

# PROKUREURSEKSAMEN

## DEEL 3 PROKUREURSPRAKTYK

31 AUGUSTUS 2006

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

31 AUGUST 2006

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.

U tree op vir Landlords (Edms)Bpk, eienaar van 'n aantal geboue bestaande uit winkels, kantore en woonstelle wat uitverhuur word aan verskeie huurders. Die maatskappy gee u 'n aantal mandate. Al die hieropvolgende vrae ontstaan uit hierdie feite.

You act for Landlords (Pty) Ltd which owns buildings comprising shops, offices and flats which it lets to various tenants. The company gives you various mandates. All the following questions arise from these facts.

**VRAAG 1 [40]**

**QUESTION 1 [40]**

1. Hulle wil sekere klousules in hulle standaardhuurkontrakte op datum bring, nl:
  - 1.1 Die Huurder se domicilium citandi et executandi en adresse vir die lewer van kennisgewings insluitende fakse; (12)
  - 1.2 'n Opsie om die huurperseel te koop in geboue wat in deeltitelskemas omskep is (u kan verwys na 'n bylae met standaard klousules vir koopaktes); (12)
  - 1.3 'n Belet teen onderverhuring en alle soortgelyke handeling, deur die huurder. (6)

1. They require new clauses for their standard lease, relating to:
  - 1.1 The tenant's domicilium citandi et executandi and address for service of notices including fax addresses; (12)
  - 1.2 An option to purchase the leased premises in some buildings which have been converted to sectional title (you may refer to an annexure containing standard provisions of sale); (12)
  - 1.3 A prohibition against sub-letting and similar actions by the tenant; (6)

STEL GEPASTE KLOUSULES OP. LET OP DIE PUNTETOEKENNING.

DRAFT SUITABLE CLAUSES. NOTE THE MARKS ALLOCATED.

- 1.4 Na voltooiing is kliënt tevrede met u werk maar voel u gelde is te hoog. Hy vra vir 'n "taksasie".

- 1.4 After you draft the clauses client is satisfied with your work but feels your fee is too high. He asks for "taxation".

Watter prosedure is beskikbaar en welke oorwegings (wat betref u self en die mandaat) sal geld in die vasstelling van redelike gelde? (10)

What procedure is available and which considerations (relating to yourself and the mandate) will apply in arriving at a reasonable fee? (10)

**VRAAG 2 [60]**

**QUESTION 2 [60]**

U reik 'n groot aantal dagvaardings uit teen verskillende huurders – vir die verhaal van huurgeld, ens. onder andere teen:

You issue a large number of summonses for arrear rental against tenants including:

2.1 Mnr X vir R10 000. Sy prokureur teken verskyning aan en skryf aan u. Hy bied aan 'n bedrag van R7 500 en afstanddoening van 'n beweerde eis vir skadevergoeding "in volle en finale vereffening". Die brief is nie gemerk "sonder benadeling van regte" nie.

Kan u die brief gebruik ter staving van:

- 2.1.1 'n aansoek om summiere vonnis;  
Verduidelik. (4)
- 2.1.2 kliënt se saak op verhoor; (2)
- 2.1.3 Sou u siening verander as die brief wel gemerk was "sonder benadeling, ens."? (2)

2.2 Me Y vir R50 000. Nadat haar prokureur verskyning aanteken, nader sy u direk en verteld dat sy 'n koper vir haar besigheid het. Sy vra u om haar by te staan om die transaksie te onderhandel en die kontrak op te stel. Sy bied aan om dubbel u gewone gelde te betaal as u die transaksie kan afsluit voor sy die eis moet betaal want sy wil die opbrengs daarvoor gebruik.

Watter oorwegings geld ten opsigte van:

- 2.2.1 U gesprek met Y en aanvaarding/  
weiering van die tweede mandaat?  
(7)
- 2.2.2 Die vergoedingsbasis (gelde) sou u  
optree? (3)

2.3 Mnr Z vir R40 000, welke eis reeds verjaar het. Stel 'n brief aan Landlords op waarin u bevestig die advies wat u hom gegee het met betrekking tot:

- 2.3.1 die betekenis van verjaring; (3)
- 2.3.2 die kans op sukses; (3)
- 2.3.3 die prosesregtelike oorwegings en  
pleitstukke; (3)
- 2.3.4 koste-bevele; (3)
- 2.3.5 Wat is u etiese posisie? (3)

2.1 R10 000 from Mr X whose attorney enters appearance to defend and writes to you offering in full and final settlement to pay R7 500 and to abandon an alleged claim for damages. The settlement offer is not marked "without prejudice".

