

PROKUREURSEKSAMEN

DEEL 3
PROKUREURSPRAKTYK

27 JULIE 2011

09:00-11:15

Totaal: [100]

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. Skryfasseblieflegs 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 3
ATTORNEYS' PRACTICE

27 JULY 2011

09:00-11:15

Total: [100]

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsman'ship.
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.

QUESTION 1 [10]

Draft a clause in an agreement for the sale of a business suspending the entire sale agreement until such time as suitable arrangements have been made with the landlord of the premises from which the business is conducted to secure the tenure of the business in the premises. The clause should allow for the possibility of:

1.1 cession and delegation of the rights and obligations in terms of the existing lease from the tenant to the purchaser with the consent of the landlord; or (5)

1.2 the conclusion of a new lease agreement between the purchaser and the landlord, together with the cancellation of the previous lease. (5)

QUESTION 2 [10]

Mr Seller, a general dealer, wants to sell his business as a going concern to Mr Buyer and instructs you to prepare a draft agreement for discussion with Mr Buyer. The turnover of the business is R500 000,00 per annum. It will be a cash transaction. (5)

QUESTION 3 [20]

List all the important clauses you would incorporate in such an agreement. Do not expand on any of them.

You have a wealthy client. He has negotiated the sale of one of his businesses. The intending purchaser is insisting that the sale be advertised in terms of Section 34 of the Insolvency Act. Explain to the client the requirements, the reasons for and the effects of advertising and of not advertising.

14

5

6

VRAAG 1 [10]

Stel 'n klousule op in 'n ooreenkoms vir die verkoop van 'n besigheid wat die hele ooreenkoms opskort totdat passieke reëlings getref is met die eienaars van die perseel waaruit die onderneming bedryf word ten einde okkupasie van die perseel deur die onderneming te verseker. Die klousule moet voorsiening maak vir die moontlikheid van:

1.1 sessie en delegasie van die regte en verpligtinge kragtens die bestaande huurkontrak van die huurder na die koper met die toestemming van die verhuurder; of (5)

1.2 die sluit van 'n nuwe huurkontrak tussen die koper en die verhuurder tesame met 'n kansellasie van die vorige huurkontrak. (5)

VRAAG 2 [10]

Mr Verkoper, 'n algemene handelaar, wil sy besigheid as 'n lopende saak aan mnr Koper verkoop. Sy opdrag aan u is om 'n konsep-ooreenkoms op te stel sodat dit met mnr Koper bespreek kan word. Die omset van die besigheid beloop R500 000,00 per jaar. Dit sal 'n kontanttransaksie wees.

Noem al die belangrike klousules wat u in so 'n ooreenkoms sal insluit sonder om daarop uit te prel.

VRAAG 3 [20]

U het 'n welgestelde klient. Hy het die verkoop van een van sy besighede onderhandel. Die voornemende koper dring daarop aan dat die verkoping adverteer word ingevolge Artikel 34 van die Insolvensiewet. Verduidelik aan die klient die vereistes, die redes vir en die effek van advertensie of versum om te adverteer.

QUESTION 4 [10]

Write a letter to your client Mrs Smith who is married out of community of property to her husband. Her husband's estate has just been sequestrated and she fears that this may have an influence on her assets. Advise her of the potential risks and what she can do to protect her interests and enforce her rights.

QUESTION 5 [14]

You are consulted by two persons who wish to start a hardware business in partnership with each other. They instruct you to prepare a partnership agreement. Draft the clauses in the agreement which deal with:

5.1 the drawings of the partners and the division of profit and loss; (4) 2

5.2 the contributions of each partner; and (2) 2

5.3 the dissolution of the partnership. (8) 4

You must use your own imaginary facts. Do not draft the whole agreement.

QUESTION 6 [8]

Your bookkeeper steals X's trust money by getting your partner to sign a cheque in your absence and depositing it into her husband's savings account. By the time you discover the theft she and her husband have disappeared. Explain to X in a letter what his rights are.

QUESTION 7 [21]

7.1 Explain the difference/s between the attorney's duty to keep the affairs of a client confidential and attorney-and-client privilege. (5) 2

VRAAG 4 [10]

Skryf 'n brief aan u klient mev Smith wat buite gemeenskap van goed getroud is met haar eggenoot. Haar man se boedel is pas gesekwestreer en sy vrees dat dit haar bates mag raak. Adviseer haar van die moontlike risiko's, asook wat sy kan doen om haar belange te beskerm en haar regte af te dwing.

VRAAG 5 [14]

U word geraadpleeg deur twee persone wat 'n hardewarebesigheid in vennootskap met mekaar wil begin. Hulle gee u opdrag om die vennootskapsooreenkoms voor te berei. Stel die klausules op wat handel met:

5.1 die trekkings van die vennote en die verdeling van wins en verlies; (4)

5.2 die bydraes van elkeen van die vennote; en (2)

5.3 die ontbinding van die vennootskap. (8)

U moet u eie denkbeeldige feite gebruik. Moet nie die hele ooreenkoms opstel nie.

VRAAG 6 [8]

U boekhouer steel X se trustgeld deur 'n tjek in u afwesigheid deur u vennoot te laat onderteken en in haar man se spaarrekening te deponeer. Wanneer u die diestal agterkom het sy en haar man reeds verdwyn. Verduidelik in 'n brief aan X wat sy regte is.

VRAAG 7 [21]

7.1 Verduidelik die verskil/le tussen 'n prokureur se plig om die sake van 'n klient vertroulik te hou en prokureur-en-klientprivilegie. (5)

7.2 Bespreek hoe u reageer op 'n aanbod van 'n klient om aan u geld te leen as u dit graag sou wou leen. (3)

7.3 'n Klient dring daarop aan dat u dagvaarding uitreik vir 'n eis wat klaarblyklik verjaart het. Hoe verduidelik u die posisie aan u klient? (6)

7.4 U word skuldig bevind aan bestuur onder die invloed. Die Prokureur sou doen aansoek om u van die rol te laat verwyder. Wat sal die Hof waarskynlik besliss en hoekom? Sou die posisie anders wees as die misdryf oneerlikheid behels het? (3)

7.5 U vennoot het 'n bedigde verklaring in 'n dringende Hof aansoek opgestel. Geen kommissaris van eed is beskikbaar nie. Kan u die eed afneem? Sou die posisie anders gewees het as dit 'n aktesaangeleentheid was? Hoekom? (4)

VRAAG 8 [7]

Wat verstaan u onder die volgende?

8.1 Optrede *Pro Amico*; (2)

8.2 Party-en-party koste; (3)

8.3 Prokureur-en-eie klientfooie. (2)

DIE EINDE

What do you understand by the following?

8.1 Acting *Pro Amico*; (2)

8.2 Party and party costs; (3)

8.3 Attorney and own client fees. (2)

QUESTION 8 [7]

7.2 Discuss how you handle an offer by a client to lend you money if in fact you would like to borrow the amount. (3)

7.3 A client insists that you issue summons on a claim that has clearly prescribed. How will you explain the situation to your client? (6)

7.4 You are convicted of driving under the influence of liquor. The Law Society applies to have your name struck from the roll. What is the High Court likely to do and why? Would the situation be different if the offence involved dishonesty? (3)

7.5 Your partner has drawn an affidavit in an urgent High Court application. No other commissioner of oaths is available. May you administer the oath? Would the position be different if it were a conveyancing matter? Why? (4)

THE END

PROKUREURSEKSAMEN

DEEL 1
HOFFROSEDORES

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 Totaal: [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 draftsman'ship.

