

# PROKUREURSEKSAMEN

## DEEL 1 HOFPROSEDURES

14 AUGUSTUS 2001

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.*

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# ATTORNEYS' EXAMINATION

## PART 1 COURT PROCEDURES

14 AUGUST 2001

09:00-12:15

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**VRAAG 1 [15]**

U kliënt besoek sy Plaaslike Owerheid om 'n nuwe bestuurderslisensie te bekom.

'n Werknemer van die Plaaslike Owerheid het nie die vloer behoorlik droog gemaak nadat dit gewas is nie. U kliënt val en doen ernstige fisiese beserings op as gevolg van die versuim.

U kliënt se instruksies aan u is dat:

- 1.1 Hy gelede mediese uitgawes van R28 567,00 aangegaan het.
- 1.2 Sy toekomstige mediese uitgawes R67 500,00 sal beloop.
- 1.3 Hy 'n verlies aan inkomste van R22 000,00 gely het.
- 1.4 Hy in die toekoms 'n verlies aan inkomste sal ly ten bedrae van R100 000,00.

U kliënt het 'n femurfraktuur met 'n ontwrigting van die acetabulum in die regterheup opgedoen.

**U moet nou u kliënt se aksie instel om sy skade te verhaal. Stel die besonderhede van vordering op met uitsluiting van die smeekbedes en vul aan met sodanige inligting as wat nodig mag wees om u kliënt in staat te stel om die aksie in te stel teen die plaaslike owerheid.**

**VRAAG 2 [7]**

2.1 U tree op vir 'n eiser in 'n bestrede geding in die Hooggeregshof. Na blootlegging deur die verweerder was u nie tevrede dat alle relevante dokumente behoorlik blootgelê is nie. Nieteenstaande die liassering van 'n kennisgewing ingevolge reël 35(3) is daar geen reaksie van die verweerder nie. **Stel die nodige kennisgewing van mosie op om 'n bevel te bekom wat die verweerder sal verplig om aan die kennisgewing te voldoen.**

(6)

2.2 **Wie sal gewoonlik die ondersteunende eedsverklaring aflê?**

(½)

2.3 **Wie moet die kennisgewing van mosie teken?**

(½)

**VRAAG 3 [3]**

U kliënt is ontevrede met die uitspraak deur 'n enkele regter in 'n siviele saak waarin hy 'n party was en wil appeleer.

3.1 **Watter stappe sal u doen om al sy remedieë in hierdie verband uit te put?**

(2)

**QUESTION 1 [15]**

Your client enters the premises of his Local Authority in order to obtain the new format driving licence.

An employee of the Local Authority has failed to properly dry the floor after washing it. Your client slips, falls and sustains serious bodily injuries as a result of the said failure.

You are instructed that your client has:

- 1.1 Incurred medical expenses in the sum of R28 567,00.
- 1.2 That in the future he will require medical treatment which will cost R67 500,00.
- 1.3 That he has suffered a loss of earnings of R22 000,00.
- 1.4 In the future he will suffer an on-going loss of earnings quantified at R100 000,00.

The injuries sustained by your client were a fractured femur, with a dislocation of the acetabulum in the right hip.

**You must now institute your client's action to recover his damages. Draft the particulars of claim, inserting such other information as may be required in order to institute the action against the local authority.**

**QUESTION 2 [7]**

2.1 You act on behalf of the plaintiff in a contested case in the High Court. After perusing the Defendant's discovery affidavit you are not satisfied that defendant has discovered all the relevant documents. You have served a rule 35(3) notice to which no response was received. **Draft the necessary notice of motion to obtain an order compelling the defendant to comply with the notice.**

(6)

2.2 **Who will usually depose to the supporting affidavit?**

(½)

2.3 **Who must sign the notice of motion?**

(½)

**QUESTION 3 [3]**

Your client is dissatisfied with a civil judgement by a single judge in the High Court in a matter in which he was a party and wishes to appeal.

3.1 **What must be done in order to exhaust his remedies in this regard?**

(2)

3.2 Indien u kliënt ontevrede is met die uitspraak van 'n volbank van die Hooggeregshof wat as 'n Hof van Appèl uitspraak gelewer het in 'n siviele saak, wat mag hy doen?

(1)

3.2 If your client is dissatisfied with the judgement of a full bench of the High Court sitting as a Court of Appeal in a civil matter, what may he do?

(1)

**VRAAG 4 [8]**

**QUESTION 4 [8]**

4.1 Welke noodsaaklike bewerings is weggelaat uit die volgende Landdroshof besonderhede van vordering?

4.1 What essential averments are missing from the following Magistrate's Court particulars of claim?

4.1.1 Die eiser se eis is vir R10 000,00 ten opsigte van die ooreengekome prys van goedere verkoop aan die verweerder gedurende Januarie 2000.

(1)

4.1.1 The plaintiff's claim is for R10 000,00 being the agreed price of goods sold to the defendant during January 2000.

(1)

4.1.2 Die eiser se eis teen die verweerder is ten opsigte van 'n gedishonoreerde tjek van R20 000,00 gedateer 1 November 2000.

(2)

4.1.2 The plaintiff's claim against the defendant is for R20 000,00 in respect of a dishonoured cheque dated 1 November 2000.

(2)

4.1.3 Die eiser se eis teen die verweerder is vir botsingskade gely aan motor met registrasienommer ND 123, welke voertuig bestuur is deur die eiser op 1 November 2000 in Wesstraat, Durban, toe die voertuig gebots het met 'n voertuig bestuur deur verweerder se werknemer. Die algehele oorsaak van die ongeluk was as gevolg van die nalatige bestuur van die verweerder se werknemer.

