

PROKUREURSEKSAMEN

DEEL 1
HOFPROSEDURES

18 FEBRUARIE 2014

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. Skryfassebliefstegs 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 druij.

ATTORNEYS' EXAMINATION

PART 1
COURT PROCEDURES

18 FEBRUARY 2014

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.

QUESTION 1
[20]

You are consulted by your client, Mary White, who advises you as follows:

1.1 Her husband died on the 8th of July 2011 as a result of bodily injuries he sustained in a motor collision that occurred on the 15th of May 2011. He was driving his own vehicle at the time;

1.2 He was unconscious from the time of the accident until he regained consciousness on 1 July 2011 but passed away seven days later;

1.3 There are two minor children, John and Claire born of the marriage presently aged ten and fifteen years respectively;

1.4 She had not been required to work during the marriage, the deceased supported the whole family and at the time of his death was earning R50 000.00 per month from his employment as an engineer;

1.5 At a recent trial instituted by the owner and driver of the other vehicle involved in the collision, the Court made a finding that both drivers were equally to blame for the collision.

You advise your client that in the circumstances she and her children have a claim for loss of support arising from the death of Mr White and she accepts your advice and instructs you to proceed with the claim.

You must answer the following questions:

1. Detail the documents you must obtain to substantiate the claims and which must accompany the RAF Claim Forms. (4)

VRAAG 1
[20]

Mary White raadpleeg u en maak die volgende mededelings :

1.1 Haar eggenoot het op 8 Julie 2011 gesterf weens liggaamlike beserings wat hy opgedoen het in 'n motorbotsing wat plaasgevind het op 15 Mei 2011. Hy het toe sy eie voertuig bestuur.

1.2 Hy was in 'n koma vanaf die datum van die ongeluk tot dat hy sy bewussyn herwin het op 1 Julie 2011, maar hy het sewe dae later te sterwe gekom.

1.3 Twee minderjarige kinders, John en Claire, is uit die huwelik gebore en hulle is tans onderskeidelik tien en vyftien jaar oud.

1.4 Dit was nie vir haar nodig om tydens haar huwelik te werk nie. Die oorledene het die hele gesin ten tyde van sy atsterwe onderhou en hy het R50 000 per maand verdien as ingenieur.

1.5 In 'n onlangse verhoor wat aanhangig gemaak is deur die eienaar en bestuurder van die ander voertuig in die botsing, het die hof bevind dat beide bestuurders gelykop bygedra het tot die botsing.

U adviseer u klient dat sy en haar kinders in die omstandighede 'n eis het vir verlies aan onderhoud voortspruitend uit die dood van Mr White. Sy aanvaar u advies en gee u opdrag om voort te gaan met die eis.

U moet die volgende vrae beantwoord:

1. Lys die dokumente wat u moet bekom om die eise te staar en wat die POF eisvorms moet vergesel. (4)

2. In point form set out the averments that must be made in the particulars of your client's claim in order to substantiate the claims for loss of support that she and the children had suffered; (5)

3. Up until when will you be able to claim loss of support on behalf of the widow and each of her children? (2)

4. In calculating the quantum of the claims for loss of support, what amount will you use as the deceased's annual income and how will you apportion that income amongst the dependants? (4)

5. By what date will you have to lodge the claim form in regard to the widow's claim? (1)

6. What principles will apply relating to the prescription of the children's claims? (2)

7. Will the RAF be entitled to apply an apportionment of damages to the claims in order to take into account the negligence of the deceased? Motivate your answer fully. (2)

QUESTION 2 [5]

Your client was injured in a motor vehicle accident that occurred on 29 November 2011 but was found not to have a 30% or more whole person impairment. Are there any circumstances under which he/she may still be entitled to a claim for general damages? Motivate your answer. (4)

QUESTION 3 [4]

List four grounds on which the procedures of a lower court may be brought under review before the High Court.

