

## PROKUREURSEKSAMEN

### DEEL 1 HOFPROSEDURES

13 AUGUSTUS 2002

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.*

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 1 COURT PROCEDURES

13 AUGUST 2002

09:00-12:15

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 3 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 [6]**

'n Prokureur het 'n enkelvoudige dagvaarding in die Hooggeregshof uitgereik gebaseer op die volgende feite:

- (a) Die verweerder het beheer oor sy voertuig verloor en gebots met 'n motorvoertuig bestuur deur die prokureur se kliënt, mnr X.
- (b) Na die voorval het die verweerder, 'n *peregrinus* van die Republiek van Suid-Afrika, tydens 'n strafszaak skuldig gepleit op 'n aanklag van dronkbestuur. Gedurende daardie verhoor het hy aangebied om die skade aan die ander voertuig aan X se broer, die eienaar van die betrokke voertuig, te betaal.

Daar het niks van die bogemelde belofte gekom nie en die prokureur is opdrag gegee om namens sy kliënt X bogemelde aksie in te stel vir betaling van die bedrag van R120 000-00, waarvan R80 000-00 ten opsigte van persoonlike beserings deur die kliënt opgedoen en R40 000-00 vir die herstelkoste van die voertuig is.

Tot sy verbasing het die verweerder verskyning tot verdediging aangeteken en die prokureur het voortgegaan om die volgende stappe te doen:

- aangesien hy van mening was dat die verweerder nie 'n *bona fide* verweer tot die eiser se eis het nie, het hy 'n aansoek om summierse vonnis geloods;
- in die beëdigde verklaring ter ondersteuning van die aansoek was die prokureur die deponent;
- hy het verder besluit om sekuriteit vir koste te versoek, aangesien die verweerder 'n *peregrinus* was.

Bespreek krities al die stappe deur die prokureur geneem om sy mandaat uit te voer.

**VRAAG 2 [14]**

U tree op namens 'n verweerder in 'n hooggeregshofaksie:

- 2.1 Noem drie gevalle waar die verweerder geregtig sal wees om sekuriteit vir koste van die eiser te versoek. (3)
- 2.2 Aanvaar dat die bedrag van sodanige koste deur die griffier bepaal is maar dat die eiser versuim het om behoorlike sekuriteit te verskaf. Stel sodanige dokumente op as wat nodig mag wees om die eiser te verplig om sekuriteit te verskaf. Kopstukke kan weggelaat word. (11)

**VRAAG 3 [5]**

Noem vyf essensiële aangeleenthede wat uit die notule van die voorverhoorkonferensie moet blyk ingevolge die bepalings van reël 37(6).

**QUESTION 1 [6]**

An attorney has issued a simple summons out of the High Court based on the following facts.

- (a) The defendant lost control of his vehicle and collided with a vehicle driven by the attorney's client, Mr X.
- (b) Subsequent to the incident the defendant, a *peregrinus* of the Republic of South Africa, pleaded guilty to a charge of drunken driving during a criminal trial. During that trial he offered to pay for the damages to the other vehicle to X's brother, the owner thereof.

Nothing came of this promise and the attorney was instructed to institute the abovementioned action on behalf of his client X, for payment of the sum of R120 000-00 comprising R80 000-00 for personal injuries sustained by his client and R40 000-00 for costs of repairing the vehicle.

To his amazement the defendant entered an appearance to defend and the attorney proceeded to take the following steps:

- being of the view that the defendant did not have a *bona fide* defence to the plaintiff's claim he launched an application for summary judgment;
- in the affidavit deposed to support this application the attorney was the deponent;
- he further decided that, as the defendant was a *peregrinus*, to demand security for costs.

Discuss critically all the steps taken by the attorney to execute his mandate.

**QUESTION 2 [14]**

You act for a defendant in a high court action:

- 2.1 State three instances in which the defendant would be entitled to call for security for costs from the plaintiff. (3)
- 2.2 Assume that the amount of such costs has been determined by the registrar but that the plaintiff has failed to give proper security. Draft such documents as may be necessary to compel the plaintiff to provide security. Headings can be excluded. (11)

**QUESTION 3 [5]**

Name five essential matters which must appear from the minutes of a pre-trial conference by virtue of the provisions of rule 37(6).

**VRAAG 4 [10]**

Daar is 'n aantal foute in die dagvaaring en besonderhede van vordering wat hieronder uiteengesit word. Identifiseer die foute en verduidelik baie kortliks waarom elkeen foutief is.

Uitgereik deur Saak Nr.:..... VORM 2  
R20 INKOMSTESE&L

Datumstempel

Klerk van die Hof

**No.2 DAGVAARDING WAARDEUR AKSIE BEGIN WORD (GEWOON)**

Uitgeneem deur

XYZ INGELYF  
SKYSCRAPER GEBOU  
SPEEDSTRAAT 200 DURBAN  
*XYZ Ingelyf*  
*Handtekening van Eiser se Prokureur*  
Verwysing: A55,5

In die Landdroshof vir die Distrik DURBAN gehou te DURBAN

tussen

MNR VIKESH DEVKUMAR Eiser

en

MEV ALICE WONDERLAND 1<sup>st</sup> Verweerder  
MNR PETER CRASHMAN 2<sup>de</sup> Verweerder

AAN die bogenoemde eerste verweerder ALICE WONDERLAND, 'n volwasse vrou woonagtig te Wallstraat 20, Pretoria, en aan PETER CRASHMAN die bogenoemde tweede Verweerder, 'n volwasse man woonagtig te Safetysingel 103, Pretoria

U word hiermee gedagvaar om binne 3 (drie) dae na betekening van hierdie dagvaarding aan die Klerk van bogenoemde Hof en ook aan die eiser of sy prokureur by die adres hierin genoem, 'n skriftelike kennisgewing van u voorneme om die aksie te verdedig af te lewer of te laat afleweren en te antwoord op die eis van mnr Vikesh Devkumar, 'n volwasse manlike tegnikus woonagtig te Quickrylaan 82, Foresthaven, Phoenix.

(1) Besonderhede:

Eiser se eis teen verweerder is vir betaling van die bedrag van R120 000,00:

SIEN BESONDERHEDE VAN VORDERING HIERBY  
AANGEHEG

**QUESTION 4 [10]**

The summons and particulars of claim which are set out hereunder, contain a number of defects. Identify these defects and explain very briefly why each is defective.

Issued by Case No.:..... FORM 2  
R20 REVENUE STAMP

Date Stamp

Clerk of the Court

**No.2 SUMMONS COMMENCING ACTION (ORDINARY)**

Sued out by

XYZ INCORPORATED  
SKYSCRAPER BUILDING  
200 SPEED STREET DURBAN  
*XYZ Incorporated*  
*Signature of Plaintiff's Attorney*  
Refer To: A55,5

In the Magistrate's Court for the District of DURBAN held at DURBAN

between

MR VIKESH DEVKUMAR Plaintiff

and

MRS ALICE WONDERLAND 1<sup>st</sup> Defendant  
MR PETER CRASHMAN 2<sup>nd</sup> Defendant

TO the abovenamed first defendant ALICE WONDERLAND an adult female residing at 20 Wall Street Pretoria and to PETER CRASHMAN the abovenamed second defendant an adult male residing at 103 Safety Crescent Pretoria

You are hereby summoned that you do within 3 (three) days of the service of this summons deliver or cause to be delivered to the Clerk of the aforesaid Court and also to the plaintiff or his attorney, at the address specified herein, a notice in writing of your intention to defend this action and answer the claim of Mr Vikesh Devkumar, an adult male, technician, residing at 82 Quick Drive, Foresthaven, Phoenix, the plaintiff herein.

