

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
ATTORNEYS' PRACTICE / PROKUREURSPRAKTYK
PART 3 / DEEL 3**

22 AUGUST / 22 AUGUSTUS 2012

ANSWERS/ANTWOORDE

**PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT
BE A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF
READING.**

NOTE TO EXAMINER:

This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.

QUESTION 1

[17]

Approach:

- | | | |
|-----|---|-----|
| 1.1 | The small claims court; | (1) |
| 1.2 | A High Court; | (2) |
| 1.3 | The CCMA; | (2) |
| 1.4 | The Pension Fund Adjudicator; | (1) |
| 1.5 | The Master of the High Court who may appoint a magistrate; | (2) |
| 1.6 | The Maintenance Court; | (2) |
| 1.7 | The Law Society (Assessment Panel); | (2) |
| 1.8 | The Attorneys Fidelity Fund and Law Society; | (3) |
| 1.9 | Sue the attorney in the appropriate court. The attorney may approach the AIIF and his own indemnity insurers. | (2) |

QUESTION 2

[16]

The parties to this agreement choose the following addresses and telefax numbers for (1) purposes of this agreement.

PARTY 1

Physical Address	
Postal Address	
Telefax No	
e-mail	(2)

PARTY 2

Physical Address
Postal Address
Telefax No
e-mail (2)

Any notice or legal process to be served on either party may be served on it at the address specified above (1) and each party hereby chooses that address as its address for all purposes under this agreement. (1)

A notice which is sent by prepaid registered post in a correctly addressed envelope to the postal address specified above will be deemed to have been received (unless the contrary is proved by the addressee) within 10 (ten) days from the date it was posted (2). A notice which is delivered by hand to a responsible person during ordinary business hours at the above physical address will be deemed to have been received (unless the contrary is proved by the addressee) on the day of delivery (2).

A Telefax sent to the telefax number specified above will be deemed, (unless the contrary is proved by the addressee), to have been received on the first business day after transmission (2).

An e-mail sent to the e-mail address specified above will be deemed, (unless the contrary is proved by the addressee), to have been received on the first business day after transmission. (2) A party shall be entitled to amend its addresses as aforesaid by giving 7 (seven) days written notice to that effect to the other party. (1)

[If no specific agreement re e-mail is concluded, the Electronic Transactions and Communications Act applies].

QUESTION 3

[21]

1. PARTIES

The parties to this agreement are

1.1 A

(the cedent) (1)

and

1.2 B

("the cessionary") (1)

2. BACKGROUND

The cedent wishes to cede the book debts of his business, Hotti Attires, 122 Park Lane, Dorpsville ("the business") to the cessionary for the sum of R.....; (1)

3. CESSION

3.1 The cedent cedes to the cessionary all the existing book debts of the business, of whatsoever nature and from whatsoever cause arising ("the book debts"). (1)

3.2 The cessionary accepts the cession. (1)

Upon delivering of the documents specified in 4, the cessionary shall pay the cedent the amount specified in 2 in cash. (1)

4. DELIVERY OF DOCUMENTS EVIDENCING BOOK DEBTS

The cedent shall, upon demand by the cessionary, deliver, cede, transfer or negotiate to the cessionary any documents of title, agreements, negotiable instruments, or other securities held by the cedent in respect of the book debts. (2)

5. WARRANTIES BY THE CEDENT

The cedent warrants and undertakes that

5.1 he has not entered into any agreement restricting or excluding the transferability of any of the book debts; (1)

5.2 he has no knowledge of any counterclaims that may extinguish any of the book debts; (1)

5.3 he has not, prior to this cession, ceded any of the book debts to any other person or concern. (1)

6. NOTICE TO DEBTORS

The cedent authorises the cessionary to give notice of the cession to any of the debtors of the business. (1)

7. INFORMATION REGARDING BOOK DEBTS

7.1 The cedent shall deliver to the cessionary within 7 (seven) days of signature of this agreement, a full list of all debtors of the business, reflecting (1)

7.1.1 their names, occupations, and addresses;

7.1.2 the nature and amount of the indebtedness of each of them;

