

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

20AUGUSTUS 2008

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 in pen 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

20AUGUST 2008

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 in pen 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 [17]

John James, terwyl hy werk toe bestuur het, was erg beseer in 'n motorbotsing wat op 1 Junie 2006 plaasgevind het.

Hy was gehospitaliseerd, maar is op 25 Junie 2006 oorlede.

'n Geregtelike doodsondersoek wat gehou was, bevind dat die bestuurder van die ander voertuig alleenlik vir die ongeluk aanspreeklik was.

U word gekonsulteer deur die weduwee, Lauren. Daar is twee minderjarige kinders uit die huwelik gebore. Haar man was die hoof uitvoerende beampte van 'n IT maatskappy.

Sy verskaf die volgende verdere besonderhede:

1. Sy is die enigste erfgenaam en sal R600 000,00 erf;
2. Die oorledene het 'n versekeringspolis op sy lewe uitgeneem waarvan sy die enigste begunstigde is, van hierdie bron sal sy 'n verdere R1 650 000,00 ontvang;
3. Gedurende die huwelik was dit nie nodig vir haar om te werk nie.

Die oorledene was 58 jaar oud ten tye van sy sterfte en sou op die ouderdom van 65 jaar aftree. Sy is 52 jaar oud, en hulle twee kinders, Jenny en Joe is 14 en 10 jaar oud respektiewelik. Hulle is gesond. U kan aanneem dat al die kinders vir 4 jaar op universiteit sal studeer.

- 1.1 Vir watter periode sal die weduwee onderhoudsverlies kan eis? (1½)
- 1.2 Vir watter periode sal elkeen van die kinders onderhoudsverlies kan eis? (2½)

QUESTION 1 [17]

John James, whilst driving to work was severely injured in a motor vehicle collision that occurred on 1 June 2006.

He was hospitalised and died on the 25th of June 2006.

At an inquest it was found that the driver of the other vehicle was solely to blame for the collision.

You are consulted by his widow Lauren. There are two minor children born of their marriage. Her husband was the chief executive officer in an IT company.

She furnishes the following information:-

1. She is the sole heir and will inherit R600 000.00.
2. The deceased had an insurance policy on his life, in which she was nominated the sole beneficiary and will be receiving R1 650 000.00.
3. She was not obliged to work during her marriage.

The deceased was 58 years old at the time of his death and would have retired at the age of 65 years. His widow is 52 years old and their two minor children Jenny and Joe are 14 and 10 years old respectively. The children are in good health. You may assume that the children will study for 4 years at a university.

- 1.1 For what period will the widow be able to claim for loss of support? (1½)
- 1.2 For what period, will each of the minor children be able to claim loss of support? (2½)

- | | | | |
|------|---|------|--|
| 1.3 | Om die eis vir onderhoudsverlies te bereken, hoe sal u die oorledene se inkomste tussen sy afhanklikes verdeel? (2) | 1.3 | For the purpose of calculating the claim for loss of support, how will you apportion the income of the deceased amongst his dependants? (2) |
| 1.4 | Sal die opbrengs van die versekeringspolis in ag geneem word by die berekening van verlies van onderhoud? Motiveer u antwoord. (2) | 1.4 | Will the proceeds of the insurance policy be taken into account when calculating the loss of support? Motivate your answer. (2) |
| 1.5 | Sal die erfenis wat die weduwee van die boedel sal ontvang, in ag geneem word wanneer die onderhoudsverlies bereken word? Motiveer u antwoord. (1) | 1.5 | Will the inheritance which the widow will receive from the estate be taken into account when calculating her loss of support? Motivate your answer. (1) |
| 1.6 | Aan welke deskundige sal u opdrag gee om die eise vir onderhoudsverlies te bereken? (1) | 1.6 | Which expert would you instruct to calculate the claims for loss of support? (1) |
| 1.7 | Die weduwee begin werk nadat haar man oorlede is, en verdien R5 000,00 per maand. Sal hierdie inkomste in ag geneem word wanneer haar en haar kinders se eise vir onderhoudsverlies bereken word? (2) | 1.7 | The widow commences work after the death of her husband and earns R5 000.00 per month. Will this income be taken into account when calculating the loss of support in respect of her and the children's claim? (2) |
| 1.8 | Teen watter datum moet Mev James haar eis indien ten einde te verhoed dat dit verjaar in terme van die Wet? (1) | 1.8 | By when must Mrs James lodge her claim in order to prevent it becoming prescribed in terms of the Act? (1) |
| 1.9 | Die eise teen die Fonds is geskik voordat dagvaarding uitgereik is. Is u kliënt geregtig om haar koste van die Fonds te verhaal? Motiveer u antwoord. (2) | 1.9 | The claims against the Fund are settled before summons is issued. Is your client entitled to recover her costs from the Fund? Motivate your answer. (2) |
| 1.10 | Die Fonds maak nie 'n skikkingsaanbod nie en u kliënt gee u opdrag om dagvaarding teen die Fonds uit te reik. Stel die sitasie van die eiser ten opsigte van die eise van die twee kinders op. (2) | 1.10 | The Fund makes no offer of settlement and your client instructs you to proceed with summons. Draft the citation of the plaintiff in respect of the claims of the two children. (2) |

VRAAG 2 [1½]

Teen watter groepe van persone loop verjaring nie in terme van die Padongelukke Fonds Wet?