(1) Particulars:

Plaintiff's claim against the defendant is for payment of R120 000,00:

SEE PARTICULARS OF CLAIM ATTACHED

Derhalwe smeek eiser om vonnis teen die verweerder vir bogenoemde bedrag, met koste. Koste, as die aksie nie verdedig word nie, sal soos volg wees:

	Dagvaarding	Vonnis
Prokureurskoste .....	R xx	R yy
Hofgelde .....	R20,00	R
Geregsbodegelde .....	R	R
Geregsbodegelde by heruitreiking ..	R	R
Uitgawes (BTW bygevoeg) .....	R x	R y
<b>TOTAAL</b>	_____	_____

**BESONDERHEDE VAN VORDERING**

1.

Die Eiser is mnr Vikesh Devkumar, 'n volwasse manlike tegnikus, woonagtig te Quickrylaan 82, Forsesthaven, Phoenix.

2.

Die Eerste Verweerder is mev Alice Wonderland, 'n volwasse vroulike aandelermakelaar woonagtig te Wallstraat 20, Pretoria.

3.

Die Tweede Verweerder is mnr Peter Crashman, 'n volwasse man woonagtig te Safetysingel 103, wie se volle en verdere besonderhede aan Eiser onbekend is.

4.

Die Eerste Verweerder was te alle relevante tye die eienaar van 'n 1994 Toyota Conquest-motorvoertuig, met registrasienommer ND500198.

5.

Op 4 April 1998 en by die kruising van Cato en Smithstraat, Pretoria, was genoemde Toyota Conquest, bestuur deur Tweede Verweerder, in 'n botsing betrokke met 'n BMW-motorvoertuig, bestuur deur die Eiser.

6.

Bogenoemde botsing was as gevolg van die uitsluitlike nalatigheid van die Tweede Verweerder, wat in een of meer van die volgende aspekte nalatig was:

- a) hy het nagelaat om 'n behoorlike uitkyk te hou;
- b) hy het teen 'n te hoë spoed onder die omstandighede gery
- c) hy het nagelaat om betyds te rem en/of het geensins gerem nie.

7.

Die BMW-motorvoertuig is bestuur deur die Eiser en is in die botsing beskadig. Die regverdige, redelike en noodsaaklike koste ten einde die motor te herstel beloop R120 000,00.

8.

In die omstandighede het die Eiser skade gely in die bedrag van R120 000,00 welke bedrag ten spyte van aanmaning op 4 April 2001, die Verweerders nalaat, weier en/of versuim, om aan Eiser te betaal.

Wherefore plaintiff prays for judgment against the defendant in the said sum, with costs. Costs, if the action is undefended, will be as follows:

	Summons	Judgment
Attorney's charges .....	R xx	R yy
Court fees .....	R20,00	R
Sheriff's fees .....	R	R
Sheriff's fees on re-issue .....	R	R
Disbursements (Value added tax) ..	R x	R y
<b>TOTAL</b>	_____	_____

**PARTICULARS OF CLAIM**

1.

The Plaintiff is Mr Vikesh Devkumar, an adult male technician residing at 82 Quick Drive, Foresthaven, Phoenix.

2.

The First Defendant is Mrs Alice Wonderland, an adult female stockbroker residing at 20 Wall Street, Pretoria.

3.

The Second Defendant is Mr Peter Crashman, an adult male residing at 103 Safety Crescent, Pretoria, whose full and further particulars are to the Plaintiff unknown.

4.

At all relevant times the First Defendant was the owner of a 1994 Toyota Conquest motor vehicle with registration number ND 500198.

5.

On 4 April 1998 at the intersection of Cato and Smith Streets, Pretoria the said Toyota Conquest driven by the Second Defendant, collided with a BMW motor vehicle driven by the Plaintiff.

6.

The aforesaid collision was occasioned by the sole negligence of the Second Defendant, who was negligent in one or more or all of the following respects:

- a) he failed to keep a proper lookout
- b) he travelled at a speed excessive in the circumstances
- c) he failed to apply his brakes either timeously or at all.

7.

In consequence of the collision, the BMW motor vehicle which was driven by Plaintiff was damaged and the fair, reasonable and necessary cost of repairing same amounted to R120 000,00.

8.

In the premises the Plaintiff has sustained damages in the sum of R120 000,00, which amount, despite due demand on 4 April 2001, the Defendants have neglected, failed and/or refused to pay to the Plaintiff.

DESHALWE, eis die eiser, vonnis teen die Eerste en Tweede Verweerder afsonderlik en gesamentlik, die een betalend die ander vrygestel te word:

- a) betaling van die bedrag van R120 000,00;
- b) rente op die bedrag van R120 000,00 teen 32% per annum vanaf datum van aanmaning tot datum van finale betaling;
- c) koste van die geding op 'n skaal tussen prokureur en kliënt;

GEDATEERTE DURBAN op hierdie dag van 2001.

\_\_\_\_\_  
EISER SE PROKUREUR

XYZ INGELYF  
Skycrapergebou  
Speedstraat 200  
DURBAN  
VERW: A100/Mnr Dudley

**VRAAG 5 [7]**

U tree namens 'n verweerder op in 'n aksie wat in die Landdroshof ingestel is, vir betaling van die koopprys van goedere verkoop en gelewer. Na liassering van die verweerder se pleit kom dit tot u kennis dat die eiser reeds ten tye van die instel van die aksie sy boekskulde aan sy bank gesedeer het as sekuriteit vir sy oortrokke fasiliteit.

- 5.1 Verleen dit 'n verweer aan die verweerder? Motiveer kortliks u antwoord. (2)
- 5.2 Indien dit wel 'n verweer daarstel, stel die nodige kennisgewing op ten einde effek daaraan te gee. Gebruik u eie bykomende feite waar nodig. Laat die kopstuk uit. (3)
- 5.3 Die eiser wil beswaar aanteken teen die liassering van hierdie verweer op hierdie laat stadium. Sit die prosedure uiteen wat gevolg moet word. (2)

**VRAAG 6 [4]**

- 6.1 Is die volgende uitsprake appelleerbaar of nie? Motiveer kortliks u antwoord.
  - 6.1.1 Die weiering om absolusie van die instansie te verleen aan die einde van eiser se saak. (1)
  - 6.1.2 Die toestaan van summere vonnis. (1)
  - 6.1.3 Die toestaan van 'n interdik *pendente lite*. (1)
- 6.2 Indien bogenoemde uitsprake gelewer is in die Landdroshof en u kliënt wil teen enige van dié uitsprake appelleer, moet hy eers aansoek doen vir verlof om te appelleer? (1)

WHEREFORE the Plaintiff, prays for judgment against the First and Second Defendant jointly and severally, the one paying the other to be absolved for:

- a) payment of the sum of R120 000,00;
- b) interest on the sum of R120 000,00 at the rate of 32% per annum from date of demand to date of payment;
- c) costs of suit on the scale between attorney and client;

DATED AT DURBAN this day of 2001.