2. Sit puntsgewys die bewerings uiteen wat in die besonderhede van vordering van u klient gemaak moet word ten einde die eise vir verlies aan onderhoud wat sy en die kinders gelyk het, te staaf. (5)

3. Tot wanneer mag u verlies aan onderhoud namens die weduwe en elk van haar kinders eis? (2)

4. In die berekening van die quantum van die eise vir verlies aan onderhoud, welke bedrag sal u gebruik as die oordeel se jaarlikse inkomste en hoe sal u dit verdeel tussen die afhanklikes? (4)

5. Teen welke datum sal u die eisvorm ten opsigte van die weduwe se eis moet indien? (1)

6. Welke beginsels sal van toepassing wees met betrekking tot verjaring van die kinders se eise? (2)

7. Sal die POF geregtig wees om 'n verdeling van skadevergoeding toe te pas om die nalatigheid van die oordeel in ag te neem? Motiveer u antwoord. (2)

VRAAG 2 [5]

U klient is beseer in 'n motorvoertuig ongeluk wat op 29 November 2011 plaasgevind het maar is bevind om nie 30% of meer totaal liggaamlik ongeskik te wees nie. Is daar enige omstandighede waaronder hy/sy nog steeds geregtig sal wees op 'n eis vir algemene skade? Motiveer u antwoord. (4)

VRAAG 3 [4]

Noem vier gronde waarop verrigtinge in 'n laer hof op herstelling na die Hof geneem kan word. (4)

VRAAG 4

U tree op namens die verweerder in 'n Hoë Hof saak. Watter prosedurele stappe sal u in elk van die volgende omstandighede kan doen?

4.1 Die dagvaarding is nie behoorlik onder- teken nie. (1)

4.2 Die eiser versum om sy deklarasie tydig te liasseer. (1)

4.3 Die eiser is 'n *peregrinus* van die Republiek. (1)

4.4 Die dagvaarding openbaar nie 'n skuld- oorsaak nie. (1)

4.5 Die hof het nie jurisdiksie nie. (1)

VRAAG 5

U klient oorhandig aan u 'n dagvaarding wat op die 18de Julie 2013 op hom beteken is. Die eisorsaak ontstaan uit 'n ooreenkoms vir goedere verkoop en gelewer op 28 Februarie 2010. Die faktuur moet vereffen moet word binne 30 dae na ontvangs van die goedere. Stel die toepaslike spesiale pleit op wat u sal beteken en liasseer. (10)

Smeka W.

VRAAG 6

U tree op namens die verweerder in 'n bestrede hoë hofgeding. Die saak is oortwee maande op verhoor. Net na sluiting van pleistukke het u 'n Reël 35(1) kennisgewing op die eiser se prokureurs beteken waarin u die eiser versoek om bloot te lê. Daar was geen reaksie op die kennisgewing of op 'n daaropvolgende brief waarin u aangedring het op blootlegging nie. U benodig die eiser se blootleggingsverklaring. U klient word benadeel in sy voorbereiding vir verhoor. Aangesien u versoeke om bloot te lê ignoreer word, besluit u om die hof te nader vir 'n gepaste bevel.

3

QUESTION 4

You act for the defendant in a High Court matter. Which procedural step can you take in each of the following circumstances? (1)

4.1 The summons was not signed properly. (1)

4.2 The plaintiff fails to file his declaration timeously. (1)

4.3 The plaintiff is a *peregrinus* of the Republic. (1)

4.4 The summons does not disclose a cause of action. (1)

4.5 The court does not have jurisdiction. (1)

QUESTIONS 5

Your client hands you a summons which was served on him on the 18th July 2013. The cause of action arose from an agreement for goods sold and delivered on the 28th February 2010 and the invoice to be settled within 30 days of receipt of the goods. Draft the special plea that you will serve and file. (10)

QUESTION 6

You act for the defendant in a defended high court action which is coming to trial in two months' time. Shortly after the pleadings had closed, you served a Rule 35(1) notice on the plaintiff's attorneys calling on the plaintiff to discover. There has been no response to this notice or to a subsequent letter in which you demanded discovery. You need the plaintiff's discovery affidavit. Your client is being prejudiced in its pre-trial preparation. As your requests for the plaintiff's discovery affidavit have been ignored, you decide to apply to court for an appropriate order.

