

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

17 FEBRUARIE 2009

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. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
3. Waar nodig, moet kandidate hulle eie feite versin.
4. Skryf asseblief slegs in pen op die regterkantse bladsye.
5. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

17 FEBRUARY 2009

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. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1

[5]

QUESTION 1

[5]

(i) U kliënt, Peter Black, deel u mee dat op 20 Augustus 2007 terwyl hy aan diens was, hy ernstig beseer is in 'n botsing tussen 'n bus en die motorvoertuig wat hy bestuur het.

(i) Your client Peter Black tells you that on 20 August 2007 whilst he was on duty he was severely injured in a motor vehicle collision that occurred between the motor vehicle he was driving and a bus.

(ii) Hy het gelede hospitaal en mediese onkoste van R60 000,00 opgedoen.

(ii) He has incurred costs in the sum of R60 000,00 in respect of past hospital and medical expenses.

(iii) Daarbenewens:-

(iii) In addition:-

a) Het hy 'n verlies van inkomste van R20 000,00 gely;

a) He has suffered loss of earnings in the sum of R20 000,00;

b) Hy ontvang tans 'n pensioen van R1 000,00 per maand van die Vergoedingskommisaris wat 'n gekapitaliseerde waarde van R80 000,00 het tot sy datum van aftrede;

b) He is presently receiving a pension from the Commission for Compensation for Occupational Injuries and Diseases of R1 000,00 per month which has a capitalised value until his date of retirement of R80 000,00;

c) Die Kommisaris het sy verlies van gelede inkomste en sy mediese en hospitaal onkoste betaal;

c) The Commissioner has paid his past loss of earnings and his medical and hospital expenses;

d) Sy eis is by die Padongelukfonds ingedien wat aangedui het dat voordat enige toepaslike aftrekkings gemaak is, hulle bereid sou wees om die kwantum van die eis te skik op die volgende basis:

d) The claim was lodged with the Road Accident Fund who have indicated that before making any relevant deductions they would be prepared to settle the quantum of the claim on the following basis:

Mediese en hospitaal onkoste
R 60 000,00

Medical and hospital expenses
R 60 000,00

Gelede verlies van inkomste
R 20 000,00

Past loss of earnings
R 20 000,00

Toekomstige verlies van inkomste
R200 000,00

Future loss of earnings
R200 000,00

Algemene skadevergoeding
R100 000,00

General damages
R100 000,00

TOTAAL R380 000,00

TOTAL R380 000,00

- (iv) Die meriete is geskik op 50% ten gunste van u kliënt.

Inaggenome die bovermelde feite, beantwoord die volgende vrae:

- 1.1 Bespreek die betrokke beginsels wat in ag geneem moet word ten einde die bedrag wat u kliënt van die Padongelukfonds moet ontvang, te bepaal. (2)
- 1.2 Inaggenome die bovermelde faktore welke bedrag sal u kliënt ontvang indien die eis geskik is op die basis soos deur die Fonds aangedui. Sit u berekening uiteen wat aantoon hoe u by die bedrag uitkom. (3)

VRAAG 2 [2]

Indien 'n eiser versuim om 'n beëdigde verklaring in te dien soos vereis in terme van Artikel 19(f)(i) van Wet Nr 56 van 1996, watter regs middels is vir die Padongelukfonds beskikbaar onder die volgende omstandighede:

- 2.1 Die Padongelukfonds versuim om beswaar teen die geldigheid van die eise te lewer binne die voorgeskrewe periode; (1)
- 2.2 Waar die Padongelukfonds wel beswaar teen die geldigheid van die eis binne die voorgeskrewe periode, aanteken. Verduidelik ten volle met verwysing na die betrokke bepalings van die Wet. (1)

VRAAG 3 [2]

U kliënt deel u mee dat terwyl hy sy motor op die N2 snelweg bestuur het, hy gebots het met 'n buiteband wat van 'n vragmotor afgeval het omdat dit nie behoorlik vasgemaak was nie. As gevolg daarvan het sy motor omgeslaan en hy was ernstig beseer. Het u kliënt 'n eis teen die Padongelukfonds? Bespreek en motiveer u antwoord.

- (iv) The merits were settled at 50% in favour of your client.

Having regard to the abovementioned facts, answer the following questions. *RAF*

- 1.1 Discuss the principles involved in arriving at the amount of damages that your client should receive from the Road Accident Fund. (2)
- 1.2 Bearing the above factors in mind what amount will your client receive if the claim is settled on the basis indicated by the Fund? Set out your calculation showing how you arrive at this amount. (3)

QUESTION 2 [2] *RAF*

If a claimant fails to submit an affidavit as required in terms of Section 19(f)(i) of Act No 56 of 1996, what are the remedies available to the Road Accident Fund under the following circumstances:

- 2.1 Where the Road Accident Fund fails to object to the validity of the claim within the prescribed period; (1)
- 2.2 Where the Road Accident Fund objects to the validity of the claim within the prescribed period. Explain fully with reference to the relevant provisions of the Act. (1)

QUESTION 3 [2] *RAF*

Your client tells you that whilst driving his motor vehicle on the N2 freeway, he collided with a tyre which had fallen from a truck because it was not properly secured. As a result thereof your client's vehicle somersaulted and he was seriously injured. Does your client have a third party claim against the Road Accident Fund? Discuss and motivate your answer.

VRAAG 4

[11]

Philip Jones, 50, het met sy vrou Mary, 48, en hulle drie kinders Rose, 18, Joyce, 16 en klein Mary, 8 gereis toe die voertuig waarin hulle gery het, die pad verlaat en omgeslaan het. Hulle oom, Peter, wat op besoek van oorsee was, het saamgery. Klaarblyklik het Mnr Jones aan die slaap geraak. Peter het liggaamlike beserings opgedoen en is by die Rob Ferreira Hospitaal te Nelspruit behandel. Peter kon nie vir 'n periode van 6 weke daarna werk nie en gedurende hierdie periode het hy geen inkomste ontvang van sy werk. Hy het die volgende skade gely;

• Hospitaalonnkoses	R15 600,00
• Mediese onkoses	R 6 200,00
• Verlies van inkomste	R15 000,00
• Algemende skadevergoeding	R25 000,00

Daarbenewens is 'n ipod wat aan klein Mary behoort onherstelbaar beskadig tesame met haar bril. Die ipod is R2 000,00 werd en die bril R1 500,00.