7.1.3 particulars of any agreements, documents of title, negotiable instruments, or other securities of whatsoever nature held in respect thereof,

7.1.4 whether the indebtedness is on open account or on credit, and in the latter event the terms of such credit. (4)

7.2 The cedent shall make available for inspection by the cessionary (or his authorised agent) at any time during normal business hours at the cedent's place of business all books of account, receipts and other books, papers, and correspondence relating to the book debts. (2)

7.3 The cedent shall give the cessionary all such information concerning the debtors of the business as he may reasonably require to enable him to recover the amount owing by each of them, (2)

SIGNED etc

4.1

4.1.1 The Fidelity Fund contributes to bank charges on trust bank accounts; the cost of annual examination by accountant (auditor) and pays the premiums to the AIIF;

(3)

4.1.2 The Fund contributes to the administration of the LSSA; Finances De Rebus; subsidises schools for legal practice and Practical Courses and Seminars.

(3)

4.2 Statements which are made expressly or impliedly without prejudice in the course of bona fide negotiations for the settlement of a dispute (1) cannot be disclosed in evidence without the consent (1) of both parties. A letter written by one attorney to another with the object of settling a dispute is thus not admissible (1) in evidence. It is considered public policy (1) to allow people to try to settle their disputes without the fear that what they may have said will be held against them if the negotiations should break down. A statement to be privileged must form part of the negotiations, and is not privileged merely by having been written in a letter containing the words "without prejudice" at the top (1).

The reply to such a letter is likewise not admissible in evidence (1). If a letter contains a statement which is irrelevant with regard to the dispute, such statement may be actionable (1). When the settlement offer contained in a letter written without prejudice is in fact accepted by the other side and the dispute is then settled on that basis both letters will become admissible in evidence (1).

[8]

4.3 The client can terminate his mandate at any stage. (1)

On the other hand, after an attorney has accepted his brief, he cannot withdraw without sound reasons e.g. failure to pay deposit (1) or to give instructions (1), conflict of interest (1), illness (1). Before withdrawal the attorney must place client on terms (1) and withdraw at an opportune time (1).

The attorney has a lien on documents on which he bestowed skill and labour (1). New attorney should not act until first attorney's cost have been paid/secured (1).

[9]

QUESTION 5**[20]****ARBITRATION**

Any dispute, difference, impasse, or deadlock between the parties pursuant to this agreement must be referred to arbitration in terms of the rules and regulations of the Arbitration foundation of South Africa ("AFSA").

(2)

Please note that arbitrations before AFSA are not mandatory, and parties may choose a different form of arbitration, where the clause appears as follows:

"1 Arbitration

1.1 Should any dispute arise between the Parties in regard to:

- 1.1.1 the interpretation of;
 - 1.1.2 the carrying into effect of; or
 - 1.1.3 the Parties' respective rights and obligations in terms hereof; or
 - 1.1.4 the rectification of; or
 - 1.1.5 the termination or arising out of the termination of; or
 - 1.1.6 any question as to whether a valid and binding agreement was concluded between the Parties or whether such agreement is of legal force or effect; or
 - 1.1.7 any other matter whatsoever emanating from this Agreement; (3)
- that dispute shall be submitted to and finally settled by arbitration. (1)
- 1.2 Any Party to this Agreement may demand that a dispute be settled in terms of this clause by giving written notice to the other Party. (1)
 - 1.3 This Clause 1 shall not prevent a Party from obtaining relief on an urgent basis from a competent court, pending the decision of the arbitrator; (1)
 - 1.4 That arbitration shall be held –
 - 1.4.1 In Pretoria and at the Brooklyn Advocates' Chambers; (½)
 - 1.4.2 with only the Parties and their representatives, present thereat; (1)
 - 1.4.3 mutatis mutandis in accordance with the Rules promulgated in terms of the Supreme Court Act, No 59 of 1959 and the uniform Rules of the High Court of South Africa, provided that no time period specified therein shall be longer than 10 court days for the purposes of the arbitration; (½)
 - 1.4.4 Otherwise in terms of the Arbitration Act No. 42 of 1965, it being the intention that the arbitration shall be held and concluded as soon as possible. (1)
 - 1.5 The arbitrator shall, if the matter in dispute is principally -
 - 1.5.1 a legal matter, be a practising counsel or a practising attorney of not less than 10 (Ten) years standing; (1)
 - 1.5.2 an accounting matter, be a practising chartered accountant of not less than 10 (Ten) years standing; (1)
 - 1.5.3 any other matter, be an independent person qualified to hear and adjudicate upon such matter; (1)
- and shall be agreed to between the Parties to the dispute.
- 1.6 Should the Parties to a dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (Seven) days after arbitration has been demanded, the matter shall be considered to be a legal dispute. (1)
 - 1.7 Should the Parties fail to agree upon an arbitrator within 14 (Fourteen) days after the arbitration has been demanded, then the arbitrator shall be appointed at the request of either of the Parties to the dispute by the President for the time being of the Law Society of (1)

