

## PROKUREURSEKSAMEN

### DEEL 3 PROKUREURSPRAKTYK

11 FEBRUARIE 2015

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 druip.

## ATTORNEYS' EXAMINATION

### PART 3 ATTORNEY'S PRACTICE

11 FEBRUARY 2015

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.

'n Groot bankgroep vestig 'n streekkantoor in die dorp waar u praktiseer. Die bank plaas 'n aantal firmas op hulle paneel maar u firma is hulle hoofprokureurs. U ontvang baie opdragte en u leer die streeksbestuurder en 'n aantal amptenare goed ken. Hoe hanteer u die volgende situasies wat uit die verhoudings ontstaan?

A large bank opens a regional office in the town where you practise. The bank appoints a few firms to its panel of attorneys but your firm is its main attorney. You receive a great deal of work from the bank and get to know the regional manager and some staff quite well. How do you deal with the following situations which arise from these relationships?

**VRAAG 1 [14]**

**QUESTION 1 [14]**

U raak te besig om persoonlik alle invorderingsaangeleenthede te hanteer. U stel 'n ervare persoon aan wie nie 'n prokureur is nie, om in u afwesigheid die invorderings te hanteer. Is dit professioneel in orde dat die persoon:

You become too busy to handle collection matters personally and appoint an experienced person who is not an attorney to deal with debt collections. Is it professionally in order for such person.

- 1.1 Aldus aangestel word? (3)
- 1.2 Kliënte te woord staan en nuwe opdragte ontvang? (2)
- 1.3 Metskuldenare onderhandel en die betaling van skulde in paaiemente reël? (2)
- 1.4 In die algemeen regsadvies gee? (2)
- 1.5 Eenvoudige Hoë hofsake hanteer en opdragte aan advokaat gee? (3)
- 1.6 Trusttjeks onderteken? (2)

- 1.1 To be appointed on that basis? (3)
- 1.2 To interview clients and accept new mandates? (2)
- 1.3 To negotiate with debtors and arrange the payment of debts in instalments? (2)
- 1.4 To give legal advice generally? (2)
- 1.5 To handle elementary high court matters and to brief counsel? (3)
- 1.6 To sign trust cheques? (2)

Motiveer u antwoorde kortliks.

Motivate your answers briefly.

**VRAAG 2 [6]**

**QUESTION 2 [6]**

U finansiële transaksies neem toe en u stel ook 'n ervare boekhouer aan wat 'n rekenaarprogram voorstel waarvan u niks weet nie. Bespreek u verantwoordelikhede.

Your financial transactions increase and you appoint an experienced bookkeeper who recommends a computer program of which you have no knowledge. Discuss your responsibilities.

**VRAAG 3 [12]**

**QUESTION 3 [12]**

Ten einde die bank se sake uit te brei en opdragte na u te genereer maak die bestuurder 'n aantal voorstelle. Bespreek in elke geval of die optrede professioneel in orde sou wees:

In order to increase business for the bank and generate work for you the manager makes certain proposals. Discuss in each case the professionalism of the proposal:

- 3.1 Ten einde verbandaansoeke te lok bied die bank aan om u registrasiegelde namens kliënte te betaal mits u slegs helfte van die tarief in die riglyne hef; as u al die opdragte kry. (3)
- 3.2 Om sulke aansoeke van verbandmakelaars te vermeerder bied die bank aan om al die voortvloeiende registrasies na u te verwys mits u aan die makelaar oorbetaal:
- a) 10% van u registrasiegelde; of  
b) 'n hanteringsfooi van R200 per geval. (3)
- 3.3 Die bank reël 'n gholfdag en vra u om die pryse by van die putjies te borg met gepaardgaande publisiteit vir u. (3)
- 3.4 Die bank bied aan om u 20% van die eksekuteursgelde te betaal in elke boedel wat u na hulle verwys om beredder te word deur die trustmaatskappy in hulle groep. (3)

**VRAAG 4 [8]**

Die bank verwys 'n groot kliënt na u met 'n dringende probleem (onregmatige terugname van 'n trekker wat op paaiemente gekoop is vir R100 000). Dit is nie ingewikkeld nie maar u het nog nooit so 'n saak hanteer nie en is nie vertrouwd met die betrokke reg en praktyk nie. Sou u nietemin die mandaat aanvaar en indien wel hoe sou u uself kwalifiseer? Sou u dit eerder na 'n meer ervare kollega verwys?

**VRAAG 5 [8]**

'n Persoon wil 'n baie groot bedrag in kontant by die bank deponeer. Die bestuurder is besorg oor FICA (Financial Intelligence Centre Act) en stel voor dat hy die bedrag by u inbetaal sodat u die bank 'n trusttjek kan gee. Welke pligte plaas FICA op u? Mag u aanvoer dat kliëntesake vertroulik is? Bespreek.