QUESTION 2 [1½]

Against which classes of persons does prescription not run in terms of the R.A.F. Act?

VRAAG 3 [1½]

- 3.1 'n Minderjarige is in 'n "tref-en-trap" ongeluk op die 24ste Julie 2004 beseer. Teen watter datum moet die eisvorm by die Fonds ingedien word ten einde te voorkom dat die eis verjaar? (1)
- 3.2 Is daar enige verskil in 'n soortgelyk eis deur 'n dertigjarige persoon? Motiveer u antwoord. (½)

VRAAG 4 [3]

U word gekonsulteer deur 'n vader, wie se seun in 'n motorbotsing oorlede is as gevolg van die nalatigheid van die bestuurder van 'n motorvoertuig. Hy oorhandig rekeningstate wat bestaan uit die volgende items:

(i)	Koste van 'n doodskis	R2000.00
(ii)	Koste van die begrafnis ondernemer	R2 500.00
(iii)	Grafsteen	R5 000.00
(iv)	Verversingsonkoste vir begrafnis bywoners	R2 000.00

Adviseer u klient ten opsigte van die items en bedrae wat van die Padongelukkefonds geëis kan word. Gee volledige redes vir u antwoord.

VRAAG 5 [2]

U tree namens 'n behoeftige klient op wat u, kort voor sy eis sou verjaar, opdrag gee om skadevergoeding voortspruitend uit beserings opgedoen in 'n motorvoertuig ongeluk te eis. Die eisvorm en mediese verslae is voltooid en onderteken. U praktiseer in die platteland en die eis sal oor twee dae verjaar.

- 5.1 Hoe sal u hierdie eisvorm betyds op die Fonds aflewer? (½)

QUESTION 3 [1½]

- 3.1 A minor is injured in a "hit and run" accident on 24th July 2004. By what date must the claim form be lodged with the Fund to prevent the claim from prescribing? (1)
- 3.2 Is there any difference in the case of a similar claim by a 30 year old person? Motivate your answer. (½)

QUESTION 4 [3]

You are consulted by a father, whose son was killed in a motor vehicle collision due to the negligence of the driver of a motor vehicle. He produces statements of accounts which consist of the following items:

(i)	Cost of coffin	R2 000.00
(ii)	Cost of Undertaker	R2 500.00
(iii)	Gravestone	R5 000.00
(iv)	Refreshment costs of mourners	R2 000.00

Advise your client as to which items and what amounts may be claimed from the Road Accident Fund. Give reasons for your answer.

QUESTION 5 [2]

You act on behalf of an indigent client who consults with you shortly before his claim will prescribe regarding a claim for damages arising from injuries sustained in a motor vehicle collision. The claim form and medical report are completed and signed. You practice in the country and the claim will prescribe in 2 days time.

- 5.1 How would you lodge the claim form timeously with the Fund. (½)

5.2 In hierdie omstandighede wanneer word dit geag dat die eisvorm afgelewer is? (½)

5.2 When is the claim form deemed to have been lodged in these circumstances? (½)

5.3 In watter ander voorgeskrewe manier mag die eisvorm afgelewer word indien die tyd nie so kort was nie? (½)

5.3 If time is not of the essence, what is the other prescribed manner of lodgement of the claimform? (½)

5.4 Hoe sal u aflewering aan die Fonds bewys in elk van die bogenoemde omstandighede? (½)

5.4 How would you prove service on the Fund in each of the aforementioned instances? (½)

VRAAG 6 [18]

QUESTION 6 [18]

U konsulteer met mnr Amos Khumalo op 'n Dinsdagoggend. Hy is die enigste lid van Ajax Enterprises Bk. Hy wys u 'n koerant wat 'n advertensie bevat deur die balju van die Hooggeregshof van 'n eksekusie verkoping van 'n Isuzu bakkie, die eiendom van Ajax Enterprises Bk.

You are consulted on a Tuesday morning by Mr Amos Khumalo, the sole member of Ajax Enterprises CC. He shows you a newspaper containing an advertisement by the sheriff of the High Court of a sale in execution of an Isuzu light delivery vehicle, the property of the CC.

Hy deel u mee dat die beslote korporasie op 'n daaglikse basis staat maak op die gebruik van die bakkie en dat die besigheid geen inkomste kan genereer sonder die bakkie nie. Verder sê hy dat hy geen kennis dra van die dagvaarding of enige ander dokumente wat verband hou met die verkoping in eksekusie nie. Die balju was die vorige dag by sy besigheidperseel van die beslote korporasie om die voertuig te verwyder maar kon dit nie kry nie. Hy het die werknemers van die Bk meegedeel dat hy die volgende dag sou terugkom om die voertuig te verwyder omdat dit op die Vrydag van dieselfde week verkoop moet word. U het die eiser se prokureur versoek om die verwydering en verkoping oor te hou maar hy weier.