6.1 Stel die volledige kennisgewing van mosie op.
6.2 Wanneer word pleistukke geag gesluit te wees kragtens Reël 29? (4)

VRAAG 7

[10]

Op 8 Mei 2013 is mnr B Cain, in die Streeks Hof van Kuruman, Noord-Kaap Provinsie, aan moord met voorbedagte rade van sy broer, skuldig bevind. Die Hof het mnr Cain die verpligte lewenslange minimum vonnis opgele. In die klagstaat is beweer dat mnr Cain sy broer 'n bord kos, wat met rottegif besmet was, gevoer het. Mnr Cain se verweer is dat die kos bedoel was om die rotte in sy woonhuis te dood en dat sy broer die kos, sonder sy medewete, geëet het. Mnr Cain is ontvrede oor die skuldigbevinding en vonnis.

7.1 Stel mnr B Cain se kennisgewing van Appel op, wat die korrekte kopstuk moet bevat. (8)
7.2 Welke dokument moet die Kennisgewing van Appel, deur die Prokureur van mnr Cain geteken, vergesel. (1)
7.3 Binne welke tydperk nadat die Hof verlot tot Appel verleen het, moet u die Kennisgewing van Appel lusseer? (1)

VRAAG 8

[3]

U klient, mnr Seema, word verhoor op 'n klagte van verkragting. Mnr Seema het onskuldiggepleiten die Staat het reeds drie getuies geroep. Die Staat, nadat hulle verdere inligting bekom het, besluit om nie met die verhoor voort te gaan nie aangesien dit duidelik blyk dat mnr Seema verkeerdlik vervolgd word.

8.1 Op watter wyse kan die Staat die verhoor verrigtinge beëindig anders as om die Staatsaak te sluit? (1)

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6.1 Draw the full notice of motion. (6)

6.2 When are pleadings deemed to be closed in terms of Rule 29? (4)

QUESTION 7

[10]

On the 8th of May 2013, Mr B Cain was convicted of the premeditated murder of his brother by the Regional Court, Kuruman, Northern Cape Province. The Court imposed the applicable minimum sentence of life imprisonment to Mr Cain. In the charge it was alleged that Mr Cain fed his brother a plate of food laced with poison. Mr Cain contended that the poisoned food was meant to be used for killing rats at his residence and that his brother ate the food without Mr Cain's knowledge. Mr Cain is not satisfied with the conviction and sentence.

7.1 Draw a Notice of Appeal on behalf of Mr B Cain including the correct heading. (8)

7.2 What other document must accompany the Notice of Appeal signed by Mr Cain's Attorney? (1)

7.3 What is the prescribed period after the granting of Leave to Appeal within which the Notice of Appeal must be filed? (1)

QUESTION 8

[3]

Your client, Mr Seema is on trial before the Court on a charge of rape. Mr Seema pleaded not guilty and the State has already called three (3) witnesses in the trial. The State after being presented with further information decides not to continue with the trial as it is clear that Mr Seema has been wrongfully prosecuted.

8.1 How can the State terminate the proceedings of the trial other than by closing the State's case? (1)

8.2 What will be the result of the step taken by the State in 8.1 above? Can the Court convict Mr Seema on the strength of the evidence adduced in the trial up to the stage that the State takes the step in 8.1 above. (2)

QUESTION 9 [5]

What are the five grounds that the Court must consider in determining whether or not it is in the interest of justice to grant bail to the accused?

QUESTION 10 [7]

Describe without elaboration, the sequential steps of a criminal trial from its commencement up to the delivery of the judgement, where the Accused pleads not guilty to the charge.

QUESTION 11 [8]

You act for Jim's Plumbing Supplies (Pty) Ltd whose business address is situated at 20 John's Avenue, Durban.