- 3.1 To attract bond applications the bank offers to pay your conveyancing fees provided you charge only half the tariff in the guidelines if all bonds are referred to you. (3)
- 3.2 To attract such applications from bond originators the bank offers to refer all the registrations to you provided you pay the originators:
- a) 10% of your fee; or  
b) a handling fee of R200 each. (3)
- 3.3 The bank arranges a golf day and asks you to sponsor the prizes at some of the holes with attendant publicity. (3)
- 3.4 The bank offers you 20% of the executor's fee for each estate you refer to them to be administered by the trust company in their group. (3)

**QUESTION 4 [8]**

The bank refers a large client of theirs to you with a fairly straightforward legal problem that requires immediate action (an illegal repossession by the seller of a tractor sold on instalments for R100 000). You have never done such a matter and do not know the law and practice involved. Will you nevertheless accept the mandate and if so how will you qualify yourself? Will you rather refer the potential client to a more experienced colleague?

**QUESTION 5 [8]**

The bank has a potential client who wishes to deposit a very large amount with them in hard cash. They are worried about FICA (Financial Intelligence Centre Act) and suggest he pays the amount to you so that you can give the bank a trust cheque. What duties does FICA place on you? Can you claim that client affairs are confidential? Discuss.

**VRAAG 6 [15]**

Die bank vra u om 'n kort memorandum op te stel wat hulle aan voornemende entrepreneurs kan gee wat leiding benodig oor hoekom en wanneer 'n privaat maatskappy as bedryfsvorm verkieslik is bo 'n vennootskap. U moet die memorandum opstel.

**VRAAG 7 [12]**

Die bankbestuurder verstaan nie dat u vertroulikheid handhaaf en dat u kliënt geregtig is op professionele privilegie ten aansien van mededelings tussen die twee van u nie, selfs al het die bank die kliënt na u verwys. Skryf 'n brief aan die bankbestuurder en verduidelik wanneer die vertroulikheid tussen prokureur en kliënt geld en waarop dit nie van toepassing is nie.

**VRAAG 8 [25]**

Die bank verwys Peter Smith en John Drake na u. Hulle het ooreengekom op die koop en verkoop van 'n vaste eiendom (Erf 102, Pietermaritzburg). Die eienaar is die Peter Smith Trust waarvan Peter Smith die trustee is en by wyse van 'n besluit van die trustees gemagtig is om die kontrak aan te gaan. Die koopprys is R950 000.

8.1 Die koop is onderhewig daaraan dat die koper 'n verbandlening vir R750 000 bekom. Versin verdere feite wat u nodig ag en stel klousules op wat:

8.1.1 in die een geval die kontrak onderhewig stel aan die verkryging van die verband;  
(5)

8.1.2 in die ander geval die kontrak beëindig as die verband geweier word. (5)

**QUESTION 6 [15]**

The bank asks you to draft a short memorandum for their new clients, who wish to start business enterprises and need guidance on why and when to use a private company rather than a partnership as vehicle for such new enterprises. Draft the memorandum.

**QUESTION 7 [12]**

The bank manager does not quite appreciate that you maintain confidentiality and that the client is entitled to legal professional privilege in respect of communication between you and the client even when the bank referred the client to you. Write a letter to the bank manager and explain when confidentiality applies and to what it does not apply.

**QUESTION 8 [25]**

The bank refers Peter Smith and John Drake to you. They have concluded an agreement for the purchase and sale of an immovable property described as Erf 102, Pietermaritzburg. The property is owned by the Peter Smith Family Trust and Peter Smith is the trustee empowered to conclude the agreement by virtue of a resolution of the trustees. The purchase price is R950 000.

8.1 The sale is conditional upon the purchaser obtaining a mortgage/loan (bond) for R750 000. Using any additional facts which you consider necessary draw the clauses which you would include in the agreement which:

8.1.1 in the one instance will make the operation of the agreement dependent on the bond being obtained;  
(5)

8.1.2 in the other instance will terminate the agreement upon the bond being refused;  
(5)

8.2 Aanvaar dat die eiendomsagent wat die eiendom probeer bemark het se mandaat beëindig is en dat die koper die verkoper direk genader het. Stel 'n klousule op wat moontlike kommissie behandel.  
(10)

8.3 Aanvaar dat die verband toegestaan is maar dat die koper nalaat om die vereiste deposito te betaal. Stel die brief op wat u aan die koper sou stuur wat die kontrakbreuk beweer en hom op terme plaas.  
(5)

8.2 Assuming that the mandate of the estate agent who had been marketing the property was terminated and the purchaser approached the seller directly. Draft a clause in the deed of sale to provide for possible agent's commission. (10)

8.3 Assuming that the purchaser's bond has been approved but the purchaser despite his promises made to pay the deposit has failed to do so. Draft the letter to be forwarded to the purchaser alleging the breach and placing him on terms.  
(5)

- DIE EINDE -

- THE END -