

# PROKUREURSEKSAMEN

## DEEL 1 HOFPROSEDURES

22 FEBRUARIE 2011

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. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
3. Waar nodig, moet kandidate hulle eie feite versin.
4. Skryf asseblief slegs in pen op die regterkantse bladsye.
5. 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

22 FEBRUARY 2011

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. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. 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 [13]**

Op 22 Junie 2010 het Mack Khosa saam met sy vriend Joe Dobbs gery om die wedstryd tussen Bafana Bafana en Frankryk in Bloemfontein tydens die 2010 wêreldbeker te gaan kyk. Joe Dobbs het bestuur en Mack Khoza was 'n passasier voor. Op pad na Bloemfontein het Joe Dobbs beheer verloor oor die voertuig wat die pad verlaat, omslaan en teen 'n boom bots. Geen ander voertuig is betrokke nie. Mack Khoza het erge liggaamlike beserings opgedoen as gevolg waarvan hy eerstens mediese noodbehandeling ontvang waarna hy gehospitaliseer is. Vir vyf maande kan hy nie werk nie. Nadat hy vir ernstige beserings geëvalueer is, is bevind dat hy permanente ongeskiktheid het. Hy ly die volgende skade:

Hospitaalonnkoses	R 36 188,00
Mediese onkoses	R 16 633,00
Verlies van inkomste	R 36 000,00
Verlies van valstande, gehoorstuk en kamera wat in die ongeluk vernietig is	R 15 000,00
Algemene skade	R 70 000,00
	R173 821,00

Mack Khoza gee u opdrag om 'n eis vir skadevergoeding in te stel.

- 1.1 Welke skadevergoeding mag u van die Padongelukke Fonds eis ten opsigte van die beserings wat hy gely het? (2)
- 1.2 Is daar enige beperking op u kliënt se algehele eis? Motiveer u antwoord. (2)
- 1.3 Ten opsigte van die skadevergoeding wat u namens u kliënt mag eis, sal u antwoord vir die vorige vraag anders wees as daar na die evaluasie bevind is dat u kliënt geen permanente ongeskiktheid gely het nie? Motiveer ten volle. (2)

**QUESTION 1 [13]**

On the 22<sup>nd</sup> June 2010 Mack Khosa was travelling with his friend Joe Dobbs to watch Bafana Bafana play France in Bloemfontein during the 2010 world cup soccer tournament. Joe Dobbs was driving his car and Mack Khosa was a front seat passenger. On route to Bloemfontein Joe Dobbs loses control of the vehicle which leaves the road, rolls and eventually collides with a tree. No other vehicle was involved. Mack Khosa sustained serious bodily injuries as a result of which he receives emergency medical treatment initially and is subsequently hospitalised; he is unable to work for five months. After assessment for serious injuries he is found to be left with a permanent disability. He has suffered the following damage:

Hospital expenses	R 36 188,00
Medical expenses	R 16 633,00
Loss of income	R 36 000,00
Loss of dentures, a hearing aid and digital camera which were destroyed in the accident	R 15 000,00
General damages	R 70 000,00
	R173 821,00

You are instructed by Mack Khosa to institute a claim for damages.

- 1.1 What damages may you claim from the Road Accident Fund in respect of the injuries he sustained? *All in a claim* (2)
- 1.2 Is there any limitation on your client's overall claim? Motivate your answer. *use of amount R 70 000* (2)
- 1.3 In respect of the damages you are entitled to claim on behalf of your client, would your answer to the previous question be any different if your client was found not to have any permanent disability after the assessment? Motivate fully. *not serious* (2)

1.4 Het u kliënt enige eis vir skadevergoeding teen Joe Dobbs? Indien wel, verskaf volle besonderhede daarvan en motiveer u antwoord. (2)

1.5 Watter verhaal sou die Padongelukke Fonds hê indien dit bevind word dat sekere van Mack Khoza se beserings opgedoen is omdat hy nie 'n sitplekgordel ten tye van die ongeluk gebruik het nie? Motiveer ten volle. (2)

1.6 Aanvaar dat u kliënt u op die laaste oomblik konsulteer en sy eis sal verjaar indien dit nie binne vyf dae ingedien is nie. Noem die noodsaaklike dokumente wat u tesame met die eis sal indien en op welke manier u die eisdokumente betyds sal aflewer. (3)

**VRAAG 2 [2]**

U kliënt se eis vir skadevergoeding word na die indiening van die eis maar voordat dagvaarding uitgereik is, geskik. Mag u kliënt sy regskoste en rente op die skikkingsbedrag van die Fonds eis? Motiveer u antwoord.