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 Khoza saam met sy vriend Joe Dobbs gery om die wedstryd tussen Barana Barana 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 nood-behandeling 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:

Hospitaal onkoste	R 36 188,00
Mediese onkoste	R 16 633,00
Verlies van inkomste	R 36 000,00
Verlies van valstade, 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 klient se algemene eis? Motiveer u antwoord. (2)
- 1.3 Ten opsigte van die skadevergoeding wat u namens u klient mag eis, sal u antwoord vir die vorige vraag anders wees as daar na die evaluasie bevind is dat u klient geen permanente ongeskiktheid gely het nie? Motiveer ten volle. (2)

QUESTION 1 [13]

On the 22nd June 2010 Mack Khoza was travelling with his friend Joe Dobbs to watch Barana Barana play France in Bloemfontein during the 2010 world cup soccer tournament. Joe Dobbs was driving his car and Mack Khoza 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 Khoza 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 Khoza 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? (2)
- 1.2 Is there any limitation on your client's overall claim? Motivate your answer. (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. (2)

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 seat belt 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)

1.4 Het u klient enige eis vir skadevergoeding teen Joe Dobbs? Indien wel, verskat 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 sitplekgordeel ten tye van die ongeluk gebruik het nie? Motiveer ten volle. (2)

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

VRAAG 3

[10]

U klient 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 klient is getramatiseer en gehospitaliseer waar sy vir skok behandel is as gevolg van die ongeluk. Sy het hospital en mediese onkoste ten opsigte van haaren die kind se behandeling aangegaan.

3.1 Adviseer u klient 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)

3.3 Adviseer u klient welke eise sy teen die Fonds het en die behandeling wat sy ontvang het. (2)

VRAAG 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.

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

Saak nr: 12/14/2010

In die saak tussen:

J P JANTJIES
 Eisër

JAN SMIT
 Verweerder

Aan die balju of sy adjunk:

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

1. Betaling van die bedrag van R120 000,43 synde die redelike en billike herstelkoste van voertuig KSJ453GP, bestuur deur die eisër 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.

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

QUESTION 4 [10]

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 THE HIGH COURT OF SOUTH AFRICA
 NORTH GAUTENG DIVISION, PRETORIA

Case no: 12/14/2010

In the matter between:

J P JANTJIES
 Plaintiff

JAN SMIT
 Defendant

To the sheriff or his deputy:

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

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 12th 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.

4. Verdere en/of alternatiewe regsulp.

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.

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

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.

GEDATEER te PRETORIA hierdie 1ste dag van Augustus 2010.

GRIFFIER VAN DIE HOË HOF

EISER SE PROKUREUR
MOTALA EN VENNOTE
STANDARD BANKGEBOU 105
KERKPLEIN
PRETORIA

3. Costs on attorney and client scale.

4. Further and/or alternative relief.

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.

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.

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.

DATED at PRETORIA this 1st day of August 2010.

REGISTRAR OF THE HIGH COURT

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

PART 1 COURT PROCEDURES [100]		QUESTIONS [5]	
6.4	Draft only the prayers for the relief that you will be seeking in the notice of motion. (5)	6.4	Stel slegs die bedes in die kennisgewing van mosie waarin u die regsulp aanvra, op. (5)
6.3	Would you use the short form (Form 2) or long form (Form 2A) notice of motion? (1)	6.3	Sou u die kort vorm (Vorm 2) of die lang vorm (Vorm 2A) kennisgewing van mosie gebruik? (1)
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? (1)	6.2	U adviseer u klient dat ten einde dagvaarding in Engeland te kan beteken u 'n aansoek na die Hoë Hof alhier moet bring. Watter aansoek? (1)
6.1	Which court or courts in the Republic would have jurisdiction to hear the matter. Briefly motivate your answer. (3)	6.1	Watter hof of howe in die Republiek sou jurisdiksie hê om die aangeleentheid aan te hoor. Motiveer kortliks u antwoord. (3)
<p>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.</p>		<p>Drie jaar gelede het Jim na Engeland getrek 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 eggskeidingsgeding in te stel.</p>	
QUESTIONS [10]		VRAAGS [10]	
5.3	Draft the necessary notice of motion. You may omit the heading and citation of the parties. (3)	5.3	Stel die nodige kennisgewing van mosie op. U mag die kopstuk en sitasie van die partye weglaat. (3)
5.2	When must this step be taken? (1)	5.2	Wanneer moet hierdie stap gedoen word? (1)
5.1	What remedy does your client have? (1)	5.1	Watter remedie het u klient? (1)
QUESTIONS [5]		VRAAGS [5]	
<p>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.</p>		<p>Die eiserin '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.</p>	

DEEL 1 HOFFROSEDURES [100]		VRAAGS [5]	
6.4	Draft only the prayers for the relief that you will be seeking in the notice of motion. (5)	6.4	Stel slegs die bedes in die kennisgewing van mosie waarin u die regsulp aanvra, op. (5)
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PART 1 COURT PROCEDURES [100]		VRAAGS [10]	
5.3	Draft the necessary notice of motion. You may omit the heading and citation of the parties. (3)	5.3	Stel die nodige kennisgewing van mosie op. U mag die kopstuk en sitasie van die partye weglaat. (3)
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QUESTION 7

7.1 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. (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. (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. (6)

QUESTION 8

8.1 Your client is charged with the rape of a 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? (1)

8.2 How will you place these circumstances before the court? (1)

VRAAG 7

7.1 Dui aan die verskillende pleite aan u kliente 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 die klient. (2)

7.3 Beide u en die aanklaagster is van mening dat die misdad van so'n aard is dat gevangenisstraf onvanpas is en wil graag 'n ooreenkoms aangaan wat die hof sal bind veralten opsigte van vonnis. Wat betref die bepaling van die Strafprosedeswet 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

8.1 Klient is aangekla van verkragting op 'n 15 jarige meisie. U ontvang opdrag om 'n borgaansoek te lods. Wat betref omstandighede sal u voor die hof moet plaas om die toestaan van borg te regverdig en op wie die onus? (1)

8.2 Hoe sal u sodanige omstandighede voor die hof plaas? (1)

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. (2)

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

QUESTION 9

8.3 U klient 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 klient 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

U klient, 'n 19jarige student, is 'n eerste orteder. Hy is in die streekhof van diefstal van rekenaar toerusting ter waarde van R6 000 skuldig bevind en tot tien jaar gevangenisstraf sonder die keuse van 'n boete gevonnis. Hy het skuldig gepleiten 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 verlot tot appel teen die vonnis te rig. Stel die aansoek op om verlot tot appel en sit die gronde van die aansoek uiteen. Vervys die hof na verskillende alternatiewe vonnisse wat deur die hof opgele kon gewees het. Sluit die kopstuk in.

VRAAG 10

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 werk 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.

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

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.

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)

VRAAG 11 [4]

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

VRAAG 12 [7]

U klient GD staak betaling van 'n tjeke ten gunste van North Coast Motors vir die prys van 'n motor. GD beweer die motor was verkoop in 'n goeie lopende toestand maar tenwyl GD na sy plaas gery het, het olie uit die oliebak geleek en die enjin het vasgebrand. Hy erken dat hy die tjeke 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 klient se opdrag is om te dagvaar vir betaling van R120 000 aan die verweerder geleen. Na bespreking besluit u om te dagvaar in die landdros Hof. Watter bewering in u dagvaarding sal u toelaat om die aksie in die landdros Hof te bring. (2)

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

PROKUREURSEKSAMEN

DEEL 1
HOPROSEDURES

26 JULIE 2011

09:00-12:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deure 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 druip.

ATTORNEYS' EXAMINATION

PART 1
COURT PROCEDURES

26 JULY 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

[20]

U word deur u klient Mev Sarah Nkosi geraadpleeg en sy lig u as volg in:

(a) Haar man met wie sy binne gemeenskap van goedere getroud was, is op 8 Junie 2010 oorlede as gevolg van liggaamlike beserings wat hy in 'n motorbotsing opgedoen het wat op 13 Maart 2010 plaasgevind het.