- 4.1 Watter skadevergoeding mag Peter van die Padongelukfonds ten opsigte van die beserings wat hy opgedoen het, eis? (1)
- 4.2 Word Peter se eis in enige mate beperk? Indien wel, verskaf volle besonderhede daarvan. (1)
- 4.3 Kan Mnr Jones enige skadevergoeding ten opsigte van die vervangingskoste van die beskadigde ipod en bril verhaal? Motiveer u antwoord. (2)
- 4.4 Gedurende u ondersoek van die eis, vind u uit dat Peter nie 'n veiligheidsgordel gedra het nie met die gevolg dat sy beserings erger was as wat hulle sou gewees het as hy wel 'n veiligheidsgordel gedra het. Watter uitwerking op sy eis het sy versuim om die gordel te dra? Motiveer u antwoord ten volle. (2)

QUESTION 4

[11]

Mr Philip Jones, 50, was travelling with his wife Mary, 48, and their three children Rose, 18, Joyce, 16 and little Mary, 8 when the vehicle they were travelling in left the road and overturned. Their uncle Peter who was visiting from overseas was travelling with them. Mr Jones apparently fell asleep. Peter sustained bodily injuries and was treated at the Rob Ferreira Hospital in Nelspruit. Peter was unable to work for a period of six weeks thereafter and for which period he was not paid. He suffered the following damages;

• Hospital expenses	R15 600,00
• Medical expenses	R 6 200,00
• Loss of income	R15 000,00
• General damages	R25 000,00

In addition an ipod belonging to little Mary was irreparably damaged in the accident together with her spectacles. The value of the ipod is R2 000,00 and the spectacles R1 500,00.

- 4.1 What damages may Peter claim from the Road Accident Fund in respect of the injuries that he sustained? (1)
- 4.2 Are there any limitations that apply to Peter's claim? If so, give full details of such limitations. (1)
- 4.3 Can Mr Jones recover any damages for the replacement costs of the damaged ipod and spectacles? Motivate your answer. (2)
- 4.4 During the course of your investigations you discover that Peter was not wearing a seatbelt with the result that his injuries were more severe than would have been the case had he been wearing a seatbelt. What effect does his failure to wear a seatbelt have on his claim? Motivate your answer fully. (2)

4.5 Sal Peter Mnr Jones kan dagvaar ten opsigte van enige van die skade wat hy gely het? Indien wel, moet u besonderhede daarvan verstrek en u antwoord ten volle motiveer. (2)

4.5 Would Peter be able to sue Mr Jones for any of the damages that he sustained? If so, furnish full details thereof and motivate your answer fully. (2)

4.6 Sal Peter se eis in enige manier anders wees in die geval dat dit bewys word dat 'n vragmotor met die agterkant van Mnr Jones se voertuig gebots het en daardeur veroorsaak dat die voertuig die pad verlaat en omgeslaan het? Motiveer u antwoord. (3)

4.6 Would Peter's claim be different in any way were it proved that a truck had in fact collided with the rear end of Mr Jones's vehicle, thereby causing it to leave the road and overturn? Motivate your answer fully. (3)

VRAAG 5 [5]

QUESTION 5 [5]

5.1 Lys die groepe van passasiers wie die Padongelukfonds moet vergoed wie ten tye van die gebeurtenis beseer is wanneer hulle in die betrokke motorvoertuig vervoer was. (4)

5.1 List the classes of passengers whom the RAF is obliged to compensate who at the time of the occurrence were injured when conveyed in the motor vehicle concerned. (4)

5.2 Wat is die maksimum bedrag wat sulke passasiers van die Padongelukfonds mag eis en ten opsigte van welke soort van skadevergoeding? (1)

5.2 What is the maximum amount such passengers may claim against the RAF and in respect of what kind of damage? (1)

VRAAG 6 [13]

QUESTION 6 [13]

U ontvang opdragte van u kliënt, Peter Brown 'n krediteur van John Smith, om op 'n dringende grondslag aansoek te doen vir die sekwestrasië van die boedel van John Smith, die eienaar van 'n fabriek, wat binne gemeenskap van goedere getroud is met Beryl Smith. Smith het 20 werknemers in sy diens wat geregistreerde lede is van 'n geregistreerde vakbond. Na oorweging van al die feite is u tevrede dat daar goeie gronde bestaan om die aansoek te doen.

You receive instructions from your client, Peter Brown, a creditor of John Smith to launch an urgent application for the sequestration of the estate of John Smith, a factory owner married in community of property, to Beryl Smith. Smith employs 20 registered members of a registered trade union in his factory. After considering all the facts you are satisfied that good cause exists to launch the application.

Stel die kennisgewing van mosie op om gevolg te gee aan u opdragte.

Draft the notice of motion to give effect to your instructions.

VRAAG 7 [4]

A is woonagtig in Kaapstad. B is woonagtig en gedomisileer in Harare in Zimbabwe. Terwyl hy met vakansie is in Kaapstad het 'n motorvoertuig bestuur deur B, gebots met A se motorvoertuig. Beide voertuie is erg beskadig en B se voertuig word tans herstel deur 'n paneelklopper in Kaapstad. B het teruggekeer na Harare per bus. A wil graag aksie instel vir die skade aan sy voertuig.

- 7.1 In watter hof sal u hom adviseer om die aksie in te stel? (1)
- 7.2 In welke hof sou u dagvaarding uitreik indien A woonagtig was in Durban in plaas van Kaapstad? (1)
- 7.3 U laat beslag lê op B se voertuig ten einde jurisdiksie te bevestig. B se woonadres in Harare is aan u bekend. Verduidelik kortliks die prosedure wat A kan volg in 'n poging om skadevergoeding van B in so 'n geval te verhaal. (2)

VRAAG 8 [3]

Watter soort proses sal u u kliënt adviseer om in die Hooggeregshof in te stel in die volgende omstandighede? Motiveer asb kortliks u antwoord:

- 8.1 U kliënt is die verhuurder van 'n sekere sakeperseel binne die regsgebied van die hof waar u praktiseer. Hy het gedurende verlede jaar 'n huurkontrak tot daardie perseel gesluit en het die huurtermyn 'n maand gelede verstryk. Die huurder het nog nie die perseel ontruim nie en u kliënt benodig die perseel nou ten einde okkupasie aan 'n nuwe huurder te gee met wie hy 'n huurkontrak gesluit het. Die perseel moet nog verander word in sekere opsigte ten einde aan die vereistes van die nuwe huurder te voldoen en is tyd 'n wesentlike faktor, andersins kan u kliënt die nuwe huurder verloor. (2)

QUESTION 7 [4]

A is resident in Cape Town. B is resident and domiciled in Harare, Zimbabwe. Whilst on holiday in Cape Town, a motor vehicle driven by B collided with the motor vehicle of A. Both vehicles were badly damaged and B's vehicle is at present being repaired at a panel beater in Cape Town. B has returned to Harare by bus. A wishes to institute action for damages to his vehicle.