**VRAAG 3 [10]**

U kliënt sien 'n ongeluk waarin haar minderjarige kind deur 'n jagende taxi getref is. Die taxi het versuim om na die ongeluk stil te hou. Die kind het erge kopbeserings in hierdie ongeluk gely. U kliënt is getramatiseer en gehospitaliseer waar sy vir skok behandel is as gevolg van die ongeluk. Sy het hospitaal en mediese onkoste ten opsigte van haar en die kind se behandeling aangegaan.

3.1 Adviseer u kliënt welke eise sy teen die Fonds namens haar kind het. (4)

3.2 Welke noodsaaklike stappe moet sy volg en wanneer om die eise namens die kind betyds in te dien? Motiveer u antwoord. (4)

1.4 Would your client have any claims for damages against Joe Dobbs? If so, please furnish full details thereof and motivate your answer. (2)

1.5 What recourse would the Road Accident Fund have should it be proved that certain of Mack Khosa's injuries were caused because he was not wearing a seatbelt at the time of the accident? Motivate fully. (2)

1.6 Assume that your client consults you at the last moment and the claim will prescribe if not lodged within five days. Name the essential documents you would submit in lodgement of the claim and how you will deliver the claim documents timeously. (3)

**QUESTION 2 [2]**

You settle your client's claim for damages after lodgement of the claim but before summons is issued. May you recover your client's legal costs and interest on the amount of the settlement from the Fund? Motivate your answer.

**QUESTION 3 [10]**

Your client witnesses her minor child being knocked over by a speeding taxi which fails to stop after the accident. The child sustains serious head injuries in this accident. Your client is traumatized and admitted to hospital where she is treated for shock as a result of this accident. She incurs hospital and extensive medical expenses in respect of the child's and her own treatment.

3.1 Advise your client what claims she has against the Fund on behalf of the child. (4)

3.2 By when and what essential steps must she follow to lodge the claims for the child timeously? Motivate your answer. (4)

3.3 Adviseer u kliënt welke eise sy teen die Fonds het ten opsigte van die trauma wat sy gely het en die behandeling wat sy ontvang het. (2)

3.3 Advise your client what claims she has against the Fund in respect of the trauma suffered and the treatment she received. (2)

**VRAAG 4 [10]**

**QUESTION 4 [10]**

Die enkelvoudige dagvaarding hieronder bevat 'n aantal foute. Identifiseer 10 daarvan en motiveer kortliks u antwoord. U kan aanvaar dat die dagvaarding behoorlik geteken en uitgereik is.

The simple summons hereunder contains a number of mistakes. Identify 10 of these and briefly motivate your answer. You may accept that the summons was duly signed and issued.

**IN DIE HOË HOF VAN SUID-AFRIKA  
NOORD GAUTENG AFDELING, PRETORIA**

**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH GAUTENG DIVISION, PRETORIA**

Saak nr: 1214/2010

Case no: 1214/2010

In die saak tussen:

In the matter between:

**J P JANTJIES**

**J P JANTJIES**

en

**Eiser**

and

**Plaintiff**

**JAN SMIT**

**Verweerder**

**JAN SMIT**

**Defendant**

Aan die balju of sy adjunk:

To the sheriff or his deputy:

Stel JAN SMIT, 'n meerderjarige loodgieter van Adderleystraat 112, Kaapstad, Weskaap (hierna die respondent genoem), in kennis dat JP JANTJIES, 'n minderjarige student van Kerkstraat 12, Pretoria-Wes, Pretoria (hierna die eiser genoem), hierby 'n aksie teen hom instel in welke aksie die eiser vorder:

Inform JAN SMIT, an adult male plumber of 112 Adderley Street, Cape Town, Western Cape (hereinafter called the respondent), that J P JANTJIES, a minor student of 12 Church Street, Pretoria-West, Pretoria (hereinafter called the plaintiff), herein institutes action against him in which action the plaintiff claims:

1. Betaling van die bedrag van R120 000.43 synde die redelike en billike herstelkoste van voertuig KSJ453GP, bestuur deur die eiser en beskadig in 'n botsing met voertuig GPJ125GP, die eiendom van die verweerder. Die botsing het op 12 Februarie 2009 te h/v West & Keystrate, Durban plaasgevind.
2. Rente @ 18,5% vanaf datum van botsing tot datum van betaling.

1. Payment of the amount of R120 000.43 being the fair and reasonable costs of repair of vehicle KSJ453GP, driven by the plaintiff and damaged in a collision with vehicle GPJ125GP, the property of the defendant. The collision took place on the 12<sup>th</sup> February 2009 at the intersection of West and Key Streets, Durban.
2. Interest @ 18.5% from date of collision to date of payment.

3. Koste op prokureur-en-kliëntskaal.

3. Costs on attorney and client scale.

4. Verdere en/of alternatiewe regshulp.

4. Further and/or alternative relief.

Stel die verweerder verder in kennis dat indien hy die eis betwis en die aksie wens te verdedig, hy binne 5 dae na die betekening aan hom van hierdie dagvaarding by die griffier van hierdie hof te Hoë Hof, Vermeulenstraat, Pretoria 'n kennisgewing van sy voorneme om te verdedig moet indien en 'n afskrif daarvan aan die eiser se prokureur moet beteken, in welke kennisgewing 'n adres (nie synde 'n posbus of *poste restante* nie) soos in reël 19(3)(b) vir die betekening aan die verweerder van alle kennisgewings en dokumente in die aksie, aangegee moet word.

Inform the defendant further that if he disputes the claim and wishes to defend the action, he shall within 5 days of the service upon him of this summons file with the registrar of this court at High Court, Vermeulen Street, Pretoria notice of his intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give an address (not being a post office or *poste restante*) referred to in Rule 19(3)(b) for the service upon the defendant of all notices and documents in the action.

Stel die verweerder verder in kennis dat indien hy versuim om 'n kennisgewing in te dien en te beteken soos voormeld, vonnis soos aangevra teen hom gegee kan word sonder verdere kennisgewing aan hom.

Inform the defendant further that if he fails to file and serve notice as aforesaid, judgment as claimed may be given against him without further notice to him.

En beteken onmiddellik daarna 'n afskrif van hierdie dagvaarding aan die verweerder en lewer die oorspronklike aan die griffier terug met 'n relaas van wat u daaromtrent gedoen het.

And immediately thereafter serve on the defendant a copy of this summons and return the same to the registrar with whatsoever you have done thereupon.

GEDATEER te PRETORIA hierdie 1ste dag van Augustus 2010.

DATED at PRETORIA this 1<sup>st</sup> day of August 2010.

\_\_\_\_\_  
GRIFFIER VANDIE HOË HOF

\_\_\_\_\_  
REGISTRAR OF THE HIGH COURT

\_\_\_\_\_  
EISER SE PROKUREUR  
MOTALA EN VENNOTE  
STANDARD BANKGEBOU 105  
KERKPLEIN  
PRETORIA

\_\_\_\_\_  
ATTORNEYS OF PLAINTIFF  
MOTALA & PARTNERS  
105 STANDARD BANK BUILDING  
CHURCH SQUARE  
PRETORIA

**VRAAG 5 [5]**

Die eiser in 'n aksie in die Hoë Hof, waarin u die verweerder verteenwoordig beteken en liasseer 'n kennisgewing waarin hy die aksie terugtrek sonder om koste te tender, 'n week voor die verhoor begin.

