

## PROKUREURSEKSAMEN

### DEEL 3 PROKUREURSPRAKTYK

27 JULIE 2011

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 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 3 ATTORNEY'S PRACTICE

27 JULY 2011

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** [10]

Stel 'n klousule op in 'n ooreenkoms vir die verkoop van 'n besigheid wat die hele ooreenkoms opskort totdat paslike reëlings getref is met die eienaars van die perseel waaruit die onderneming bedryf word ten einde okkupasie van die perseel deur die onderneming te verseker. Die klousule moet voorsiening maak vir die moontlikheid van:

- 1.1 sessie en delegasie van die regte en verpligtinge kragtens die bestaande huurkontrak van die huurder na die koper met die toestemming van die verhuurder; of (5)
- 1.2 die sluit van 'n nuwe huurkontrak tussen die koper en die verhuurder tesame met 'n kansellasie van die vorige huurkontrak. (5)

**VRAAG 2** [10]

Mnr Verkoper, 'n algemene handelaar, wil sy besigheid as 'n lopende saak aan mnr Koper verkoop. Sy opdrag aan u is om 'n konsepooreenkoms op te stel sodat dit met mnr Koper bespreek kan word. Die omset van die besigheid beloop R500 000,00 per jaar. Dit sal 'n kontanttransaksie wees.

**Noem** al die belangrike klousules wat u in so 'n ooreenkoms sal insluit sonder om daarop uit te brei.

**VRAAG 3** [20]

U het 'n welgestelde kliënt. Hy het die verkoop van een van sy besighede onderhandel. Die voornemende koper dring daarop aan dat die verkoping adverteer word ingevolge Artikel 34 van die Insolvensiewet. Verduidelik aan die kliënt die vereistes, die redes vir en die effek van advertensie of versuim om te adverteer.

**QUESTION 1** [10]

Draft a clause in an agreement for the sale of a business suspending the entire sale agreement until such time as suitable arrangements have been made with the landlord of the premises from which the business is conducted to secure the tenure of the business in the premises. The clause should allow for the possibility of:

- 1.1 cession and delegation of the rights and obligations in terms of the existing lease from the tenant to the purchaser with the consent of the landlord; or (5)
- 1.2 the conclusion of a new lease agreement between the purchaser and the landlord, together with the cancellation of the previous lease. (5)

**QUESTION 2** [10]

Mr Seller, a general dealer, wants to sell his business as a going concern to Mr Buyer and instructs you to prepare a draft agreement for discussion with Mr Buyer. The turnover of the business is R500 000,00 per annum. It will be a cash transaction.

**List** all the important clauses you would incorporate in such an agreement. Do not expand on any of them.

**QUESTION 3** [20]

You have a wealthy client. He has negotiated the sale of one of his businesses. The intending purchaser is insisting that the sale be advertised in terms of Section 34 of the Insolvency Act. Explain to the client the requirements, the reasons for and the effects of advertising and of not advertising.

**VRAAG 4** [10]

Skryf 'n brief aan u kliënt mev Smith wat buite gemeenskap van goed getroud is met haar eggenoot. Haar man se boedel is pas gesekwestreer en sy vrees dat dit haar bates mag raak. Adviseer haar van die moontlike risiko's, asook wat sy kan doen om haar belange te beskerm en haar regte af te dwing.

**VRAAG 5** [14]

U word geraadpleeg deur twee persone wat 'n hardewarebesigheid in vennootskap met mekaar wil begin. Hulle gee u opdrag om die vennootskapsooreenkoms voor te berei. Stel die klousules op wat handel met:

- 5.1 die trekkings van die vennote en die verdeling van wins en verlies; (4)
- 5.2 die bydraes van elkeen van die vennote; en (2)
- 5.3 die ontbinding van die vennootskap. (8)

U moet u eie denkbeeldige feite gebruik. Moet nie die hele ooreenkoms opstel nie.

**VRAAG 6** [8]

U boekhouer steel X se trustgeld deur 'n tjek in u afwesigheid deur u vennoot te laat onderteken en in haar man se spaarrekening te deponer. Wanneer u die diefstal agterkom het sy en haar man reeds verdwyn. Verduidelik in 'n brief aan X wat sy regte is.

**VRAAG 7** [21]

- 7.1 Verduidelik die verskil/le tussen 'n prokureur se plig om die sake van 'n kliënt vertroulik te hou en prokureur-en-kliënt privilegie. (5)

**QUESTION 4** [10]

Write a letter to your client Mrs Smith who is married out of community of property to her husband. Her husband's estate has just been sequestrated and she fears that this may have an influence on her assets. Advise her of the potential risks and what she can do to protect her interests and enforce her rights.

**QUESTION 5** [14]

You are consulted by two persons who wish to start a hardware business in partnership with each other. They instruct you to prepare a partnership agreement. Draft the clauses in the agreement which deal with:

- 5.1 the drawings of the partners and the division of profit and loss; (4)
- 5.2 the contributions of each partner; and (2)
- 5.3 the dissolution of the partnership. (8)

You must use your own imaginary facts. Do not draft the whole agreement.

**QUESTION 6** [8]

Your bookkeeper steals X's trust money by getting your partner to sign a cheque in your absence and depositing it into her husband's savings account. By the time you discover the theft she and her husband have disappeared. Explain to X in a letter what his rights are.

**QUESTION 7** [21]

- 7.1 Explain the difference/s between the attorney's duty to keep the affairs of a client confidential and attorney-and-client privilege. (5)

7.2 Bespreek hoe u reageer op 'n aanbod van 'n kliënt om aan u geld te leen as u dit graag sou wou leen. (3)

7.2 Discuss how you handle an offer by a client to lend you money if in fact you would like to borrow the amount. (3)

7.3 'n Kliënt dring daarop aan dat u dagvaarding uitreik vir 'n eis wat klaarblyklik verjaar het. Hoe verduidelik u die posisie aan u kliënt? (6)

7.3 A client insists that you issue summons on a claim that has clearly prescribed. How will you explain the situation to your client? (6)

7.4 U word skuldig bevind aan bestuur onder die invloed. Die Prokureursorde doen aansoek om u van die rol te laat verwyder. Wat sal die Hoë Hof waarskynlik beslis en hoekom? Sou die posisie anders wees as die misdryf oneerlikheid behels het? (3)

7.4 You are convicted of driving under the influence of liquor. The Law Society applies to have your name struck from the roll. What is the High Court likely to do and why? Would the situation be different if the offence involved dishonesty? (3)

7.5 U vennoot het 'n beëdigde verklaring in 'n dringende Hoë Hof aansoek opgestel. Geen kommissaris van ede is beskikbaar. Kan u die eed afneem? Sou die posisie anders gewees het as dit 'n aktesaangeleentheid was? Hoekom? (4)

7.5 Your partner has drawn an affidavit in an urgent High Court application. No other commissioner of oaths is available. May you administer the oath? Would the position be different if it were a Conveyancing matter? Why? (4)

**VRAAG 8 [7]**

**QUESTION 8 [7]**

Wat verstaan u onder die volgende?

What do you understand by the following?

8.1 Optrede *Pro Amico*; (2)

8.1 Acting *Pro Amico*; (2)

8.2 Party-en-party koste; (3)

8.2 Party and party costs; (3)

8.3 Prokureur-en-eie kliënt fooie. (2)

8.3 Attorney and own client fees. (2)

**DIE EINDE**

**THE END**