(b) Hy was vanaf die ongeluksdatum tot 12 Mei 2010 bewuseloos.

(c) Twee kinders wat 7 en 12 jaar oud was ten tyde van hulle vader se afsterwe, is uit die huwelik gebore.

(d) Ten tyde van sy sterfte het die oorledene R240 000,00 per jaar verdien uit sy werk as 'n Siviele Ingenieur.

(e) In 'n siviele saak ingestel deur die eienaar en bestuurder van die ander voertuig wat in die botsing betrokke was, is bevind dat die oorledene 60% verantwoordelik was vir die botsing.

(f) Sy deel u ook mee dat hospitaal, mediese en begrafnis kostes aangegaan is. U advies aan u klient is dat sy en haar kinders eise vir verlies van onderhoud het as gevolg van Mnr Nkosi se sterfte. Sy aanvaar u raad en gee u opdrag om die eise in te stel.

1.1 Om hierdie eise te boekstaaf moet sekere dokumente die RAF1 eisevorm vergesel. Noem hierdie dokumente. (4)

1.2 Sit puntsgewys die bewerings uiteen wat in die besonderhede van eis tot u klient se dagvaarding gemaak moet word ten opsigte van die eise vir verlies van onderhoud alleenlik. (5)

QUESTION 1

New Act

[20]

You are consulted by your client Mrs Sarah Nkosi who advises as follows:

(a) Her husband to whom she was married in 2010 as a result of bodily injuries he sustained in a motor collision that occurred on the 13th March 2010.

(b) He was unconscious from the date of the accident until the 12th May 2010.

(c) There are two children born of the marriage aged 7 and 12 years at the time of their father's death.

(d) At the time of his death the deceased was earning R240 000,00 per annum from his employment as a civil engineer.

(e) At a recent civil trial instituted by the owner and driver of the other vehicle involved in the aforesaid collision, the deceased was found to be 60% to blame for the collision.

(f) She also informs you that hospital, medical and funeral expenses were incurred. You advised your client that she and her children have claims for loss of support arising from the death of Mr Nkosi. She accepts your advice and instructs you to proceed with the claims.

1.1 To substantiate the claims certain documents have to accompany the RAF1 claim form. Name these documents. (4)

1.2 In point form set out the allegations that have to be made in the particulars of claim to your client's summons relating to the claims for loss of support only. (5)



- prescribed limit (Apd E185249)
particulars of claim
public health benefit
- CC claim limited - None! PART 1
- 2nd witness sheet - check COURT PROCEDURES [100]

(a)	Gelede hospitaal en mediese onkoste	R 80 000,00
(b)	Toekomstige mediese onkoste	R 60 000,00
(c)	Gelede verlies van inkomste	R 40 000,00
(d)	Toekomstige verlies van inkomste	R 150 000,00
(e)	Algemene skade	R 100 000,00

VRAAG 2

- U tree namens u klient op wat 'n saak teen die Padongelukke Fonds vir skadevergoeding ingestel het as gevolg van die nalatigheid van 'n versekerde bestuurder. Die Fonds het aanspreeklikheid vir die eiser se skade erken. U klient kan nie werk nie en het geen geld om homself te onderhou nie. Dit sal omstreeks 'n jaar wees voordat die saak tot verhoor kom. U klient se dagvaarding bevat die volgende eise:-
- 1.3 Vir welke tydperke sal u klient verlies van onderhoud vir haarself en haar kinders kan eis? Toon aan hoe die ooredeense jaarlikse inkomste tussen die eisers verdeel sal word en op welke bedrag hierdie berekening gemaak sal word? (4)
- 1.4 Teen welke datums sal u die RAF1 eisvorms ten opsigte van die weduwee en die kinders se eise moet indien? (2)
- 1.5 Inaggenome die bevinding wat alreeds deur 'n hof gemaak is dat die ooredeense 60% verantwoordelik was vir die botsing, sal die Fonds geregtig wees om 'n verdeling van aanspreeklikheid toe te pas? Motiveer u antwoord. (2)
- 1.6 Mag die eisers rente op die bedrag van hul eise eis en, indien wel, teen watter koers en vanaf welke datum? (2)
- 1.7 Welke begripnis onkoste is u klient geregtig om van die Fonds te eis? Motiveer u antwoord. (1)

(a)	Past hospital and medical expenses	R 80 000,00
(b)	Future medical expenses	R 60 000,00
(c)	Past loss of earnings	R 40 000,00
(d)	Future loss of earnings	R 150 000,00
(e)	General damages	R 100 000,00

QUESTION 2

- You act on behalf of a Plaintiff who has instituted an action for damages against the Road Accident Fund due to the negligence of an insured driver. The Road Accident Fund has in writing admitted liability for the Plaintiff's damages. Your client is unable to work and has no funds to support himself. It will take approximately one year for the matter to come to trial. Your client's summons contains the following claims:-
- 1.3 For what periods will your client be able to claim loss of support on behalf of herself and her children? Show how the deceased's annual income will be apportioned among the claimants and on what amount will this calculation be made? (4)
- 1.4 By what dates will you have to lodge the RAF1 claim forms in respect of the widows claim and those of the children? (2)
- 1.5 Will the Fund be entitled to apply an apportionment of liability bearing in mind that a finding had already been made by a Court to the effect that the deceased was 60% to blame for the collision? Motivate your answer. (2)
- 1.6 May the claimant claim interest on the amount of the claim and, if so, at what rate and from when can such interest be claimed? (2)
- 1.7 What funeral expenses is your client entitled to claim from the Fund? Motivate briefly. (1)

What remedy is available in terms of the Court

Rules to alleviate your client's plight?

[1]

You are aware that the Road Accident Fund has obtained a statement from the insured driver after summons was served on it. Are you entitled to obtain a copy of such statement? Motivate your answer.

QUESTION 4

[1]

Assuming that the Road Accident Fund obtained a statement from the driver of the insured vehicle before summons was issued, is your client entitled to a copy of such statement? Motivate your answer.

QUESTION 5

[10]

Your client Ashika Singh informs you that she has for many years conducted the business of general dealer in partnership with Fatima Hassim. In terms of the written partnership agreement entered into on the 1st of November 1995 and at Pietermaritzburg, Fatima had to keep the books of the partnership and on a quarterly basis render statements of account reflecting the financial affairs of the partnership, supported where necessary with documentary proof. During December 2010 Fatima met the love of her life and while Ashika carried on with the day to day running of the business, Fatima spent less and less time on her duties.

On the 30th of June 2011 the parties agreed by way of a written agreement to dissolve the partnership with immediate effect and agreed that Ashika will carry on with the business for her own account. Fatima undertook to render a statement of account by 15 July 2011 for the period 1 January 2011 to 30 June 2011. This would make sharing of profits possible.

Welke regsiddel is kragtens die hofreëls beskikbaar om u klient se dilemma te verlig?

VRAAG 3

[1]

U is bewus daarvan dat die Padongelukke Fonds na dagvaarding op die Fonds beteken is, 'n verklaring van die versekerde bestuurder verkry het. Is u geregtig op 'n afskrif van die verklaring? Motiveer u antwoord.

VRAAG 4

[1]

Neem aan dat die Padongelukke Fonds 'n verklaring van die bestuurder van die versekerde voertuig voordat dagvaarding uitgereik is, verkry het. Is u klient geregtig om 'n afskrif daarvan te verkry? Motiveer u antwoord.

VRAAG 5

[10]

U klient Ashika Singh deel u mee dat sy oor baie jare besigheid as algemene handelaar in vennootskap met Fatima Hassim bedryf het. Kragtens die skriftelike vennootskaps-ooreenkoms wat te Pietermaritzburg op 1 November 1995 aangegaan is, sou Fatima die boekhouding van die vennootskap hanteer en op 'n kwartaallikse basis 'n rekeningstaat met waar nodig dokumentêre bewyse wat die finansiële aangeleenthede van die vennootskap uiteensit, opstel. Gedurende Desember 2010 het Fatima die liefde van haar lewe ontmoet en al hoe minder tyd aan haar pligte bestee, terwyl Ashika steeds voortgegaan het om daaglikse besigheid te bedryf.