- 7.1 In which court would you advise him to proceed? (1)
- 7.2 In which court would you issue summons if A had been resident in Durban instead of Cape Town? (1)
- 7.3 You caused B's vehicle to be attached to confirm jurisdiction. B's residential address in Harare is known to you. Briefly explain the procedure which A could follow in an attempt to recover damages from B in this instance. (2)

QUESTION 8 [3]

What type of proceeding would you advise your client to institute in the High Court under the following circumstances? Please motivate your answer briefly:

- 8.1 Your client is the landlord of certain business premises within the area of jurisdiction of the court where you practice. He, during last year concluded an agreement of lease in respect of the said premises, which lease expired a month ago. The tenant has still not vacated the premises and your client now requires the premises in order to give occupation to a new tenant with which he has concluded an agreement of lease. The premises still have to be altered in certain respects to suit the requirements of the new tenant and time is of the essence, otherwise your client stands to lose the new tenant. (2)

8.2 U kliënt, Dame X, die eienaar van 'n skoonheidsalon, wil skadevergoeding eis van Die Maan koerant as gevolg van 'n lasterlike artikel wat 14 dae gelede in die koerant verskyn het. Ondanks aanmaning het die koerant geweier om die artikel terug te trek of om verskoning aan te bied. (1)

8.2 Your client, Madame X, the owner of a beauty parlour, wishes to claim damages from The Moon newspaper by reason of a defamatory article which appeared in the newspaper fourteen day ago. Despite demand, the newspaper has declined to retract the article or to tender an apology. (1)

VRAAG 9 [5]

QUESTION 9 [5]

9.1 Hoeveel dae word toegelaat in die Hooggeregshof om verskyning tot verdediging aan te teken en hoe word die dae bereken in die volgende gevalle:

9.1 How many days are allowed in the High Court for entering an appearance to defend and how are these days calculated in the following instances:

9.1.1 Waar die adres vir betekening van die dagvaarding op die verweerder, 'n privaat persoon, binne die regsgebied is van die Hooggeregshof waar dagvaarding uitgereik is. (1)

9.1.1 Where the address for service of the summons on the defendant, a private individual, is within the area of jurisdiction of the High Court from where it is issued. (1)

9.1.2 Waar die adres vir betekening buite die hof se jurisdiksie is naamlik 500 km vanaf die hofsetel. (2)

9.1.2 Where the address for service falls outside the court's jurisdiction and is 500 km from the seat of the court. (2)

9.2 Kan u steeds verskyning tot verdediging aanteken indien die *dies* verstryk het? Motiveer kortliks. (2)

9.2 Can you still enter appearance to defend if the *dies* have expired? Briefly motivate. (2)

VRAAG 10 [4]

QUESTION 10 [4]

Onder watter omstandighede is hoorsê getuienis toelaatbaar in strafregtelike verrigtinge?

Under which circumstances is hearsay evidence admissible in criminal proceedings?

VRAAG 11 [5]

QUESTION 11 [5]

U kliënt is aan verkragting skuldig bevind. Gedurende konsultasies noem hy aan u dat hy alreeds drie keer skuldig bevind is aan misdade waarby 'n element van geweld teenwoordig is. Die SAP69 dokument maak geen melding van die kliënt se vorige veroordelings nie.

Your client is convicted of rape. During consultations he advises you that he has three previous convictions for offences involving an element of violence. The SAP69 document however indicates that your client has no previous convictions.

11.1 Berus daar 'n plig op u om die vorige veroordelings van u kliënt aan die Hof te openbaar? Hoe sal u hierdie aspek behandel wanneer u die Hof toespreek ter versagting van vonnis. (3)

11.1 Is there a duty upon you to reveal to the court the previous convictions of the accused and how will you deal with this aspect when addressing the court in mitigation of sentence? (3)

11.2 Hoe sal u hierdie aspek behandel gedurende 'n formele borgaansoek? (2)

11.2 How will you deal with the above situation during a formal bail application? (2)

VRAAG 12 [6]

QUESTION 12 [6]

U word geraadpleeg om namens X op te tree. Hy is aangekla van die moord van 'n polisiebeampte wie tydens 'n gewapende roof gepoog het om u kliënt te arresteer. U instruksies is om 'n aansoek om borg namens u kliënt te loods.

You receive instructions to act on behalf of X who has been charged with the murder of a police official who was attempting to arrest him during the course of an armed robbery. You receive instructions to apply for bail on behalf of X.

Bespreek die beginsels wat die Hof in ag sal neem tydens hierdie aansoek sowel as die prosedure wat gevolg sal word.

Discuss the principles that a court will consider in such an application as well as the procedure that will be followed during the said application.

VRAAG 13 [7]

QUESTION 13 [7]

U kliënt is van strafbare manslag skuldig bevind. Die Hof het bevind dat u kliënt sy motorvoertuig nalatiglik bestuur het en met die oorledene, 'n voetganger, gebots het. Die beskuldigde is 25 jaar oud en is 'n eerste oortreder. Hy is getroud en het 'n vaste betrekking. Hy onderhou sy bejaarde moeder. Sy verdediging dat die botsing veroorsaak is deurdat die beskuldigde in 'n noodtoestand verkeer het wanneer die voorlinkerband van sy voertuig gebars het wat veroorsaak het dat hy beheer oor die voertuig verloor, word deur die Landdros verwerp. Die Landdros het verder die getuienis van die distrikgeneesheer dat die oorledene kon gesterf het as gevolg van longontsteking wat hy in die hospitaal kon opgedoen het, nie aanvaar nie. Die beskuldigde is gevonnissen tot 6 jaar gevangenisstraf.

Your client has been convicted of culpable homicide, it having been found that he drove his motor vehicle negligently and collided with the deceased, a pedestrian. The accused is 25 years of age and is a first offender. He is furthermore married and is in fixed employment. He supports his aged mother. The magistrate rejected his defence that the collision was occasioned by the accused being placed in a sudden emergency situation when the front left tyre of his vehicle burst causing him to lose control over the said vehicle. The magistrate furthermore failed to accept the evidence of the district-surgeon that the deceased's death could have been caused by pneumonia which he could have contracted whilst in hospital. The accused was sentenced to 6 years imprisonment.