\_\_\_\_\_  
PLAINTIFF'S ATTORNEY

XYZ INCORPORATED  
Skycraper Building  
200 Speed Street  
DURBAN  
REF: A100/Mr Dudley

**QUESTION 5 [7]**

You act for a defendant in an action in the Magistrate's Court for payment of the price of goods sold and delivered. After filing the defendant's plea you become aware that the plaintiff had, at the time the action was instituted, ceded its book debts to its bank as security for its overdraft.

- 5.1 Does this information afford any defence to the defendant? Motivate your answer briefly. (2)
- 5.2 If this does afford a defence draft the necessary notice, that you would file to give effect thereto. Invent such additional facts as you may require. Leave out the heading. (3)
- 5.3 The plaintiff wishes to note an objection to the defendant raising this defence at this late stage. Set out the procedure it should follow. (2)

**QUESTION 6 [4]**

- 6.1 Are the following judgments appealable? Motivate your answer briefly.
  - 6.1.1 The refusal to grant absolution from the instance at the end of the plaintiff's case. (1)
  - 6.1.2 The grant of summary judgment. (1)
  - 6.1.3 The grant of an interdict *pendente lite*. (1)
- 6.2 Is leave to appeal necessary in respect of any of these judgments if they are granted in the Magistrate's court? (1)

**VRAAG 7 [4]**

Voldoen die volgende relase van betekening aan die vereistes van Reël 9 van die Landdroshofreëls? Motiveer kortliks u antwoord.

- 7.1 Die dagvaarding is persoonlik beteken op die Verweerder op Sondag, 4 Julie 1998. (1)
- 7.2 Die dagvaardiging is beteken by die Verweerder se woning aan die Verweerder se vyftienjarige seun wat in beheer van die perseel was toe betekening bewerkstellig is. (1)
- 7.3 Die dagvaardiging is beteken deur 'n afskrif te laat by die Verweerder se gekose *domicilium citandi*. (1)
- 7.4 Die dagvaardiging is beteken aan die Verweerder se prokureur. (1)

**VRAAG 8 [25]**

U word gekonsulteer deur u kliënt, mnr W Smith, wat u as volg inlig:

Sy vrou, met wie hy binne gemeenskap van goedere getroud is, het liggaamlike beserings opgedoen in 'n motorbotsing wat op 20 Augustus 2000 plaasgevind het.

Volgens die mediese verslag het sy die volgende beserings opgedoen:

- 'n Fraktuur van die regtertibia;
- 'n Skedelbasisfraktuur;
- 'n Avulsiebesering aan die regterbeen.

Sy was drie dae bewusteloos en vir twee maande na die botsing afwesig van haar werk. Ten tye van die botsing was sy werksaam as 'n welsyns werksster en het R5 000 per maand verdien. Ingevolge haar dienskontrak was sy geregtig op een maand siekverlof met volle salaris.

Sy vrou is deur haar mediese praktisyn geadviseer dat sy in die toekoms 'n verdere operasie sal moet ondergaan ten einde die skroef wat in die tibia ingesit is, te verwyder. Sy sal vir 'n maand van haar werk afwesig wees as gevolg van die operasie en sal nie geregtig wees op enige verdere siekverlof nie. Desnieteenstaande sal sy ten volle betaal word deur haar werkgever.

Ten tye van die botsing het mnr Smith sy eie voertuig bestuur en was dit in 'n kop-aan-kopbotsing betrokke met 'n ander voertuig. Dit skyn of die bestuurder van die ander voertuig totaal veranderwoordelik was vir die botsing. Mnr Smith se minderjarige seun het in die ongeluk gesterf.

Hy vertel u dat hy die hospitaal-, mediese en begravniskoste betaal het. Hy gee u foto's van die botsingstoneel wat die posisie van die voertuie na die ongeluk uitwys.

**QUESTION 7 [4]**

Do the following returns of service comply with the provisions of Rule 9 of the Magistrates Court Rules? Motivate your answer briefly:

- 7.1 The summons was served personally on the Defendant on Sunday, 4 July 1998. (1)
- 7.2 Service of the summons was effected at the place of residence of the Defendant on his son who was fifteen years of age and in charge of the premises at the time of the service. (1)
- 7.3 The summons was served by leaving a copy at the *domicilium citandi* chosen by the Defendant. (1)
- 7.4 The summons was served on the Defendant's attorney. (1)

**QUESTION 8 [25]**

You are consulted by Mr W Smith who advises you as follows:

His wife to whom he is married in community of property, sustained bodily injuries in a motor collision that occurred on 20 August 2000.

According to the Medical Report she had the following injuries:

- A fracture of the right tibia;
- A fracture of the base of the skull;
- A degloving injury to the right leg.

She was unconscious for three days, and off work for two months after the collision. At the time she was employed as a social worker earning R5 000 per month. Her contract of employment provided that she was entitled to one month's sick leave on full pay.

His wife has been informed by her doctor that she will also require surgery in the future, to remove the screw inserted in the tibia. She will be off work for one month recovering from this operation but has used up her sick leave entitlement. Her employers will nevertheless pay her full salary to her.

At the time of the collision, Mr Smith was driving his own vehicle when it was in a head-on collision with another vehicle. It appears that the driver of the other vehicle was completely to blame for the collision. Mr Smith's minor son died in the collision.

He informs you that he has paid the hospital, medical and funeral expenses that were incurred. He hands you photographs of the scene of the collision which depict the positions of the vehicles after the collision.

Mnr Smith het ook 'n groot litteken aan die regterkant van sy gesig as gevolg van 'n besering opgedoen in die botsing.

Mr Smith also has a large scar on the right side of the face caused by an injury sustained in the collision.