Op die 30ste Junie 2011 het die partye skriftelik ooreengekom om met onmiddellike ingang die vennootskap te ontbind. Ashika sou vir eie rekening voortgaan om die besigheid te bedryf maar Fatima het onderneem om finansiële state vir die tydperk Januarie 2011 tot Junie 2011, Dit teen nie later nie as 15 Junie 2011 voor te lê. Dit sou winsdeling moontlik maak.

7.1 Daar is vier uitsonderings op die algemene reël dat 'n party getroud binne gemeenskap van goed nie regsgedinge kan instel of verdedig sonder die skriftelike toestemming van haar/sy eggenoot nie. (2)

Noem die vier gevalle.

VRAAG 7 [5]

Na ondersoek van die aangeleentheid kom u tot die gevolgtrekkings dat die betekening van 'n tussenpleit aansoek die geskikste manier is om u klient se belange te beskerm.

Stel die tussenpleit kennisgewing in terme van Reël 58 op. U moet nie die applikant se eedsverklaring ook opstel nie.

Hy bevestig dat hy die goedere ontvang het en dat die dienste gelewer is maar omdat al die onderhandelinge telefonies gevoer is en omdat beide aanspraakmakers betrokke was het hy geen idee wie om te betaal nie.

U ontvang opdrag van u klient, Moeketsi Phalatsi dat hy gekonfronteer word met twee botsende aansprake van twee aanspraakmakers, Jan de Waal en Piet Grobler vir betaling van die bedrag van R245 000 ten opsigte van goedere verskat en dienste gelewer.

VRAAG 6 [10]

Ten spyte van herhaalde versoeke en selfs wettige aanmaning is niks voorgele nie. Die gevolg is dat Ashika geen idee het van die finansiële posisie vir die tydperk Januarie tot Junie 2011 nie en ook nie in staat is om haar deel van die winste op te eis nie.

Stel die nodige besonderhede van vordering op om u klient te help om die probleem op te los. Gebruik sodanige addisionele feite as wat u mag benodig.

7.1 There are four exceptions to the general rule that a party married in community of property cannot sue or defend legal proceedings without the written consent of his/her spouse. Name these four instances. (2)

general damages - court

QUESTION 7 [5]

After investigating the matter you come to the conclusion that serving an interpleader notice is the best possible way of safeguarding your clients' interests.

Draft the interpleader notice in terms of Rule 58. Do not draft the affidavit.

He acknowledged that he received the goods and benefited from the services and thus owes the amount but as all the preceding negotiations took place telephonically and as both parties were involved he has no idea to whom payment should be made.

You are instructed by your client Moeketsi Phalatsi that he is faced with adverse claims from two claimants, Jan de Waal and Piet Grobler who both claim payment of the amount of R245 000 in respect of goods supplied and services rendered.

QUESTION 6 [10]

Despite numerous requests and even lawful demand nothing has been presented with the result that Ashika has no idea of the financial position for the period January to June 2011 and has not been able to access her share of the profits.

Draft the necessary particulars of claim to assist your client in resolving the situation, using such additional facts as you may find necessary.

A

4

7.2 Vergelyk 'n versoek om nader ondersoek in die landdroshof en 'n versoek om nader ondersoek in die hof.
(3)

VRAAG 8 [7]

8.1 U klient, 'n prominente politikus, is deur die polisie gearresteer op klagtes van bedrog en korrupsie ter waarde van R50 miljoen. Hy is op die Donderdag voor Goede Vrydag, 12 uur die middag gearresteer. U ontvang 'n noodoproep van u klient waaraan hy inligging verskeie openbare vergaderings op Goede Vrydag, 'n publieke vakansiedag asook die Saterdag, Sondag en Maandag van die Paasaweek moet bywoon. Hy deel u mee dat hy onskuldig is en gee u opdrag om onmiddellik sy vrylating uit polisie-aanhouding, te bewerkstellig.

8.1.1 Is u klient geregtig om gedurende die naweek voor die hof te verskyn vir doeleindes van 'n borgaansoek?
(1)

8.1.2 Indien die polisie besluit om u klient nie aan te klaan, wat is sy regte?
(1)

8.1.3 Die polisie besluit om u klient aan te klaan. Verduidelik die magte van die polisie en die aanklaer om borg toe te staan.
(2)

8.2 U klient deel u mee dat hy vorige veroordelings het en dat daar verskeie klagtes teen hom aanhangig is. Sal u die hof hiervan gedurende die borgaansoek verwittig en indien wel, waarom?
(1)

8.3 U klient verskyn voor die hof op die volgende Dinsdag oggend en u kry opdrag om onmiddellik 'n borgaansoek te lods. Die ondersoekbeampte lig die hof in dat sy 'n geleentheid benodig om verdere

7.2 Compare a request for further particulars in the magistrate's court and a request for further particulars in the high court.
(3)

QUESTION 8 [7]

8.1 Your client, a prominent politician, is arrested by the police on charges of fraud and corruption estimated at R50 million. He is arrested at 12 noon on the Thursday preceding Good Friday. He telephones you from the police cells in desperation and tells you that he has to attend various public meetings on Good Friday, being a public holiday, as well as the Saturday, Sunday and Monday of the Easter weekend. He professes his innocence and instructs you to immediately obtain his release from police custody.

8.1.1 Is your client entitled to be brought before court for the purposes of a bail application over the weekend?
(1)

8.1.2 If the police decide not to charge your client, what are his rights?
(1)

8.1.3 The police decide to charge your client. Explain the authority of the police and the prosecutor to grant bail.
(2)

8.2 You are instructed that your client has both previous convictions and other charges pending against him. Will you inform the court of these facts during a bail application and, if so, why?
(1)

8.3 Your client is brought to court on the following Tuesday morning and instructs you to bring the bail application there and then. The investigating officer, however, informs the court that she needs an

8.4 In due course the court refuses the bail application and you are instructed to appeal this decision. Is it necessary for you to bring an application for leave to appeal the decision of the court? (1)

8.4 In due course the court refuses the bail application and you are instructed to appeal this decision. Is it necessary for you to bring an application for leave to appeal the decision of the court? (1)

QUESTION 9 [1]

Whist your client is in detention, the investigating officer informs you that he wants to take blood samples from your client for the purposes of DNA testing and furthermore he requires your client to attend an identity parade. What powers do members of the police have in this regard?

QUESTION 10 [3]

Your client is convicted on two counts, namely murder and the illegal possession of a firearm at a criminal trial. The court sentences your client to 20 years direct imprisonment for the murder and 10 years imprisonment for the illegal possession of a firearm. The court is silent in its decision as to whether the sentences are to run cumulatively or concurrently. How long is your client liable to serve in prison? Include brief reasons in your answer.

QUESTION 11 [3]

Your client is charged with one count of housebreaking. The complainant testifies during the trial that he was present when the house was broken into but he cannot identify your client. No further evidence of identity is presented by the State before it closes its case. What options does your client have in regard to the further process of the trial and mention the test the court will apply with regard to each option.

materiële getuïenis, wat verlore kan raak indien borg toegestaan word, in te win. Mag die hof die borgaansoek in hierdie omstandighede uitstel en indien wel, vir hoe lank?

8.4 Mettertyd word borg deur die hof geweier en u kry opdrag om appél teen hierdie beslissing aan te teken. Is dit nodig om 'n aansoek om verlot tot appél teen die hof se beslissing te bring? (1)

VRAAG 9 [1]

Terwyl u klient in aanhouding is, deel die ondersoekbeampte mee dat hy 'n bloedmonster van u klient wil neem vir die doeleindes van DNA toets. Hy versoek verder dat u klient 'n uitkenningsparade bywoon. Watter magte het die polisie in hierdie verband?