U ontvang instruksies drie dae na vonnis en skuldigbevinding om appèl aan te teken teen die skuldigbevinding sowel as die vonnis wat opgelê was.

You receive instructions three days after conviction and sentence to appeal both against the conviction and sentence.

13.1 Stel die beskuldigde se aansoek om verlof om te appelleer op, insluitende die kopstuk. (6)

13.1 Draw the application for leave to appeal, including the heading. (6)

13.2 Binnehoeveel daevanaf datum van vonnis moet die aansoek om verlof om te appelleer van datum van vonnis geloots word? (1)

13.2 Within how many days from date of sentence must an application for leave to appeal be filed? (1)

VRAAG 14 [3]

U ontvang instruksies om namens vyf beskuldigdes op te tree wie aangekla is van gewapende roof. U konsulteer afsonderlik met elkeen van u kliënte wat die meriete betref. Een van die beskuldigdes noem aan u dat hy nie in die roof betrokke was nie, maar dat al sy vier mede-beskuldigdes daaraan deelgeneem het. Bespreek die etiese beginsels en verskaf redes vir u antwoord.

QUESTION 14 [3]

You receive instructions to act on behalf of five co-accused charged with armed robbery. You consult separately with each of the clients on the merits. One of the accused advises you that he was not involved in the said robbery, but that his four co-accused all participated therein. Discuss the ethical situation, furnishing reasons for your answer.

VRAAG 15 [10]

Dolly Dlomo spreek u oor 'n dagvaarding wat teen haar uitgereik is in die Johannesburgse landdroshof. Daar is 'n aantal foute in die besonderhede van vordering wat hieronder uiteengesit word. **Identifiseer die foute.**

QUESTION 15 [10]

Dolly Dlomo consults you with a summons issued against her out of the Johannesburg magistrate's court. The particulars of claim which are set out hereunder, contain a number of defects. **Identify these defects.**

1. Eiser is B L NDLOVU, 'n minderjarige bouer, wat woonagtig is te Weststraat 1, Johannesburg.
2. Eerste verweerder is DOLLY DLOMO, 'n meerderjarige onderwyseres wat woonagtig is te Smithstraat 1, Durban.
3. Tweede verweerder is BONGANI DLOMO, 'n meerderjarige skoolhoof woonagtig te Smithstraat 1, Durban.
4. Op 1 Februarie 2008 het eiser en eerste verweerder 'n kontrak aangegaan ingevolge waarvan eiser 'n motorhuis moes bou by eerste verweerder se huis in Pretoria teen 'n koste van R110 000,00.
5. Op 1 Februarie 2008 het tweede verweerder homself mondelings verbind as 'n borg teenoor eiser vir die nakoming van eerste verweerder se verpligtinge kragtens die kontrak.

1. Plaintiff is B L NDLOVU, a minor builder who lives at 1 West Street, Johannesburg.
2. First defendant is DOLLY DLOMO an adult teacher who lives at 1 Smith Street, Durban.
3. Second defendant is BONGANI DLOMO, an adult school headmaster who resides at 1 Smith Street, Durban.
4. Plaintiff and first defendant entered into a contract on 1 February 2008 for plaintiff to build a garage at first defendant's house in Pretoria at a cost of R110 000,00.
5. Second defendant on 1 February 2008 bound himself verbally as surety to the plaintiff for the first defendant's obligations in terms of the contract.

6. Verweerders het, ten spyte van aanmaning, versuim om die bedrag op 1 April 2008 te betaal.

Derhalwe vra eiser vonnis teen beide verweerders vir:

- (a) Betaling van R110 000,00;
- (b) Rente daarop teen 10% per jaar vanaf 1 Maart 2008;
- (c) Koste op die skaal tussen prokureur en kliënt.

6. Defendants have failed to pay the amount despite demand on the 1st April 2008.

Plaintiff prays for judgment against both defendants for:

- a) Payment of R110 000,00.
- b) Interest thereon at the rate of 10% per annum from 1 March 2008.
- c) Costs on the scale between attorney and client.

VRAAG 16

[8]

QUESTION 16

[8]

Jy konsulteer met Billy Naidoo gedurende 2006. Hy deel u mee dat hy sy Flymo grassnyer na Lawnmower Repairs BK geneem vir herstelwerk. Die grassnyer is teruggelewer aan u kliënt maar was steeds nie in 'n werkende toestand nie. Totdat die grassnyer in 'n werkende toestand is, is u kliënt nie bereid om vir die herstelwerk te betaal nie. Nadat hy niks verder van die aangeleentheid verneem het van Lawnmower Repairs CC nie, is u kliënt oorsee met lang vakansie.

Metsy terugkeer word hy gekonfronteer deur die Balju in Mei 2008, met 'n lasbrief, uitgereik na aanleiding van 'n vonnis toegestaan ten gunste van Lawnmower Repairs BK teen hom in November 2007 vir R7 000,00 vir herstelkoste terwyl hy oorsee was.

Omdat hy die hoop gekoester het om die aangeleentheid met Lawnmower Repairs BK op te los, het hy u slegs 'n maand later geraadpleeg. Stel die nodige aansoek namens mnr Naidoo op sodat hy verweer voor die hof kan plaas. (Geen kopstuk, slot en beëdigde verklaring word benodig).

You are consulted by Billy Naidoo. He advises you that in 2006 he took his Flymo lawnmower to Lawnmower Repairs CC for repair. The lawnmower was returned to him but was still not working and as a result he was not prepared to pay for the repairs until such time as it was operational. He heard nothing further from Lawnmower Repairs CC and went on an extended overseas holiday.

On his return he was confronted by the Sheriff in May 2008 with a Warrant of Execution as a result of a Judgment for R7 000,00 for repair charges that Lawnmower Repairs CC had obtained against him in November 2007 during his absence.

Because he hoped to settle the matter with Lawnmower Repairs CC, he consulted you only one month later. Draw the necessary application on behalf of Mr Naidoo to enable him to deal with the Judgment which has been entered against him so that he could present his defence ultimately to the court. (Omit heading and ending and any affidavit).