(2)

4.1.3 The plaintiff's claim is against the defendant for the damage sustained in a collision to a motor vehicle, registration number ND123, being driven by the plaintiff on 1 November 2000 in West Street, Durban, when it collided with a vehicle driven by defendant's employee. The sole cause of the collision was the negligent driving of the defendant's employee.

(2)

4.2 Die verweerder op wie die dagvaardiging beteken is met die besonderhede van vordering uiteengesit in paragraaf 4.1.1 hierbo, konsulteer met u. **Stel 'n dokument op, uitsluitend die opskrif en einde, wat u sal opstel as gevolg van die weglating van die noodsaaklike bewering of bewerings.**

(3)

4.2 The defendant who was served with the summons which contains the particulars of claim set out in 4.1.1 above consults you. **Draw a document, excluding the heading and the ending, that you would prepare as a consequence of the absence of the essential averment or averments concerned.**

(3)

**VRAAG 5 [9]**

**QUESTION 5 [9]**

U klient, Kuzwayo's Bouerverskaffers, is 'n bouhandelaar. Die eienaar, Bhkinkosi Kuzwayo, skakel u op 1 Junie 2000 om u mee te deel dat een van sy kliënte, Bongani Nxumalo, in sy winkel is. Bongani erken dat hy R15 000,00 skuld vir goedere verkoop aan hom, welke bedrag hy onderneem het om aan die einde van April 2000 te betaal, maar nie in staat is om te betaal nie. Bongani bied nou aan om die eis in paaiemente van R2 000,00 per maand te betaal. U klient deel u verder mee dat hy teensinning bereid is om die aanbod te aanvaar, maar twyfel of Bongani die paaiemente gereeld sal betaal. U klient deel u ook mee dat hy Bongani stuur om u te spreek en verlang dat u 'n dokument moet opstel wat Bongani kan teken. Hierdie dokument moet voorsiening maak vir Bongani se onderneming

Your client, Kuzwayo's Builders Suppliers, is a builder's merchant. The proprietor, Bhkinkosi Kuzwayo, phones you on 1 June 2000 to say one of his customers, Bongani Nxumalo, has come into his shop. Bongani acknowledges he owes R15 000,00 for goods sold to him which he undertook to pay at the end of April 2000 but that he is not able to make this payment. Bongani has now offered to pay the claim in instalments of R2 000,00 per month. Your client tells you that he is reluctantly prepared to accept the offer but he doubts whether Bongani will maintain instalments. Your client tells you that he is sending Bongani round to see you and that he would like you to draw a document for Bongani to sign. This document must provide for Bongani's undertaking to pay the

om die eis in paaiemente te betaal en verder ook voorsiening maak dat indien Bongani sou versuim om paaiemente te betaal, u so spoedig as prakties moontlik voort kan gaan met aksie, met die vooruitsig dat Bongani se werkgewer, Johannesburg Munisipaliteit, die paaiemente van Bongani se salaris aftrek en aan u oorbetaal.

**Sit kortliks die punte, in verkorte vorm, uiteen wat sal verskyn in die dokument wat u sal opstel.**

**VRAAG 6 [4]**

Die eiser, 'n maatskappy XYZ (Edms) Beperk, het aksie in die Landdroshof teen u kliënt J Naidoo ingestel. Die besonderhede van vordering bevat die volgende bewerings:

*"Eiser se eis teen verweerder is vir die bedrag van R14 700,00 ten opsigte van die prys van goedere verkoop en gelewer deur eiser aan verweerder gedurende Maart 1999 op die Verweerder se spesiale aandrang en versoek."*

**Stel die versoek om sodanige nadere besonderhede op as wat u nodig ag, uitsluitend die opskrif en einde en beperk uself tot sodanige informasie waarop u kliënt geregtig is vir doeleindes van pleit. U kliënt deel u mee dat hy nog nooit enige besigheid met die eiser gedoen het nie.**

**VRAAG 7 [4]**

U kliënt versoek u om hom te verdedig in 'n aksie wat voortspruit uit 'n bou-ooreenkoms. Die dispuut gaan oor die gehalte van die bouwerk wat deur u klient verrig is. Die ooreenkoms het 'n arbitrasieklousule.

**Stel u kliënt se pleit op, uitsluitend die opskrif en uitsluitend daardie deel van die pleit wat betrekking het op die meriete van die eiser se eis.**

**VRAAG 8 [10]**

Tydens 'n konsultasie deel u kliënt u mee dat hy in 'n motorongeluk beseer is, en as gevolg daarvan het hy 'n verlies aan inkomste gely en sal in die toekoms 'n verdere verlies aan inkomste ly. Hy het R5 000,00 per maand verdien ten tye van die ongeluk. Vanweë die feit dat hy vir 'n tydperk van 6 maande na die ongeluk van die werk afwesig was, is hy oorgesien vir bevordering. Hy is betaal vir een maand siekverlof ingevolge sy dienskontrak en daarbenewens het sy werkgewers hom ex gratia drie maande se salaris betaal as 'n gebaar van welwillendheid. Die regsmediese verslag wat u van 'n ortopediese chirurg verkry het, dui aan dat u kliënt vyf jaar vroeër as normaal sal moet aftree as gevolg van die beserings wat hy opgedoen het.

U kliënt gee u opdrag om, inter alia, te eis vir gelede en toekomstige verlies aan verdienste.

debt in instalments and it must provide that, if Bongani defaults, you can proceed as soon as practicable with a view to getting Bongani's employer, Johannesburg City Council, to deduct the payments from Bongani's salary and pay you.