VRAAG 10 [3]

U klient is skuldig bevind aan twee klagtes naamlik moord en die onwettige besit van 'n vuurwapen. Die hof lê vonnisse van 20 jaar direkte gevangenisstraf op vir die moord en 10 jaar gevangenisstraf ten opsigte van die onwettige besit van 'n vuurwapen. Die hof dui nie in sy beslissing aan of die vonnisse kumulatief of gelyktydig uitgedien moet word nie. Hoe lank sal u klient in die gevangenis aangehou word? Verduidelik kortliks.

VRAAG 11 [3]

U klient is aangekla van een klag van huisbraak. Gedurende die verhoor getuig die klaer dat hy teenwoordig was ten tye van die inbraak maar nie u klient kan identifiseer nie. Geen verdere getuïenis word deur die staat aangebied voordat die staat sy saak sluit nie. Wat is u klient se opsigte ten opsigte van die verdere verloop van die verhoor? Noem die toets wat deur die hof toegepas sal word ten opsigte van elke opsie.

QUESTION 12 [7]

Your client, Siphwe Shabalala, a 20 year old law student at the local university, is charged with assault with intent to do grievous bodily harm. In explaining the incident he instructs you that he intended to go out for a beer on 21 April 2010 and that as he opened his car door an unidentified male attacked him. Your client retaliated and in the process he punched the assailant resulting in the assailant losing consciousness. He promptly took the assailant to hospital where he left him and proceeded to the police station to report the incident. To his surprise some eight months later your client is arrested and charged with assault relating to this incident. He instructs you to prepare a Sec. 115 plea explanation on his behalf.

12.1 Draft the explanation of plea, excluding the heading, making up facts wherever appropriate. (4) **3**

12.2 What should the court do before accepting the plea explanation? (2) **1**

12.3 Can your client be cross-examined by the prosecutor with reference to his plea explanation? (1) **0**

QUESTION 13 [4]

You client advises that his motor vehicle was damaged in a collision. The cost of repair amounts to R46 000. The driver of the other vehicle was charged with and found guilty of driving under the influence of alcohol and will be sentenced shortly. You client wishes to recover his damages.

13.1 Advise your client of the procedure to be followed in terms of the Criminal Procedure Act to pursue his claim for compensation. (2) **2**

13.2 How is the amount awarded to be determined? (1) **1**

VRAAG 12 [7]

U klient, Siphwe Shabalala, 'n 20 jarige regsudent aan die plaaslike universiteit, is aangekla van aanranding met die opset om ernstig te beseer. Hy verduidelik aan u dat op 21 April 2010 hy van plan was om uit te gaan om 'n bier te geniet. Hy was besig om die deur van sy voertuig oop te maak, toe hy deur 'n onbekende man aangeraand is. U klient het gereageer deur terug te slaan en as gevolg daarvan het die aanvaller sy bewussyn verloor. U klient het die aanvaller onmiddellik hospitaal toe geneem waar hy hom gelaat het en daarna het hy die insident by die polisie stasie aangemeld. Tot sy verbasing is hy so agt maande daarna gearresteer en aangekla van aanranding in verband met hierdie insident. Hy gee u opdrag om 'n Art. 115 pleitsverduideliking namens hom op te stel.

12.1 Stel die pleitsverduideliking op, sonder die kopstuk. Gebruik u eie feite waar nodig. (4)

12.2 Wat word van die hof verwag voordat die pleitsverduideliking aanvaar word? (2)

12.3 Kan u klient deur die aanklaer gekruis-onderva word met betrekking tot sy pleitsverduideliking? (1)

VRAAG 13 [4]

U klient lig u in dat sy voertuig in 'n motorongeluk beskadig is. Die herstelkoste bedra R46 000. Die bestuurder van die ander voertuig is aangekla en skuldig bevind van bestuur onder die invloed van alkohol en word binnekort gevonniss. U klient wil graag sy skade verhaal.

13.1 Adviseer u klient van die prosedure vervat in die Strafproseswet wat gevolg moet word om sy eis vir skadevergoeding in te stel. (2)

13.2 Hoe word die bedrag wat toegeken kan word, bereken? (1)

13.3 What is the effect of an order made by the court and what steps are available to your client should the accused not comply with the order? (1)

QUESTION 14 [10]

14.1 In a trial in the Magistrates Court arising out of a motor collision, the only evidence is that of the two drivers, who give completely differing versions of what happened. The Magistrate is unable to decide which of the two witnesses is to be believed. What should the Magistrate order? (2)

14.2 After the judgment in the Magistrate Court, an independent witness comes forward and introduces himself to the Plaintiff and tells the Plaintiff that he saw the whole incident and fully corroborates the Plaintiff's version. Is there any action the Plaintiff can take and if so, what? (2)

14.3 Your client calls on you, having been served with a summons in a Magistrates Court in which Joe Sparza cc is the Plaintiff. Your client tells you that the financial position of Joe Sparza cc is not very sound and that the claim is vexatious and he produces a letter written by Joe Sparza cc to that effect. When you enter an appearance is there anything you ought to do in the light of your instructions? (2)

14.4 You are preparing for Trial in an action in the Magistrates Court on behalf of your client for the recovery of costs of repairing his vehicle which was damaged in a collision. How would you prove Plaintiff's damages? What documents, if any, will you prepare? (You are not required to draft any documents). (2)

13.3 Wat is die effek van die hofbevel en welke stappe is tot u klient se beskikking indien die beskuldigde nie die bevel na kom nie? (1)

VRAAG 14 [10]

14.1 In 'n verhoor in die Landdroshof voortspruitend uit 'n motorbotsing, is die enigste getuie die van die twee bestuurders wat geheel en al verskillende weergawes gee van wat gebeur het. Die landdroos kan nie besluit wie van die twee getuies geglo moet word nie. Welke bevel behoort die landdroos te maak? (2)

14.2 Na die uitspraak kom 'n onafhanklike getuie na vore en stel hom aan die eiser voor. Hy deel die eiser mee dat hy die ongeluk gesien het en ten volle met die eiser se weergawe saamstem. Is daar enige stappe wat die eiser kan doen en, indien wel, wat? (2)

14.3 U klient nader u nadat 'n dagvaarding op hom beteken is in 'n Landdroshof aksie waarin Joe Sparza Bk die eiser is. U klient deel u mee dat die finansiële posisie van Joe Sparza Bk swak is en dat die eis kweisugtig is en toon 'n brief aan u deur die eiser wat dit bevestig. Wanneer u verskyning aanteken, is daar enigiets anders wat u behoort te doen in die lig van u instruksies? Indien wel, watsal u doen? (2)

14.4 U berei voor vir 'n verhoor in 'n aksie in die Landdroshof namens u klient vir verhaal van die herstelkoste van sy voertuig wat beskadig is in 'n botsing met 'n voertuig wat bestuur is deur die verweerder. Hoe sou u Eiser se skade bewys? Welke dokumente, indien enige, sou u opstel? Daar word nie van u verwag om die dokument(e) op te stel nie. (2)

14.5 You are instructed to issue summons for the recovery of a motor car sold on suspensive sale because the Defendant has failed to pay his instalments. Besides complying with the credit agreement you have to first do something required by the National Credit Act. What is it you have to do before you institute proceedings? (2)

QUESTION 15

You act for the Plaintiff in the following actions in the Magistrates Court. Very briefly indicate what your next step ought to be. What is the name or names of any documents you would file?