- 5.1 Watter remedie het u kliënt? (1)
- 5.2 Wanneer moet hierdie stap gedoen word? (1)
- 5.3 Stel die nodige kennisgewing van mosie op. U mag die kopstuk en sitasie van die partye weglaat. (3)

**VRAAG 6 [10]**

U kliënt, mev Ann Jones en haar eggenoot, mnr Jim Jones is 15 jaar gelede buite gemeenskap van goed in Durban getroud.

Drie jaar gelede het Jim na Engeland vetrek waar hy nou woon en werk. Hy is nie voornemens om na die Republiek terug te keer nie en stel nie belang in die voortsetting van die huwelik nie. Ann, wat steeds in Durban woon, gee opdrag aan u om 'n egskeidingsgeding in te stel.

- 6.1 Watter hof of howe in die Republiek sou jurisdiksie hê om die aangeleentheid aan te hoor. Motiveer kortliks u antwoord. (3)
- 6.2 U adviseer u kliënt dat ten einde dagvaarding in Engeland te kan beteken u 'n aansoek na die Hoë Hof alhier moet bring. Watter aansoek? (1)
- 6.3 Sou u die kort vorm (Vorm 2) of die lang vorm (Vorm 2A) kennisgewing van mosie gebruik? (1)
- 6.4 Stel slegs die bedes in die kennisgewing van mosie waarin u die regshulp aanvra, op. (5)

**QUESTION 5 [5]**

The plaintiff in an action in the High Court, in which you represent the defendant, serves and files a notice of withdrawing the action a week before the trial commences without tendering costs.

- 5.1 *application to court that they tender costs*  
What remedy does your client have? (1) 1
- 5.2 *after withdrawal*  
When must this step be taken? (1) 0
- 5.3 Draft the necessary notice of motion. You may omit the heading and citation of the parties. (3) }

**QUESTION 6 [10]**

Your client Mrs Ann Jones and her husband, Mr Jim Jones were married in Durban out of community of property 15 years ago.

Three years ago Jim left for England where he now resides and works. He has no intention of returning to the Republic and has indicated that he is no longer interested in the continuation of the marriage. Ann who still resides in Durban instructs you to issue summons for a divorce.

- 6.1 Which court or courts in the Republic would have jurisdiction to hear the matter. Briefly motivate your answer. *Durban - marriage concluded in Durban - marriage concluded in Durban* (3) 2
- 6.2 You advise your client that in order to have the summons served in England, you need to bring an application to the High Court here first. What application do you have in mind? *ex parte application for divorce* (1) 1
- 6.3 Would you use the short form (Form 2) or long form (Form 2A) notice of motion? (1) 0
- 6.4 Draft only the prayers for the relief that you will be seeking in the notice of motion. (5) 0

**VRAAG 7 [11]**

U ontvang instruksies van 'n groep persone aangekla van bedrog. Geeneen van u kliënte is al vantevore in verband met hierdie misdaad aangekla of het enige vorige veroordelings nie. Gedurende 'n breedvoerige konsultasie erken u kliënte aan u dat hulle inderdaad skuldig is soos aangekla. U is tevrede dat hulle al die materiële elemente van die klagte erken.

- 7.1 Dui aan die verskillende pleite aan u kliënte beskikbaar. (3)
- 7.2 Net voordat hulle in die hof verskyn, gee een van die beskuldigdes u opdrag om onskuldig te pleit op grond van feite wat bots met sy oorspronklike instruksies. Wat sal u doen in verband met die verteenwoordiging van dié kliënt. (2)
- 7.3 Beide u en die aanklaagster is van mening dat die misdaad van so 'n aard is dat gevangenisstraf onvanpas is en wil graag 'n ooreenkoms aangaan wat die hof sal bind veral ten opsigte van vonnis. Watter bepalings van die Strafproseswet sal u gebruik in 'n poging om die hof aan 'n vonnis te bind waarop u en die aanklaagster ooreenkom. Verduidelik kortliks die prosedure wat sal volg en die rolle wat die hof, aanklaagster en u, die prokureur sal speel. (6)