- 1.8 The Parties irrevocably agree and undertake with each other that any award that may be made by the arbitrator: (1)
- 1.8.1 shall be final and binding upon them; (1)
- 1.8.2 will be carried into effect; (1)
- 1.8.3 May be made an order of court of the country to whose jurisdiction such Party to the dispute may be subject. (1)
- 1.9 The provisions of this clause constitute the irrevocable consent of the Parties to the arbitration proceedings in terms hereof and none of the Parties shall be entitled to withdraw therefrom or to claim at any such arbitration proceedings that it is not bound by the provisions of this clause." (1)

[Also note that consumer legislation such as the Rental Housing Act, 1999, the NCA, and the CPA introduces consumer tribunals and other ADR for which may also be made use of in such clauses. One must just be careful to read the various applicable statutes as there are limitations. (For example, the Rental Housing Tribunal does not have jurisdiction to evict tenants)]

QUESTION 6

[3]

Costs *de bonis propriis* may be awarded against an attorney (1) or any person in a fiduciary position (trustee, etc) (1) as a mark of displeasure at abusing the process of court (1).

TOTAL: [100]

PROKUREURSEKSAMEN

DEEL 4 BOEKHOU

22AUGUSTUS 2012

14:00-16:15

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 mag sakrekenaars gebruik.
2. By beantwoording van vrae moet die betrokke inskrywings duidelik geïdentifiseer, omskryf en uiteengesit word.
3. Afsonderlike besigheids- en trustkasboeke, asook kliëntegrootboekrekeninge moet geopen word en moet nie gekombineer word nie. Joernaalinskrywings moet behoorlik beskryf en geïdentifiseer word.
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% of 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 4 BOOKKEEPING

22AUGUST 2012

14:00-16:15

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 may use calculators.
2. In answering the questions you should ensure that the relevant entries are clearly identified, narrated and detailed.
3. Separate business and trust cash books and clients' ledger accounts must be opened and are not to be combined. Journal entries must be properly identified and narrated.
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 [30]

U moet die eerste inskrywings met volle beskrywing (besonderhede) opstel om die volgende aan te teken. Noem die boeke van eerste inskrywing.

- 1.1 U ontvang van 'n korrespondent-prokureur 'n tjek vir R7500 tesame met 'n afrekeningstaat vir 'n invordering vir u kliënt White. (2)
- 1.2 In dieselfde afrekeningstaat toon die korrespondent fooie en uitgawes van R1000 plus BTW. (2)
- 1.3 Die korrespondent gee u 'n toelae van R200 plus BTW. (2)
- 1.4 Inkomsteseëls word uit seëls voorhande getrek vir R500 vir die registrasie van 'n maatskappy. (2)
- 1.5 U vind dat slegs R400 inkomsteseëls nodig is en u gee R100 seëls aan die kassiere terug. (2)
- 1.6 U vra 'n fooi van R5000 plus BTW vir u dienste by die registrasie van die maatskappy. (2)
- 1.7 XYZ (Edms) Bpk gee u 'n tjek vir R6100. (2)
- 1.8 U bank laat weet dat die tjek vir R6100 teruggestuur is, gemerk "betaling gestaak". (2)
- 1.9 U kliënt Green skuld u R7000 en u hou R5000 namens haar op trust. (4)
- 1.10 U boekhouer krediteer foutiewelik A se Trust Grootboekrekening in plaas van B se Trust Grootboekrekening met 'n bedrag van R10000. (2)

QUESTION 1 [30]

You are required to prepare fully narrated prime entries to record the following. Identify the prime books of entry.