15.1 The Plaintiffs claim is for the cost of repairing his motor car which was damaged whilst he was parked at the side of the road when the Defendant drove into it when he fell asleep behind the wheel. The Defendant entered appearance to defend. (1)

15.2 Your clients claim is for the purchase price of goods sold and delivered in respect of which your client has provided you with orders and delivery notes both of which have been signed by the Defendant. The Defendant has entered appearance to defend. (1)

15.3 The Defendant has entered appearance to defend and requested further particulars to your clients summons. You informed him that the rules do not allow for further particulars three weeks ago but the Defendant has done nothing. (2)

15.4 The Defendant has failed to enter an appearance to defend within the expiry of the ten day period allowed in the summons for him to do so. (1)

14.5 U kry opdrag om dagvaarding uit te reik vir teruggawe van 'n voertuig wat aangekoop is kragtens 'n afbetalingsooreenkoms. Die verweerder het versum om paaiement te betaal. Afgesien van die nakoming van die bepallings van die krediet ooreenkoms moet u eers 'n stap doen wat ingevolge die National Credit Act vereis word alvorens u regsaksie kan instel. Wat moet u doen? (2)

VRAAG 15

U tree op vir die eiser in die volgende gedinge in die landdros Hof. Dui kortliks aan wat u volgende stap behoort te wees. Watter dokumente sou u lewer?

15.1 Die eiser se eis is vir die koste van die herstel van sy voertuig wat beskadig is terwyl dit langs die pad gestaan het en die verweerder aan die slaap geraak het. Die verweerder het verskyning om te verdedig aangebly. (1)

15.2 U klient se eis is vir die koopprys van goedere verkoop en gelewer. U klient het u voorsien van 'n bestelling en 'n afleweringnota wat beide deur die verweerder ondersoek is. Die verweerder teken verdediging aan. (1)

15.3 Die verweerder het verskyning om te verdedig aangebly en het nader besonderhede tot u klient se dagvaarding gevra. U het hom drie weke gelede ingelig dat die reëls nie meer nader besonderhede toelaat nie maar die verweerder het niks verder gedoen nie. (2)

15.4 Die verweerder het versum om verskyning aan te teken binne die tien dae tydperk uiteengesit in die dagvaarding. (1)

15.5 Your clients claim is based on a cheque which was dishonoured four years. The Defendant has pleaded prescription as his only defence. (2)

QUESTION 16 [8]

Draft a Magistrates Court plea omitting the heading and description of the parties and the ending in the following matters:

16.1 The contract on which the Plaintiff sues contains a clause referring disputes to arbitration. Defendant further alleges Plaintiff has failed to construct an electric fence round the development required in the specification attached to and forming part of the contract. (5)

16.2 Plaintiff has already obtained a judgment disposing of the dispute. (3)

THE END

15.5 U klient se eis is gebaseer op 'n tjek wat vier jaar terug oenteer is. Die verweerder pleit verjaring as sy enigste verweer. (2)

VRAAG 16 [8]

Stel op: 'n pleit in die Landdroshof (sonder die kopstuk, beskrywing van die partye of afsluiting) op die volgende feite.

16.1 Die kontrak waarop die eis berus, bevat 'n klousule wat geskille na arbitrasie verwys. Die verweerder beweer verder dat die eiser versuim het om 'n elektriese heining om die ontwikkeling op te rig soos vereis in die spesifikasies wat deel van die kontrak is. (5)

16.2 Eiser het reeds 'n finale bevel verkry oor die geskil. (3)

DIE EINDE

PROKUREURSEKSAMEN

**DEEL 4
BOEKHOU**

23 FEBRUARIE 2011

14:00-16:15
Totaal: [100]

1. Kandidate mag sakrekenaars gebruik.
2. By beantwoording van vrae moet die betrokke inskrywings duidelik geïdentifiseer, omskryf en uiteengesit word.
3. Atsonderlike besigheds- en trustkasboeke, asook klientegroofoekrekeninge moet geopen word en moet nie gekombineer word nie. Joernaalinskrywings moet behoorlik beskryf en geïdentifiseer word.
4. Skryf assebliefs 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 druip.

ATTORNEYS' EXAMINATION

**PART 4
BOOKKEEPING**

23 FEBRUARY 2011

14:00-16:15
Total: [100]

1. Candidates may use calculators.
2. In answering the questions you should ensure that the relevant entries are clearly identified, narrated and detailed.
3. 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.
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 [70] QUESTION 1 [70]

U Trustkasboeksaldo op 31 Desember 2010 is R150 000 en die trustbanksaldo is R165 000. Die Trustbankrekonstruasiestaat toon dat 'n tjek vir R15 000 uitgereik aan klient A, nog nie by die bank vir betaling aangebied was nie. U Besigheidskasboeksaldo op dieselfde datum is R10 000 (gunstig).

Die volgende transaksies het gedurende Januarie 2011 plaasgevind.

Jan 3 Mnr X stel u in kennis dat hy 'n tjek ter waarde van R20 000 wat hy in Desember 2010 aan u gegee het, gestop het omdat hy nie voldoende fondse gehad het nie. Hy gee u R20 000 in kontant ter vervanging van die tjek. Die geld is 'n deposito op 'n eiendom wat hy gekoop het. Hy betaal u ook R7 560 in kontant, vir u pro-forma koste rekening vir die oordrag.

4 U betaal die hereregte van R3 000 in Mnr X se saak.

5 Mev D betaal u R5 000 as deposito vir haar egskelidingsaak. U reik 'n dagvaarding namens haar uit en het 'n fooi van R1 140 insluitende BTW.

7 Die tjek van R15 000 uitgereik in Desember 2010 aan klient A is in die pos aan u teruggestuur gemerk "adres onbekend". U skryf die tjek terug en probeer om A se nuwe adres vas te stel.

8 Mnr E betaal u R2 500 per tjek, synde die eerste betaling verskuldig aan u klient Mev F. U het reeds 'n aanmaningsbrief aan E uitgereik (fooi R500).

9 Mnr G betaal u R3 420 synde u fooi (insluitende BTW), vir 'n atgehandelde kriminele saak.

10 U verreken aan Mev F.

4 You pay transfer duty of R3 000 in the matter of Mr X.

5 Mrs D pays you R5 000 as a deposit for her divorce action. You issue summons on her behalf and debit a fee of R1 140 including VAT.

7 The cheque for R15 000 issued in December 2010 to client A is returned in the post "address unknown". You write back the cheque and attempt to trace A's new address.

8 Mr E pays you R2 500 by cheque as a first instalment on his indebtedness to your client Mrs F. You had issued a letter of demand to E (fee R500).

9 Mr G pays you your fee of R3 420 (including VAT) for a completed criminal matter.

10 You account to Mrs F.

Jan 3 Mr X informs you that he has stopped payment of a cheque for R20 000 given to you in December 2010 as he was short of funds. He hands you R20 000 in cash to replace the cheque. The money is a deposit for a property he has purchased. He also pays you R7 560 cash in respect of your pro-forma account for the costs of transfer.

Handwritten notes:
- "less of the amount of the cheque"
- "of the amount of the cheque"
- "of the amount of the cheque"

14 U bank stel u in kennis dat Mnr E se tjek van R2 500 onteer is.

15 U betaal die Balju R200 vir betekening van die dagvaarding namens Mv D.

16 Mv D stel u in kennis om haar lêer te sluit en u verreken aan haar.

17 Die oordrag aan Mnr X word geregistreer. U het u fooi van R4 000 en u betaal die verkoper, Mnr S R20 000.

17 U het korrespondent ABC & Kie opdrag gegee om R50 000 van skuldenaar Green namens Black te verhaal. U ontvang die volgende staat. BTW is nie van toepassing nie.