He tells you that the CC relies on the use of this vehicle in its business on a daily basis and that it cannot generate income without it. He furthermore informs you that he has no knowledge of the summons or of any subsequent documents to which the sale in execution relates. The sheriff has been to the business premises of the close corporation the previous day to remove the vehicle but could not find it and informed staff members that he would be back the following day as the vehicle was to be sold on the Friday of the same week. You requested the attorney for plaintiff to hold over the removal and sale but he refused.

U het die hoflêer van die saak nagegaan en het vasgestel dat die dagvaarding op die verkeerde adres beteken is (Kerkstraat 17, Bloemfontein, in plaas van Kerkstraat 71, Bloemfontein). U merk op dat die skuldoorsaak vir goedere verkoop en gelewer is en dat vonnis by verstek toegestaan

You perused the court file and ascertained that the summons was served on an incorrect address (17 Church Street, Bloemfontein instead of 71 Church Street, Bloemfontein). You also noted that the cause of action is for goods sold and delivered and the judgment was granted by default

is aan Great Value (Edms) Bpk, die eksekusie skuldeiser. U kliënt deel u mee dat die koopprys van die goedere reeds betaal is. Hy gee bewys daarvan aan u in die vorm van 'n kwitansie wat gedateer is voor die datum van die uitreiking van die dagvaarding.

U kliënt vra u om aansoek te doen vir opskorting van die lasbrief vir eksekusie en daarna vir tersydestelling van die vonnis.

Stel slegs die volgende dokumente op.

- 6.1 Kennisgewing van mosie vir die opheffing van die lasbrief vir eksekusie. (Sluit die kopstuk in). (10)
- 6.2 Die beëdigde verklaring ter ondersteuning van die aansoek om tersydestelling van vonnis. (Sluit die kopstuk in maar laat die attestasie klousule van die kommissaris van ede uit). (8)

VRAAG 7

[7]

U verteenwoordig die verweerder in 'n aksie waarin die eiser skadevergoeding in die som van R200 000,00 eis wat voorspruit uit 'n motorvoertuig botsing by 'n kruising tussen die eiser se vragmotor en verweerder se motorvoertuig. Beide voertuie is beskadig as gevolg van die botsing.

U het tot die slotsom gekom dat die hof op die meriete 'n verdeling van skuld van 60/40% teen u klient behoort te maak. U kliënt se eie skade beloop die bedrag van R100 000,00.

- 7.1 Bereken die bedrag wat u, u kliënt sal adviseer om te tender. (2)
- 7.2 Sit kortliks die vereistes van reël 34 van die Eenvormige Hofreëls uiteen ten einde 'n geldige tender te maak om u

to Great Value (Pty) Ltd, the execution creditor. Your client informs you that the purchase price was in fact paid and produces proof in the form of a receipt dated prior to the issuing of the summons.

He wishes you to apply for a stay of execution of the writ and thereafter to launch an application for rescission of judgment.

Draft the following documents only:

- 6.1 Notice of motion for the stay of the writ (include the heading). (10)
- 6.2 The affidavit in support of the eventual application for rescission of judgment (include the heading but omit the attestation clause of the commissioner of oaths). (8)

QUESTION 7

[7]

You represent the Defendant in an action in which the Plaintiff claims damages in the sum of R200 000,00 arising from a motor vehicle collision, which occurred at an intersection involving the Plaintiff's truck and the Defendant's motor vehicle. Both vehicles were damaged as a result of the collision.

You have concluded that on the merits the Court should apportion fault 60/40% against your client. Your client's own damages amount to the sum of R100 000,00.

- 7.1 Calculate the amount which you would advise your client to tender. Set out your calculations. (2)
- 7.2 Briefly set out the requirements of rule 34 of the Uniform Rule of Court to make a valid tender in order to limit your client's

kliënt se aanspreeklikheid vir verdere koste van die aksie sover as moontlik te beperk. (3)

liability for further costs of the action as far as possible. (3)

7.3 Op die veronderstelling dat volgens u berekenings ingevolge 2.1 hierbo 'n bedrag minder is as die monetêre jurisdiksie van die Hooggeregshof bepaal het, sal u koste op die Hooggeregshof-skaal aanbied of nie? Motiveer asb u antwoord. (2)

7.3 Assuming that you have in your calculations in 2.1 above arrived at an amount which is less than the monetary jurisdiction of the High Court, will you tender costs on the High Court scale or not? Please motivate your answer. (2)

VRAAG 8 [18]

QUESTION 8 [18]

U kliënt, 'n 19 jarige eerste oortreder, word deur sy 35 jarige vriend oortuig, nadat die twee 'n paar biere gedrink het, om 'n bank te beroof. Voordat hulle die rooftof aan die gang sit steel die twee 'n motorvoertuig om mee te vlug van die toneel. Die vriend besit 'n ongelisensiëerde vuurwapen waarmee hy, gedurende die rooftog, die bankwerknemers dreig. U kliënt bestuur die voertuig vanaf die toneel. Hy is nie in besit van 'n bestuurderslisensie nie. Dieselfde dag word u kliënt en sy vriend gearresteer en die gesteelde voertuig en geld is teruggevind. Hulle word daarna in die streekshof aangekla van gewapende roof met verswarende omstandighede, besit van 'n ongelisensiëerde vuurwapen, diefstal van 'n motorvoertuig en die bestuur van 'n motorvoertuig sonder 'n geldige bestuurderslisensie. U kliënt pleit skuldig aan al die aanklagtes en as gevolg van die medebeskuldigde se pleit van onskuldig, beveel die landdros dat die verhore van die twee beskuldigdes geskei word. U kliënt word skuldig bevind.