- 8.1 Kan mnr Smith namens sy vrou optree in die eis teen die POF ten opsigte van al haar skade? Motiveer u antwoord. (3)
- 8.2 Het mnr Smith enige eis in sy eie reg teen die POF? Motiveer u antwoord. (3)
- 8.3 Spesifiseer die hoofde van skadevergoeding wat u sal eis namens mev Smith. (3)
- 8.4 Welke bedrae kan namens mev Smith geëis word ten opsigte van gelede en toekomstige verlies aan verdienste? Motiveer u antwoord. (4)
- 8.5 Welke dokumentêre bewys moet aan die POF verskaf word ter staving van die eis vir die verlies van verdienste en welke inligting moet daarin uiteengesit word? (2)
- 8.6 Neem aan dat mnr Smith gedeeltelik aanspreeklik was vir die botsing. Sal sy nalatigheid enige verskil maak in verband met die skadevergoedinghoofde wat u namens mev Smith sal eis? Motiveer u antwoord. (2)
- 8.7 Sekere dokumente moet die MMF-1 eisvorm wat u namens mev Smith indien vergesel. Spesifiseer hierdie dokumente. (7)
- 8.8 Voor welke datum moet die eisvorm ten opsigte van mev Smith se eis ingedien word by die POF? (1)

- 8.1 Can Mr Smith act on behalf of Mrs Smith in the claim against the RAF for all her damages? Motivate your answer. (3)
- 8.2 Does Mr Smith have any claim in his own right against the RAF? Motivate your answer. (3)
- 8.3 Specify the heads of damages that you will claim on behalf of Mrs Smith. (3)
- 8.4 What amounts in respect of past and future loss of earnings can be claimed on behalf of Mrs Smith? Motivate your answer. (4)
- 8.5 What documentary proof must be furnished to the RAF in support of the claim for loss of earnings and what information must be set out therein? (2)
- 8.6 Assuming that Mr Smith was partially to blame for the collision, will his negligence affect the heads of damages that you will claim on Mrs Smith's behalf? Motivate your answer. (2)
- 8.7 Certain documents must accompany the MMF-1 claim form you lodge on Mrs Smith's behalf. Name these documents. (7)
- 8.8 By which date must the claim form in respect of Mrs Smith's claim be lodged with the RAF? (1)

**VRAAG 9 [8]**

**QUESTION 9 [8]**

- 9.1 U kliënt is mnr A. U tree namens hom op in 'n formele teengestaande borgaansoek. Na aanhoor van getuienis van beide die beskuldigde en ondersoekbeampte, weier die landdros borg op grond daarvan dat dit nie in die belang van geregtigheid sal wees indien borg toegestaan word nie. U opdrag is om appèl aan te teken teen gemelde bevinding. U kliënt bring egter nuwe feite, wat tot sy voordeel strek en wat grootliks handel met die gronde waarop die landdros sy beslissing gemaak het, onder u aandag. Die feite is nie voor die hof geplaas tydens die borgaansoek nie.
- Welke verdere stappe sal u doen in belang van die kliënt? (4)
- 9.2 Is u kliënt vir doeleindes van die borgaansoek geregtig op insae in die polisiedossier? (1)

- 9.1 You act on behalf of Mr A in an opposed formal bail application. After hearing evidence from your client and the investigating officer the magistrate finds that it is not in the interests of justice to grant your client bail. Mr A instructs you to note an appeal against the magistrate's decision and in his instructions he brings to your attention certain new facts which were not placed before the court in his evidence and which, to a large extent, deal with, in your client's favour, the grounds upon which the magistrate based his refusal.
- What further steps would you take on your client's behalf? (4)
- 9.2 Is your client entitled, for the purposes of the bail application, to peruse the police docket? (1)

9.3 Welke inligting moet u as regsverteenvoorder van die beskuldigde vanuit regsweë onder die hof se aandag bring gedurende die borgaansoek? (2)

9.4 Is die Staat geregtig om die getuienis gelewer tydens die borgaansoek te gebruik in die verhoor van die beskuldigde? (1)

### VRAAG 10 [2]

U verskyn vir mev C op 'n klag van winkeldiefstal. U opdrag is om skuldig te pleit wat u inderdaad doen en die kliënt word skuldig bevind. Tydens die voorbereiding vir vonnisoplegging word u genader deur u kliënt se geneesheer wat u meedeel dat ten tye van die pleeg van die misdryf u kliënt sekere medikasie gebruik het wat daartoe kon lei dat sy nie die onregmatigheid van haar dade besef het nie. U konfronteer u kliënt met hierdie inligting en sy bevestig dit, maar deel u mee dat sy dit verswyg het omdat dit vir haar 'n verleentheid sou veroorsaak. U opdrag is om alles te doen wat nodig is om bogemelde situasie reg te stel.

Noem die stappe wat u sal doen in die lig van die bogemelde omstandighede.

### VRAAG 11 [11]

Die klaer, 'n bejaarde man het ongeveer 23h30 op 'n sekere aand huis toe geloop vanaf 'n nabygeleë kroeg. Hy is oorval deur twee jong mans wat hom beroof van sy horlosie. Drie dae later word die horlosie in die besit van u kliënt gevind. In sy verduideliking aan die polisie meld u kliënt dat op die gegewe datum, tyd en plek soos vervat in die klagstaat, hy by 'n vriend van hom se partytjie was. Ongeveer 23h30 op die gegewe aand het twee mans by gemelde partytjie opgedaag en het hy die horlosie by een van hulle gekoop vir R100-00. Hy is vroeg die volgende oggend huistoe

By 'n uitkenningsparade wys die klaer u kliënt uit as een van die mans wat hom aangerand en beroof het. U kliënt word in die Streekshof van Pretoria aangekla van roof.

11.1 Stel u kliënt se verklaring ingevolge artikel 115 van die Strafproseswet op, insluitend die kopstuk. (4)

11.2 Formuleer ten minste vyf vrae wat u in kruisverhooraan die klaer sal stel ter verdediging van u kliënt. (5)

11.3 Roof uitgesluit, noem ten minste vier ander misdrywe waarop u kliënt skuldig bevind kan word. (2)

9.3 What information are you, in law, as legal representative of the accused obliged to bring to the attention of the court during the bail application? (2)

9.4 Is the State entitled to use the evidence given at the bail application during the trial of the accused? (1)

### QUESTION 10 [2]

You act on behalf of Mrs C who has been charged with shoplifting. Your instructions are to plead guilty and your client is convicted as charged. During preparation for sentencing you receive a telephone call from your client's doctor who advises you that your client was, at the time of the commission of the offence, using medication which could have resulted in her not being capable of appreciating the wrongfulness of her act. You confront her with this information and she confirms that it is indeed correct. She however, states that she did not advise you as to her condition as it would have been far too embarrassing to be made public. Your instructions are now to do all that is necessary to rectify the situation.

What steps will you take in the light of these circumstances?

### QUESTION 11 [11]

The complainant, an adult gentleman, was walking home from the local tavern at 23h30 on a certain night. He was accosted by two young men who robbed him of his watch. Three days later your client is found in possession of the watch and he explains to the police that on the day referred to in the charge sheet, he attended a party at a friend's home when two young men arrived at 23h30 and offered him a watch which he purchased for the sum of R100-00. He returned home from the party early the next morning.

At an identification parade the complainant points out your client as being one of the assailants. Your client is charged in the Regional Court, Pretoria with robbery.

11.1 Draft your client's Section 115 statement, including the heading. (4)

11.2 Formulate at least five questions that you will put to the complainant in cross-examination in your client's defence. (5)

11.3 Besides robbery, name at least four other offences in respect of which your client can be convicted. (2)



**VRAAG 12 [4]**

U klient, Mnr B, word aangekla van aanranding met die doel om ernstig te beseer. Die staat roep die klaer en drie getuies. Nie een van bogemelde getuies kan die beskuldigde met sekerheid identifiseer as die aanvaller nie. Hulle weerspreek mekaar ook in verskeie belangrike opsigte. Die staat sluit sy saak.

Bespreek die opsies tot u klient se beskikking en motiveer u antwoord.

