

PROKURERSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

22 FEBRUARIE 2012

09:00-11:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.

1. Kandidate moet al die vrae beantwoord.
2. 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 3 ATTORNEY'S PRACTICE

22 FEBRUARY 2012

09:00-11:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. 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 [11]

Omskryf of beskryf, kortliks en sonder gebruik van voorbeelde:

- 1.1 Geskik en gepas om 'n prokureur te wees; (1)
- 1.2 'n Botsing van belange; (1)
- 1.3 Uitbuit/uitoorlê ("overreaching"); (1)
- 1.4 Dokumente wat onderhewig is aan 'n prokureur se retensiereg t.o.v. gelde; (1)
- 1.5 Die doel waarvoor die Getrouheidsfonds in die lewe geroep is; (2)
- 1.6 Professionele privilegie; (2)
- 1.7 Omstandighede waaronder 'n prokureur 'n mandaat moet weier. (3)

VRAAG 2 [10]

- 2.1 Verstrek redes waarom dit soms beter is om sake te bedryf deur 'n regs persoon eerder as enkeleienaar of vennootskap; (5)
- 2.2 Welke vorms van 'n maatskappy kan kragtens die nuwe Maatskappywet No 7 van 2008 opgerig word? (5)

VRAAG 3 [5]

Wat is die regsverhouding tussen 'n prokureur en kliënt? Noem vier regsgevolge van die regsverhouding met betrekking tot bv. vergoeding, onttrekking, kommissie, afrekening.

VRAAG 4 [3]

Noem drie pligte van 'n opdragnemende korrespondent.

QUESTION 1 [11]

Define or describe, briefly and without use of examples:

- 1.1 Fit and proper to be an attorney; (1)
- 1.2 A conflict of interest; (1)
- 1.3 Overreaching as opposed to overcharging; (1)
- 1.4 The documents subject to an attorney's lien/hypothec for fees; (1)
- 1.5 The purpose for which the Attorneys Fidelity Fund was established; (2)
- 1.6 Legal professional privilege; (2)
- 1.7 The circumstances requiring an attorney to decline a mandate. (3)

QUESTION 2 [10]

- 2.1 Give reasons why in certain circumstances conducting a business through a legal entity is preferable to doing so as a sole proprietor or partnership; (5)
- 2.2 What types of company can be incorporated under the New Companies Act No 71 of 2008? (5)

QUESTION 3 [5]

What is the legal relationship between an attorney and client? List four legal consequences arising from that relationship relating to e.g. reward, termination, commissions, accounting.

QUESTION 4 [3]

List three duties of an instructed correspondent.

VRAAG 5 [6]

Noem ses voorbeelde/gevalle van minagting *in facie curiae*. ("in the face of the court")

VRAAG 6 [24]

A leen R200 000.00 by B terugbetaalbaar in 60 gelyke paaient. Stel 'n volledige skuld-erkenning op met uitsluiting van die klousules oor die rentekoers, vervroegde betaling en domisilie.

VRAAG 7 [12]

- 7.1 Wat is die essensiële sake waaroor partye moet ooreenkom om 'n geldige vennootskap tot stand te bring? (4)
- 7.2 Stel 'n gepaste klousule op wat handel met ontbinding tussen drie vennote wat insluit dood, uitrede, kontrakbreuk. (8)

VRAAG 8 [15]

Stel enige drie van die volgende klousules op vir gebruik in enige ooreenkoms:

- 8.1 Volle ooreenkoms; (5)
- 8.2 Wysigings; (5)
- 8.3 Jurisdiksie van distrikshowe; (5)
- 8.4 Verdeelbaarheid van bepalings. (5)

VRAAG 9 [9]

Skryf aan u kliënt wat gehoor het van die kurator in die insolvente boedel van een van sy debiteure om hom raad te gee oor hoe om 'n eis te bewys vir goedere verkoop en gelewer en die oorwegings oor of hy hoegenaamd die eis moet bewys.

QUESTION 5 [6]

List six examples/instances of contempt in the face of the court. ("*in facie curiae*")

QUESTION 6 [24]

A borrows from B an amount of R200 000,00 repayable in 60 equal monthly instalments. Draw a complete acknowledgement of debt omitting only clauses relating to the rate of interest, early repayment and domicile.

QUESTION 7 [12]

- 7.1 What are the essential matters on which parties must agree in order to create a valid partnership? (4)
- 7.2 Draft a suitable clause to deal with dissolution of the partnership between 3 partners including retirement, breach and death. (8)

QUESTION 8 [15]

Draft any three of the clauses listed below for inclusion in any agreement:

- 8.1 Whole agreement; (5)
- 8.2 Variation; (5)
- 8.3 Jurisdiction for district courts; (5)
- 8.4 Severability of provisions. (5)

QUESTION 9 [9]

Write to your client who has heard from the trustee in the insolvent estate of one of his creditors. Advise him how to prove a claim for goods sold and delivered and the considerations as to whether to prove a claim at all.

VRAAG 10

[5]

Welke van die volgende sou ingesluit word by die berekening van aanwas;

- 10.1 Groot inkomste deur die man verdien terwyl sy vrou die huishouding behartig; (1)
- 10.2 Geld wat die vrou verdien deur deelyds vir bure klere te maak; (1)
- 10.3 Die man erf R20 000,00 van sy oorlede vader; (1)
- 10.4 Die vrou ontvang R20 000,00 as algemene skade na 'n motorbotsing; (1)
- 10.5 Die POF betaal die vrou R50 000,00 mediese uitgawes; (1)

QUESTION 10

[5]

Which of the following would be included in the calculation of the accrual as between spouses;

- 10.1 Large income earned by the husband while his wife remained at home to manage the household; (1)
- 10.2 Money earned by the wife by part-time dressmaking for neighbours; (1)
- 10.3 The husband inherits R20 000,00 out of his father's estate; (1)
- 10.4 The wife receives R20 000,00 general damages arising from an accident; (1)
- 10.5 The RAF pays the wife R50 000,00 for medical expenses. (1)

DIE EINDE

THE END