Your client, a 19 year old first offender, is persuaded by his 35 year old friend, after having consumed a few beers, to rob a bank. Prior to the robbery the two accused steal a motor vehicle to be used during the robbery. The friend has an unlicensed firearm with which he threatens bank officials during the robbery. During the getaway the vehicle is driven by your client who does not have a driver's licence. Your client and his friend are arrested the same day and the stolen vehicle and monies are recovered. They are subsequently charged in the regional court with armed robbery with aggravated circumstances, possession of an unlicensed firearm, theft of a motor vehicle and driving a motor vehicle without a valid driver's licence. Your client pleads guilty to all the charges and because his co-accused has pleaded not guilty, the magistrate orders a separation of trials. Your client is found guilty.

8.1 Watter faktore sal u onder die hof se aandag bring in u betoog ter versagting van vonnis en welke beginsels van beide die gemene reg en die statutêre reg, sal u in u argument opper. (10)

8.1 What factors will you bring to the court's attention in your address in mitigation of sentence and what principles of both the common law and the statutory law, will you address in your argument? (10)

8.2 U kliënt is gevonnissen tot 18 jaar direkte gevangenisstraf ten opsigte van die roof, twee jaar gevangenisstraf ten opsigte

8.2 Your client is sentenced to 18 years direct imprisonment in respect of the robbery, two years imprisonment in respect of the

van die besit van 'n ongelisensiëerde vuurwapen, twee jaar gevangenisstraf ten opsigte van die diefstal van 'n motorvoertuig en 'n boete van R300,00 of 150 dae gevangenisstraf ten opsigte van die bestuur van 'n motorvoertuig sonder 'n geldige bestuurslisensie. U ontvang instruksies om 'n aansoek te bring vir verlof om te appelleer teen vonnis. Stel die aansoek, insluitende die hoof, op.
(6)

- 8.3 Binne welke periode moet 'n beskuldigde aansoek doen vir verlof om te appelleer en word naweeksdag en publieke vakansiedag in berekening gebring in die bepaling van hierdie periode? (2)

VRAAG 9 [4]

U kliënt het onskuldig gepleit ten opsigte van 'n klagte van onsedelike aanranding. Nadat die Staat getuie gelei het sluit die Staat sy saak. Bespreek die beginsels wat u in aanmerking sal neem wanneer u u kliënt adviseer om sy saak te sluit sonder die lei van enige getuie.

VRAAG 10 [3]

Gedurende die verloop van 'n verhoor is getuie deur 'n staatsgetuie gelei wat verskil van u kliënt se weergawe in verskeie aspekte.

- 10.1 Wat is u plig gedurende die kruisondervraging van die getuie met betrekking tot die weergawe van u kliënt in soverre dit verskil met die van die getuie? (2)
- 10.2 Watter gevaar loop u kliënt indien u, as regsvertegenwoordiger, nie hierdie plig nakom nie. (1)

possession of an unlicensed firearm, two years imprisonment in respect of the theft of a motor vehicle and a fine of R300,00 or 150 days imprisonment in respect of the driving of a motor vehicle without a valid driver's licence. You receive instructions to bring an application for leave to appeal against sentence. Draw the application, including the heading.
(6)

- 8.3 What is the period of time within which an accused is to apply for leave to appeal and are weekend days and public holidays taken into account in calculating this period? (2)

QUESTION 9 [4]

Your client has pleaded not guilty to a charge of indecent assault. The State leads evidence and closes its case. Discuss the principles that you will consider in advising your client to close his case without leading any evidence.

QUESTION 10 [3]

During the course of a trial the state witness gives evidence against your client which is contradictory to your client's version in a number of respects.

- 10.1 What is your duty during cross examination of the witness with regard to the version of your client insofar as it differs from that of the witness? (2)
- 10.2 What is the danger should you as the legal representative, not comply with this duty? (1)

VRAAG 11

[7]

Die verweerder gee aan u 'n instruksie om 'n voorlopige vonnis dagvaring wat op hom beteken is te verdedig, op grond van sy tjek in die bedrag van R80,000 wat gedishonoreer is. Hy het die tjek gegee as betaling vir 'n tweede handse motor voertuig wat hy gekoop het. U kliënt deel u mee dat hy die voertuig in terme van 'n privaats ooreenkoms gekoop het, nadat hy 'n advertensie in 'n koerant gesien het. Toe hy oppad terug na sy plaas gery het, het al die olie uit die oliebak dreinerings gat uitgeloop en het die enjin vasgebrand wat uitgebreide herstelwerk benodig het. U kliënt sê dat hy daarna die bank instruksie gegee het om betaling van die tjek te stop. U stel u kliënt se beëdigde verklaring in terme van die genoemde feite op, om die aksie te opponeer. Die eiser repliseer by wyse van 'n beëdigde verklaring en suggereer dat indien die olie gelek het, die gat in die oliebak veroorsaak was deur die voertuig wat in iets vasgery het op die plaas pad na die verweerder se huis, aangesien die eiser nie bewus was van enige olie lek voordat hy die voertuig aan die verweerder oorhandig het nie.