**Briefly list the points, in an abbreviated form, that would be contained in the document that you would draw.**

**QUESTION 6 [4]**

The plaintiff, a company XYZ (Pty) Ltd, has instituted action in the Magistrate's Court against your client, J Naidoo. The particulars of claim contain the following allegations:

*"Plaintiff's claim is against defendant for the sum of R14 700,00 being the price of goods sold and delivered by plaintiff to defendant during March 1999 at the defendant's instance and request."*

**Draw the request for such further particulars as you consider necessary, omitting the heading and the ending and restrict yourself to the information to which your client is entitled for the purpose of pleading. He has informed you that he has never done any business with the plaintiff.**

**QUESTION 7 [4]**

Your client asks you to defend him in an action arising out of a building contract. The dispute concerns the quality of the building work performed by your client. The contract has an arbitration clause.

**Draw your client's plea omitting the heading and also omit that part of the plea which deals with the merits of the plaintiff's claim.**

**QUESTION 8 [10]**

Your client, who was injured in a motor collision, informs you that he has suffered a loss of earnings and will in future suffer further loss of earnings. He was earning R5 000,00 per month at the time of the collision. He informs you that, due to the fact that he was off work for a period of 6 months after the collision, he was overlooked for promotion. He also informs you that he was paid for a period of one month in terms of his contractual sick leave benefits and that he was paid ex gratia for a further three months thereafter as a gesture of goodwill by his employers. The medico-legal report which you have obtained from an orthopaedic surgeon indicates that your client will be forced into early retirement five years earlier than normal due to the sequelae of his injuries.

Your client, inter alia, instructs you to claim for past and future loss of earnings.

8.1 Sit volledig uiteen watter dokumente/inligting sal u van u kliënt se werkgever moet kry om hierdie eise te staaf?

(6)

8.2 Het u kliënt 'n verlies aan gelede inkomste gely?

(1)

8.3 Indien wel, wat is die bedrag en hoe bereken u hierdie verlies?

(3)

### VRAAG 9

[4]

U kliënt deel u mee dat hy in 'n motorbotsing betrokke was terwyl hy sy motor onder die invloed van drank bestuur het. Van u kliënt se getuie en dié van 'n onafhanklike ooggetuie, blyk dit dat die ander bestuurder nalatig was en sulke nalatigheid alleenlik die ongeluk veroorsaak het.

Sal u, u kliënt aanbeveel om met 'n eis voort te gaan vanweë die beserings wat hy in die ongeluk opgedoen het, niestandaard die feit dat hy onder die invloed van drank was? Motiveer u antwoord.

### VRAAG 10

[8]

Tydens 'n konsultasie deel 'n kliënt u mee dat sy beseer is in 'n ongeluk toe die motor waarin sy 'n passasier was van die pad gery het en teen 'n boom gebots het. Die bestuurder het te vinnig gery en beheer oor die voertuig verloor.

Die voertuig is gelisensieer as 'n huurmotor en u kliënt het soos die ander passasiers, reisgeld betaal aan die bestuurder. U kliënt is erg beseer in die botsing, is in 'n hospitaal opgeneem en het mediese onkoste aangegaan.

10.1 Het u kliënt 'n eis teen die Fonds? Motiveer u antwoord en sit uiteen enige ondersoek wat u moet aangaan om vas te stel wat namens u kliënt geëis kan word.

(3)

10.2 Het u kliënt 'n eis teen die bestuurder persoonlik? Motiveer u antwoord.

(2)

10.3 Sal u antwoorde op die vorige vrae anders wees, indien daar vasgestel word dat die motor nie wettiglik gelisensieer was nie?

(3)

8.1 Explain fully what information/documentation you will obtain from your clients employer in order to substantiate these claims.

(6)

8.2 Has your client a claim for loss of past earnings?

(1)

8.3 If so, in what amount and how do you calculate this loss?

(3)

### QUESTION 9

[4]

Your client advises you that while driving his motor vehicle he was under the influence of liquor and was involved in a collision with another vehicle. From your client's version of what took place, and the evidence of an independent witness, it is apparent that the other driver was negligent, and such negligence was the sole cause of the collision.

Would you advise your client to institute a claim for damages arising from the injuries he sustained in this collision, despite the fact that he was under the influence of liquor? Motivate your answer fully.

### QUESTION 10

[8]

Your client consults you about an accident in which she was injured when the vehicle in which she was travelling as a passenger left the road and crashed into a tree. The driver evidently drove too fast and lost control of the vehicle.

The vehicle was a registered taxi and like the other passengers, your client had paid the driver a fee. Your client sustained extensive bodily injuries, was hospitalised and incurred medical expenses.

10.1 Does your client have a claim against the Fund? Motivate your answer fully and deal with any special investigations that have to be made to establish what can be claimed on your client's behalf.

(3)

10.2 Would your client be entitled to also claim against the driver personally? Motivate your answer fully.

(2)

10.3 Would your answers to the aforesaid questions be different if it was established that the vehicle was not covered by a lawful permit?

(3)

**VRAAG 11 [3]**

Die broodwinner is erg beseer in 'n motorbotsing wat op 1 Oktober 1999 plaasgevind het. Hy sterf drie maande later as gevolg van sy beserings. Hy word oorleef deur sy vrou en twee minderjarige kinders.

**Wanneer sal verjaring begin loop ten opsigte van die weduwee en minderjarige kinders se eise?**

**VRAAG 12 [8]**

Die klagte teen u kliënt is strafbare manslag. Daar word beweer dat u kliënt die oorledene, 'n oorgewig man, met die vuus in die gesig geslaan het tydens 'n bakleierey. Die oorledene het agteroor geval en die agterkant van sy kop het 'n klip getref. Hy het sy bewussyn verloor en is van die toneel verwyder na die hospitaal waar hy gesertifiseer was as dood by aankoms.

