

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

19 FEBRUARIE 2013

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 druip.

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

19 FEBRUARY 2013

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

[15]

Op 20 Oktober 2012 was u kliënt, terwyl sy aan diens was as 'n werknemer van 'n sekuriteitsmaatskappy, 'n passassier in 'n motorvoertuig bestuur deur 'n mede werknemer in die loop van sy diens en in die uitvoering van sy pligte as 'n werknemer van die sekuriteitsmaatskappy. Hulle het gereageer op 'n noodgeval, en as gevolg van baie hoë spoed, kon hulle voertuig nie om 'n draai in die pad kom nie, en het met 'n keerwal aan die kant van die pad gebots. As gevolg van die botsing het u kliënt beserings opgedoen en die volgende skade gely:

- Hospitaaluitgawes
- Reeds gelede verlies aan verdienste
- Algemene skade

- 1.1 Teen watter party/partye kan u kliënt eise instel? (2)
- 1.2 Watter bedrae kan van die onderskeie partye geëis word? (4)
- 1.3 Wat is die vereiste wat nagekom moet word vir u kliënt om suksesvol te wees met 'n eis vir algemene skade? Indien u kliënt nie sou voldoen aan hierdie vereiste nie, is daar enige uitsonderings wat u kliënt kan help om nogtans te kwalifiseer vir algemene skade? (5)
- 1.4 Aanvaar dat u kliënt nie aan die vereistes voldoen nie om van die party/partye te verhaal wat u genoem het in paragraaf 1.1 hierbo. Sal u kliënt in sodanige geval geregtig wees om van haar medewerknemerte verhaal? Motiveer u antwoord. (2)
- 1.5 Aanvaar dat die voertuig bestuur was deur u kliënt se werkgewer. Hoe sal u antwoord in 1.1 verskil, indien enigsins? (2)

QUESTION 1

[15]

On the 20th October 2012, your client, whilst on duty as an employee of a security company, was a passenger in a motor vehicle driven by a co-employee in the course of her employment and in the exercise of his duties as a servant of the security company. They were responding to an emergency and, as a result of excessive speed, the vehicle failed to negotiate a bend in the road, and collided into an embankment. As a result, your client has sustained injuries and suffered the following damage:

- Hospital Expenses
- Past Loss of earnings
- General Damages

- 1.1 Against which party/parties can your client institute claims? (2)
- 1.2 What amount can she claim from each party? (4)
- 1.3 What is the requirement that must be satisfied in order for your client to succeed with the claim for general damages? Should your client not satisfy this requirement, are there any exceptions that may assist your client to nevertheless qualify for general damages? (5)
- 1.4 Assume that your client does not meet the requirements to recover from the party/parties you have identified in paragraph 1.1 above. Would your client be entitled to recover from her co-employee? Motivate your answer. (2)
- 1.5 Assume that the vehicle was being driven by your client's employer. How would your answer to question 1.1 differ, if at all? (2)

VRAAG 2 [4]

- 2.1 Omskryf die wyse(s) waarop u as prokureur wat namens 'n eiser optree, 'n eis kan indien by the Padongelukfonds. (2)
- 2.2 Van wanneer af begin die 60 dae tydperk loop ten opsigte van elk van die wyses van indiening wat u genoem het? (2)

VRAAG 3 [2]

Is u kliënt, wat 'n voetganger was, geregtig om 'n eis in te dien teen die Padongelukfonds, as sy in 'n sloot val terwyl sy 'n botsing vermy met 'n voertuig waaroor die bestuurder beheer verloor het, en sodoende ernstige beserings opdoen? Motiveer u antwoord.

VRAAG 4 [2]

Hoe sal u as prokureur namens 'n eiser in 'n geding teen die Padongelukfonds verseker dat die oorspronklike SAPD dossier en hospitaalrekords by die hof is op die dag van die verhoor?

VRAAG 5 [2]

Wanneer begin rente loop teen die Padongelukfonds? Teen welke rentekoers sal sodanige rente bereken word? Verduidelik u antwoorde.