- 11.1 Watter uitspraak verwag u dat die landros sal lewer by die verhoor? Verduidelik kortliks hoekom u dink hy so 'n uitspraak sal lewer. (3)
- 11.2 Neem aan dat die landros ten gunste van die eiser gevind het en die verweerder wil voortgaan met die saak, watter stappe moet die verweerder neem? (3)
- 11.3 Neem aan dat die eiser nie doen wat hy gevra word om te doen nie, welke regte het die verweerder? (1)

VRAAG 12

[6]

U het namens 'n kliënt dagvaarding uitgereik waarin u skadevergoeding eis, synde die herstelkoste van haar voertuig veroorsaak deur 'n botsing. Die verweerder teken nie verskyning

QUESTION 11

[7]

The defendant instructs you to defend a provisional sentence summons issued against him for the sum of R80,000 in respect of a dishonoured cheque which your client tells you he gave as the purchase price of a second-hand car. Your client tells you that he bought the car by way of a private sale as a consequence of seeing an advertisement in a newspaper. But when he was on his way home to his farm, all the oil in the sump drained out of the sump drainage hole and the engine seized, requiring very extensive repairs. Your client says he then instructed his bank to stop payment of the cheque. You draw your client's affidavit to oppose the provisional sentence summons along the aforementioned lines. The plaintiff responds by filing affidavit in which he suggests that if the oil leaked out, the hole in the sump must have come from the vehicle striking an object on the farm road on the way to the defendant's home, as he was not aware of any leak coming from the sump before he gave delivery to the defendant.

- 11.1 What judgment would you expect the magistrate to hand down at the hearing? Very briefly explain why he would give such judgment. (3)
- 11.2 Assuming the magistrate found in favour of the plaintiff and the defendant wished to pursue the matter, what steps should the defendant take? (3)
- 11.3 Assume that the plaintiff does not do what he may be called on to do, what are the defendant's rights? (1)

QUESTION 12

[6]

You have issued summons on behalf of a client for damages sustained in a collision, being the repair costs to her motor vehicle. The defendant does not enter an appearance to defend and you

tot verdediging aan nie en u wil 'n versoek om vonnis by verstek indien. U het reeds die versoek om vonnis by verstek opgestel. Stel die addisionele dokument op wat u nodig ag ter staving van die aansoek.

VRAAG 13 [2]

U kliënt gee u opdrag om aksie in te stel vir die verhaal van die koste van die herstel van sy motorvoertuig wat beskadig was in 'n motor botsing. Die verweerder verdedig die aksie en dit kom op verhoor. Wanneer opdrag gegee was het u kliënt foto's van die ongelukstoneel gegee wat deur 'n verbygaande voetganger geneem is. Is daar enige spesiale stappe wat u moet neem om die foto's te kan gebruik as getuie tydens die verhoor? Sit die stappe uiteen in puntvorm.

VRAAG 14 [4]

U kliënt gee u instruksie om 'n huurder wat twee maande agterstallig is met sy huur te dagvaar vir R20,000. U reik die dagvaarding uit en beteken dit op die verweerder. Daarna vind u uit dat u kliënt bedoel het dat die huur eintlik R20,000 'n maand was. Teen die tyd wat u die fout agterkom, het die verweerder reeds 'n verskyning om te verdedig aangeteken.

- 14.1 Welke prosedure sal u volg om die fout reg te stel? (1)
- 14.2 Neem aan dat die verweerder beswaar wil maak teen die stap om die fout te herstel, welke stappe sal hy moet neem? Moet nie die dokument wat namens die verweerder gelyasseer moet word opstel nie maar dui aan wat die dokument moet bevat. (2)
- 14.3 Neem aan dat die verweerder se beswaar onsuksesvol was, wat moet die eiser daarna doen om die prosedure wat geneem is te finaliseer? (1)

wish to apply for default judgment. You have already drafted a request for default judgment. Draft the document that you will have to file in support of your application.

QUESTION 13 [2]

Your client instructs you to sue for the cost of repairing his motor vehicle which was damaged in a collision. The defendant defends the action and it comes to trial. When you were instructed, your client handed you some photographs taken at the scene by a passer by. Are there any special steps you have to take to get the photographs admitted as evidence during the trial? List the steps in pointform.

QUESTION 14 [4]

Your client instructs you to sue a tenant for two months' arrear rent in the sum of R20,000. You issue summons and then discover that what your client meant was that the rent was R20,000 per month. You discover this after the defendant entered an appearance to defend.