On the 20th of October 2012 they entered into a written agreement with Pat's Builders CC, whose premises are situated at 20 Moore Road, Durban. In terms of the agreement they agreed to sell to Pat's Builders CC plumbing materials. In addition it was agreed that payment would be effected within 15 (fifteen) days of receipt of a statement. Pat Le Roux, a member of Pat's Builders CC signed as surety and co-principal debtor.

The agreement also stated that the parties consented to the jurisdiction of the Magistrate's Court and interest would be payable at 20% per annum on overdue accounts and if any action was instituted for the recovery of any outstanding balance costs would be payable on the scale as between attorney and client.

8.2 Watsal die gevolge van die Staats optrede, soos in 8.1 hierbo, wees? Is die Hof by magte om mnr Seema skuldig te bevind op sterkte van die getuieis, wat aangebied is voordat die stap soos in 8.1 hierbo gedoen was? (2)

VRAAG 9 [5]

Wat is die vyf gronde wat die Hof in ag moet neem om te bepaal of dit in die belang van geregtigheid is om borg al dan nie, aan 'n beskuldigde toe te staan?

VRAAG 10 [7]

Lys sonder om daarop uit te brei, die volgende van stappe in 'n strafverhoor, in 'n geval waar die beskuldigde onskuldig pleit, van die begin tot en met die uitspraak.

VRAAG 11 [8]

U tree op namens Jim's Plumbing Supplies (Edms) Bpk (Pty) Ltd] wie se sakeadres geleë is te 20 Johnaan, Durban.

Op 20 Oktober 2012 het hulle 'n geskrewe ooreenkoms aangegaan met Pat's Builders BK Durban. Ingevolge die ooreenkoms sou hulle aan Pat's Builders BK loodgietermateriaal verkoop. Verder is ooreengekom dat betaling sou geskied binne 15 (vyftien) dae na ontvangs van 'n rekeningstaat. Pat Le Roux, 'n lid van Pat's Builders BK het geteken as borg en mede-hoofskuldenaar.

Die ooreenkoms het ook bepaal dat die partye toestem tot die jurisdiksie van die Landdros Hof en dat rente betaalbaar sou wees teen 20% per jaar op agterstallige rekeninge. Indien aksie ingestel word vir die verhaal van enige agterstallige balans, sou kostes betaalbaar wees op die prokureur en klient skaal.

Jim's Plumbing Supplies (Pty) Ltd sold and delivered plumbing materials to Pat's Builders CC for a price of R124,000.00 on 23 October 2012.
Pat's Builders are still indebted to Jim's Plumbing Supplies (Pty) Ltd in an amount of R124,000.00 and received a statement on the 1st of December 2012.
Draft particulars of claim citing all relevant parties (omit headings).
QUESTION 12
[8]

What essential averments are missing from the following district or regional magistrates court particulars of claim?
12.1 The Plaintiff's claim is for R350,000.00 being the agreed price of the goods sold to Defendant during January 2013.
(2)

12.2 The Plaintiff's claim is against the Defendant for R20,000.00 in respect of a cheque drawn by Defendant and dated the 1st of January 2013 and which despite demand he has failed to pay.
(1)

12.3 The Plaintiff's claim is against the Defendant for the cost of repair of a motor vehicle, registration no. ND 12 driven by Plaintiff and damaged by the Defendant's negligent driving.
(2)

12.4 Plaintiff's claim is against Defendant, a medical practitioner. Plaintiff entered into a contract on the 7th of January 2013 in terms of which Defendant undertook to replace the Plaintiff's hip joint. Defendant carried out such operation. Plaintiff has duly paid the agreed fee. Defendant has experienced pain and suffering and will have to undergo future medical treatment. Plaintiff accordingly suffered damages.
(2)