VRAAG 6 [3]

Ingevolge Reël 4 van die Eenvormige Hofreëls kan betekening van 'n dagvaarding uit die Hooggeregshof op een of meer van die volgende wyses geskied. **Dui aan waar of vals.**

- 6.1 By die gekose domicilium van die verweerder. (½)

QUESTION 2 [4]

- 2.1 Describe the manner or manners in which you as an attorney acting for a claimant can deliver a claim to the Road Accident Fund? (2)
- 2.2 From when does the period of 60 days commence to run in respect of each or any of the manners of delivery you have identified? (2)

QUESTION 3 [2]

Is your client, who was a pedestrian at that time, entitled to lodge a claim against the RAF in circumstances where she falls into a ditch whilst avoiding a collision with a vehicle whose driver had lost control, sustaining serious injuries thereby? Motivate your answer.

QUESTION 4 [2]

As an attorney representing Plaintiff in a lawsuit against the RAF to recover damages, how will you ensure that the original SAPS docket and hospital records are at Court on the date of trial?

QUESTION 5 [2]

When does interest start running against the RAF? At what rate will such interest be calculated? Explain your answers.

QUESTION 6 [3]

In terms of Rule 4 of the Uniform Rules of Court, service of a summons issued out of the High Court may be effected in one or other of the following ways. **Answer true or false.**

- 6.1 At the chosen *domicilium* of the defendant. (½)

DEEL 1 HOFPROSEDURES [100]	PART 1 COURT PROCEDURES [100]
6.2 Aan enige agent wat behoorlik skriftelik daartoe gemagtig is om betekening namens die verweerder te aanvaar. (½)	6.2 On any agent who is duly authorised thereto in writing to accept service on behalf of the defendant. (½)
6.3 By die woonadres van die burgemeester van 'n munisipaliteit as verweerder. (½)	6.3 At the residential address of the mayor of the municipality as defendant. (½)
6.4 By die woonadres van die direkteur van 'n verweerder maatskappy waarvan die geregistreerde adres elders is. (½)	6.4 At the residential address of a director of a defendant company which has its registered address elsewhere. (½)
6.5 In die geval van 'n vennootskap, wat nie oor 'n plek van besigheid beskik nie, by die woonadres van 'n vennoot. (½)	6.5 In the case of a partnership which has no place of business, on a partner at his / her residential address. (½)
6.6 Persoonlik op elk van die trustees van 'n <i>inter vivos</i> trust by hul onderskeie besigheidsadresse. (½)	6.6 Personally on each of the trustees of an <i>inter vivos</i> trust at their respective business addresses. (½)
VRAAG 7 [14]	QUESTION 7 [14]
7.1 In welke gevalle kan 'n eiser aansoek doen vir summere vonnis? (4)	7.1 In what instances can a plaintiff apply for summary judgment? (4)
7.2 Mnr Phineas Ndlovu is die besturende direkteur van Mzansi Builders (Edms) Bpk wat aksie ingestel het teen Bafana Construction BK vir betaling van die bedrag van R350 000 vir goedere verkoop en gelewer gedurende Augustus 2011 op spesiale aandrang en versoek van die verweerder tesame met rente en koste. Die verweerder het verdediging aangeteken. Stel die kennisgewing van mosie en beëdigde verklaring op ter ondersteuning van die aansoek om summere vonnis. (8)	7.2 Mr Phineas Ndlovu is managing director of Mzansi Builders (Pty) Ltd which has instituted an action against Bafana Construction CC for the amount of R350 000.00, plus interest, plus costs in respect of goods sold and delivered by plaintiff to the defendant at the defendant's special instance and request during August 2011. The defendant has entered an appearance to defend. <u>Draft the notice of motion and the affidavit in support of the application for summary judgment.</u> (8)
7.3 Aan wie word die kennisgewing van mosie gerig? (2)	7.3 To whom is the notice of motion addressed? (2)
VRAAG 8 [3]	QUESTION 8 [3]
Noem die verskillende soorte dagvaardings in die Hoë Hof. Noem een voorbeeld van 'n eisoorzaak waar u elk van die onderskeie dagvaardings sou kon gebruik.	What are the different types of summonses in the High Court? Name one example of a cause of action for which each of the summonses can be used?