- 14.1 What procedure would you follow to correct this mistake? (1)
- 14.2 Assume the defendant objects to your endeavouring to correct the mistake, what must he do? Do not draw the document that must be filed on behalf of the defendant, but indicate what the document should contain. (2)
- 14.3 Assuming the defendant's objection was unsuccessful, what must the plaintiff do thereafter to finalise the procedure? (1)

VRAAG 15 [6]

Het die landdros hof jurisdiksie in die volgende sake?

- 15.1 'n Aansoek vir die likwidasië van 'n beslote korporasie. (1)
- 15.2 'n Eis gebaseer op 'n gedishonoreerde tjek vir R100 000,00. (1)
- 15.3 'n Aansoek vir die aanstelling van 'n curator *ad litem*. (1)
- 15.4 'n Aksie vir 'n egskeiding wat nie geopponeer word nie. (1)
- 15.5 'n Aansoek vir die sekwestrasie van 'n persoon se boedel. (1)
- 15.6 'n Aansoek vir die heraanstelling van 'n werker wat op 'n onwettige wyse afgedank is. (1)

QUESTION 15 [6]

Does the magistrate's court have jurisdiction in the following matters?:

- 15.1 An application for the liquidation of a close corporation. (1)
- 15.2 A claim based on a dishonoured cheque for the sum of R100 000,00. (1)
- 15.3 An application for the appointment of a curator *ad litem*. (1)
- 15.4 An action for an unopposed divorce. (1)
- 15.5 An application to sequester the estate of an individual. (1)
- 15.6 An application for the reinstatement of a wrongfully dismissed employee. (1)

DIE EINDE

THE END

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
COURT PROCEDURES / HOFPROSEDURES
PART 1 / DEEL 1**

20 AUGUST / 20 AUGUSTUS 2008

ANSWERS/ANTWOORDE

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

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

QUESTION 1

[17]

- 1.1 7 years, that is until deceased would have retired. (1½)
- 1.2 8 and 12 years respectively, (1) that is up to 18 years of age plus 4 years at varsity(1). (2½)
- 1.3 The income of the deceased would be apportioned on the basis of two parts to the deceased, two parts to the surviving spouse and one part to each dependant child. (2)
- 1.4 By virtue of the provisions of Section 1(1) of the Assessment of Damages Act, No. 9 of 1969, no insurance money or pension benefit will be taken into account when calculating the loss of support. (1) In other words, insurance and pension benefits payable to dependants are not deductible from damages recoverable by a third party due to the death of the breadwinner. (1) (2)
- 1.5 The inheritance, which the widow will receive from the estate, will be taken into account when calculating her loss of support. This is considered as an accelerated benefit. (1)
- 1.6 An actuary. (1)
- 1.7 A widow, claiming compensation for the loss of support consequent upon the death of her husband, is not required to mitigate her loss by finding employment and no allowance should be made in respect of her earnings or earning capacity. (1) What she has lost is a right – the right of support. She cannot be required to mitigate that loss by incurring the duty of supporting herself. (2)

- 1.8 On the 24th of June 2009, ie. 3 years after her husband's death. (1)
- 1.9 Yes. You have complied with the requirements of the Act in respect of proper lodgement of the claim and this entitles you to your party and party costs. (2)
- 1.10 "The plaintiff is Lauren James of (here give her address) who sues herein in her capacity as the mother and natural guardian of her minor children Jenny and Joe." (2)

QUESTION 2 **[1½]**

- 2.1 Minors (½)
- 2.2 Mental patients (½)
- 2.3 Persons under curatorship (½)

QUESTION 3 **[1½]**

- 3.1 23 July 2006 (1)
- 3.2 No (½)

[Note: All "hit and run" claims must be lodged within two years of the occurrence.]

QUESTION 4 **[3]**

The Fund is duly responsible for the costs of the actual interment (1). Therefore only the costs of the coffin and the undertaker – R4 500,00 (2).

QUESTION 5 **[2]**

- 5.1 By dispatching the MMF.1 Claim Form and Annexures to the Fund by pre-paid registered post. (½)
- 5.2 On the day that the document is dispatched by registered post. (½)
- 5.3 By delivering the MMF.1 Claim Form and Annexures to an office of the Road Accident Fund – a receipt from the Fund on service is recommended. (½)
- 5.4 By putting up a copy of the Post Office document, proving postage by pre-paid registered mail, or a receipt from the Fund. (½)

1.1

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION ½ mark**

Case No

in the matter between

AJAX ENTERPRISES CC

APPLICANT 1 mark

and

**THE SHERIFF, BLOEMFONTEIN
GOOD VALUE (PTY) LTD**

**1st RESPONDENT 1 mark
2nd RESPONDENT 1 mark**

NOTICE OF MOTION

TAKE NOTE that application will be made on behalf of the above-named applicant on the _____ day of _____ at 10:00 or as soon thereafter as counsel may be heard for an order in the following terms: **½ mark**

- (a) that the application be heard as a matter of urgency and that the requirements of the rules regarding service and time limits be dispensed with. **1 mark**
- (b) that the writ of execution of the Isuzu vehicle attached be stayed. **1 mark**
- (c) costs of the application **1 mark**

Note to the examiner:

Any of a number of possible costs orders can be prayed for.