**Stel 'n Artikel 115 Verklaring op waarin u u kliënt se pleitverduideliking asook erkennings ten opsigte van sake wat nie in dispuut is nie, uiteensit ingevolge artikel 220 van die Strafproseswet.**

**VRAAG 13 [10]**

13.1 Noem die drie opsies wat beskikbaar is aan die verdediging nadat die Staat sy saak gesluit het. (3)

13.2 Bespreek die omstandighede waarin u elkeen van hierdie opsies sal uitoefen. (7)

**VRAAG 14 [5]**

U tree op namens mnr A in 'n strafhofsak in die distrikshof. U instruksies is om vir borg aansoek te doen.

Nadat getuienis van u kliënt en die ondersoekbeampte, wat borg opponeer, aangehoor is, bevind die Landdros teen u kliënt en weier borg.

U ontvang instruksies van mnr A om appèl teen die weiering van borg te notuleer en in sy instruksies bring hy nuwe feite ter steuning van sy aansoek om borg onder u aandag.

**Bespreek kortliks hoe u die appèl sowel as die nuwe feite sal hanteer.**

**VRAAG 15 [2]**

**Noem enige drie (3) bevoegde uitsprake op 'n aanklag van strafbare manslag.**

**QUESTION 11 [3]**

The breadwinner is seriously injured in a motor collision that occurred on 1 October 1999. He dies three months after the accident as a result of the injuries sustained. He is survived by his wife and two minor children.

**When does prescription start to run in respect of the claims of the widow and the minor children?**

**QUESTION 12 [8]**

Your client is charged with culpable homicide, it being alleged that during a fight with the deceased, he struck the deceased, an overweight man, with the fist in the face. The deceased fell backwards and hit the back of his head on a rock. He lost consciousness and was taken from the scene of the incident to hospital where he was certified dead on arrival.

**Draft a Section 115 statement setting out your client's plea explanation and admissions relating to matters which are not in dispute in terms of section 220 of the Criminal Procedures Act.**

**QUESTION 13 [10]**

13.1 Name the three options open to the defence once the State has closed its case. (3)

13.2 Discuss the circumstances under which you would exercise each option. (7)

**QUESTION 14 [5]**

You act on behalf of Mr A in a criminal matter in the district court. Your instructions are to apply for bail.

After hearing evidence from your client and the investigating officer, who is opposing the granting of bail, the Magistrate finds against your client and refuses bail.

Mr A instructs you to note an appeal against the refusal of bail and in his instructions he now also brings to your attention new facts in support of the application for bail.

**Describe in brief how you will treat the appeal and the new facts.**

**QUESTION 15 [2]**

**Name any three (3) competent verdicts on a charge of culpable homicide.**

# PROKUREURSEKSAMEN

## DEEL 2 BOEDELS

14 AUGUSTUS 2001

14:00-16:15

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# ATTORNEYS' EXAMINATION

## PART 2 ESTATES

14 AUGUST 2001

14:00-16:15

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**VRAAG I [60]**

U is 'n prokureur en word aangestel as die eksekuteur in die boedel van wyle Jan Smit. U is nie vir BTW geregistreer nie.

Hy was die geregistreerde eienaar van 'n woonhuis wat gewaardeer is vir R450 000,00.

Sy motorvoertuie, 'n motor en 'n 4 X 4 "Heuwelbul" is gewaardeer vir R120 000,00 en R280 000,00 onderskeidelik.

Hy was die eienaar van aandele in 'n openbare maatskappy wat op die Johannesburgse Effektebeurs genoteer is en teen R125 000,00 gewaardeer is, en hy het ook aandele besit in 'n privaatmaatskappy wat gewaardeer is teen R75 000,00.

In die huweliksvoorwaardekontrak tussen die oorledene en sy eggenote, deur wie hy oorleef word, het hy 'n bestaande polis op sy lewe, wat by sy afsterwe 'n bedrag van R100 000,00 uitbetaal, aan sy eggenote geskenk. Hierdie polis is formeel aan sy eggenote gesedeer kort na die sluiting van die huwelik.

*Bo en behalwe die polis waarna hierbo verwys word, was daar ook nog nie volgende versekeringspolisse op die oorledene se lewe:*

- i) 'n polis waarkragtens 'n bedrag van R200 000,00 regstreeks aan sy dogter, wat as begunstigde in die poliskontrak benoem is, uitbetaal is.
- ii) 'n polis in die naam van die oorledene waarkragtens die versekerde bedrag ter waarde van R250 000,00 by sy afsterwe uitbetaalbaar is. Daar was nie 'n ander persoon as begunstigde in die poliskontrak benoem nie. Die oorledene het bloot die polis in sy eie naam uitgeneem.

*Die oorledene het aan sy werkgewer se pensioenfonds en groepsleweversekeringskema behoort, wat die volgende bedrae regstreeks aan sy weduwee uitbetaal het:*

- i) Pensioenfonds: 'n enkelbedrag van R290 000,00
- ii) Groepleweversekeringskema: R275 000,00

Die oorledene het 'n oortrokke bankrekening gehad en by sy afsterwe het die debietsaldo op sy tjekrekening R17 000,00 beloop.

Die kwotasie van die begrafnisondernemers wat die teraardebestelling behartig het, was R6 400,00.

*Die oorledene se testament bepaal soos volg:*

- i) Die huis en alle aandele wat hy by sy afsterwe besit, gaan na sy oorlewende eggenote, met wie hy buite gemeenskap van goed getroud is met uitsluiting van enige aanwasbedeling.
- ii) 'n Kontantlegaat van R50 000,00 aan die Kagiso Trust se studentebeursfonds.

**QUESTION I [60]**

You are an attorney and have been appointed as executor in the deceased estate of the late John Smith. You are not registered as a VAT vendor.

