

# PROKUREURSEKSAMEN

## DEEL 3 PROKUREURSPRAKTYK

21 AUGUSTUS 2008

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 druipe.

# ATTORNEYS' EXAMINATION

## PART 3 ATTORNEY'S PRACTICE

21 AUGUST 2008

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** [25]

Skryf aan 'n voornemende egpaar wat van voorneme is om 'n burgerlike huwelik te sluit, 'n brief waarin u die huwelikseiendom-regimes wat van toepassing is in Suid-Afrika, uiteensit. U brief moet handel met die effek van elke regime op die partye se boedels gedurende die huwelik en by ontbinding daarvan met dood of egskeiding. Die lengte van u antwoord en die detail vereis word bepaal deur die punte toegeken.

**VRAAG 2** [12]

'n Maatskappy in likwidasië skuld u kliënt 'n groot bedrag synde die koopprys van goedere verkoop en gelewer voor likwidasië. U kliënt het geen sekuriteit vir sy eis nie. Dit blyk uit die likwidateur se verslag dat die maatskappy se skulde sy bates met 'n aansienlike bedrag oorskry.

1. Adviseer u kliënt oor die raadsaamheid om 'n eis teen die maatskappy in likwidasië te bewys. U moet in besonder handel met die moontlikheid dat daar nie voldoende bates sal wees om die koste van likwidasië en die likwidateur se koste te betaal nie. (8)
2. Indien u kliënt besluit om 'n eis te bewys welke dokumente sal hy moet voltooi om dit te doen? (4)

**VRAAG 3** [20]

U kliënt oorweeg dit om 'n blok eiendomme in 'n woongebied te koop met die doel om die huise te sloop en om die hele blok te ontwikkel deur meenthuise te bou en uitte huur. Voordat u kliënt die eiendomme kan ontwikkel soos beplan, sal hy 'n suksesvolle aansoek vir die hersonering daarvan aan die plaaslike owerheid moet doen:

**QUESTION 1** [25]

Draft a letter to a young couple who intend shortly to enter into a civil marriage setting out the marital property regimes which apply in South Africa. Your letter should deal with the application of each regime on the parties' estates during the marriage and at the end either by death or divorce. The length of your answer and the detail required is determined by the marks awarded.

*OCP SA 100 - Application for client's teacher*

**QUESTION 2** [12]

A company in liquidation owes your client a substantial amount of money for the purchase price of goods sold and delivered before liquidation. Your client holds no security for his claim. From the liquidators' report to creditors it is clear that the debtor company's liabilities exceed its assets by a large amount:

1. Advise your client on the advisability of proving a claim against the estate of the company in liquidation. You must particularly deal with the possibility that there will not be sufficient funds to pay the costs of the liquidation and the liquidator's costs. *Contribution by creditor (8)*
2. If your client decides to prove a claim, what documents will he have to complete to do this? — Affidavit — Proof of money owed (4)

**QUESTION 3** [20]

Your client is considering purchasing a block of properties in a residential area for the purpose of demolishing the houses thereon and developing the whole block by constructing town houses thereon which he intends to lease. Before your client can develop the properties as he proposes, he will have to successfully apply to the local authority for the rezoning thereof:

3.1 Stel die kousules op wat u kliënt behoort aan te dring, ingelyf moet word in die koopkontrakte om hom te beskerm indien hy nie suksesvol is om al die eiendomme in die blok te koop of indien die hersoneringaansoek nie suksesvol is nie. (12)

3.2 Die hersonering is voltooi en die eiendomme is aan u kliënt oorgedra. Die ontwikkeling is ook voltooi. Verskeie van die voornemende huurders is Beslote Korporasies en u kliënt is bekommerd dat hulle nie die huurgeld sal kan betaal nie. Stel die klousule in die huurkontrakte op wat u kliënt die reg sal verleen om die huurgelde van die lede van die Beslote Korporasies te verhaal. (8)

**VRAAG 4 [15]**

U kliënt is die eienaar van 'n sake-onderneming wat uit onroerende eiendom met 'n winkelkompleks daarop bestaan. U kliënt verhuur die winkels en die onderneming bestaan uit die eiendom en die verhuring van die winkels. U kliënt is van voorneme om die hele onderneming te verkoop. Stel die klousules op wat in die koopkontrak bevat moet word om die betaling van hereregte en belasting op toegevoegde waarde (BTW) te vermy.