- (d) Further and/or alternative relief.

FURTHER TAKE NOTE that should the respondents wish to oppose this application notice of such opposition should be given on/or before (date) and their opposing affidavit(s) should be served and filed before (date). **2 marks**

FURTHER TAKE NOTE that the affidavit of Amos Khumalo annexed hereto will be used in support of this application. ½ mark

Kindly place the matter on the roll for hearing accordingly. ½ mark

DATED at

Applicant's Attorney

To the Registrar of the above-named Court.

To the Sheriff, Bloemfontein / 1st Respondent

To Attorneys for judgment creditor / 2nd Respondent

Note to examiner:

It is important that candidates know that this application should be served on both respondents as well as filed with the Registrar. This will either show from the heading or above.

(10)

6.2

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION**

Case No

In the matter between

AJAX ENTERPRISES CC

APPLICANT

and

GOOD VALUE (PTY) LTD

RESPONDENT

APPLICANT'S FOUNDING AFFIDAVIT

I the undersigned

AMOS KHUMALO

do hereby make oath and state:

1

- 1.1 I am the sole member of the applicant, Ajax Enterprises CC, a close corporation duly registered in terms of the Close Corporations Act with registered address at and duly authorised to act on behalf of the applicant. **1 mark**
- 1.2 The contents hereof are in my personal knowledge unless otherwise stated and are both true and correct. **1 mark**

Note to examiner:

Candidates should be penalised in the event of them stating that Amos Khumalo is the applicant.

2

The respondent is Good Value (Pty) Ltd, a company with limited liability duly incorporated in terms of the Companies Act of the Republic of South Africa with registered address / principal place of business at **1 mark**

3

This is an application for rescission of judgment granted by default on the by this honourable court, against the applicant in the above matter.

4

Note to examiner:

Good cause must be shown in the following paragraphs:

Candidates should explain that applicant was not in wilful default, i.e. Ajax CC never received the summons as it was served on the wrong address. **1 mark**

A copy of the return of service should be attached, **Annexure 'A'**. **1 mark**

Candidates must also show that the applicant has a bone fide defence to plaintiff's claim, i.e. that full payment was made. **[1]** A copy of the receipt should be attached, **Annexure 'B'**. **1 mark**

5

Wherefore applicant prays for an order in terms of the notice of motion. **1 mark**

Note to examiner:

Candidates can also set out the prayers: rescission of judgment, leave to defend, an appropriate cost order, further/or alternative relief.

Signed at Bloemfontein this day of 2008.

APPLICANT

Note to examiner:

Candidates need not insert the attestation clause of the commissioner of oaths.

(8)

QUESTION 7**[7]**

- 7.1 60% of plaintiff's claim of R200 000,00 = R120 000,00 ½ mark
- less 40% of defendants counter claim of R100 000,00 ½ mark
= R40 000,00 ½ mark
balance to be tendered R80 000.00

or

60% of R300 000,00 = R180 000,00
- less damages R100 000,00
= R80 000,00 ½ mark

(2)

- 7.2 - Requirements of rule 34(5) the written authority of the client to tender. 1 mark
- Requirement of rule 34(2)(b) a written notice of offer setting out that it is made without prejudice by way of offer of settlement. 1 mark
- Stipulate whether costs up to date of the offer are included in the amount tendered. 1 mark

(3)

- 7.3 Costs. I will advise the defendant to tender costs on the Magistrate's Court scale because the monetary jurisdiction limit is R100 000,00 and can be argued to that the Court should award jurisdiction on the appropriate Magistrate's Court scale – alternative answer: it can be argued that the court has a discretion with regard to the cost order and may award costs on the High Court scale in view of the fact that the amount is reasonably close to the limit of jurisdiction in the Magistrate's Court. For the sake of settlement and to avoid the risk of the court exercising its discretion in favour of the plaintiff, High Court costs can be tendered.

(2)

QUESTION 8**[18]**

- 8.1 The personal circumstances of the accused (e.g. his age, employment situation, level of education etc.);

That he was more than likely influenced by the other accused who was older than him;

The effect of alcohol on him;

That accused number 2 seems to be the main perpetrator (he is older than you client, persuaded your client to commit the offence and was in possession of the firearm);

Minimum force was used and no one was injured;

The stolen items (money and vehicle) were recovered;

The accused pleaded guilty – a sign of remorse;

The accused has no previous convictions;

That the accused is willing to give evidence against accused number 2 if necessary;

The cumulative effect of the sentences should be considered;

The court should be requested to order that some of the sentences run concurrently, bearing in mind that all were committed during the commission of the robbery.

Principles to be applied: the triad namely, the interests of society, the nature and seriousness of the offence and the personal circumstances of the accused. The court should find a balance between these three factors.

Statutory provisions:

The practitioner will have to bear in mind the minimum sentences prescribed for offences of this nature in terms of the Criminal Law Amendment Act 105 of 1997 – fifteen years for a first offender. Substantial and compelling circumstances will have to be brought to the attention of the court to justify the imposition of a lesser sentence. It can be argued that the circumstances referred to above in their entirety or individually, constitute such circumstances.