VRAAG 9 [3]

Identifiseer ses gevalle waar die liassing van 'n spesiale pleit toepaslik sou wees.

VRAAG 10 [2]

Kragtens die Wet op die Instel van Gedinge teen Sekere Staatsorgane 40/2002 mag aksie nie teen 'n staatsorgaan ingestel word nie tensy vooraf kennis gegee is aan die staatsorgaan.

- 10.1 Binne welke tydperk van datum waarop die skuld ontstaan het moet sodanige kennis gegee word? (½)
- 10.2 Buiten die kwantum wat moet die kennisgewing in 10.1 genoem, nog uiteensit? (½)
- 10.3 Hoeveel dae moet verstryk nadat die kennisgewing op die staatsorgaan beteken is voordat dagvaarding uitgereik mag word? (½)
- 10.4 Is die Wet van toepassing op eise voortspruitend uit delik? (½)

VRAAG 11 [10]

U kliënt, James Bond, 'n 28 jarige man van Hoofstraat 12, Paarl word aangekla van bestuur van 'n motorvoertuig terwyl die alkohol vlak in sy bloed hoër as die toegelate wetlike perk was. Op 10 April 2012 het hy 'n Toyota voertuig, registrasie nommer CJ1234 in Jan van Riebeeckweg bestuur. Die betrokke dag het hy alkoholiëse drankies met sy vriende geniet en was hy oortuig dat hy nugter genoeg was om sy voertuig te bestuur. By die kruising van Jan Van Riebeeckweg en Boschstraat, Paarl het 'n ander voertuig, sonder inagneming dat u kliënt reeds in die kruising was, ingedraai en die kant van u kliënt se voertuig gestamp. U kliënt is op die toneel gearresteer en 'n bloedmonster is van hom geneem. Dit het later geblyk dat die alkohol vlak in sy bloed 0.22g per 100ml was.

Stel 'n Artikel 112 (2) verklaring op ingevolge die Strafproseswet.

QUESTION 9 [3]

Identify six instances when the filing of a special plea would be appropriate.

QUESTION 10 [2]

In terms of the Institution of Legal Proceedings against certain State Organs Act 40/2002, action may not be instituted against an Organ of State unless prior notice was given to the State Organ.

- 10.1 Within which time period from the date of the debt arising must such notice be given? (½)
- 10.2 What must the notice referred to in 10.1 above set out apart from the quantum? (½)
- 10.3 How many days must lapse after the notice was served on the Organ of State before process may be served on it? (½)
- 10.4 Does the Act apply in respect of claims arising from delict? (½)

QUESTION 11 [10]

Your client, James Bond, an adult male 28 years old and residing at 12 Main Street, Paarl is charged with driving a motor vehicle whilst the alcohol content of his blood exceeded the legal limit. On the 10 April 2012 he drove a Toyota motor vehicle with registration number CJ 1234 on Jan Van Riebeeck Road, Paarl. On that particular day he had a few alcoholic drinks with his friends, but was convinced that he was sober enough to drive his vehicle. At the intersection of Jan Van Riebeeck Road and Bosch Street another vehicle, without regard for your client having already proceeded into the intersection, drove into the side of your client's vehicle. Your client was arrested at the scene, his blood drawn and it subsequently transpired that the alcohol content of his blood was 0,22 grams per 100ml.

Draft a Section 112(2) statement in terms of the Criminal Procedure Act.