**QUESTION 12 [4]**

Your client, Mr B, is charged with assault with the intent to do grievous bodily harm. The state calls the complainant and three witnesses, none of whom are able to identify your client as being the person who assaulted the complainant. They furthermore contradict each other in various material respects. The State thereafter closes its case.

Discuss the various options open to your client and motivate your answer.

## PROKUREURSEKSAMEN

### DEEL 2 BOEDELS

13 AUGUSTUS 2002

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 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 2 ESTATES

13 AUGUST 2002

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 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 draftsmanhip.
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**

**[53]**

U word geraadpleeg deur Mary Poppins, 'n weduwee, en sy gee u opdrag om haar testament op te stel. Sy het twee getroude kinders en haar bates is die volgende:

- 'n woonhuis wat vir R500 000,00 gewaardeer is;
- 'n motor wat vir R120 000,00 gewaardeer is;
- meubels en huishoudelike toebehore wat vir R300 000,00 gewaardeer is;
- aandele in 'n openbare maatskappy waarvan die aandele gekwoteer is op die Johannesburgse Effektebeurs gewaardeer teen R30 000,00;
- R180 000,00 in 'n geldmarkrekening by 'n handelsbank;
- twee lewensversekeringspolisse op haar eie lewe met 'n gesigwaarde van R100 000,00 en R150 000,00 onderskeidelik;
- juwele wat vir R50 000,00 gewaardeer is;

U klient wil haar woonhuis en motor aan haar oudste getroude dogter, Joanne Smith, bemaak en in geval van laasgenoemde se vooroorlye, aan haar oudste seun. Vanweë haar bekommernis oor die lot van verwaarloosde kinders, wil sy 'n kontantlegaat van R100 000,00 aan die Mandela Kinderfonds bemaak. Die restant van haar boedel moet na haar ander getroude dogter, Mathilda Steyn, gaan. U het opdrag om seker te maak dat haar twee dogters se eggenotes of hulle krediteure geen beheer oor of eis sal hê met betrekking tot enige bate wat die dogters kragtens haar testament erf nie.

**GEVRA**

- 1.1 Stel 'n volledige testament op vir Mary Poppins. (14)
- 1.2 Aanvaar dat Mary Poppins op 30 September 2001 te sterwe gekom het.
- Stel die likwidasierekening op (slegs bates) en aanvaar dat rente in die bedrag van R1 500,00 ten opsigte van die geldmarkrekening opgeloo het tot by datum van afsterwe en dat die twee lewensversekeringspolisse teen die sigwaarde uitbetaal is. Gebruik u eie fiktiewe besonderhede en beskrywings waar nodig. (10)
- 1.3 Bepaal die boedel se aanspreeklikheid, indien enige, vir boedelbelasting deur die boedelbelastingaddendum ooreenkomstig regulasie 5(1)(h) op te stel. Aanvaar vir doeleindes hiervan dat die totale laste van die boedel 'n bedrag van R80 000,00 beloop. (10)
- 1.4 Stel die rekapitulatie-opgawe en die distribusierekening op. (19)

**QUESTION 1**

**[53]**

You are consulted by Mary Poppins, a widow, and she instructs you to draw her will. She has two married children and her assets are the following:

- a house valued at R500 000,00;
- a motor car valued at R120 000,00;
- furniture and household effects valued at R300 000,00;
- shares in a public company quoted on the Johannesburg Securities Exchange valued at R30 000,00;
- R180 000,00 in a money market account with a commercial bank;
- two life insurance policies on her own life with a face value of R100 000,00 and R150 000,00 respectively;
- jewellery valued at R50 000,00;

Your client wishes to bequeath her house and motor car to her eldest married daughter, Joanne Smith, or, failing her, her eldest son. In view of her concern for the plight of destitute children, she wishes to leave a cash legacy of R100 000,00 to the Mandela Childrens Fund. The rest of her estate is to be left to her other married daughter, Mathilda Steyn. You are instructed to ensure that her two daughters' husbands or their creditors will have no control over or claim in respect of any asset that the daughters inherit in terms of her will.

**REQUIRED**

- 1.1 Draw a complete will for Mary Poppins. (14)
- 1.2 Assume that Mary Poppins died on 30 September 2001.
- Draw the liquidation account (assets only), assuming that interest in the amount of R1 500,00 had accrued in respect of the money market account as at date of death and that the two life insurance policies were paid out at face value. Use your own fictitious particulars and descriptions where necessary. (10)
- 1.3 Assess the estate's liability, if any, for estate duty by drawing an estate duty addendum in terms of regulation 5(1)(h), assuming that the total liabilities of the estate amount to R80 000,00. (10)
- 1.4 Draw the recapitulation statement and the distribution account. (19)

**VRAAG 2 [10]**

X kom sonder 'n testament te sterwe en sy netto boedel bedra R230 000,00. Hy was met W2 buite gemeenskap van goed getroud. Sy eerste vrou, W1, is vooroorlede. X en W2 het twee kinders, A en B. B is vooroorlede en word oorleef deur twee kinders, C en D. E is die enigste kind uit X se huwelik met W1, F is 'n buite-egtelike kind van W1, gebore voor W1se huwelik met X.

Hoe verdeel die boedel van X? Dui slegs die bedrag aan wat aan iedere erfgenaam toegeken word en motiveer.

**VRAAG 3 [5]**

A, 'n testateur, bemaak sy plaas aan J en laat die restant van sy boedel na aan D.

Die eksekuteur het na die testateur se afsterwe vasgestel dat daar 'n verband oor die plaas geregistreer is. Daar bestaan geen lewensversekeringsdekking om die verband af te los nie.

Die bedrag uitstaande onder die verband is R35 000,00.

Verduidelik hoe die eksekuteur te werk moet gaan om die verband af te los.

**VRAAG 4 [10]**

4.1 'n Ongetroude man bemaak sy boedel aan sy kinders, 'n seun A en 'n dogter B. B sterf voor haar vader en laat haar eggenote C en haar kinders D en E na.

Hoe sal die boedel vererf? (3)

4.2 'n Ongetroude man bemaak sy boedel aan sy kinders, 'n seun A en 'n dogter B. A sterf sonder enige nasate voor sy vader. Die testateur word oorleef deur sy ouers C en D.

Hoe sal die boedel vererf? (3)

4.3 'n Man getroud buite gemeenskap van goed bemaak sy boedel aan sy vrou en kinders. Hy word oorleef deur sy vrou W en drie kinders - A, B en C. B doen afstand van sy erfenis.

Hoe sal die boedel vererf? (4)

**VRAAG 5 [3]**

Is 'n polis wat ingevolge 'n egskeidingsbevel aan die vrou gesedeer is 'n bate vir boedelbelastingdoeleindes in die oorlede man se boedel?

**QUESTION 2 [10]**

X dies without leaving a will and his nett estate amounts to R230 000,00. He was married out of community of property to W2. His first wife, W1, is predeceased. X and W2 had two children, A and B. B is predeceased and is survived by two children, C and D. E is the only child of X's marriage to W1, whilst F had been born out of wedlock to W1 before she married X.

