

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

27 FEBRUARIE 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

27 FEBRUARY 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

[4]

U kliënt konsulteer u in verband met die omstandighede van 'n motorbotsing waarin hy betrokke was. Hy was 'n passasier in 'n voertuig wat met 'n trek gebots het op die pad tussen Kokstad en Matatiele. Die bestuurder van die trek was verantwoordelik vir die botsing.

U kliënt het 'n gebreekte femur, 'n gebreekte enkel en 'n gebreekte sleutelbeen opgedoen in die botsing en sy gewrig is erg ontwig. As gevolg daarvan was hy 2 weke in die hospitaal en daarna was hy op krukke ontslaan en bly 'n verdere drie weke by die huis voordat hy kon terugkeer werk toe. U kliënt is ten volle betaal vir die tydperk wat hy van die werk af was, al was hy net geregtig op drie weke siekteverlof.

- 1.1 Watter bedrag kan in hierdie omstandighede geëis word ten opsigte van verlies van inkomste? Motiveer u antwoord. (2)
- 1.2 Van welke mediese spesialis sal u 'n regsmediese verslag verkry om u kliënt se eis vir algemene skade te staaf? (1)
- 1.3 U kliënt se polshorlosie is onherstelbaar beskadig in die botsing. Mag hy die koste om dit te vervang van die Fonds eis? (1)

VRAAG 2

[5]

U kliënt, 'n werknemer by 'n konstruksie-maatskappy, was 'n passasier in 'n voertuig wat deur 'n mede-werknemer bestuur is wie op diens was in die uitvoering van sy werkspligte as 'n werknemer van die konstruksie-maatskappy. As gevolg van die bestuurder se nalatigheid vind 'n ongeluk plaas en u kliënt is beseer.

U kliënt ly die volgende skade:

QUESTION 1

[4]

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 a truck on the road between Kokstad and Matatiele. The driver of the truck was solely responsible for the collision.

Your client suffered a broken femur, a broken ankle and a broken collarbone in the collision and his wrist was severely dislocated. As a result, he was hospitalized for two weeks and, when discharged, was still on crutches and obliged to stay at home for another three 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 in terms of his employment contract.

- 1.1 What amount can your client claim for past loss of earnings in these circumstances? Motivate your answer. (2)
- 1.2 From which medical specialist would you obtain a medico-legal report to substantiate your client's claim for general damages? (1)
- 1.3 Your client's wristwatch was damaged beyond repair in the collision. May he claim the replacement cost from the Fund? (1)

QUESTION 2

[5]

Your client, an employee at a construction company and on duty at the time, was a passenger in a vehicle driven by a co-employee in the course of his employment and in the exercise of his duties as a servant of the construction company. As a result of this driver's negligence an accident occurred and your client was injured.

He suffers the following damages:

Hospitaalonnkoses R 2 500,00
Mediese onkoses R 4 000,00
Gelede verlies aan inkomste R 10 000,00
Algemene skade R 40 000,00

Hospital expenses R2 500,00
Medical expenses R4 000,00
Past loss of earnings R10 000,00
General damages R40 000,00

2.1 Teen welke party/partye kan u klient 'n eis instel? (1½)

2.1 Against which party/parties can your client institute a claim? (1½)

2.2 Watter bedrag kan hy van elke party eis? (2½)

2.2 What amount can he claim from each party? (2½)

2.3 Kan hy enige skadevergoeding van sy werkgever eis? Motiveer u antwoord. (1)

2.3 Can he claim any damages from his employer? Motivate your answer. (1)

VRAAG 3 [5]

QUESTION 3 [5]

U tree op namens die Padongelukkefonds. U ondersoek na die omstandighede van die ongeluk waaruit die eis ontstaan bewys dat die eiser wie sy motor bestuur het tydens die ongeluk, nalatig was, en indien nie heeltemal verantwoordelik vir die ongeluk dan wel grootliks daartoe bygedra het.

You are acting for the Road Accident Fund. Your investigations into the circumstances of the collision giving rise to the claim establish that the Plaintiff who was driving his vehicle at the time was negligent, and if not solely to blame for the collision, then certainly contributed largely to it.

Stel die verweerder se alternatiewe pleit en smeekbede op waarin bydraende nalatigheid aan die kant van die eiser gepleit word.

Draft the defendant's alternative plea and prayer wherein you plead contributory negligence on the part of the Plaintiff.

VRAAG 4 [4]

QUESTION 4 [4]

Nadat die pleitstukke gesluit is, maak die Padongelukkefonds 'n aanbod in terme van Reël 34 van die Hooggeregshofreëls. U klient, die eiser, aanvaar die aanbod.

After the close of pleadings the Road Accident Fund makes a settlement offer in terms of Rule 34 of the High Court Rules which is acceptable to your client, the plaintiff.

4.1 Hoe sal u die Fonds laat weet dat u klient die aanbod aanvaar? (1)

4.1 How do you advise the Fund of your client's acceptance of his offer? (1)

4.2 Betaling van die aanbedsbedrag is eers twee maande na aanvaarding van die aanbod, ontvang. Is u klient geregtig op rente en, indien wel, van wanneer af en teen watter koers? (2)

4.2 You only receive the cheque in terms of the settlement two months after the offer is accepted. Is your client entitled to interest, and if so, from when and at what rate? (2)

4.3 Wat kan u namens u kliënt doen indien die Fonds versuim om te betaal nadat die aanbod aanvaar is? (1)

4.3 What can you do on behalf of your client if the Fund fails to pay after acceptance of the offer? (1)

VRAAG 5 [7]

QUESTION 5 [7]

U word opgedra dat 'n botsing plaasgevind het tussen twee huurmotors met registrasienommers CA 675 en CY 1126 respektiewelik.

