer en gemerk "Verwys na Trekker".

QUESTION 1

[30]

Your client Marcus instructs you to collect R5 000 from Thomas, and gives you a covering deposit of R1 000 in cash. You instruct and pay a tracing agent R250. You charge a letter of demand and summons fees of R300. Thomas pays an amount of R2 000, and you charge a collection fee of R200.

REQUIRED:

Record the abovementioned transactions in your accounting records. Transfer whatever you are entitled to transfer to your business account, and account fully to your client but retain the deposit to cover future fees and disbursements. Prepare an accounting statement and make provision for VAT on your fees at 14%.

QUESTION 2

[20]

You hold an amount of R400 000 in trust for your client Mrs Rich. She hands you a cheque from Mr. Poor, drawn in her favour, in the amount of R100 000.

She gives you the following instructions:-

- You must deposit the cheque for R100 000; (You must accept that this cheque has been properly negotiated in your favour).
- R200 000 must be invested in an interest bearing account for her benefit
- The cheque in the amount of R100 000, received from Mr Poor, must be used to purchase Unit Trusts

Two weeks after you had made the investment, Mr Poor's cheque is dishonoured and marked "Refer to Drawer".

Mev. Ryk gee u opdrag om die rentedraende rekening te sluit (u ontvang R210 000) en om die effektrusts te verkoop (u ontvang R106 000). U verreken aan haar vir die rente alleen.

GEVRA:

1. Wat benodig u van Mev. Ryk voordat u die belegging kan maak? Motiveer u antwoord.
2. U moet al die bovermelde transaksies in u kasboeke en grootboeke aanteken.

VRAAG 3

[20]

- 3.1 Watter rekeninge, indien enige, mag wettiglik 'n debietsaldo in u trustgrootboek toon? (2)
- 3.2 Mag twee prokureurs ooreenkom:-
 - op 'n toelaag van 40% op fooie
 - op geen toelaag hoegenaamd (2)
- 3.3 Mag 'n prokureur die deponering van trustgelde weerhou om kontant aan 'n trustkrediteur te betaal? (2)
- 3.4 Hoe bereken 'n prokureur die bedrag beskikbaar vir oorplasing vanaf die trust na die besigheidsrekening? (4)
- 3.5 Hoe betaal 'n prokureur borggeld in kontant vanuit trustgeldewathy namens 'n kliënt hou. (3)
- 3.6 Definieer:
 - Insetbelasting
 - Uitsetbelasting (2)
- 3.7 U het foutiewelik R2000 uit trust aan 'n kliënt betaal in plaas van R200-00. Hoe sal u die fout regstel? (3)

Mrs Rich instructs you to close the interest bearing account (you receive R210 000) and to sell the unit trusts (you receive R106 000). You account to her for the interest only.

REQUIRED:

1. What do you need from Mrs Rich before investing the monies? Motivate your answer.
2. You must record the above transactions in your cash books and ledgers.

QUESTION 3

[20]

- 3.1 What accounts, if any, may legitimately reflect a debit balance in your trust ledger? (2)
- 3.2 May two attorneys agree
 - to an allowance of 40% on fees
 - to no allowance at all (2)
- 3.3 May an attorney withhold the banking of trust money to pay cash to a trust creditor? (2)
- 3.4 How does an attorney determine the amount available for transfer from trust to the business account? (4)
- 3.5 How does an attorney pay bail in cash from trust monies held on behalf of a client? (3)
- 3.6 Define:
 - Input VAT
 - Output VAT (2)
- 3.7 You erroneously paid a client R2000-00 from trust in stead of R200-00. How do you rectify the error? (3)

3.8 Mag 'n prokureur sonder 'n trust-
bankrekening praktiseer? (2)

3.8 Can an attorney practice without a trust
banking account? (2)

VRAAG 4 [30]

QUESTION 4 [30]

U ontvang die volgende staat van u korrespondent
"Groen Prokureurs", aan wie u opdrag gegee het
om 'n invorderingsaangeleentheid namens u
kliënt te hanteer.

You receive the following statement from your
correspondent "Green Attorneys" whom you
instructed to attend to a collection matter on
behalf of your client.

Swart teen Wit

Aan dagvaardingsfooi	R100,00	
Aan inkomsteseëls betaal	R 50,00	
Betaal Balju	R120,00	
Per kontant gevorder van Wit		R2 000,00
Aan invorderingskommissie	R200,00	
Aan BTW	R 42,00	
Per u toelaag		R 100,00
Per BTW op toelaag		R 14,00
Aan tjek hiermee	<u>R1 602,00</u>	
	<u>R2 114,00</u>	<u>R2 114,00</u>

Black vs White

To fee Summons	R100,00	
To paid Revenue stamp	R 50,00	
To paid Sheriff	R120,00	
By Cash White		R2 000,00
To Collection Commission	R200,00	
To VAT	R 42,00	
By your allowance		R 100,00
By VAT on allowance		R 14,00
To cheque herewith	<u>R1 602,00</u>	
	<u>R2 114,00</u>	<u>R2 114,00</u>

GEVRA:

Teken die bogenoemde transaksies in al u
rekeningboeke aan en verreken volledig aan u
kliënt.

REQUIRED:

Record the above transactions in all your books
of account and account fully to your client Black.

DIE EINDE

THE END