**VRAAG 8 [7]**

- 8.1 U kliënt is aangekla van verkragting op 'n 15 jarige meisie. U ontvang opdrag om 'n borgaanzoek te lods. Watter omstandighede sal u voor die hof moet plaas om die toestaan van borg te regverdig en op wie rus die onus? (1)
- 8.2 Hoe sal u sodanige omstandighede voor die hof plaas? (1)

**QUESTION 7 [11]**

You are instructed by a group of persons who are charged with fraud. None of you clients have been charged with this offence before or have any previous convictions. During a detailed consultation your clients admit to you that they are indeed guilty of the offence as charged. You are satisfied that they admit to all the material elements of the charge.

- 7.1 Indicate the possible pleas available to your clients. *guilty not guilty* (3)
- 7.2 Immediately prior to the court appearance one of your clients instructs you to plead not guilty on the basis of facts which conflict with his initial instructions given to you. Indicate what action you will take in regard to representing this individual. *witness for him - order of int - conflicting instr* (2)
- 7.3 Both the prosecutrix and you are of the view that the offence is such that imprisonment is not warranted and seek to enter into an agreement which may bind the court, particularly as regards sentence. What provisions in the Criminal Procedure Act would you rely on in an attempt to bind the court to a sentence on which both you and the prosecutrix agree. Briefly describe the procedure that will ensue and include the roles that the court, prosecutrix and you, the attorney will, play. *pro-ban-gam* (6)

**QUESTION 8 [7]**

- 8.1 Your client is charged with the rape of a *minor* 15 year old girl. You are instructed to bring a bail application. What circumstances will you have to establish which may permit your client's release on bail and which party bears the onus in this regard? *disputed facts* (1)
- 8.2 How will you place these circumstances before the court? *application* (1)

8.3 U kliënt verkies om getuienis in die borgaansoek te lewer. Die aanklaer stel 'n vraag aan die beskuldigde in verband met sy betrokkenheid by die insident waarvan hy aangekla is. Is u kliënt verplig om hierdie vraag te beantwoord en wat sal u in die omstandighede doen? (2)

8.4 Is die rekord van die borgaansoek verrigtinge toelaatbaar in die verhoor wat volg? Gee kortliks redes. (2)

8.5 Is getuienis van vorige veroordelings toelaatbaar in 'n borgaansoek? (1)

**VRAAG 9 [7]**

U kliënt, 'n 19jarige student, is 'n eerste oortreder. Hy is in die streekhof van diefstal van rekenaar toerusting ter waarde van R6 000 skuldig bevind en tot tienjaar gevangenisstraf sonder die keuse van 'n boete gevonniss. Hy het skuldig gepleit en al die goedere is teruggevind. 'n Korrektiewe toesighoudingsverslag bevind dat hy 'n geskikte kandidaat is vir korrektiewe toesig. U ontvang instruksies om 'n aansoek vir verlof tot appél teen die vonnis te rig. Stel die aansoek op om verlof tot appél en sit die gronde van die aansoek uiteen. Verwys die hof na verskillende alternatiewe vonnisse wat deur die hof opgelê kon gewees het. Sluit die kopstuk in.

**VRAAG 10 [5]**

Mary kontrakteer met 'n bouer om 'n motorhuis te bou teen 'n kontrakprys van R80 000. Die bouer versoek 'n deposito van R40 000 wat Mary betaal. Die bouer begin werk en vra vir nog R10 000 wat Mary ook betaal. Daarna staak die bouer die werke en verbreek die kontrak. Mary kry 'n ander bouer om die motorhuis te voltooi vir R50 000. Stel besonderhede van vordering op vir verhaal van die skade.

pd 50  
50

8.3 Your client elects to testify in the bail application and is asked a question by the prosecutrix about his involvement in the incident in respect of which he is charged. Is your client obliged to answer this question? Indicate what you will do in the circumstances. (2)

8.4 Is the record of the bail application proceedings admissible in the subsequent trial of your client? Give brief reasons for your answer. Yes. *to prevent later allegations of fabrication may result in the case being thrown out* (2)