VRAAG 17 [5]

U verteenwoordig die verweerder. U versoek vir nadere besonderhede op die eiser se dagvaarding is nie beantwoord nie. U benodig die inligting gevra voordat u die pleit kan opstel. Stel die nodige aansoek op om lewering van die nadere besonderhede af te dwing (geen kopstuk, slot en beëdigde verklaring word benodig nie).

VRAAG 18 [2]

U het 'n verstek vonnis verkry teen Golden Estate Agency (Edms) Beperk in die landdroshof verkry. Die balju kan nie enige bates in die besigheidsplek vind nie. Die direkteur S Golden het hom gesê dat al die toerusting onderworpe is aan 'n huurkontrak.

Volgens die "te koop" en "verkoop" kennisgewingsborde wat buite verskeie plaaslike huise aangebring is, is dit duidelik dat die verweerder se besigheid goed doen.

U klient wil nie likwidasië prosedures instel nie. Welke stappe kan hy doen in die landdroshof om vas te stel watter kommissie betaalbaar is aan die verweerder? Nadat dit bepaal is, wat sal u vervolgens doen om die vonnis vereffen te kry?

QUESTION 17 [5]

You act for a defendant. Your request for further particulars to plaintiff's summons has been unanswered. You require the information requested before you can draft your client's plea. Draft the necessary application to compel delivery of the further particulars (omit heading and ending).

QUESTION 18 [2]

You have obtained judgment against Golden Estate Agency (Pty) Limited in the Magistrate's Court. The sheriff could not find any attachable assets at their place of business. He was told by a director, S Golden, that all the equipment was on lease.

From sale boards and sold notices on display outside various local houses it is apparent that the defendant's business is doing well.

Your client does not want you to institute liquidation proceedings. What steps are available in the Magistrate's Court to find out what commissions are due to them and having found out, what would you do next to obtain satisfaction of the judgment?

DIE EINDE

THE END

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

4AUGUSTUS 2009

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. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.
3. Waar nodig, moet kandidate hulle eie feite versin.
4. Skryf asseblief slegs in pen op die regterkantse bladsye.
5. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

4AUGUST 2009

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. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

VRAAG 1 [1]

Neem aan dat die Padongelukfonds 'n verklaring van die bestuurder van die versekerde voertuig verkry het voor dagvaarding uitgereik is. Is u kliënt wat 'n eis teen die Fonds het, op 'n afskrif van sodanige verklaring geregtig?

VRAAG 2 [2]

Mnr Owen het beserings opgedoen terwyl hy op sy motorfiets gery het. Hy het vriende besoek en 'n paar biere gedrink. Oppad huistoe was hy in 'n ongeluk met 'n onbekende voertuig betrokke wat hom van agter gestamp het en ook nie na die ongeluk gestop het nie. Hy het aksie teen die Fonds ingestel. Daarna vra die Fonds dat hy hom aan 'n ondervraging moet onderwerp in terme van die Wet. Verder vereis hulle dat hy 'n beëdigde verklaring moet maak waarin hy die omstandighede van die ongeluk ten volle uiteensit.

Is u kliënt verplig om daartoe in te stem?

VRAAG 3 [2]

U kliënt se eis in verband met persoonlike beserings gaan verjaar binne die volgende sewe dae en ten spyte van 'n deeglike soektog kan u nie die hospitaalrekords opspoor nie en die hospitaal kan van geen verdere hulp wees nie. U het alreeds ander dokumente voltooi ten einde die eis te kan indien.

Watter stappe sal u doen om te verseker dat u betyds 'n geldige eis kan indien?

VRAAG 4 [2]

Joe, 'n voetganger, is op 6 Junie 2008 beseer as gevolg van die nalatige bestuur van die versekerde bestuurder. 'n Derde-party eis is namens Joe by die Padongelukfonds deur 'n eisekonsultant ingedien. Die Fonds weier om Joe se eis to aanvaar. Is die Fonds geregtig om dit te doen? Gee volledige redes vir u antwoord.

QUESTION 1 [1]

Assume that the Road Accident Fund obtained a statement from the driver of the insured vehicle before summons was issued. Is your client who has a claim against the Fund, entitled to a copy of such statement?

QUESTION 2 [2]

Mr Owen sustained injuries while riding his motor cycle. He advises you that he had visited his friends and he had a few beers. While returning to his house he was involved in an accident when an unknown vehicle collided with him from behind and the vehicle did not stop after the accident. He instituted action against the Fund. The Fund requests your client to submit to an interrogation in terms of Act and to make a sworn statement fully setting out the circumstances of the accident.

Is your client obliged to submit to such interrogation?

QUESTION 3 [2]

Your client's claim for personal injuries is about to prescribe in seven days' time and you have been unable to locate the hospital records despite an extensive search, and the hospital is unable to be of any further assistance. You already have other documents completed to enable you to lodge the claim.

What steps would you take to enable you to lodge a valid claim timeously?

QUESTION 4 [2]

Joe, a pedestrian was injured on 6th June 2008 due to the negligent driving on the part of the insured driver. A third party claim on behalf of Joe was lodged with the Road Accident Fund by a claims consultants. The Road Accident Fund refuses to entertain Joe's claim. Is it entitled to do so?. Give full reasons for your answer.

VRAAG 5 [2]

U kliënt deel u mee dat sy minderjarige seun, terwyl hy sy motorfiets gery het, moes uitswaai toe 'n ander motorvoertuig voor hom in 'n kruising ingedraai het. Hy het beheer verloor en teen 'n lampaal gebots. As gevolg daarvan het hy ernstige beserings opgedoen. Die bestuurder van die ander voertuig het weggeroep sonder om stil te hou en kan nie opgespoor word nie.

Het u kliënt 'n eis teen die Padongelukfonds?

VRAAG 6 [1]

Teen watter koers en vanaf watter datum mag rente geëis word ten opsigte van 'n eis vir skadevergoeding onder Wet Nr 56 van 1996?

VRAAG 7 [7]

U word geraadpleeg deur u kliënt wat die omstandighede van 'n motorongeluk waarin hy betrokke was aan u verduidelik. Hy was 'n passasier in 'n voertuig wat met 'n ander voertuig op die pad tussen Pretoria en Johannesburg gebots het. Die voertuig waarin hy gereis het, was deur 'n mede-werknemer bestuur. Die bestuurder van die ander voertuig was vir die botsing verantwoordelik.