Jim's Plumbing Supplies (Edms) Bpk het loodgietermateriaal verkoop aan Pat's Builders BK ten bedrae van R124,000.00 en dit op 23 Oktober 2012 aan hulle gelewer.
Pat's Builders is steeds die bedrag van R124,000.00 aan Jim's Plumbing Supplies (Edms) Bpk verskuldig. Pat's Builders het op 1 Desember 2012 'n rekeningstaat ontvang.
Stel die besonderhede van vordering op en sitteer relevante partye. (Laat Kopstukke weg).
VRAAG 12
[8]

Watter noodsaaklike bewerings ontbreek by die volgende besonderhede van vordering in die distriks- of streekshof?
12.1 Die Eiser se eis is vir R350,000.00 synde die ooreengekome prys van die goedere verkoop aan Verweerder gedurende Januarie 2013.
(2)

12.2 Die Eisers se eis teen die Verweerder is vir R20,000.00 ten opsigte van 'n tyeke-trek deur die Verweerder en gedateer 1st Januarie 2013 en wat hy ten spyte van aansoek vir versuim het om te betaal.
(1)

12.3 Die Eisers se eis teen die Verweerder vir die koste van die herstel van 'n motor-voertuig, Registrasienr ND 12 wat deur die Eiser bestuur is en beskadig is deur die Verweerder se nalatige bestuur.
(2)

12.4 Eisers se eis is teen die Verweerder, 'n mediese praktisyn. Eiser het 'n kontrak gesluit op die 7 Januarie 2013 ingevolge waarvan Verweerder onderneem het om die Eiser se heupgewrig te vervang. Verweerder het sodanige operasie uitgevoer. Eiser het die ooreengekome fooi nabehore betaal. Verweerder het baie pyn en lyding ervaar en sal toekomstige mediese behandeling moet ondergaan. Eiser het gevolglik skade gely.
(2)

12.5 Eiser beweer hy was in 'n vreedsame en ongestoorde besit van 'n plaas beskryf as Gedeelte XY van AB op 1 Januarie 2013. Verweerder het Eiser van besit ontnem deur die hekke wat lei na die plaas met slotte en kettings te sluit en die plaas deur gewapende wagte te laat bewaak. (1)

VRAAG 13 [3]

'n Dagvaarding is op Verweerder beteken met die besonderhede uiteengesit in vraag 12.2. Stel asseblief die dokumente (sonder kopstuk) op, wat u sal voorberei nadat u verskyning om te verdedig aangeteken het. (1)

VRAAG 14 [4]

Wat is die noodsaaklike aspekte wat gedek moet word om die skadebedrag te bewys wanneer getuieis van 'n werktuigkundige aangebied word in 'n eis om skadevergoeding. Die eis spruit voort uit swak vakmanskap tydens die herstel van 'n motorvoertuig?

VRAAG 15 [2]

U klient is gedagvaar in die Landdros Hof vir skadevergoeding in die bedrag van R40 000.00 ten opsigte van 'n motorvoertuigbotsing. Hy glo dat beide partye 50% verantwoordelik was vir die botsing. Hy het R20 000.00 beskikbaar. Adviseer hom oor die stappe wat hy moet doen om verdere kostes te beperk.

above

- DIE EINDE -

- THE END -

12.5 Plaintiff avers he was in peaceful and undisturbed possession of a farm described as Portion XY of AB on 1st January 2013. Defendant deprived Plaintiff of possession by placing locks and chains on the gates leading up to the farm and placing the farm under armed guard. (1)

QUESTION 13 [3]

Defendant has been served with a summons with the particulars set out in 12.2. Please draw the document, excluding the heading, that you would prepare after you have entered an appearance to defend. (1)

QUESTION 14 [4]

What are the essential aspects to be dealt with when presenting evidence of a mechanic to prove the amount of damages? The claim is for damages resulting from bad workmanship in the repair of a motor vehicle. (1)

QUESTION 15 [2]

Your client has been sued in the Magistrate's Court for damages in an amount of R40 000.00 in respect of a motor collision. He believes that both parties were 50% responsible for the collision. He has R20 000.00 available. Advise him on the steps he should take to curtail further costs.