Can you use the letter to strengthen:

- 2.1.1 an application for summary judgment;  
Explain. (4)
- 2.1.2 your case in the trial; (2)
- 2.1.3 Would your reply change if the letter had been marked "without prejudice"? (2)

2.2 R50 000 from Ms Y who, after her attorney enters appearance approaches you directly to say that she is selling her business. She asks you to act for her in negotiating the sale and drafting the contract. She offers to pay you twice your normal fee if you can conclude the sale before she has to pay the rental since she wants to use the proceeds in order to pay.

What considerations arise in respect of:

- 2.2.1 Your discussion with Y and accepting/  
refusing the new mandate? (7)
- 2.2.2 the matter of fees should you  
accept? (3)

2.3 R40 000 from Mr Z which claim has actually prescribed. Draft the letter to your client in which you record the advice you gave him before suing relating to:

- 2.3.1 the meaning of prescription; (3)
- 2.3.2 the merits; (3)
- 2.3.3 procedural issues and pleadings;  
(3)
- 2.3.4 orders for costs. (3)
- 2.3.5 What are the ethical considerations?  
(3)

2.4 ABC vir R50 000. Kliënt beweer dat ABC besig is om winkelvoorraad te verwyder waaruit u kliënt hoop om die verskuldigde bedrag te verhaal.

Skryf 'n advies aan u kliënt aangaande:

- 2.4.1 Welke soort dagvaarding u kan gebruik? (Art 31 Landdroshofwet). Verduidelik waarom;
- 2.4.2 die proses en effek;
- 2.4.3 'n alternatiewe prosedure wat dieselfde kan bereik (Art 32).

Beskryf die effek van elk van die remedies. (11)

2.5 Mev ET wat 'n woonstel huur. U dagvaar ook vir kansellasië en uitsetting. Aan watter bykomende vereistes sou u vooraf moes voldoen het? (4)

2.6 'n Dosyn huurders teen wie u almal vonnis verkry, maar niks verhaal nie. U ontvang 'n brief van 'n kollega wat vra dat u die lêers aan hom stuur omdat kliënt verlang dat hy die saak oorneem.

Stel 'n brief op aan die kollega waarin u, u en sy posisie uiteensit wat betref:

- 2.6.1 u regte ten aansien van koste tot op datum; (3)
- 2.6.2 sekuriteit vir u koste; (3)
- 2.6.3 sy reg om sondermeer voort te gaan. (2)
- 2.6.4 Sou u u gelde en uitgawes kan delg uit bedraë wat u van ander huurders verhaal het? (2)

ONDESKEI DEURGAANS, INDIEN NODIG, TUSSEN DIE REG EN ETIEK.

2.7 Hoe bepaal u die bedrag van die eis vir doeleindes van taksasie as u net uitsetting vra? (2)

2.4 R50 000 from ABC which is removing from the premises its stock-in-trade from which your client hopes to recover the rental.

Draft an opinion to your client advising on:

- 2.4.1 What kind of summons can be used (Section 31 of the Magistrates Court Act)? Explain why;
- 2.4.2 the procedure and effect;
- 2.4.3 an alternative procedure to achieve the same results (Section 32).

Describe the effect of each remedy. (11)

2.5 Mrs E. T. who rents a flat. The summons includes a claim for cancellation and ejectment. What prior additional requirements should you have complied with? (4)

2.6 A dozen tenants against whom you also obtain judgment without collecting any money. You receive a letter from a colleague asking you to send him the files stating that client wishes him to proceed with the matters.

Draft a letter to your colleague setting out your and his position regarding:

- 2.6.1 your right to recover fees and disbursements; (3)
- 2.6.2 security for your costs; (3)
- 2.6.3 his right to start acting forthwith; (2)
- 2.6.4 Could you set off your costs against amounts collected from other debtors? (2)

DISTINGUISH THROUGHOUT AS MAY BE NECESSARY, BETWEEN LAW AND ETHICS.

2.7 How do you calculate the value of a claim for ejectment for purposes of taxation? (2)