**VRAAG 5 [3]**

U het namens die verkoper en die koper van 'n sake-onderneming opgetree. U het al die onderhandelinge wat die ondertekening van die koopkontrak voorafgegaan het, hanteer. U het ook die koopkontrak, wat 'n handelsbeperking op die verkoper bevat, opgestel en u was teenwoordig by die ondertekening daarvan deur beide partye. U word nou deur die koper meegedeel dat die verkoper besig is om die handelsverbod te verbreek omdat hy van mening is dat dit ongeldig is. Die koper gee u opdrag om teen die verkoper op te tree om die handelsbeperking af te dwing. Mag u hierdie opdrag aanvaar? Motiveer u antwoord.

3.1 Draft the clauses which your client should insist be included in the deeds of sale to protect him if the application for the rezoning is not successful and if he is not successful in purchasing all the properties in the block. (12)

3.2 The rezoning is completed, the properties are transferred into your client's name and the development is completed. Certain of the prospective tenants of the town houses are Close Corporations and your client is worried that they may not pay the rent. Draw the clause in the lease agreement which will give your client the right to recover outstanding rentals from the members of the Close Corporations. (8)

**QUESTION 4 [15]**

Your client is the owner of a business enterprise which consists of an immovable property on which a shopping centre has been erected. Your client lets out the shops and the business enterprise consists of the property and the letting of the shops. Your client intends to sell the whole enterprise as going concern. Draw the clauses which must be included in the Deed of Sale to avoid transfer duty and value added tax being payable on the transaction.

**QUESTION 5 [3] 2**

You acted for the seller and the purchaser of a business. You attended to all the negotiations which preceded the signing of the deed of sale which contained a restraint of trade on the seller. You also drew the deed of sale and were present when it was signed. The purchaser consults you and advises that the seller is breaching the restraint provisions and alleges that they are invalid and unenforceable. The purchaser wishes you to take steps against the seller to enforce the restraint. May you accept this instruction? Motivate your answer.

**VRAAG 6 [10]**

U word geraadpleeg deur 'n arm kliënt wat 'n aansienlike skadevergoedingseis het as gevolg van 'n aanranding wat op hom gepleeg is. Hy het nie voldoende fondse om u fooie te betaal nie, maar dit lyk asof hy 'n goeie saak het. Adviseer u kliënt hoe u namens hom kan optree in sy skadevergoedingsaksie en op welke basis, indien enige, u vergoed sal word.

**VRAAG 7 [7]**

Wat verstaan u onder die volgende?

- 7.1 Optree *Pro Amico*; (2)
- 7.2 Party en Party Koste; (3)
- 7.3 Prokureur en eie kliënt gelde. (2)

**VRAAG 8 [8]**

'n Prokureur laat 'n eis verjaar. Welke stappe moet hy neem om:

- 8.1 Sy kliënt te beskerm? (4)
- 8.2 Homself te beskerm? (4)

**DIE EINDE**

**QUESTION 6 [10]**

You are consulted by a poor client who has a substantial claim for damages as the result of an assault committed on him. He does not have funds to pay your fees but appears to have a good case. Advise your client as to how you can act for him in his action for damages and on what basis you will be remunerated, if at all.

**QUESTION 7 [7]**

What do you understand by the following?

- 7.1 Acting *Pro Amico*; (2) *bfor. friends, can take fees money*
- 7.2 Party and Party Costs; (3) *What the court will award the other party's costs.*
- 7.3 Attorney and Own Client fees. (2) *more money if up agreed 2 give more of AC*

**QUESTION 8 [8]**

An attorney allows a claim to prescribe. What steps must he take to:

- 8.1 Protect his client? (4) *As soon as possible advise the client of the claim.*
- 8.2 Protect himself? (4) *admission of liability, make sure the client knows, advise the client of the consequences of prescription.*

**THE END**