8.5 Is evidence of previous convictions admissible in a bail application? (1) |  
Yes

**QUESTION 9 [7] 5**

Your client is 19 years of age, a first offender and a student. He is convicted in the Regional Court of theft of computer equipment valued at R6000 and sentenced to 10 years imprisonment without the option of a fine. He pleaded guilty and all the goods were recovered. A correctional supervision report finds him to be a suitable candidate for correctional supervision. You client instructs you to bring an application for leave to appeal against the sentence. Draft the application for leave to appeal, setting out the grounds and referring the court to various alternative sentences which the court could have imposed on the accused. Include the heading.

**QUESTION 10 [5] 4**

Mary contracts with a builder to build a garage at a contract price of R80 000. The builder asks for a deposit of R40 000, which Mary pays. When the builder has commenced work he asks for a further R10 000 which she also pays. The builder thereafter ceases work and abandons the contract. Mary gets another builder to complete the garage for R50 000. Draw particulars of claim in a summons for damages. *Att attached*

pd 50 price 800  
20 000



**VRAAG 11** [4]

U kliënt het 'n dagvaarding van R50 000 ontvang tov. goedere verkoop en afgelewer. U kliënt ontken enige transaksies met die Eiser. U teken verskyning aan. Wat mag en wat moet die Eiser doen voordat u hoef te pleit?

**VRAAG 12** [7]

U klient GD staak betaling van 'n tjek ten gunste van North Coast Motors vir die prys van 'n motor. GD beweer die motor was verkoop in 'n goeie lopende toestand maar terwyl GD na sy plaas gery het, het olie uit die oliebak gelek en die enjin het vasgebrand. Hy erken dat hy die tjek gereken het maar beweer dat die voertuig nie in goeie lopende toestand was nie. 'n Voorlopige vonnis dagvaarding is op hom beteken. Eiser beweer die verkoop was "voetstoots".

- 12.1 Indien u die landdros was, watter bevel sou u maak, tov. die voorlopige vonnis verrigtinge en waarom? (3)
- 12.2 Veronderstel die landdros staan voorlopige vonnis toe. Wat moet die verweerder doen om toe te tree tot die hoofsaak en wat moet die eiser doen in antwoord (en as die eiser dit nie doen nie, wat kan die verweerder doen?) (4)

**VRAAG 13** [9]

13.1 U kliënt se opdrag is om te dagvaar vir betaling van R120 000 aan die verweerder geleen. Na bespreking besluit u om te dagvaar in die landdroshof. Watter bewering in u dagvaarding sal u toelaat om die aksie in die landdroshof te bring. (2)

13.2 Die Landdros maak 'n bevinding dat die verweerder geregtig is om skuldvergelyking van R30 000 toe te pas. Vir watter bedrag moet hy vonnis gee? (2)

**QUESTION 11** [4]

Your client has received a summons for R50 000 for goods sold and delivered. Your client denies having any dealings with the Plaintiff. You enter appearance to defend. What may and what must the Plaintiff do before you need to plead?

**QUESTION 12** [7]

Your client GD stopped payment on a cheque he drew in favour of North Coast Motors for the price of a motor car. GD says the car was sold as being in good running order but while GD drove it to his farm oil drained out of the sump and the engine seized. He admits signing the cheque but avers that the vehicle was not in good running order. He has been served with provisional sentence summons. The plaintiff in his reply says the car was sold "as it stands".

- 12.1 If you were the Magistrate what order would you make with the provisional sentence application and why? (3)
- 12.2 Assume the magistrate grants provisional sentence. What must the defendant do to go into the main case and in response what must the Plaintiff do (and if the Plaintiff does not, what can the Defendant do?) (4)

**QUESTION 13** [9]

13.1 Your client instructs you to sue for R120 000 lent to the defendant. After discussing you agree to sue in the Magistrates Court. What allegations in your summons will enable you to bring your claim in the Magistrates Court? (2)

13.2 The Magistrates finds that the defendant is entitled to set off an amount of R30 000. For what amount should he give judgment? (2)