VRAAG 12

[6]

John Smith deel u mee (voor vonnis) dat hy skuldig bevind is aan die besit van dagga nadat hy 'n pleit van skuldig aangebied het. Hy was besig om te ryloop en is opgelaai in 'n voertuig wat deur 'n vriend bestuur is met twee ander passasiers. Toe die lede van die Suid Afrikaanse Polisediens die voertuig gestop en ondersoek het, het hy in die agterste sitplek van die voertuig gesit. 'n Koevert met dagga is onder sy sitplek gevind. Hy en al die ander insittendes is aangekla van die besit van dagga. Terwyl hy in die selle gewag het om hof toe geneem te word is hy deur die mede-beskuldigdes meegedeel dat aangesien die dagga onder sy sitplek gevind is, hy skuldig was op die aanklag. Hy is ook meegedeel dat indien hy nie vir die hof sê dat dit sy dagga is nie, sou sy vriende "hom kry". Gevolglik het hy skuldig gepleit. Hy kan nie bekostig om 'n kriminele rekord te hê nie aangesien dit sy indiensneming sal beïnvloed.

Watter raad sal u vir u kliënt gee? Beskryf die prosedure wat in die hof sal volg.

VRAAG 13

[5]

Noem vyf moontlike strawwe wat 'n hof 'n beskuldigde kan oplê wat van 'n misdryf skuldig bevind is.

VRAAG 14

[4]

U kliënt, Rasta, deel u mee dat, terwyl hy 'n bier by 'n plaaslike Taverne geniet het, het die klaer hom met 'n mes aangeval. Hy was in staat om die mes by die klaer af te neem. Die klaer het weggehardloop en hy het die klaer agternagesit en hom vyf keer in die rug met die mes gesteek. Hy deel u mee dat hy van plan is om op 'n klagte van aanranding met die opset om ernstig te beseer skuldig te pleit.

Agt maande daarna, en net voor die aanvang van die verhoor, adviseer u kliënt u dat hy van plan is om onskuldig te pleit aangesien hy na die

QUESTION 12

[6]

John Smith advises you (before sentence) that he has been found guilty of possession of dagga having tendered a plea of guilty to that effect. He was hitchhiking and given a lift in a vehicle driven by a friend with two passengers. He was seated in the rear passenger seat when the vehicle was stopped by members of the South African Police Service and searched. An envelope of dagga was found under the seat occupied by client. He and the other passengers were all charged with possession of dagga. Whilst in the cells awaiting to be taken to court he was told by the co-accused that as the dagga was found under his seat he was guilty of the offence. He was also told that unless he advised the Court that the dagga belonged to him his friends would "get him". He accordingly pleaded guilty. He cannot afford to have a criminal record as this will affect his employability.

What advice will you give your client? Describe the procedure that will follow in Court.

QUESTION 13

[5]

Name five forms of sentence that a Court can impose upon an accused who has been convicted of an offence.

QUESTION 14

[4]

Your client, Rasta, tells you that he was enjoying a beer in a local tavern when he was attacked with a knife by the complainant. He managed to dispossess the complainant of the knife and as the complainant ran away Rasta chased him and stabbed him five times in the back. He advises you that he intends pleading guilty to the charge of assault with intent to commit grievous bodily harm.

Eight months later and shortly before trial he tells you that he intends pleading not guilty as, subsequent to the offence, he has shaved his

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voorval sy baard en lokke ("dreadlocks") afgeskeer het. Hy is van mening dat die staatsgetuies hom nie positief sal kan identifiseer as die persoon wat die klaer aangerand het nie. Hy versoek u om hom nog steeds te verteenwoordig.

Bespreek die opsies beskikbaar en u etiese plig as die beskuldigde se prokureur.

VRAAG 15 [2]

'n Kliënt raadpleeg u en oorhandig aan u 'n koopkontrak. U kliënt is die verkoper. Die volgende is 'n klousule in die kontrak:

"Die koper en die verkoper stem toe tot die jurisdiksie van die Landdroshof Port Elizabeth vir die beslegting van enige geskil ten opsigte van die kontrak."