BLACK VS GREEN

Per kontant Green	R50 000
Aan fooi dagvaarding	R300
Invoeringskommissie	R250
Aan tjek hiermee	R49 633
	<u>R50 183</u>

20 Mnr E betaal u R2 500 kontant ten opsigte van die VT tjek.

30 U betaal salarisse van R15 000.

U word gevra om:

- die bovermelde transaksies in al u rekeningboeke aan te teken.
- beide u Trust- en Besighidskasboeke soos op 31 Januarie 2011 te balanseer.
- oorplassings na u Besighidsrekening te doen wanneer u daarop geregtig is.
- die fooie waarop u geregtig is wanneer verskuldig te hef.
- voorsiening te maak vir BTW, tensy anders vermeld in die transaksie.

14 Your bank advises you that Mr E's cheque for R2 500 has been dishonoured.

15 You pay the Sheriff R200 for service of summons on behalf of Mrs D.

16 Mrs D advises you to close your file on her case and account to her.

17 The transfer to X is registered. You debit your fee of R4 000 and pay the seller, Mr S R20 000.

17 You instructed your correspondent ABC & Co to collect R50 000 from debtor Green on behalf of Black. You receive the following statement. VAT does not apply.

BLACK VS GREEN

By cash Green	R50 000
To fee summons	R300
Collection Commission	R250
To cheque herewith	R49 633
	<u>R50 183</u>

20 Mr E pays you R2 500 cash in respect of the RD cheque.

30 You pay salaries of R15 000.

You are required to:

- enter the aforesaid transactions in all your books of account
- balance both your Trust and Business cash books as at 31 January 2011.
- effect transfers to your Business account when you are entitled to do so. *
- charge the fees you are entitled to when due.
- charge VAT, unless specifically mentioned in the transaction. *

VRAAG 2 [10]

2.1 U het R20 000 namens u klient, Mnr Bafana, ingevorder. U klient stel u in kennis dat hy nie 'n bankrekening het nie, en vra dat u hom 'n kontant tjek gee vir gelde aan hom verskuldig.

Hoe sou u te werk gaan om sy opdrag uit te voer deur betaling te maak direk aan u klient uit die Trustrekening en nie die Besigheidsrekening nie. (7)

2.2 Mag Trust tjeks uitgereik word: 2.2.1 sonder kruising en nie gemerk "nie oordraagbaar"? (1)
2.2.2 betaalbaar aan "toonder"? (1)
2.2.3 betaalbaar aan 'n ongeïdentifiseerde begunstigde? (1)

VRAAG 3 [20]

U moet die volgende transaksies met volledige beskrywings in die toepaslike joernale aanteken. Identifiseer die joernale wat u sal gebruik.

3.1 Inkomstesëls van R300 word uit voorraad gebruik vir die registrasie van 'n maatskappy ABC (Edms) Bpk. (2)
3.2 U klient, Barney skuld u R2 047 en u hou R1 800 in Trust in sy rekening. U is geregtig om 'n oorpasing te maak. (2)
3.3 U korrespondent het u 'n 20% toelaag op fooie van R2 000 gegee. Maak voorsiening vir 14% BTW met boekstaving van die transaksie. (2½)

QUESTION 2 [10]

2.1 You have collected R20 000 on behalf of your client, Mr Bafana. Your client informs you that he does not have a bank account and requests that you give him a cash cheque for moneys due to him.

How would you go about giving effect to your client's instruction by making payment directly to your client from the Trust account and not the Business account. (7)

2.2 May Trust cheques be drawn: 2.2.1 without being crossed and marked "not transferable"? (1)
2.2.2 payable to "bearer"? (1)
2.2.3 payable to an unidentified payee? (1)

QUESTION 3 [20]

You are required to prepare fully narrated journal entries to record the following. Identify the journals to be used.

3.1 Revenue stamps of R300 have been issued from stamps on hand, for the registration of a company ABC (Pty) Ltd. (2)
3.2 Your client, Barney owes you R2 047 and you are holding R1 800 in Trust on his behalf. You are entitled to effect a transfer. (2)
3.3 Your correspondent has given you a 20% allowance on fees of R2 000. When making this entry, provide for VAT at 14%. (2½)

THE END	DIE EINDE
<p>3.4 Your bookkeeper has erroneously credited Martha's Trust ledger account with R4 000 instead of Melody's Trust ledger account. (2)</p> <p>3.5 You allow your client Ally a 10% reduction on fees of R5 000. VAT of R700 has already charged. Show how you would record the reduction. (2^{1/2})</p> <p>3.6 You receive Counsel's brief marked R1 750 in Mr Modau's divorce. (2)</p> <p>3.7 You charge your client Michael R300 for interest on an arrear account. (2)</p> <p>3.8 You purchase office equipment for R50 000 plus VAT at 14% from SG Supplies (Pty) Ltd. You are a VAT vendor. (2^{1/2})</p> <p>3.9 You receive your correspondent's accounting statement for fees of R1 140 (inclusive of VAT at 14%) in the collection matter of Joe vs Mike. No allowance is applicable. (2^{1/2})</p>	<p>DEEL 4 BOEKHOU [100]</p> <p>3.4 U boekhouer het Martha se Trustgrootboekrekening verkeerdlik met R4 000 gekrediteer in plaas van Melody se Trustgrootboekrekening. (2)</p> <p>3.5 U gee u klient Ally 'n 10% vermindering op 'n fooi van R5 000. BTW van R700 is reeds ghef. Toon aan hoe u die vermindering sou aanteken. (2^{1/2})</p> <p>3.6 U ontvang die advokaat se brevet van R1 750 in Mnr Modau se egskedding. (2)</p> <p>3.7 U hef R300 teen u klient Michael, vir rente op 'n agterstallige rekening. (2)</p> <p>3.8 U koop kantoor toerusting vir R50 000 plus BTW teen 14% van SG Supplies (Pty) Ltd. U is geregistreer vir BTW. (2^{1/2})</p> <p>3.9 U ontvang u korrespondent se rekening-staat vir fooie van R1 140 (BTW ingesluit teen 14%) in die invorderings saak van Joe vs Mike. Geen toelaag is van toepassing nie. (2^{1/2})</p>
<p>PART 4 BOOKKEEPING [100]</p>	<p>4</p>

PROKUREURSEKSAMEN

DEEL 2
BOEDELS

22 FEBRUARIE 2011

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. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.

3. Waar nodig, moet kandidate hulle eie feite versin.

4. Skryf assebliefs 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 2
ESTATES

22 FEBRUARY 2011

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. Candidates must remember that marks are awarded for good draftsman'ship.

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

[60]

Pierre Nel, 'n wewenaar en atgetrede boer, sterf aan 'n hartaanval op 1 Julie 2010. Toe hy ophou boer, het hy dorp toe getrek en sy plaas aan sy buurman, Jack Frost, verhuur. Die huurder het die huurgeld altyd vroegetydig betaal. Die huurgeld het R50 000,00 per jaar bedra, betaalbaar sesmaandeliks agteruit teen die einde van Junie en Desember van elke jaar. Die huurkontrak het op 31 Desember 2010 verstrik.

Toe wyle mnr Nel atgetree het, het hy sy vee en implemente per openbare veiling vir R2 000 000,00 netto verkoop. Die oordene het die bedrag wat hy van die afsaer ontvang het in 'n 6 maande vaste deposito by ABC Bank bele. Hy het die deposito op 1 April 2010 vir 'n verdere 6 maande hernu teen 'n rentekoers van 10% per jaar. Die rente is op vervaldatum betaalbaar.

Bo en behalwe bogenoemde plaas en vaste deposito, het die oordene die volgende bates besit:

1. Erf 5225 Bloemfontein, wat deur 'n taksateur vir R1 500 000,00 gewaardeer is.
2. 'n 2008 Range Rover wat deur die taksateur vir R480 000,00 gewaardeer is. Die ekskuteur verkoop hierdie voertuig op 15 Oktober 2010 uit die hand vir R460 000,00 en die opbrengs word op dieselfde dag in die boedelbankrekening gedeponeer.
3. Klerasie en persoonlike effekte van geen kommersiële waarde nie.