U kliënt het 'n fraktuur van sy regte tibia en fibula in die botsing opgedoen. As gevolg daarvan is hy 5 weke in die hospitaal en na hy ontslaan is, is hy verplig om vir 'n verder 6 weke by die huis te bly. Toe eers kon hy terugwerk toe gaan. Terwyl hy van die werk afwesig was, is hy ten volle betaal alhoewel hy net op drie weke siekverlof geregtig was. Sy werkgewer het hom vir die verdere drie weke betaal, alhoewel hy nie deur u kliënt se dienskontrak verplig was om dit te doen nie. Die voertuig waarin hy passasier was, is bestuur gedurende die loop en uitvoering van die bestuurder se diens. Stel 'n gepaste brief

QUESTION 5 [2]

Your client advises you that his minor son, whilst riding his motorcycle, had to take evasive action when a motor vehicle turned in front of him in an intersection. He lost control and crashed into a lamp post. As a result thereof he sustained serious injuries. The driver of the other vehicle drove away without stopping and cannot be traced.

Does your client have a claim for compensation against the RAF?

QUESTION 6 [1]

At what rate, and from what date, may interest be claimed in respect of a claim for damages under the RAF Act?

QUESTION 7 [7]

You are consulted by your client who explains the circumstances of a motor collision in which he was involved. He was a passenger in a vehicle which collided with another on the road between Pretoria and Johannesburg. The vehicle he was travelling in was being driven by his co-employee. The driver of the other vehicle was to blame for the collision.

Your client suffered a compound fracture of the right tibia and fibula in the collision. As a result, he was hospitalised for five weeks and, when discharged, he was obliged to stay at home for another six weeks. Only then could he return to work. Whilst away from work your client was paid in full, although he was only entitled to three weeks sick leave. His employer paid him for the extra three weeks although not obliged to do so in terms of your client's employment contract. The vehicle in which your client was a passenger was being driven in the course and scope of the driver's employment. Draft an appropriate letter

aan u kliënt se werkgewer op waarin u die inligting wat u nodig het uiteensit ten einde u te help om u kliënt se eis vir verlies van inkomste te formuleer en daarna te substansieer. Neem in ag dat u kliënt sy volle salaris ontvang het terwyl hy van die werk weg was.

VRAAG 8 [5]

U word geraadpleeg deur u kliënt wat in 'n motorbotsing erg beseer is. Welke faktore sal u in ag neem wanneer u die kwantum van kliënt se algemene skadevergoeding bereken?

VRAAG 9 [3]

U kliënt is deur 'n ongeïdentifiseerde motorvoertuig op 1 April 2008 omgery. As gevolg van die ernstige kopbesering wat hy opgedoen het, is u kliënt bewusteloos en hy het sy bewussyn eers op 10 Mei 2008 herwin.

Voor watter datum moet u sy eis vir skadevergoeding teen die Padongelukfonds indien, ten einde te voorkom dat die eis verjaar. Motiveer u antwoord ten volle.

VRAAG 10 [15]

U word deur mnr James Jones, die enigste lid van Bargain Builders BK, genader met 'n koopvooreenkoms, waarkragtens die BK 'n eiendom Erf 247, Sentraal Port Elizabeth Registrasie afdeling Oos-Kaap, geleë te Hoofweg 1, Sentraal Port Elizabeth vanaf die Swart Familie Trust koop. Die Trust word deur John en Mary Swart, die trustees, verteenwoordig.

By nagaan van die koopvooreenkoms wat te Port Elizabeth op 12 Augustus 2007 gesluit is, merk u dat in terme van klousule 12 daarvan betaling van die koopsom gewaarborg moes word by wyse van 'n bankwaarborg vir die bedrag van R120 000 synde die volle koopsom betaalbaar op registrasie.

to your client's employer setting out all the information that you require to formulate and subsequently substantiate the claim for loss of earnings on your client's behalf. Bear in mind that your client received his full salary whilst away from work.

QUESTION 8 [5]

You are consulted by your client who was severely injured in a motor vehicle collision. What factors will you take into considerations when assessing the quantum of your client's general damages?

QUESTION 9 [3]

Your client was run down by an unidentified motor vehicle on the 1st April 2008. As a result of a serious head injury he sustained, he was rendered unconscious and only regained consciousness on 10th May 2008.

By when must you lodge his claim for damages against the RAF in order to avoid his claim becoming prescribed? Motivate your answer fully.

QUESTION 10 [15]

You are consulted by Mr James Jones, the sole member of Bargain Builders CC who hands you an agreement of sale in terms of which the close corporation had bought erf 247, Central Port Elizabeth, Registration Division, Eastern Cape situated at 1 Main Road, Central Port Elizabeth from the Black Family Trust duly represented by its trustees, John and Mary Black.

Upon perusal of the agreement entered into at Port Elizabeth on the 12th August 2007, you notice that in terms of clause 12 thereof, payment of the purchase price was to be guaranteed by way of a bank guarantee for the amount of R120 000 being the full purchase price, payable against transfer.

U stel by die oordragprokureurs vas dat die waarborge betyds ontvang was en verder dat u kliënt al die ander voorwaardes van die kontrak nagekom het. U kliënt dring aan dat oordrag van die eiendom moet plaasvind.

Die verkoper weier niteenstaande aanmaning om die oordrag dokumente te teken en beweer dat hulle 'n fout begaan het deur die eiendom vir R120 000 te verkoop.

U kliënt gee u instruksies om dagvaarding uit te reik sodat die eiendom oorgedra kan word aan die BK.

U besluit om 'n gekombineerde dagvaarding uit te reik in die Port Elizabeth Hoër Hof.

Stel die besonderhede van vordering tot die dagvaarding in die Hoër Hof op. Gebruik sodanige addisionele feite as wat u nodig vind.

VRAAG 11 [5]

11.1 Verduidelik kortliks die vereistes vir 'n versoek om nadere besonderhede in die Hoër Hof en op watter stadium tydens die verrigtinge dit aangevra kan word. (2)

11.2 Noem drie gevalle waar pleitstukke as gesluit beskou word (*litis contestatio*) kragtens reël 29. (3)

VRAAG 12 [5]

U verteenwoordig die eiser in 'n skadevergoedingsaksie in die Hoër Hof. U is in besit van vyf fotos wat u as getuie by die verhoor wil aanbied.

Stel die vereiste kennisgewing op.

VRAAG 13 [12]

Op Vrydag die 20ste Februarie 2003 om en by 22h00 het die oorledene en sy vriendin, beide van wie gedrink het vanaf vroeër die aand, 'n

You ascertain from the conveyancers attending to the transfer of the property that the guarantees were received timeously and that your client had complied with all that was required of him. Your client is adamant that he wants transfer.