How would the estate of X devolve? Indicate only the amounts that you would allocate to each of the heirs and motivate.

**QUESTION 3 [5]**

A testator bequeaths his farm to J, and leaves the residue of his estate to D.

After the testator's death the executor ascertains that a mortgage bond is registered over the farm. There is no life insurance cover linked to the bond.

An amount of R35 000,00 is still owing on the bond.

Explain how the executor should deal with the bond in order to settle it.

**QUESTION 4 [10]**

4.1 An unmarried man leaves his estate to his children, a son A and a daughter B. B predeceases her father, leaving her husband C and her children D and E.

How will the estate devolve? (3)

4.2 An unmarried man leaves his estate to his children, a son A and a daughter B. A predeceases his father, leaving no issue. The testator is survived by his parents C and D.

How will the estate devolve? (3)

4.3 A man married out of community of property leaves his estate to his wife and children. He is survived by his wife W and by three children - A, B and C. B renounces his inheritance.

How will the estate devolve? (4)

**QUESTION 5 [3]**

Is a policy ceded to the wife in terms of a decree of divorce an asset in the estate of the deceased husband for estate duty purposes?

**VRAAG 6 [16]**

A, 'n vermoënde wewenaar, word oorleef deur twee seuns. Die oudste seun is 'n welvarende sakeman, die jonger seun is gestremd en word in 'n inrigting versorg. Hy is onbevoeg om vir homself te sorg.

Die wewenaar begeer dat sy hele boedel aangewend word vir die milde onderhoud van sy gestremde seun. Die restant van die boedel wat beskikbaar sal wees met die afsterwe van die gestremde seun moet op die ander seun (of sy afstammeling) vererf.

U adviseer die wewenaar om 'n testamentêre trust op te rig om uitvoering te gee aan die bostaande. Hy aanvaar u advies en gee u opdrag om sy testament op te stel. Hy verlang dat u (of u firma) die trustee moet wees.

Stel slegs daardie bepalings in die testament op wat betrekking het op die trust, met uitsluiting van die magte van die trustee.

**VRAAG 7 [3]**

A bemaak in sy testament sy plaas aan B onderworpe aan die voorwaarde dat met die afsterwe van B sal die plaas op C vererf.

Beskryf kortliks hoe u met die plaas sal handel

- 7.1 in A se bestorwe boedel; en (1)
- 7.2 in B se daaropvolgende bestorwe boedel. (2)

**QUESTION 6 [16]**

A wealthy widower is survived by two sons. The eldest brother is a well-to-do businessman; the younger brother is handicapped and in the care of an institution. He is incapable of providing for himself.

The widower wishes to make his entire estate available for the generous maintenance of his handicapped son. What remains of the estate upon the handicapped son's death is to be left to the other son (or his descendants).

You advise the widower to create a testamentary trust to give effect to the above. He accepts your advice and instructs you to draw his will. He wishes you (or your firm) to be the trustee.

Draw only those provisions of the will relating to the trust, excluding the powers of the trustee.

**QUESTION 7 [3]**

A in his will leaves his farm to B, subject to the condition that, upon B's death, it is to devolve upon C.

Describe briefly how you would deal with the farm

- 7.1 in A's deceased estate; and (1)
- 7.2 in B's subsequent deceased estate. (2)

## PROKUREURSEKSAMEN

### DEEL 3 PROKUREURSPRAKTYK

14 AUGUSTUS 2002

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.*

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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

14 AUGUST 2002

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 [15]**

'n Direkteur van ABC (Edms) Bpk (die Werkgewer) raadpleeg u. Hy vertel u dat ABC (Edms) Bpk sake doen in 'n hoogs gespesialiseerde veld en in die proses is om 'n hoogs deskundige persoon (die Werknemer) in diens te neem om een van sy takke te bestuur.

Hy vra u om 'n klousule op te stel wat ingelyf sal word in die dienskontrak wat sal verhoed dat die toekomstige werknemer vertroulike inligting wat hy in die loop van sy diens mag bekom, aan derdes sal openbaar. Die klousule moet ook handel met die situasie sou die werknemer die maatskappy se diens verlaat.

Stel die toepaslike klousule op.

**VRAAG 2 [10]**

U word geraadpleeg deur mnr X, wat u meedeel dat 'n maatskappy XYZ (Edms) Bpk die bedrag van R100 000,00 aan hom verskuldig is synde die balans van die koopprys van goedere verkoop en gelewer oor 'n aantal maande. Hy lig u in dat die maatskappy sekere afbetalings op sy skuld gedoen het, maar daarna onder likwidasie geplaas is terwyl die balans van R30 000,00 nog uitstaande is. Hy gee u opdrag om 'n eis teen die maatskappy in likwidasie in te stel.

2.1 Welke dokumente sal u opstel vir ondertekening deur u kliënt om te verseker dat sy eis behoorlik bewys word? (5)

2.2 Welke prosedure sal u volg om te verseker dat die eis bewys word op sterkte van die dokumente wat u opgestel het? (5)

**VRAAG 3 [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 noodsaaklike klousules wat u in so 'n ooreenkoms sal insluit sonder om daarop uit te brei.

**VRAAG 4 [15]**

U tree op vir 'n vervaardigingsmaatskappy wat handelsware deur middel van verskeie verspreiders versprei. U kliënt gee u opdrag om 'n ooreenkoms op te stel wat met al die regte en verpligtinge van die maatskappy en die verspreiders handel. U kliënt is baie afhanklik van hierdie verspreiders en hy wil van u weet wat sou

**QUESTION 1 [15]**

You are consulted by a director of ABC (Pty) Ltd (The Employer). He tells you that ABC (Pty) Ltd conducts business in a highly specialized field and that it is in the process of employing a very skilled person to manage one of its branches (the Employee).

He asks you to draw a clause to be incorporated into the employment contract that will ensure that the prospective employee does not disclose confidential information which he may acquire during the course of his employment to third parties. The clause should also deal with the situation in the event of the employee leaving employment.

Draw the appropriate clause.

**QUESTION 2 [10]**

You are consulted by Mr X who advises you that a company XYZ (Pty) Ltd is indebted to him in an amount of R100 000,00 being the balance of the purchase price of goods sold and delivered by your client to the company over a period of months. He informs you that the company has made certain payments but has now been placed under liquidation leaving the amount of R30 000,00 unpaid. He instructs you to lodge a claim against the company in liquidation.

2.1 What documents will you prepare for signature by your client to ensure that his claim is properly proved? (5)

2.2 What procedure will you follow to ensure that the claim is proved on the strength of the documents that you have prepared? (5)

**QUESTION 3 [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 essential clauses you would incorporate in such an agreement. Do not expand on any of them.

**QUESTION 4 [15]**

You act for a manufacturing company which distributes its merchandise through various distributors. Your client instructs you to prepare an agreement to deal with the rights and obligations of the company and the distributors. Your client is very dependent on these distributors and wants to know from you what will happen in the event

gebeur indien daar 'n dispuut tussen die partye ontstaan wat uiteindelik op 'n hofspraak uitloop en wat waarskynlik die voortgesette verhouding tussen die partye mag skaad. U adviseer u kliënt dat daar metodes is om met dispuut te handel anders as by wyse van die hofproses.