He was the registered owner of a dwelling house valued at R450 000,00.

His motor vehicles, a motorcar and a 4 X 4 "Apache Adventurer", are valued at R120 000,00 and R280 000,00 respectively.

He was the owner of shares in a public company quoted on the Johannesburg Stock Exchange and which are valued at R125 000,00. He also owned shares in a private company which are valued at R75 000,00.

In the antenuptial contract between the deceased and his wife, who survives him, he donated to her an existing life policy on his own life, the proceeds of which amount to R100 000,00. The policy had been formally ceded to his wife shortly after the conclusion of the marriage.

*Over and above the policy referred to above, there were the following life insurance policies on the deceased's life:*

- i) a policy in terms of which an amount of R200 000,00 had been paid out directly to the deceased's daughter, who had been nominated as beneficiary in terms of the policy.
- ii) a policy in the name of the deceased, in terms of which the insured amount of R250 000,00 is payable at his death. No third person was named as beneficiary. The deceased merely took out the policy in his own name.

*The deceased had been a member of his employer's pension fund and group life insurance scheme, which paid out the following amounts directly to his widow:*

- i) Pension fund: a lump sum of R290 000,00
- ii) Group life insurance: R275 000,00

The deceased had a bank overdraft and at date of death the debit balance on his cheque account amounted to R17 000,00.

The quotation from the burial society for attending to the funeral amounted to R6 400,00.

*The deceased's will contains the following bequests:*

- i) The house and all shares owned by the deceased at his death go to his wife, to whom he had been married out of community of property with exclusion of the accrual system.
- ii) A cash legacy of R50 000,00 to the students' bursary fund of the Kagiso Trust.



- iii) Die restant van die boedel gaan na sy seun.
- 1.1 **Stel die volgende onderafdelings van die boedelrekening volledig op:**
- 1.1.1 Die Opskrif
  - 1.1.2 Die Likwidasierekening
  - 1.1.3 Die Rekapitulاسie-opgawe
  - 1.1.4 Die Boedelbelasting-addendum
- (52)

**Let wel:**

- i) Waar volle beskrywings van bates nie voorsien is nie, moet u dit verskaf.
- ii) Enige ander items wat as 'n reël in 'n Likwidasierekening en in die opskrif moet verskyn, moet ingesluit word - gebruik u eie denkbeeldige besonderhede en bedrae waar nodig.
- 1.2 **Noem die verskillende dokumente wat u by die Meester moet indien om u eksekuteursbrief te bekom.**
- (8)

**VRAAG 2 [10]**

A sterf intestaat op 30 Junie 2000 en word oorleef deur sy vrou, met wie hy binne gemeenskap van goed getroud was, sy seun C en sy dogter D. Die netto waarde van die gemeenskaplike boedel was R606 000,00. D, wat nie minderjarig of geestesongesteld is nie, doen afstand van haar erfenis.

**Verduidelik hoe die oorledene se boedel sal vererf en gee redes vir u antwoord.**

**VRAAG 3 [10]**

Simon verly 'n testament op 14 Januarie 2000 waarkragtens hy sy boedel aan sy vrou Susan nalaat. Simon en Susan, wat buite gemeenskap van goed met mekaar getroud was, is op 13 Junie 2000 geskei. Simon trou met Marie op 13 Julie 2000 en sterf kinderloos op 11 Augustus 2000.

- 3.1 **Hoe moet Simon se boedel verdeel word?** (6)
- 3.2 **Indien Simon op 1 Desember 2000 gesterf het, hoe sou sy boedel dan verdeel moes word?** (4)

- iii) The residue of the estate to his son.
- 1.1 **Draw the following sections of the estate account in full:**
- 1.1.1 The Heading
  - 1.1.2 The Liquidation Account
  - 1.1.3 The Recapitulation Statement
  - 1.1.4 The Estate Duty Addendum
- (52)

**Please note:**

- i) Where full descriptions of assets are not furnished, you must supply them.
- ii) Any other items which as a rule must appear in a Liquidation Account and the heading, must be included - use your own imaginary amounts and particulars where necessary.
- 1.2 **Name the various documents which you will have to submit to the Master in order to obtain letters of executorship.**
- (8)

**QUESTION 2 [10]**

A dies intestate on 30 June 2000 leaving his wife B to whom he was married in community of property, his son C and his daughter D. The joint estate has a net value of R606 000,00. D, who is neither a minor nor mentally ill, renounces her inheritance.

**Explain how the deceased's estate will devolve. Give reasons for your answers.**

**QUESTION 3 [10]**

Simon executed a will on 14 January 2000 in terms of which he left his estate to his wife, Susan. Simon and Susan, who were married out of community of property, were divorced on 13 June 2000. Simon married Mary on 13 July 2000 and died childless on 11 August 2000.

- 3.1 **How will Simon's estate be distributed?** (6)
- 3.2 **If Simon had died on 1 December 2000, how would his estate devolve?** (4)

**VRAAG 4 [9]**

U word deur 'n ongeletterde persoon opdrag gegee om vir hom 'n testament op te stel. Verduidelik die prosedures wat u ingevolge die Wet op Testamente moet volg om 'n geldige testament wat deur middel van 'n merk verly word, daar te stel.

**VRAAG 5 [6]**

In welke omstandighede moet 'n eksekuteur aan die Meester sekerheid stel vir die behoorlike uitvoering van sy pligte? Hoe word sekerheid gestel?

**VRAAG 6 [5]**

Pieter, wat ingevolge huweliksvoorwaardes getroud was, kom te sterwe en in sy testament het hy al sy bates aan sy twee meerderjarige kinders bemaak. Sy vrou, met wie hy 35 jaar lank getroud was, raadpleeg u oor haar regte.