The seller, however, despite lawful demand refuses or neglects to sign the transfer documents, claiming that they had made a mistake in selling for R120 000.

Your client instructs you to issue summons claiming an order for transfer of the fixed property to the CC.

You decide to issue a combined summons from the High Court in Port Elizabeth.

Using such additional facts as you may find necessary, draft the particulars of claim to the summons in the High Court.

QUESTION 11 [5]

11.1 Briefly explain what the requirements are for requesting further particulars in the High Court and at what stage of the proceedings these may be requested. (2)

11.2 Name three instances when pleadings are considered closed (*litis contestatio*) in the High Court in terms of rule 29. (3)

QUESTION 12 [5]

You act for the plaintiff in an action for damages in the high court. You are in possession of five photographs which you wish to tender in evidence at the trial.

Draft the necessary notice.

QUESTION 13 [12]

On Friday the 20th February 2003 at approximately 22h00 the deceased and his girlfriend, both of whom had been drinking since

kroeg binnegegaan. Hulle het op stoele langs beskuldigdes 1 en 2 gesit en die partye het aangehou drink. Later die aand het 'n argument ontstaan tussen die oorledene en die beskuldigdes en die kroegeienaar het die beskuldigdes, oorledene en sy vriendin beveel om die kroeg te verlaat. Dit was 'n donker nag en die enigste straatlig was ongeveer 200m van die kroeg. Volgens die oorledene se vriendin, die staat se enigste ooggetuie, het die argument tussen die partye voortgegaan in die straat voor die kroeg waar beskuldigdes 1 en 2 begin het om die oorledene met die vuus te slaan. Die oorledene het geval, opgestaan, weer neergeval en is verder deur beide beskuldigdes aangerand, wat hom daar in die straat bewusteloos gelos het. Sy vriendin het hom by 'n nabygeleë huis ingehelp. Om en by 02h00 die volgende oggend het sy broer hom na die hospitaal toe geneem omdat hy nie sy bewussyn herwin het nie. Die volgende dag is hy oorlede.

Alhoewel die staat in besit is van getuienis dat daar 'n aantal kliënte van die kroeg in die nabyheid was, kan geen van die persone 'n betroubare weergawe van dit wat daar gebeur het, gee nie.

Die beskuldigdes adviseer u dat die oorledene die argument in die kroeg begin het sowel as die bakleiery in die straat. Hulle was dus verplig om hulself te verdedig teen die oorledene deur hom met die vuus te slaan. Hulle erken die oorsaak van dood soos beskryf deur die distriks-geneesheer.

Die distriks-geneesheer deel die hof mee dat die oorledene dood is as gevolg van 'n "intra-kraniale bloeding" veroorsaak deur trauma aan die kop.

13.1 Noem die moontlike klagtes wat teen die beskuldigdes gebring kan word.

(3)

13.2 Die twee beskuldigdes verskyn in die streekhof en pleit onskuldig. Stel

earlier the evening, entered a tavern. They occupied chairs next to accused 1 and 2 and the parties continued drinking. As the night wore on an argument erupted between the deceased and the two accused and the tavern owner requested all of them to leave. It was a dark night with the only street lamp approximately 200 metres from the tavern. According to the deceased's girlfriend, the only state eye-witness, the argument continued in the street where accused 1 and 2 started hitting the deceased with fists. The deceased fell, rose to his feet, tripped and was further assaulted by both accused who left him lying there unconscious. He was helped into a nearby house by his girlfriend. At about 02h00 the next morning his brother took him to hospital as he had not regained consciousness. He died the next day.

Although the state has evidence that there were a number of other patrons of the tavern in the vicinity, none of these persons could give a reliable description as to what had occurred during the incident.

The accused advise you that the deceased started the argument in the tavern and the fight in the street. They were obliged to defend themselves by warding off the attack by hitting him with fists. They admit the cause of death as described by the district-surgeon.

The district-surgeon told the court that the deceased died as a consequence of an intracranial haemorrhage caused by trauma to the head

13.1 What possible charges can be brought against the accused? (3)

13.2 The two accused appear in the regional court and plead not guilty. Draft the Section

beskuldigde 1 se verklaring in terme van Artikel 115 op, waarin u handel met die waarskynlike hoofklag. Sluit die kopstuk in. (5)

115 statement in respect of the 1st accused, including the heading, in answer to the probable main charge. (5)

13.3 Sit uiteen die verskeie aspekte wat u sal opper in u argument vir die onskuldigvinding van die beskuldigdes. (4)

13.3 Set out the various points that you will raise in your argument for an acquittal in respect of both accused. (4)

VRAAG 14 [6]

QUESTION 14 [6]

U kliënt is aangekla van die bestuur van 'n motorvoertuig op 'n publieke pad terwyl hy onder die invloed van alkohol was. Die mediesebeampte het 'n bloedmonster van sy liggaam binne twee ure van bestuur getrek en u is tevrede dat die bloedmonster akkuraat geanaliseer is en dat die alkoholinhoud van die bloed van die beskuldigde, uitgedruk in gram per honderd millimeters van bloed, 0.11% is. U adviseer u kliënt om skuldig te pleit tot die alternatiewe klagte naamlik die bestuur van 'n motorvoertuig op 'n publieke pad terwyl die alkoholinhoud van sy bloed die regslimiet van 0.05% oorskry.

Your client is charged with the offence of driving a motor vehicle on a public road in Soweto whilst under the influence of alcohol. The medical officer drew blood samples from his body within two hours of his driving the vehicle and you are satisfied that the process of analyzing the blood sample is accurate and that the accused's blood alcohol count, expressed in grams per hundred milliliters of blood, was 0.11%. You advise your client to plead guilty to the alternative charge of driving a motor vehicle on a public road whilst the alcohol content of his blood exceeded the legal limit of 0.05%.

Stel die beskuldigde se Artikel 112 verklaring, sonder die kopstuk, op.

Draw the Section 112 statement that you will present to the court. Do not include the heading.

VRAAG 15 [5]

QUESTION 15 [5]

Artikel 60 (4) verklaar dat:

Section 60 (4) states that:

"Die belang van geregtigheid laat nie die vrylating uit aanhouding van 'n beskuldigde toe nie waar een of meer van die volgende gronde vasgestel word...."

"The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:"

Noem die vyf gronde vermeld in die Artikel.