Stel die tersaaklike klousule op wat in 'n ooreenkoms geïnkorporeer kan word om effek te gee aan u advies.

**VRAAG 5 [5]**

'n Getroude paar raadpleeg u oor 'n egskeiding. Die partye verseker u dat hulle reeds hulle geskille opgelos het en dat hulle geen wesenlike struikelblokke voorsien nie. Later beseef u dat nieteenstaande hierdie versekering, hulle steeds nie ooreengekom het oor die wyse waarop die gesamentlike boedel verdeel sal word nie. U bespreek die aangeleentheid in detail met hulle, maar hulle slaag nie daarin om die dispuut op te los nie. Een van die partye gee u opdrag om 'n egskeidingsaksie teen die ander in te stel.

Hoe sal u hierdie situasie hanteer? Motiveer u antwoord.

**VRAAG 6 [10]**

- 6.1 Watis 'n getrouheidsfondssertifikaat? (2)
- 6.2 Hoe, wanneer en van wie word dit bekom? (5)
- 6.3 Wat is die gevolge indien 'n prokureur sou versuim om sy getrouheidsfondssertifikaat te hernu? (3)

**VRAAG 7 [10]**

Welke prosedure moet 'n Kommissaris van Ede volg wanneer hy 'n beëdigde verklaring beëdig of bevestig?

**VRAAG 8 [20]**

U word geraadpleeg deur 'n man en 'n vrou wat van voorneme is om met mekaar te trou. Die man is 'n veertigjarige boer en die vrou is 'n ses-en-twintigjarige pas gekwalifiseerde rekenmeester. Die man het onlangs 'n plaas en implemente ter waarde van R1 000 000,00 uit die opbrengs van 'n suksesvolle sake-onderneming gekoop vir kontant. Die vrou is voornemens om haar eie rekenmeesterspraktik te begin en het studieskuld asook min bates. Die partye vra u om hulle skriftelik te adviseer oor die verskeie huweliksbedelings wat in Suid-Afrika bestaan en om hulle ook te adviseer oor die bedeling wat u meen hulle behoort te volg en, indien u meen dat 'n huweliksvoorwaardekontrak gebruik moet word, hoe dit gestruktureer moet word.

of a dispute arising between the parties which may result in a court case which will probably damage the ongoing relationship between the parties. You advise him that there are ways and means of dealing with disputes other than by court proceedings.

Draft the relevant clause to be incorporated in the agreement to give effect to your advice.

**QUESTION 5 [5]**

A married couple consults you for a divorce. The parties assure you that they have already settled their differences and that they do not foresee any major obstacles. Later on you realise that despite their assurances they have in fact not come to terms as to how the joint estate should be divided. You have in depth discussions with both but they are unable to resolve the dispute. One of the parties instructs you to institute divorce proceedings against the other.

How will you deal with this situation? Motivate your answer.

**QUESTION 6 [10]**

- 6.1 What is a fidelity fund certificate? (2)
- 6.2 How, when and from whom is one obtained? (5)
- 6.3 What are the consequences following upon an attorney failing to renew his fidelity fund certificate? (3)

**QUESTION 7 [10]**

What procedure must be followed by a Commissioner of Oaths who attests or affirms an affidavit for a deponent?

**QUESTION 8 [20]**

You are consulted by a couple who intend to get married. The man is a forty year old farmer and the woman is a twenty-six year old newly qualified accountant. The parties tell you that the man has recently purchased a farm and implements to the value of R1 000 000,00 for cash, from the proceeds of a successful business venture. The woman is about to open her own accounting practice and has few assets and a studyloan to repay. The parties ask you to advise them in writing of the various matrimonial regimes which are applicable in South Africa and furthermore to advise them which regime they should adopt and, if you feel that an antenuptial contract is necessary, how this should be structured.



**Skryf 'n brief aan u kliënte waarin u hulle adviseer oor:**

- 8.1 die verskillende huweliksbedelings wat in Suid-Afrika van toepassing is met 'n kort beskrywing van die implikasies van elk; en
- 8.2 welke bedeling u meen hulle moet volg met kort redes oor hoe enige kontrak wat u dink nodig mag wees, gestruktueer moet word.

**VRAAG 9 [5]**

Lewis maak die volgende stelling:

"A practitioner must avoid all conduct which if known, could damage his reputation as an honourable lawyer and honourable citizen"

Hierdie stelling behels 'n verskeidenheid aspekte. **Noem vyf pligte en verantwoordelikhede waaraan u dink 'n prokureur moet voldoen om Lewis se stelling na te kom.**

**Draft a letter to the couple:**

- 8.1 setting out the various matrimonial regimes applicable in South Africa and describing shortly what the implications of each are; and
- 8.2 advising the couple which regime you feel they should follow with brief reasons as to how any contract which you may consider necessary should be structured.

**QUESTION 9 [5]**

Lewis makes the following statement:

"A practitioner must avoid all conduct which if known could damage his reputation as an honourable lawyer and honourable citizen."

This statement covers a variety of aspects. **Mention five duties and obligations which you think an attorney should fulfil to comply with Lewis' statement.**

# PROKUREURSEKSAMEN

## DEEL 4 BOEKHOU

14 AUGUSTUS 2002

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 kliëntegrootboekrekeninge moet geopen word en moet nie gekombineer word nie. Joernaalinskrywings 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 druipe.

# ATTORNEYS' EXAMINATION

## PART 4 BOOKKEEPING

14 AUGUST 2002

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 Beskryf in detail watter faktore u in aanmerking sal neem, die prosedures wat u sal volg en die inskrywings wat u sal doen om 'n oorplasing vanuit u trust- na u besigheidsbankrekening te maak. (12)
- 1.2 Nadat u 'n oorplasing gemaak het, hoe sou u u self tevrede stel dat voldoende trustfondse gehou word om u verpligtinge teenoor trustkrediteure na te kom? (8)

**VRAAG 2 [15]**

Op 31 Januarie 2000 het u besigheidsbankstaat 'n oortrokke saldo van R12 489 getoon.

Op dieselfde datum het die kasboek 'n debietsaldo van R2 000 getoon.

U vergelyk u kasboekinskrywings met die bankstaat en identifiseer die volgende verskillende:

- 'n Tjek vir R2 800, uitgereik aan 'n kliënt, is slegs in die kasboek aangeteken.
- 'n Tjek vir R1 660, ontvang van 'n debiteur, is gedishonoreer. Dit is nie in u kasboek aangeteken nie.
- Rente van R1 100 op die oortrokke rekening is nie in die kasboek aangeteken nie.
- Die bank het verkeerdelik 'n tjek vir R6 000, getrek op die trustbankrekening, uit die besigheidsrekening betaal.

U assuransië-aftrekorder van R700 is nie in die kasboek aangeteken nie.