(10)

B.2 IN THE REGIONAL COURT FOR THE DIVISION OF JOHANNESBURG HELD AT JOHANNESBURG

Case No: RC1/08/06

In the matter between:

CLIENT'S NAME

APPLICANT

and

THE STATE

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

KINDLY TAKE NOTICE that the abovementioned applicant intends to apply for leave to appeal in terms of Section 309B (1) of the Criminal Procedure Act, Act 51 of 1977, to the Witwatersrand Local Division of the High Court of South Africa against the sentence imposed on him by the Learned Magistrate, Mr XXXX on the 8th of May 2007, on the following grounds:

1. The Magistrate over-emphasized the seriousness of the offence.
2. The Learned Magistrate failed to place sufficient emphasis on the personal and mitigating circumstances of the applicant in particular in that:
 - 2.1 He failed to take into account the fact that the applicant was 19 years of age at the time of the commission of the offence;
 - 2.2 He failed to take into account that alcohol played a role in the commission of the offence;
 - 2.3 He failed to take into consideration that the applicant was influenced by an elder person to participate in the offence and that he, the applicant, played a minor role therein.
3. He failed to take into consideration the cumulative effect of the sentences.
4. He failed to find that there were substantial and compelling circumstances which justify the imposition of a lesser sentence than the sentence prescribed in Section 51(2)(a)(i), the circumstances being those set out hereinbefore.
5. The Learned Magistrate failed to consider alternative sentencing options.
6. The Learned Magistrate over-emphasised the interest of society above the interests of the accused.
7. The sentence imposed is shockingly severe, harsh and inappropriate in the circumstances.

In the light of the aforementioned it is respectfully submitted that a reasonable possibility exists that another court will come to a different conclusion.

DATE AT JOHANNESBURG ON THIS THE 22nd OF APRIL 2007.

**APPLICANT'S ATTORNEYS
DE VILLIERS & BENADE**
Attorneys Chambers
Bree Street
JOHANNESBURG

**TO: THE CLERK OF THE COURT
JOHANNESBURG**

(6)

3.3 Fourteen days. Weekend days and public holidays are not taken into account. (2)

QUESTION 9 **[4]**

If you simply close your case without calling evidence your client may be acquitted. Credibility is now an issue and it may be that, although the State established a prima facie case, the witnesses were so unimpressive or contradicted each other so hopelessly that the court will not convict on their evidence. However, do not embark on this course lightly as it has often been asked by judges "but why didn't your client testify?" Decline calling your client when you are certain either that the state witnesses were so unimpressive and their evidence so improbable that the court will not convict or when you know that your client will be such a bad witness that he cannot possibly assist his own case.

Also discuss the pros and cons of closing his case with your client and ensure that he understands all the implications and that he consents to do so, bearing in mind the danger that exists in not replying to the State's case.

QUESTION 10 **[3]**

10.1 It is your duty to ensure that your client's version, in each and every respect and in particular where there is a difference between that of the state and your client, is put to the witness. (2)

10.2 In the event of your not putting the relevant portion of your client's version to a witness the court can find that the version of the witness is correct and can accept same. The prosecutor may also, when your client gives evidence, accuse your client of fabricating his version after having heard that of the state witness. (1)

QUESTION 11**[7]**

- 11.1 Grant provisional sentence. The defendant has admitted signing the cheque and has failed to show, on a balance of probabilities that his defence is likely to succeed. (3)
- 11.2 Within two months the defendant should pay to the plaintiff (not into court) the amount of the judgment debt, interest and costs but before doing so he should demand that the plaintiff gives him security for repayment of these amounts. After the plaintiff has given security the defendant must give notice of his intention to enter the principal case and deliver his plea within a further ten (10) days. (3)
- 11.3 If plaintiff fails to give security when he is asked to do so the defendant may carry on with his defence without having to make payment. (1)

QUESTION 12**[6]**

1. The affidavit for proving the amount of the damages by an expert should cover the following points.
- 1.1 Description of deponent, qualifications qualifying him as an expert as well as his experience in the field of motor vehicle repairs and assessment of repair costs.
- 1.2 He examined the particular motor vehicle and assessed the repair costs / or compared the damages which he found, to an existing quotation. He compiled the quotation which is annexed or he confirms the existing quotation.
- 1.3 He gives an opinion that the total amount of the quotation is fair and reasonable and that the amount does not exceed the difference between the pre and post accident market value.

QUESTION 13**[2]**

Plaintiff must give ten (10) days notice of his intention to use the photographs at the hearing and such notice must call on the defendant to inspect the photographs and call on the defendant to give notice, if he chooses to do so, to object to the use of these photographs and that if he does not object they may be admitted in evidence without further proof.

QUESTION 14**[4]**

- 14.1 Give notice of intention to amend (1)
- 14.2 Give notice he intends to object setting out his grounds for objection (2)
- 14.3 File and serve the corrected pages (1)

QUESTION 15

[6]

- 15.1 yes (1)
- 15.2 yes (1)
- 15.3 yes (1)
- 15.4 no (1)
- 15.5 no (1)
- 15.6 no (1)