Name the five grounds referred to in the Section.

VRAAG 16 [2]

QUESTION 16 [2]

Mej X forseer 'n bottelnek binne-in die anus van 'n 16 jarige seun. Van watter misdaad kan sy aangekla word. Verduidelik die rede vir u antwoord.

Ms X forcibly inserted the neck of a bottle into the anus of a 16 year old boy. With what offence can she be charged? Give reasons for your answer

VRAAG 17

[8]

U is besig om voor te berei vir 'n verhoor in die landdroshof, waarin u kliënt skade eis vir beserings wat hy opgedoen het toe die verweerder se hond hom gebyt het terwyl hy in die straat gedraf het.

17.1 Watter kennisgewings moet u liasseer sodat u die getuienis van 'n mediese spesialis kan lei rakende die beserings? Verduidelik wat sondanige kennisgewings behoort te bevat sonder om die kennisgewings op te stel. (5)

17.2 U kliënt het fotos van die wonde wat hy opgedoen het, laat neem en u wil hierdie fotos gebruik as getuienis by die verhoor. Welke stappe sal u doen in hierdie verband? (3)

VRAAG 18

[5]

U tree op namens James Brown. U kliënt het 'n ooreenkoms aangegaan met Billy Jones BK, verteenwoordig deur die alleen lid – Billy Jones. Kragtens die ooreenkoms het die BK onderneem om by jou kliënt se huis 'n swembad te bou teen 'n kontrakprys van R40 000,00. Die R40 000,00 was betaalbaar soos volg:

- (a) R20 000,00 by ondertekening van die kontrak;
- (b) R10 000,00 sodra die opgrawings gedoen is;
- (c) R10 000,00 by voltooiing.

U kliënt het die kontrakteur die R20 000,00 betaal en daarna 'n verdere R10 000,00 nadat die kontrakteur aangedui het dat hy finansiële probleme het. Die kontrakteur het van die werk gedoen en daarna verdwyn. Gevolglik het u kliënt die kontrak gekanselleer en die dienste van New Pool CC bekom om die werk te voltooi teen 'n koste van R25 000,00.

QUESTION 17

[8]

You are preparing for trial in a case in the magistrate's court in which your client claims damages for the injuries he suffered as a consequence of being bitten by the defendant's dog, whilst your client was jogging down the street.

17.1 What notices would you have to file so that you could lead evidence from a medical specialist about the injuries? Explain what such notices should contain without drafting any of the notices. (5)

17.2 Your client has had photographs taken of the wounds he sustained and you want to introduce these photographs into evidence at the hearing. What steps would you take in this regard? (3)

QUESTION 18

[5]

You act for James Brown. Your client entered into an agreement with Billy Jones CC represented by its sole member, Billy Jones. In terms of the agreement, the Close Corporation undertook to construct a swimming pool at his home for a total contract price of R40 000,00. The R40 000,00 was to be paid as follows:

- a) R20 000,00 on signing of the contract;
- b) R10 000,00 once the excavations were completed;
- c) R10 000,00 on completion.

Your client paid the Contractor the initial R20 000,00 and after the Contractor indicated that he had financial problems, he advanced him a further R10 000,00. The Contractor undertook certain work and then absconded. As a result your client cancelled the contract and obtained the services of New Pool CC who undertook to complete the work at a cost of R25 000,00.

Stel die nodige besonderhede van eis op waarin u kliënt sy skade verhaal (geen kopstuk en slot word benodig nie).

VRAAG 19 [3]

U kliënt oorhandig aan u 'n dagvaarding, uitgereik in Durban, waarin hy gedagvaar word deur Kurt Schmitt, 'n inwoner van Munich, Duitsland. U kliënt dui aan dat hy 'n goeie verweer het maar dat hy bekommerd is oor die verhaal van sy koste indien hy suksesvol sou wees. Adviseer u kliënt oor die stappe wat geneem kan word om sy belange te beskerm.

VRAAG 20 [3]

U kliënt oorhandig aan u 'n dagvaarding waarin hy gedagvaar word vir R30 000,00 in die landdroshofvoortspruitend uit 'n motorongeluk. Hy word daarvan beskuldig dat hy nalatig opgetree het. Sy motor was nie in die ongeluk beskadig nie. Uit die inligting oor die omstandighede van die ongeluk, blyk dit dat die eiser bydraend nalatig was. U is van mening dat albei partye ewe aanspreeklik is vir die ongeluk.

Adviseer jou kliënt hoe hy die saak kan benader in terme van die reëls van die hof ten einde die aangaan van verdere regs-koste te beperk.

VRAAG 21 [5]

U reik dagvaarding uit namens Sifiso Cele teen die bestuurder van 'n vragmotor wat gebots het teen sy muur wat skade veroorsaak het ten bedrae van R40 000,00. Die prokureur wat die bestuurder van die vragmotor verteenwoordig, teken verskyning om te verdedig aan en liasseer 'n pleit waarin hy ontken dat sy kliënt aanspreeklik is weens die feit dat hy nie 'n geldige bestuurslisensie gehad het ten tye van die ongeluk nie. Stel die document op wat u behoort te liasseer na ontvangs van so 'n pleit (geen opskrif en einde word benodig).

Draft the necessary Particulars of Claim in which your client seeks to recover the damage he has suffered. (Omit heading and prayer).

QUESTION 19 [3]

Your client provides you with a Summons issued in Durban in which he has been sued by Kurt Schmitt, a resident of Munich, Germany. Your client instructs you that he has a good defence to the action but is concerned as to how he would recover his costs should he be successful. Advise your client what steps you will take so as to protect his interest.

QUESTION 20 [4]

Your client provides you with a Summons in which he has been sued for R30 000,00 in the magistrate's court as a result of a motor collision in which it is alleged that he has been negligent. His car was not damaged in the collision. Your client instructs you as to the circumstances of the collision which appear to indicate that there has been contributory negligence on the part of the plaintiff and you are of the opinion that each party is equally to blame for the collision.

Advise your client what steps he should take in terms of the Rules of Court so as to try to curtail further costs.

QUESTION 21 [5]

You issue summons on behalf of Sifiso Cele who has a claim against the driver of a heavy duty vehicle which crashed into the wall of your client's property causing R40 000,00 damage. The attorney representing the defendant entered appearance to defend and filed a plea in which he denied his client was liable because he was not licensed to drive a heavy duty vehicle. Draft the document which you ought to file in response to such a plea. Omit heading and ending.