U kliënt deel u mee dat die ooreenkoms gedurende 2010 in Johannesburg gesluit is en dat die koper in Johannesburg woon en werk.

Gedurende Januarie 2013 versoek u kliënt u om die koper uit die Distrikslanddroshof van Port Elizabeth te dagvaar vir betaling van die verkoopsprys ten bedrae van R400 000.00. Hierdie bedrag het pas opeisbaar geword.

Mag u kliënt voortgaan in die Port Elizabeth Distrikslanddroshof? Verskaf redes vir u antwoord.

VRAAG 16 [13]

(a) Jimmy Bellows is die Besturende Direkteur van Bellows (Edms) Beperk.

Op 10 Julie 2012 bestuur hy die maatskappy se motorvoertuig, 'n BMW registrasienommer ND 12 in Noordstraat, Durban.

Hy staan stil by 'n verkeerslig waar 'n voertuig, 'n Toyota bakkie registrasienommer ND 737, agter in die BMW vasry.

beard and dreadlocks and does not believe that the state witnesses will be able to positively identify him as being the person who assaulted the complainant. He now wishes to plead not guilty and requests that you continue acting for him.

Discuss shortly the options available and your ethical responsibility as the accused's attorney.

QUESTION 15 [2]

You are consulted by a client who hands you a contract of sale. Your client is the seller. The following clause appears in the contract:

"The buyer and the seller consent to the jurisdiction of the Magistrate's Court, Port Elizabeth for the determination of any dispute arising from the contract."

Your client informs you that the agreement was concluded in Johannesburg in 2010 and that the buyer resides and works in Johannesburg.

In January 2013 your client requests you to issue Summons against the buyer for the payment of the purchase price of R400 000,00 which has now become due and payable, in the Port Elizabeth District Magistrate's Court.

May your client proceed in the Port Elizabeth District Magistrate's Court and give reasons for your answer.

QUESTION 16 [13]

(a) Jimmy Bellows is the Managing Director of Bellows (Pty) Limited.

On the 10th July 2012 he is driving the company's motor vehicle, a BMW registration number ND 12 in North Street, Durban.

① He is stationary at a traffic light where a motor vehicle ND 737, a Toyota bakkie, ② collides with the rear of his vehicle.

Die Toyota behoort aan Classic Paper CC. Ten tye van die botsing is dit bestuur deur Billy Naidoo in die uitvoer en bestek van sy pligte as werknemer van Classic Paper CC.

Die BMW word in die botsing beskadig. Die redelike en noodsaaklike herstelkoste van die voertuig is R25 000.00.

Daar was geen reaksie op 'n aanmaningsbrief wat op 12 September 2012 aan beide Classic Paper CC en aan Billy Naidoo gestuur is om binne 10 dae te betaal nie.

Stel die nodige Besonderhede van Vordering op om aksie in te stel teen beide verweerders. (Laat opskrifte weg.)
(10)

(b) Beide verweerders verdedig die aksie.

Mag die eiser aansoek doen om Summiere Vonnis teen die verweerders? Verskaf redes vir u antwoord en dui aan in watter gevalle aansoek om summiere vonnis gedoen mag word? (3)

VRAAG 17 [5]

U tree op vir die verweerder. Adviseer u kliënt oor wat hy in die volgende gevalle in die Landdroshof mag doen:

(a) Aksie is deur 'n uitlander woonagtig in Japan teen hom ingestel in Suid-Afrika. Die uitlander beskik oor geen bates in Suid-Afrika nie. (1)

(b) U kliënt opponeer 'n Dagvaarding vir Voorlopige Vonnis wat op hom beteken is. Ten spyte van die opponerende Beëdigde Verklaring wat hy geliasseer het, word voorlopige vonnis aangeteken.

The said Toyota is owned by Classic Paper CC and at the time of the collision it is being driven by Billy Naidoo acting in the course and scope of his employment with Classic Paper CC.

As a result of the collision the BMW is damaged and the reasonable and necessary costs of repairing the vehicle is R25 000,00.