- 1.1 You receive a cheque for R7 500 from a Correspondent attorney together with an accounting statement in a collection matter on behalf of your client White. (2)
- 1.2 In the same accounting statement the Correspondent reflects fees and disbursements of R1000 plus Vat. (2)
- 1.3 The Correspondent gives you an allowance of R200 plus Vat. (2)
- 1.4 Revenue stamps are issued from stamps on hand for R500 for the registration of a company XYZ (Pty) Ltd. (2)
- 1.5 You discover that only R400 revenue stamps are required and return the R100 stamps to your cashier. (2)
- 1.6 You charge a fee of R5000 plus Vat for your services in the registration of the Company. (2)
- 1.7 XYZ (Pty) Ltd gives you a cheque for R6100. (2)
- 1.8 Your bank advises you that the cheque for R6100 has been returned "payment stopped". (2)
- 1.9 Your client Green owes you R7000 and you are holding R5000 in Trust on her behalf. (4)
- 1.10 Your Bookkeeper erroneously credited A's Trust Ledger account with R10 000 instead of B's Trust Ledger Account. (2)

1.11 U ontvang 'n rekening vir R5700 BTW ingesluit van Advokaat in die saak van Mev Divorce. (2)

1.11 You receive an account from Counsel of R5 700 including Vat in the matter of Mrs Divorce. (2)

1.12 Op 10 Desember reik u 'n Trusttjek vir R7500 uit aan kliënt Black. Op 12 Desember laat u bank weet dat 'n tjek vir R10000 wat u namens Black van 'n skuldenaar ontvang het, onteer is. (6)

1.12 You issue a Trust cheque for R7 500 to client Black on the 10 December. On 12 December your Bank advises you that a cheque for R10 000 you received from a debtor on behalf of Black has been dishonoured. (6)

VRAAG 2 [40]

QUESTION 2 [40]

U kry opdrag van u korrespondent om R5000 van Thabo in te vorder namens sy kliënt Mopani Bpk. In die uitvoering van u mandaat vind die volgende transaksies plaas:

You are instructed by your correspondent to recover R5 000 from Thabo on behalf of his client, Mopani Ltd. In executing the mandate the following transactions occur:

1. U hef 'n opdragfooi van R120 (BTW uitgesluit).
2. U betaal 'n opspoorder R100 (ignoreer BTW implikasies).
3. U reik dagvaarding uit en hef fooie van R180 (BTW uitgesluit)
4. Thabo betaal u R2400 van die skuld.

1. You charge an instruction fee of R120 (excluding VAT).
2. You pay a tracing agent R100 (ignore VAT implications).
3. You issue summons and charge fees of R180 (excluding VAT).
4. Thabo pays you R2 400 of the debt.

By die debitering van fooie waarop u geregtig is, moet voorsiening gemaak word vir BTW teen 14%. Die gewone 1/3 toelaag is van toepassing.

In debiting the fees you are entitled to, provision should be made for VAT at 14%. The usual 1/3 allowance is also applicable.

Benodig:

Required:

Teken bogemelde transaksies in u rekening-boeke aan, betaal aan u korrespondent die bedrag aan hom verskuldig en dra dit waarop u geregtig is, oor na die besigheidsrekening. STEL 'NAFREKENINGSTAAT OP.

Record the above transactions in your books of account, pay the amount due to your correspondent and transfer what you are entitled to to the business account. PREPARE AN ACCOUNTING STATEMENT.