- 'n Elektroniese oordrag van R3 000 ter betaling van 'n kliënt se rekening wat op die bankstaat aangedui is, verskyn nie in die kasboek nie.
- 'n Deposito van R11 000 wat in die kasboek aangeteken is, verskyn nie op die bankstaat nie.
- 'n Deposito van R6 000 is in u kasboek verkeerdelik aangeteken as R6 311.
- 'n Tjek van R9000 is in u kasboek verkeerdelik aangeteken as R9 482.

**GEVRA:**

- 2.1 Stel die aanvullende kasboek op. (9)
- 2.2 Stel die bankrekonsiliësiestaats soos op 31 Januarie 2000 op. (6)

**QUESTION 1 [20]**

- 1.1 Explain in detail the factors you would take into account, the procedures you would follow and the entries you would make in transferring funds from your trust to your business banking account. (12)
- 1.2 Having made a transfer, how would you satisfy yourself that sufficient trust funds are retained to meet your obligations to trust creditors? (8)

**QUESTION 2 [15]**

On 31 January 2000 your business bank statement reflected an overdrawn balance of R12 489.

On the same date your cash book reflected a debit balance of R2 000.

You compare your cash book entries with the bank statement and identify the following differences:

- A cheque for R2 800, issued to a client, appears only in the cash book.
- A cheque for R1 660, received from a debtor, has been dishonoured. This does not appear in your cash book.
- Interest of R1 100 on the overdraft has not been entered in the cash book.
- A cheque for R6 000, drawn on the trust banking account, has been erroneously paid by the bank from the business account.
- Your insurance stop order for R700 is not recorded in the cash book.
- An electronic transfer of R3 000 in payment of a client's account appears on the bank statement, but is not shown in the cash book.
- A deposit of R11 000 which was entered in the cash book does not appear on the bank statement.
- A deposit of R6 000 was incorrectly recorded in your cash book as R6 311.
- A cheque of R9 000 was incorrectly recorded in your cash book as R9 482.

**REQUIRED:**

- 2.1 Prepare a supplementary cash book. (9)
- 2.2 Prepare a bank reconciliation statement as at 31 January 2000. (6)

**VRAAG 3 [50]**

U tree namens mnr Koper in 'n eiendomstransaksie op. Hy gee u opdrag om 'n koop-ooreenkoms op te stel ingevolge waarvan hy 'n eiendom van mnr Verkoper vir R300 000 koop. Die koopprys is as volg betaalbaar:

- 'n kontantdeposito van R100 000 wat u op trust moet hou tot registrasie van transport;
- R200 000 by wyse van 'n lening by 'n bouvereniging ten gunste waarvan 'n eerste verband oor die eiendom geregistreer word.

Kragtens die koopkontrak is Koper aanspreeklik vir die betaling van hereregte en verbandkoste ten bedrae van R15 000.

Op 4 Februarie 2002 teken die partye die ooreenkoms en mnr Koper gee u twee bankgewaarborgde tjeks vir R100 000 as deposito en R20 000 synde u verwagte kostes, wat die hereregte en verbandkoste van R15 000 insluit. Kragtens die ooreenkoms is u gemagtig om die deposito in 'n rentedraende rekening te belê.

Op 5 Februarie 2002, belê u die R100 000 by Phoenix Bank en u gee ook opdrag aan u korrespondent om die registrasie van die oordrag te doen. U stuur die tjek vir R15 000 aan u korrespondent vir die betaling van hereregte en verbandkoste.

Op 26 Februarie 2002, stuur u die deposito van R100 000 telegrafies aan u korrespondent, nadat u die belegging by Phoenix Bank gesluit het en betaling van R100 580 ontvang het.

Op 28 Februarie 2002, ontvang u die volgende verrekeningstaat van u korrespondent.

**I/S: Oordrag Verkoper aan Koper**

Opbrengs bouvereniging verband		200 000	
Hereregte en verbandkoste ontvang		15 000	
Deposito ontvang		100 000	
Betaal hereregte en verbandkoste	15 000		
Betaal Mnr Verkoper namens u	300 000		
Ons fooie i/s registrasie ens.	4 000		
BTW hierop teen 14%	560		
U 25% toelaag		1 000	
BTW hierop teen 14%		140	
Balans verskuldig		3 420	
		<u>319 560</u>	<u>319 560</u>

U betaal u korrespondent.

U word gevra om:

- bovermelde transaksies in u rekeningkundige boeke aan te teken;
- die bedrag waarop u geregtig is, na u besigheidsbankrekening oor te plaas; en
- volledig aan u kliënt te verreken deur die opstel van 'n verrekeningstaat.

**QUESTION 3 [50]**

You act for Mr Purchaser in a property transaction. He instructs you to draw an agreement in terms of which he purchases a property from Mr Seller for R300 000. The purchase price is payable as follows:

- a cash deposit of R100 000 to be held in trust pending transfer.
- R200 000 by way of a loan from a Building Society in favour of which a first mortgage bond over the property is to be registered.

In terms of the deed of sale, Purchaser is liable for payment of transfer duty and bond costs in the amount of R15 000.

On 4 February 2002 the parties sign the agreement and Mr Purchaser gives you two bank guaranteed cheques for R100 000 as the deposit and R20 000 being your estimated costs, which includes the transfer duty and bond costs of R15 000. In terms of the agreement you are authorised to invest the deposit in an interest bearing account.

On 5 February 2002, you invest the R100 000 in the Phoenix Bank and instruct your correspondent to attend to the registration of the transfer. You send a cheque for R15 000 to your correspondent for payment of the transfer duty and bond costs.

On 26 February 2002, you send the deposit of R100 000 telegraphically to your correspondent after having received R100 580 from the Phoenix bank on closing the interest bearing investment.

On 28 February 2002, your correspondent accounts to you as set out hereunder.

**RE: Transfer Seller to Purchaser**

Proceeds building society bond		200 000	
Transfer and bond costs received		15 000	
Deposit received		100 000	
Paid transfer duty and bond costs	15 000		
Paid Mr Seller on your behalf	300 000		
Our fees re registration of transfer etc.	4 000		
VAT thereon at 14%	560		
Your 25% allowance		1 000	
VAT thereupon at 14%		140	
Balance due		3 420	
		<u>319 560</u>	<u>319 560</u>

You pay your correspondent.

You are required to:

- record the above transactions in your accounting records;
- transfer the amount that you are entitled to, to your business bank account; and
- account fully to your client by preparing an accounting statement.

**VRAAG 4 [15]**

Daar word van elke firma vereis om 'n lys van trustkrediteure op te stel.

- 4.1 (a) Wanneer moet so 'n lys opgestel word?  
(b) Wat moet in die lys verskyn?  
(c) Waar moet die lys van saldo's aangeteken word?  
(d) Vir hoe lank moet die lys bewaar word? (11)

- 4.2 Wat word vereis van 'n prokureur waar hy/sy geld belê namens 'n kliënt sonder die kliënt se vooraf skriftelike opdrag? (4)

**QUESTION 4 [15]**

Every firm is required to produce a list of trust creditors.

- 4.1 (a) When must such list be extracted?  
(b) What must the list show?  
(c) Where must the balances list be noted?  
(d) For how long must such list be retained? (11)

- 4.2 What is required of an attorney when he/she invests money on behalf of a client without prior written instructions? (4)