

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

13 AUGUSTUS 2014

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 assebliefslegs 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 druipe.

ATTORNEYS' EXAMINATION

PART 3 ATTORNEY'S PRACTICE

13 AUGUST 2014

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 [20]

Joe Lessor verhuur 'n sakeperseel aan Lessee (Edms) Bpk. Hy vereis borgstelling deur die twee direkteure. Stel die borgakte op.

VRAAG 2 [5]

Stel op: 'n kort kontrakbreukklousule wat in handelsooreenkomste gebruik kan word.

VRAAG 3 [6]

Formuleer die waarborge wat 'n koper van aandele in 'n privaatmaatskappy gewoonlik in die koopakte sal verlang.

VRAAG 4 [16]

Mnr Seller wil sy huis verkoop aan mnr Burger wat 'n verbandlening nodig het om die koopprijs te betaal. Stel die klousules op wat u in die kontrak sou insluit wat verkryging van die lening onderskeidelik maak;

- 4.1 'n opskortende voorwaarde; en (6)
4.2 'n ontbindende voorwaarde. (6)

(4 punte word toegeken vir duidelike bewoording)

VRAAG 5 [15]

Mnr Adam Smith verkoop sy restaurant-onderneming aan John Brown vir wie u optree. Hy vra u raad op die konsepkontrak.

- 5.1 Volgens kliënt koop hy voorraad op-hande. U merk dat die kontrak nie voorraad, voorraadopname en prys van voorraad behandel nie. Stel so 'n klousule op vir voorlegging aan verkoper se prokureur. (5)
- 5.2 Hy betaal baie vir klandisiewaarde en wil beskerm word teen die risiko dat Smith 'n restaurant naby oprig. Stel die toepaslike klousule op. (5)

QUESTION 1 [20]

Joe Lessor lets business premises to Lessee (Pty) Ltd. He requires suretyship by the two directors. Draft the deed of suretyship.

QUESTION 2 [5]

Draft a short breach clause that could be used in any commercial agreement.

QUESTION 3 [6]

Draft the warranties in a deed of sale of shares in a private company that a purchaser would normally require.

QUESTION 4 [16]

Mr Seller has agreed to sell his house to Mr Buyer, who will need a mortgage loan in order to pay the price. Draft the clauses which you would include in the agreement which respectively make the obtaining of the loan:

- 4.1 a suspensive condition and (6)
4.2 a resolute condition. (6)

(4 marks are awarded for clarity of drafting)

QUESTION 5 [15]

Mr Adam Smith sells his restaurant business to John Brown. You act on behalf of the purchaser. He submits a draft contract to you for your consideration and comment.

- 5.1 According to your client he will be buying the stock on hand. You notice the contract does not contain a clause dealing with the stock, stock taking and the purchase price of the stock. Draft such a clause for submission to the seller's attorney for consideration. (5)
- 5.2 As he is paying a substantial amount of goodwill, your client wishes to be protected in the sense that Smith must not be allowed to open a restaurant in the close vicinity. Draft a clause to give effect to the purchaser's wishes. (5)

5.3 U merk dat daar nie voorsiening is vir kennis van die verkoping ingevolge die Insolvensiewet nie. Wat is u advies aan kliënt daaroor. (5)

5.3 You notice that there is no provision for the publication of the sale of this business in terms of the Insolvency Act in the agreement. What will your advice be to your client with regard thereto. (5)

VRAAG 6 [5]

QUESTION 6 [5]

A wil as koper 'n koopakte onderteken maar namens 'n maatskappy wat nog nie opgerig is nie.

A wishes to enter into a deed of sale on behalf of a company not yet incorporated (as purchaser).

6.1 Beskryf die koper; (1)

6.1 Describe the purchaser; (1)

6.2 Stel 'n klousule op wat verkoper beskerm as die maatskappy nie die kontrak bekragtig nie. (4)

6.2 Draft a clause dealing with failure by such company to ratify the agreement. (4)

VRAAG 7 [20]

QUESTION 7 [20]

7.1 U is onseker of bepaalde optrede eties aanvaarbaar is. Hoe gaan u die antwoord kry? (3)

7.1 If you are not sure whether some or other step you propose taking is ethically permissible, how would you go about getting the answer? (3)

7.2 Wat gebeur as u nie u lidmaatskapsgeelde aan u Orde betaal nie? (2)

7.2 What will happen if you fail to pay your membership fees to the Law Society of which you are a member? (2)

7.3 Vir welke doel is die Prokureurs Getrouheidsfonds gestig? (3)

7.3 What is the purpose for which the Attorneys Fidelity Fund was established? (3)

7.4 Waarom sal u 'n kliënt aanraai om 'n testament op te stel? (3)

7.4 Why would you advise your client that he should draw up a will? (3)

7.5 Mag 'n praktisyn:

7.5 May a practitioner:

7.5.1 foenie wat hy verdien met sy kandidaat prokureur deel? (1)

7.5.1 share fees earned by him with a candidate attorney in his employ? (1)

7.5.2 sy kandidaat 'n kommissie betaal op die foenie wat die kandidaat verdien? (1)

7.5.2 pay the candidate attorney a commission based on the fees (the candidate attorney) generates? (1)

7.6 Welke werk mag kragtens die Prokureurswet net deur 'n prokureur met die oog op besoldiging, voordeel of beloning gedoen word. (7)

7.6 What work done in expectation of a fee, gain or reward may under the Attorneys Act only be done by an attorney? (7)

VRAAG 8 [13]

- 8.1 Mag 'n prokureur met 'n kliënt konsulteer terwyl die kliënt in 'n siviele saak kruis-ondervra word. Bespreek kortliks. (3)
- 8.2 Mag 'n prokureur ooit inligting wat kliënt in vertroue meegedeel het, openbaar? Bespreek kortliks. (3)
- 8.3 Mag 'n prokureur 'n beskuldigde verdedig wat aan hom/haar erken dat hy die misdaad gepleeg het? Motiveer. (4)
- 8.4 U laat toe dat 'n POF eis verjaar. Beskryf kortliks welke advies u die kliënt gee nadat u dit uitvind. (3)

QUESTION 8 [13]

- 8.1 May an attorney consult with his/her own client in a civil case whilst that client is being cross examined? Discuss briefly. (3)
- 8.2 May an attorney under any circumstances divulge information given by his/her client in confidence? Discuss briefly. (3)
- 8.3 May an attorney defend an accused person who admits that he is guilty of an offence charged? Motivate your answer. (4)
- 8.4 You act for a client in an MVA claim and you inadvertently allow the matter to prescribe. Describe briefly what advice you would give your client after this has come to your attention. (3)

- DIE EINDE -

- THE END -