Mr Nel het nie in lewensversekering of skuld geglo nie. Die enigste laste van sy boedel, behalwe administrasiekoste en moontlike boedelbelasting, was BAVBO vir begrafniskoste (R12 000,00) en SAID se finale inkomste-belastingaanslag vir R5 000,00.

QUESTION 1

[60]

Pierre Nel, a widower and retired farmer, died of a heart attack on 1 July 2010. When he retired from farming, he moved to town and let his farm to his neighbour, Jack Frost, who always paid the rental before due date. The rental amounted to R50 000,00 p.a., payable six monthly in arrear at the end of June and December of each year. The lease terminated on 31 December 2010.

When the late Mr Nel retired, he sold his livestock and implements by public auction for R2 000 000,00 net. The deceased invested the amount received from the auctioneers in a 6 month fixed deposit with ABC Bank. He renewed the deposit on 1 April 2010 for a further 6 months at an interest rate of 10% p.a., the interest being payable on maturity.

Apart from the above farm and fixed deposit, the deceased owned the following assets:

1. Erf 5225 Bloemfontein, valued by an appraiser for R1 500 000,00.
2. 2008 Range Rover valued by the appraiser for R480 000,00. The executor sold this vehicle out of hand for R460 000,00 on 15 October 2010, and the proceeds were paid into the estate banking account on the same day.
3. His clothing and personal effects which were of no commercial value.

Mr Nel did not believe in either life insurance or debt. The only liabilities of his estate, apart from administration costs and possible estate duty, were BAVBO for funeral expenses of R12 000,00 and SARS for the final income tax assessment of R5 000,00.

Chains against estate

Assets Realised

immovable

income & expenditure

Mr Nel in his will appointed attorneys XYZ as his executors, and he exempted them from furnishing security. The said attorneys are registered as VAT vendors, but the deceased was not. The will states that the executor is entitled to charge professional fees in addition to the executor's remuneration. ** NB appraisal fees @ 3 1/2 (6% incl. VAT)*

In his will Mr Nel further bequeathed his farm to his major son Pieter, and he left the residue of his estate to his daughter Susan, who is a divorcee. The market value of the farm was determined by the appraiser as R2 100 000.00. *- less 30% (7) - no spousal bequest - Rebekah 44 R3,5 mill.*

REQUIRED:

Draw the first and final liquidation and distribution account as at 31 December 2010, omitting the heading and the executor's certificate. Specify the administration costs as far as it is possible to do so, and make calculated estimates for those items which cannot be precisely specified. Administration costs amount to R292 000.00 in total.

QUESTION 2

[15]

X dies without a will and is survived by:

- W1, his first wife from whom he was divorced.
- W2, his second wife, to whom he was married in community of property at the time of his death.
- E and F, the children of his predeceased son D born out of his marriage to W1.
- C, born out of wedlock from an extra-marital affair between X and one Z.
- A and B, his two children born out of his marriage to W2.
- K and M, the children of W2 from her previous marriage to her late first husband H1.

The net joint estate of X and W2 amounts to R4 000 000.00 (four million rand).

Mr Nel het in sy testament prokureurs XYZ as sy eksekuteurs benoem, en hulle vrygestel van die plig om sekuriteit stel. Gemelde prokureurs is vir BTW geregistreer, maar die oorledene was nie. Die testament bepaal dat die eksekuteur geregtig is om professionele fooie bo en behalwe die eksekuteursfooie, te hef.

Mr Nel het verder in sy testament sy plaas aan sy meerderjarige seun Pieter bemaak en die restant van sy boedel aan sy geskeide dogter Susan. Die markwaarde van die plaas is deur die taksateur op R2 100 000.00 vasgestel.

GEVRA:

Stel die eerste en finale likwidasië- en distribusierekening soos op 31 Desember 2010 op, met weglating van die opskrif en die eksekuteur se sertifikaat. Spesifiseer die administrasiekoste vir sover dit moontlik is, en beraam daardie items wat nie presies bepaal kan word nie. Die administrasie-koste beloop in totaal R292 000.00.

VRAAG 2

[15]

X sterf sonder 'n testament en word oorleef deur:

- W1, sy eerste vrou, van wie hy geskeis is.
- W2, sy tweede vrou, met wie hy ten tye van sy dood binnegemeenskap van goed getroud was.
- E en F, die kinders van sy vooroorlede seun D uit sy huwelik met W1.
- C, gebore uit 'n buite-egtelike verhouding tussen X en ene Z.
- A en B, sy twee kinders uit sy huwelik met W2.
- K en M, die kinders van W2 uit haar vorige huwelik met haar oorlede eerste man, H1.

X en W2 se netto gemeenskaplike boedel beloop R4 000 000.00 (vier miljoen rand).

GEVRA:
Verduidelik hoe die R4 000 000,00 verdeel moet word. Verstrek slegs die geldwaardes en motiveer u verdeling. Indien enige van die bovermelde persone nie in die boedel mag deel nie, identifiseer sodanige persone en motiveer sodanige uitsluiting.

VRAAG 3 [21]

U word deur Mary Ndhlovu oor haar testament geraadpleeg. Sy is 'n oujongnooi en woon in 'n luukse deeltitelleenheid waarvan sy die geregistreerde eienaar is. Haar bejaarde moeder wat finansiële onafhanklik is, woon by haar in. Mary wil die eiendom aan haar jonger suster bemaak, maar sy het twee probleme. Eerstens staan haar suster op trou met 'n jongman wat, na Mary se oordeel, 'n onverantwoordelike jong "lavensteihaan" is met 'n oppervlakkige lewensuitkyk. Tweedens is Mary bang dat indien sy voor haar moeder te sterwe sou kom, laasgenoemde nie 'n geskikte woonplek sal hê nie. Mary wil die restant van haar boedel aan haar kerk bemaak.

GEVRA:

Stel 'n testament op van minstens twee bladsye met inagneming van Mary se bekommernis oor haar moeder en haar bedenkings oor haar aanstaande swaer. Mary is nie ten gunste van die oprigting van 'n trust nie.

VRAAG 4 [4]

Pas nadat u die bereddering van 'n bestorwe boedel afgehandel het maar voor u ontslag as ekssekuteur, ontdek die oortledene se nagelate eggenote wat sy enigste erfgenaam is, 'n verdere date waarvan niemand bewus was nie. Dit is 'n ou aandeelsertifikaat vir 100 aandele in Rand Holdings Limited, wat slegs R900,00 werd is. Wat sal u as ekssekuteur in hierdie geval doen?

DIE EINDE

THE END

REQUIRED:
Explain how the amount of R4 000 000,00 is to be distributed. Give only the monetary values and motivate your distribution. Should any of the above mentioned parties be excluded from sharing in the estate, identify such party/parties and motivate such exclusion.

QUESTION 3 [21]

You are consulted by Mary Ndhlovu in connection with her will. She is a spinster and resides in an upmarket sectional title unit of which she is the registered owner. Her elderly mother, who is financially independent, resides with her. Mary wants to bequeath the property to her younger sister, but she has two concerns. Firstly, her sister is engaged to be married to a young man who, in Mary's opinion, is "an irresponsible little stud with a cavalier attitude towards life". Secondly, if she should predecease her mother, her mother would have no suitable place of abode. Mary wants to bequeath the rest of her estate to her church.

REQUIRED:

Draw a will of at least two pages in length for Mary with due regard to her concerns about her mother and her misgivings regarding her future brother in law. Mary is not in favour of the creation of a trust.

QUESTION 4 [4]

After you have finalised the administration of a deceased estate, but before obtaining your discharge as executor, the deceased's spouse stumbles upon an additional asset which nobody knew she had, namely an old share certificate of 100 shares in Rand Holdings Limited, worth a mere R900,00. The surviving spouse was the sole heir in terms of the deceased's will. What will you do as the executor?