- 6.1 Het sy enige eis teen die boedel? (1)
- 6.2 Indien u antwoord op 6.1 ontkennend is verduidelik hoekom nie, en as u antwoord bevestigend is, verduidelik hoekom en wat die aard van haar eis sal wees. (4)

**QUESTION 4 [9]**

You are instructed by an illiterate person to prepare a will for him. With reference to the Wills Act explain the procedures that must be followed to validate the will which is executed by the making of a mark.

**QUESTION 5 [6]**

In what circumstances must an executor furnish security to the Master for the proper performance of his functions? How is security furnished?

**QUESTION 6 [5]**

Peter who was married by antenuptial contract dies and in his will he bequeaths all his assets to his two major children. His wife to whom he was married for 35 years consults you as to her rights.

- 6.1 Has she got any claim against his estate? (1)
- 6.2 If your answer to 6.1 is negative explain why not and if your answer is in the affirmative, explain why and what claims she will have. (4)

## PROKUREURSEKSAMEN

### DEEL 3 PROKUREURSPRAKTYK

15 AUGUSTUS 2001

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. Die vrae mag in Afrikaans of Engels beantwoord word.
3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
4. Waar nodig, moet kandidate hulle eie feite versin.
5. Skryf asseblief slegs op die regterkantse bladsye.
6. 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

15 AUGUST 2001

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. The questions may be answered in English or Afrikaans.
3. Candidates must remember that marks are awarded for good draftsmanship.
4. Candidates must invent their own facts wherever necessary.
5. Please write only on the right-hand pages.
6. 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 kliënt is 'n klein sakeman wat graag 'n regspersoon wil oprig vir doeleindes van die ontwikkeling en bedryf van 'n nuwe besighied in 'n riskante besigheidsveld. Hy vertel u dat hy van voornemens is om 'n vennoot in te bring. Hy vra u advies met betrekking tot die tipe regspersoon wat hy moet gebruik.

**Stel 'n opinie in briefvorm op in waarin u hom adviseer om 'n beslote korporasie te gebruik in teenstelling met 'n privaat maatskappy met beperkte aanspreeklikheid. Gee ook redes waarom u kliënt nie 'n vennootskap moet gebruik nie.**

**VRAAG 2 [24]**

**Bespreek kortliks hoe u as prokureur in die volgende omstandighede sal optree.**

- 2.1 U oorhandig 'n trusttjek aan u kliënt namens wie u 'n invordering hanteer het. Twee dae later versoek hy u om die kruising op die tjek te kanselleer aangesien hy nie 'n bankrekening het nie en nie die tjek gewissel kry nie. (4)
- 2.2 U kliënt dring daarop aan dat u iemand wat hom na bewering geld skuld, moet dagvaar maar u is daarvan oortuig dat u kliënt nie 'n goeie saak het nie. (4)
- 2.3 Gedurende die verloop van 'n siviele verhoor waarin u namens die eiser optree, blyk dit dat u getuienis in die saak sal moet aflê. (4)
- 2.4 U kliënt vra u of dit moontlik is om vooraf met 'n advokaat op 'n fooi ooreen te kom vir laasgenoemde se verskyning voor 'n tribunaal. (4)
- 2.5 U is van mening dat die omvang van 'n rekening van 'n kollega vir die opstel van 'n huurkontrak, welke koste u kliënt as huurder moet betaal, buitensporig hoog is. (4)
- 2.6 U as prokureur tree op vir een van die partye in 'n dispuut wat wye publisiteit in die pers en elektroniese media ontlok. U word deur die pers genader vir 'n onderhoud en u stem in. Tydens die onderhoud word indringende vrae gevra oor u kliënt se sake en u antwoord vrylik. **Is u gedrag aanvaarbaar? Gee redes.** (4)

**QUESTION 1 [30]**

Your client is a small businessman who wishes to set up a juristic person as a vehicle for the development and operation of a new business venture in a risky field of business. He tells you that he intends to bring in a partner. He seeks your advice as to the nature of the vehicle he should use.

**Draft an opinion in letter form to your client advising him to use a close corporation in preference to a private company with limited liability. Also give reasons why your client should not use a partnership.**

**QUESTION 2 [24]**

**Discuss briefly how you, as an attorney, should act in the following circumstances.**

- 2.1 You hand a trust cheque to a client on whose behalf you handled a collection matter. Two days later he requests you to cancel the crossing on the cheque as he has no bank account and cannot cash the cheque. (4)
- 2.2 Your client insists that you issue summons against somebody who allegedly owes him money, but you are convinced that your client does not have a good case. (4)
- 2.3 During the course of a civil trial in which you are acting for a plaintiff it becomes clear that you will have to give evidence. (4)
- 2.4 Your client enquires from you whether it would be possible to agree with counsel on a fee in advance for the latter's appearance before a tribunal. (4)
- 2.5 You are of the opinion that the account of a colleague for the drafting of a lease agreement, the cost of which your client as the tenant will have to pay, is excessively high. (4)
- 2.6 You are the attorney acting for one of the parties in a dispute which has caused wide publicity in the press and the electronic media. You are called upon by the press for an interview which you accept. During the interview searching questions are asked with regard to your client's affairs which you answer freely. **Is your conduct acceptable? Give reasons.** (4)

**VRAAG 3 [20]**

U word geraadpleeg deur 'n kliënt wat u opdrag gee dat hy van voornemens is om 'n bedrag van R 1 000 000,00 aan sy broer te leen vir 'n periode van vyf jaar teen 'n rentekoers wat gelykstaan aan 2% meer as die prima rentekoers gevra deur XYZ Bank Beperk op oortrokke bankrekening. U word verder meegedeel dat u kliënt se broer die eienaar is van 1 000 aandele in ABC Beperk wat hy bereid is om te gee as sekuriteit vir terugbetaling van die lening.