A letter of demand sent on 12th September 2012 to both Classic Paper CC and Billy Naidoo, giving them 10 days to pay, has met with no response.

Draft the necessary Particulars of Claim in which action is instituted against both Defendants. (Omit headings).
(10)

(b) Both Defendants enter an Appearance to Defend.

May the Plaintiff apply for Summary Judgment against the Defendants? Give reasons for your answer and indicate in which instances one may apply for summary judgment? (3)

QUESTION 17 [5]

You Act for the Defendant. Advise your client what action he may take in the following circumstances in the Magistrate's Court:

(a) Action has been instituted against him in South Africa by a foreigner living in Japan who appears to have no assets in South Africa. (1)

(b) A Provisional Sentence Summons has been served upon your client, who opposed the Summons. Despite his filing an Opposing Affidavit provisional sentence has been entered.

U kliënt het fondse maar hy glo dat hy 'n goeie verweer het. Wat kan die verweerder doen sodat die saak op verhoor kan gaan? (2)

- (c) U kliënt het skulde ten bedrae van R40 000.00 en kan sy krediteure nie betaal nie. Hy het egter 'n werk en sal maandelikse betalings kan maak. Adviseer u kliënt oor watter opsies tot sy beskikking is. (2)

VRAAG 18 [5]

U tree op vir Faizal Hassan.

U kliënt het 'n groot hoeveelheid papier by die eiser gekoop. Toe die papier afgelewer is, het u kliënt opgemerk dat die papier nie soos versoek gelinieer was nie. Hy het die eiser gekontak en hom meegedeel dat dit foutief is en dit terugbesorg. Geen antwoord is van die eiser ontvang nie.

Dan gaan u kliënt op 'n sakereis oorsee. Terwyl hy weg is word dagvaarding op sy vrou beteken vir die koste van die papier. Sy plaas dit in 'n laai en vertel hom nie daarvan wanneer hy van sy oorsese reis af terugkeer nie.

Die eiser doen aansoek om Verstek Vonnis wanneer die tyd om verdediging aan te teken verstryk. Vonnis word toegestaan op 15 Augustus 2012.

Op 1 September 2011 daag die balju op by u kliënt se perseel met 'n Lasbrief vir Eksekusie.

U kliënt kontak onmiddelik die eiser in 'n poging om die aangeleentheid op te los maar is onsuksesvol na maande se onderhandelinge. U kliënt nader u om Aansoek om Tersydestelling van die Vonnis op te stel. Aansoek word gedoen op 15 Januarie 2012.

Stel die Kennisgewing op. (Los enige opskrifte of stawende verklaring uit.)

Your client has sufficient funds but still believes he has a good defence. What action can be taken by the Defendant so that the matter can proceed to Trial? (2)

- (c) Your client has debts of R40 000,00 and is not in a position to pay his creditors. He is however employed and will be in a position to make monthly payments. Advise your client what options are available to him. (2)

QUESTION 18 [5]

You act for Faizal Hassan.

Your client has purchased a large quantity of paper from the Plaintiff. However, when it was delivered he noticed that it was not lined as requested. He contacted the Plaintiff advising him that it is defective and returned it. No response is received from the Plaintiff.

Your client then goes on an overseas business trip. Whilst away a Summons is served upon his wife for the costs of the paper. She places the Summons in a drawer and when he returns from overseas does not draw it to his attention.

When the time-period for entering an appearance to Defend has expired the Plaintiff applies for Default Judgment which is granted on the 15th August 2012.

On the 1st September 2012 the Sheriff arrives at your client's premises with a Warrant of Execution.

Your client immediately contacts the Plaintiff in an effort to try and resolve the matter but after months of negotiations this proved unsuccessful. Your client now approaches you requesting that an Application for the rescission of the Default Judgment be drawn. The Application is made on the 15th January 2013.

Draw the necessary Notice. (Omit any headings or supporting affidavit).

DIE EINDE

THE END