VRAAG 3 [5]

QUESTION 3 [5]

In welke bankrekening sal u die volgende betalings ontvang:

Into which banking account would you receipt payments received as follows:

- 3.1 U prokureur-en-kliënt rekening; (1)
- 3.2 U getakseerde party-en-party koste; (1)
- 3.3 Geld ontvang in die loop van die beredding van 'n bestorwe boedel; (2)
- 3.4 Kommissie ten aansien van 'n Artikel 78(2A) belegging. (1)

- 3.1 Your Attorney and client account; (1)
- 3.2 Your taxed party and party costs; (1)
- 3.3 Monies received in the course of administering a deceased estate; (2)
- 3.4 Commission received in respect of a Section 78 (2)(A) investment. (1)

VRAAG 4 [5]

Die bank wat u Trustgelde verskuldig aan Trustkrediteure hou kragtens Artikel 78(1) word gelikwieder. Wat is die Trustkrediteure se remedies (indien enige) teen:

- 4.1 Die bank; (1)
- 4.2 Die Getrouheidsfonds vir Prokureurs; (1)
- 4.3 U, die praktisyn? (1)
- 4.4 Wat is u regte as Prokureur? (2)

VRAAG 5 [20]

- 5.1 U kliënt Mnr Director betaal 'n bedrag van R50 000 in u Trustrekening in, ten aansien van 'n saak waar sy seun aangekla word van 'n misdaad. Die tjek word foutiewelik in die kasboek aangeteken as R5000. Hoe stel u die fout reg? (2)
- 5.2 Mnr Director gee u opdrag om aansoek te doen vir borg. Borg word vasgestel op R20 000 wat u in kontant betaal. Welke inskrywings maak u? (3)
- 5.3 Nadat u borg betaal het, vind u dat u boekhouer foutiewelik die tjek vir borggeld teen Mnr Crook in plaas van Mnr Director ge-pos het. Hoe stel u die fout reg? (2)
- 5.4 U kliënt se seun word op borg vrygelaat en u stuur 'n interim rekening vir fooie van R5700 (BTW ingesluit). U boekhouer debiteer foutiewelik u kliënt se rekening met R7500. Hoe stel u die fout reg? (2)
- 5.5 U kliënt se seun pleit skuldig en word R10 000 beboet. U betaal die boete in kontant. Welke inskrywings maak u? (3)
- 5.6 Stel u finale rekeningstaat aan Mnr Director op. Debiteer 'n fooi van R15 000 plus BTW. (5)

QUESTION 4 [5]

The Bank which holds your Trust monies due to Trust Creditors are held in terms of Section 78 (1) is liquidated. What are the remedies, if any, of the Trust Creditors against:

- 4.1 The Bank; (1)
- 4.2 The Attorneys Fidelity Fund; (1)
- 4.3 You the Practitioner? (1)
- 4.4 What are your rights as an Attorney? (2)

QUESTION 5 [20]

- 5.1 Your client Mr Director pays an amount of R50 000 into your Trust Account in respect of a matter where his son is charged with a criminal offence. The cheque is entered incorrectly in the cash book as R5000. How do you rectify the error? (2)
- 5.2 Mr Director then instructs you to apply for bail. Bail is fixed in the amount of R20 000 which you pay in cash. What entries will you make? (3)
- 5.3 After paying the bail you discover that your bookkeeper has erroneously posted the cheque for bail to Mr Crook instead of Mr Director. How would you rectify the error? (2)
- 5.4 Your client's son is released on bail, and you send an interim account for your fees of R5700 (including Vat). Your bookkeeper erroneously debits your client's account with R7500. How would you rectify the error? (2)
- 5.5 Your client's son pleads guilty and is fined R10 000. You pay the fine in cash. What entries will you make? (3)
- 5.6 Draft your final statement of account to Mr Director. Debit a fee of R15 000 plus Vat. (5)

5.7 Beskryf die inskrywings ten einde oor te dra dit waarop u geregtig is. (2)

5.7 Describe the entries to transfer what you are entitled to? (2)

5.8 In reaksie op u staat betaal kliënt die uistaande balans. Welke inskrywings maak u? (1)

5.8 In response to your statement, client pays the outstanding balance. What entry do you make? (1)

DIE EINDE

THE END