U kliënt gee u opdrag om die dokument op te stel wat sy broer se skuld aan hom sal boekstaaf en om die nodige bepalinge daarin uiteen te sit wat sal verseker dat indien die verskuldige bedrag nie terug betaal word nie, u kliënt sy broer se aandele in ABC Beperk kan bekom om te verseker dat hy wel betaal sal word. Stel die nodige dokument op.

**VRAAG 4 [18]**

U kliënt het sy huis aan mnr Koper verkoop vir R250 000,00. Kragtens die ooreenkoms was mnr Koper verplig om 'n waarborg vir die volle koopprys aan u kliënt te lewer binne 'n periode van 30 dae vanaf die datum van die ooreenkoms maar het versuim om dit te doen.

Dit blyk dat die ooreenkoms nie 'n kansellasieklausule bevat nie en dat dit blykbaar opgestel is deur 'n onervare persoon wat u kliënt die versekering gegee het dat die ooreenkoms in orde is.

U kliënt verlang u advies.

4.1 Is hy geregtig om die ooreenkoms in hierdie omstandighede te kanselleer? Motiveer u antwoord.

(5)

4.2 Skryf die brief of briewe om uitvoering te gee aan u advies.

(13)

**VRAAG 5 [8]**

U word opdrag gegee dat u kliëntmaatskappy sekuriteit verlang ten aansien van 'n beslote korporasie se huidige en toekomstige skuld aan hom.

Die twee lede van die beslote korporasie het ingestem om hulle te bind as medeborge aan u kliënt vir die huidige en toekomstige verpligtinge van die beslote korporasie aan u kliënt. Dit is aanvaarbaar vir u kliënt.

Stel 'n kort borgakke op wat voldoende sal wees om aan bogemelde vereistes te voldoen.

**QUESTION 3 [20]**

You are consulted by a client who instructs you that he intends lending his brother the sum of R100 000,00 for a period of five years at an interest rate equivalent to 2% above the prime rate of interest charged by XYZ Bank Ltd on overdrawn banking accounts. You are further instructed that your client's brother owns 1 000 shares in ABC Limited which he is prepared to give as security for the repayment of the loan.

Your client instructs you to draw the document recording his brother's indebtedness to him, and to incorporate therein the necessary provisions to provide that if the debt is not repaid the shares in ABC Limited can be acquired by your client so as to ensure that he will recover payment. Draw the necessary document.

**QUESTION 4 [18]**

Your client sold his house to Mr Purchaser for R250 000,00. In terms of the agreement of sale Mr Purchaser was obliged to deliver a guarantee for the full purchase price to your client within 30 days from the date of signature of the agreement but failed to do so.

It appears that the agreement does not contain a cancellation clause as it was apparently drafted by an inexperienced person who assured your client that the agreement was in order.

Your client seeks your advice.

4.1 Is he entitled to cancel the agreement under these circumstances? Motivate your answer.

(5)

4.2 Draft the letter(s) to give effect to your advice.

(13)

**QUESTION 5 [8]**

You are instructed that your client company requires security in respect of a close corporation's present and future indebtedness to it.

The two members of the debtor close corporation are prepared to bind themselves as sureties for the present and future liability of the debtor to your client. This is acceptable to your client.

Draw a short deed of suretyship which will meet the abovementioned requirements.

# PROKUREURSEKSAMEN

## DEEL 4 BOEKHOU

15 AUGUSTUS 2001

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. Die vrae mag in Afrikaans of Engels beantwoord word.
2. Kandidate mag sakrekenaars gebruik.
3. By beantwoording van vrae moet die betrokke inskrywings duidelik geïdentifiseer, omskryf en uiteengesit word.
4. Afsonderlike besigheids- en trustkasboeke, asook kliëntegrooboekrekeninge moet geopen word en moet nie gekombineer word nie. Joernalinskrywings moet behoorlik beskryf en geïdentifiseer word.
5. Skryf asseblief slegs op die regterkantse bladsye.
6. 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 drup.

# ATTORNEYS' EXAMINATION

## PART 4 BOOKKEEPING

15 AUGUST 2001

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. The questions may be answered in English or Afrikaans.
2. Candidates may use calculators.
3. In answering the questions you should ensure that the relevant entries are clearly identified, narrated detailed.
4. 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.
5. Please write only on the right-hand pages.
6. 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]**

- 1.1 **Bespreek die kriteria wat u sal toepas en ook u optrede om te besluit of gelde deur u ontvang in u trust- of besigheidsrekening gedeponeer sal word.** (7)
- 1.2 **Wat beteken die terme:**
- 1.2.1 **Uitsetbelasting?** (3)
- 1.2.2 **Insetbelasting?** (3)
- 1.3 **Hoe gereeld en wanneer moet BTW aan die SA Inkomstediens oorbetal word?** (5)
- 1.4 **Vir hoe lank en waar moet die rekeningkundige boeke van 'n praktyk bewaar word?** (2)

**VRAAG 2 [20]**

U trustbankrekonsiliasiestaat soos op 31 Januarie 2000 is as volg:

	R	R
Saldo per bankstaat (gunstig)		64 999
Min: Uitstaande tjeks Nr		
129	733	
183	8427	
192	9316	<u>18476</u>
		46523
Plus: Uitstaande deposito		<u>7229</u>
Kasboekbalans		<u>53752</u>

Gedurende die maand Februarie 2000 het u die volgende deposito's gemaak en tjeks uitgereik:

	R	R
18/2/00 Deposito	64770	12/2/00 Tjek Nr 193 7272
24/2/00 Deposito	23906	16/2/00 Tjek Nr 194 1926
28/2/00 Deposito	12302	18/2/00 Tjek Nr 195 7849
		28/2/00 Tjek Nr 196 25000
		28/2/00 Tjek Nr 197 15000

U bankstaat vir Februarie 2000 is as volg:

	Debiet	Krediet	Saldo
01/2/00 Saldo			64999
04/2/00 Deposito		7229	72228
07/2/00 Tjek 183	8427		63801
16/2/00 Tjek 193	7272		56529
18/2/00 Tjek 195	7849		48680
Deposito		64770	113450
22/2/00 Tjek 194	1926		111524
24/2/00 Deposito		23906	135430
28/2/00 Diensfooie	1333		134097
Rente		428	134525

**QUESTION 1 [20]**

- 1.1 **Discuss the criteria you would apply and the action you would take in deciding whether money received by you should be deposited into the business or the trust banking account.** (7)
- 1.2 **What is meant by the terms:**
- 1.2.1 **Output tax?** (3)
- 1.2.2 **Input tax?** (3)
- 1.3 **How often and when must VAT be paid over to the SA Revenue Service?** (5)
- 1.4 **For how long and where must the accounting records of a practice be kept?** (2)

**QUESTION 2 [20]**

Your trust bank reconciliation statement at 31 January 2000 is as follows:

	R	R
Balance per bank statement (favourable)		64 999
Less: Outstanding cheques No		
129	733	
183	8427	
192	9316	<u>18476</u>
		46523
Add: Outstanding deposit		<u>7229</u>
Cash book balance		<u>53752</u>

During the month of February 2000, you made the deposits and issued the cheques as set out hereunder:

	R	R
18/2/00 Deposit	64770	12/2/00 Cheque No 193 7272
24/2/00 Deposit	23906	16/2/00 Cheque No 194 1926
28/2/00 Deposit	12302	18/2/00 Cheque No 195 7849
		28/2/00 Cheque No 196 25000
		28/2/00 Cheque No 197 15000

Your bank statement for February 2000 is as follows:

	Debit	Credit	Balance
01/2/00 Balance			64999
04/2/00 Deposit		7229	72228
07/2/00 Cheque 183	8427		63801
16/2/00 Cheque 193	7272		56529
18/2/00 Cheque 195	7849		48680
Deposit		64770	113450
22/2/00 Cheque 194	1926		111524
24/2/00 Deposit		23906	135430
28/2/00 Service charges	1333		134097
Interest		428	134525

Bykomende inligting:

Tjek 129 vir R733 is op 22/5/99 uitgereik. U opdrag aan die bank is om die trustbankkoste te debiteer teen die besigheidsbankrekening.

**U moet u kasboek opskryf, balanseer en die bankrekonsiliasiestaat opstel vir Februarie 2000.**

**VRAAG 3 [25]**

In u praktyk het u die ondervermelde transaksies aangegaan:

1. U ontvang R60 000 van Colin om in trust te hou, afhangende van 'n toekomstige gebeurtenis. Colin gee u skriftelike magtiging om die fondse by Tweede Bank namens hom te belê.
2. In opdrag van Colin, onttrek u R15 000 van die belegging en u betaal die advokaat R6 000.
3. U ontvang R150 000 van Gladys synde die koopprys van 'n woonstel wat sy gekoop het.
4. Sy gee u opdrag om R100 000 daarvan by Derde Bank namens haar te belê.
5. U ontvang bedrae ten bedrae van R250 000 van verskeie kliënte en u besluit om R200 000 daarvan op 'n rente-draende rekening by Eerste Bank te belê.
6. U ontvang 'n bykomende R15 000 in kontant van Gladys synde die pro forma oordragskoste en u betaal die hereregte van R10 000.
7. U onttrek R100 000 van die belegging by Eerste Bank en ontvang R1 200 rente daarop wat u aan die begunstigde daarvan betaal.

U word gevra om:

- 3.1 **Al die bogenoemde transaksies in u trustkasboek- en grootboekrekeninge aan te teken.** (15)
- 3.2 **'n Uittreksel van trustsaldo's te maak soos vereis deur die reëls van die Prokureursordes.** (5)
- 3.3 **Aan te toon of u voldoende trust- en beleggingsfondse het om u verpligtinge aan trustkrediteure te betaal.** (5)

Additional information:

Cheque 129 for R733 was issued on 22/5/99. Your instructions to the bank are to debit your business account with the trust account bank charges.

**You are required to write up and balance your cash book and prepare the bank reconciliation statement for February 2000.**

**QUESTION [25]**

During the course of your practice, you have attended to the undermentioned transactions.

1. You receive R60 000 from Colin to be held in trust pending the happening of a future event. Colin authorises you in writing to invest the funds on his behalf at Second Bank.
2. On Colin's instructions you later withdraw R15 000 from the investment and pay counsel R6 000.
3. You receive R150 000 from Gladys being the purchase price of an apartment which she has purchased.
4. She instructs you to invest R100 000 thereof on her behalf at Third Bank.
5. You receive amounts totaling R250 000 from a variety of clients and you decide to invest R200 000 thereof in an interest bearing account with First Bank.
6. You receive a further R15 000 in cash from Gladys being the pro forma transfer costs and you pay the transfer duty of R10 000.
7. You call up R100 000 of the First Bank investment and receive R1 200 interest thereon, which you pay to the beneficiary thereof.

You are required to:

- 3.1 **Record all the above transactions in your trust cash book and ledger accounts.** (15)
- 3.2 **Extract a list of trust balances as required by the Law Societies' rules.** (5)
- 3.3 **Indicate whether you are holding sufficient funds in your trust and investment accounts to cover your liability to trust creditors.** (5)