You are instructed that a collision occurred between two taxis with registration numbers CA 675 and CY 1126.

U kliënte, Ben en Charlie, was betalende passasiers in voertuie CA 675 en CY 1126 respektiewelik. Al twee is ernstig beseer in die botsing. Nie een van die voertuie het 'n geldige vervoerpermit in terme van die Padvervoer Wet gehad nie. Die botsing het plaasgevind as gevolg van die uitsluitlike nalatigheid van die bestuurder van voertuig CY 1126.

Your clients Ben and Charlie were passengers being conveyed for reward in CA 675 and CY 1126 respectively. Both were seriously injured in this collision. Neither vehicle had a valid public permit in terms of the Road Transportation Act. The collision occurred as a result of the sole negligence of the driver of vehicle CY 1126.

As gevolg van beserings wat in die botsing opgedoen is:

As a result of the injuries sustained in the collision:

(a) Het Ben skade gely ten bedrae van R 150 000 wat soos volg bereken is:

(a) Ben suffered damages in an amount of R150 000,00 which is calculated as follows:

Hospitaalonnkoste	R 20 000,00
Verlies van inkomste	R 30 000,00
Algemene skade	R 100 000,00

Hospital expenses	R20 000,00
Loss of earnings	R30 000,00
General damages	R100 000,00

(b) Het Charlie skade gely ten bedrae van R 220 000 wat soos volg bereken is:

(b) Charlie suffered damages in the sum of R220 000,00 which is calculated as follows:

Hospitaalonnkoste	R 30 000.00
Verlies van inkomste	R 40 000.00
Algemene skade	R 150 000.00

Hospital expenses	R30 000,00
Loss of earnings	R40 000,00
General damages	R150 000,00

Beskryf die aard en die bedrag van die eise, indien enige, wat beide Ben en Charlie teen die Fonds of enige van die bestuurders sal hê.

Describe the type and amount of the claims, if any, that both Ben and Charlie have against the Fund or either of the drivers.

Motiveer u antwoord volledig.

Motivate your answer fully.

VRAAG 6 [18]

U verteenwoordig **ABC (Edms) Bpk** wat u soos volg opdrag gee:

U kliënt het 'n skriftelike huurkontrak gesluit met **XYZ Bk** op 1 Maart 2007 ten opsigte van 'n besigheidperseel, nl Winkel No 1, Hoofweg Winkelsentrum, King Williamstown, Oos-Kaap.

Die huur is vir 'n tydperk van 3 (drie) jaar teen 'n maandelikse huurgeld van R100 000,00 per maand (uitsluitende BTW).

Die huurgeld is aan u kliënt betaalbaar maandeliks vooruit voor of op die 1ste besigheidsdag van elke maand.

Op die datum van konsultasie met u kliënt se verteenwoordiger was die huurder agterstallig met huurgeld in die bedrag van R300 000,00 plus BTW vir die voorafgaande drie maande.

Die huurkontrak bepaal ondermeer soos volg:

Kontrakbreuk:

Indien die huurder versuim om enige huurgeld of ander bedrag verskuldig deur hom ingevolge die huurkontrak te betaal of enige ander bepaling of voorwaarde van hierdie huurkontrak verbreek of versuim om sodanige betaling te maak of sodanige kontrakbreuk te herstel binne 'n tydperk van 10 dae nadat die verhuurder hom skriftelik kennisgewing ten dien effekte gegee het, dan sal die verhuurder geregtig wees, maar nie verplig nie, om hierdie huurkontrak onmiddellik te kanselleer en besit van die huurperseel te eis sonder benadeling van sy eis vir enige agterstallige huurgeld en enige ander bedrae hierkragtens betaalbaar of enige skadevergoeding wat hy mag ly as gevolg van sodanige kontrakbreuk en/of kansellering en/of enige ander remedie wat hy teen die huurder mag hê voorspruitend uit hierdie huurkontrak of die reg.

QUESTION 6 [18]

You represent **ABC (Pty) Ltd**, the owner of certain business premises. You are instructed as follows:

Your client entered into a written agreement of lease on 1 March 2007 with **XYZ CC** in respect of business premises iro Shop No 1, Main Road Mail, King Williamstown, Eastern Cape.

The lease is for a period of 3 (three) years at a monthly rental of R100 000,00 per month (excluding VAT).

The rental is payable monthly in advance to your client on or before the first business day of every month.

As at the date of the consultation with your client's representative the tenant was in arrears with rental in the sum of R300 000,00 plus VAT for the preceding three months.

The lease *inter alia* also provides as follows:

Breach:

Should the lessee fail to pay any rental or other amount due by it in terms of this lease or commit any other breach of any term or condition of this lease or fail to make such payment or remedy such breach within a period of 10 (TEN) days after the giving of written notice to that effect to it by the lessor, then the lessor shall be entitled, but not obliged, to cancel this lease forthwith and claim possession of the leased premises without prejudice to its claim for any arrear rental and other sums payable hereunder or for any damages which it may suffer by reason of such breach and/or cancellation and/or to any other remedy which it may have against the lessee arising out of this lease or the law.

Koste:

Indien die huurder kontrakbreuk pleeg, sal hy aanspreeklik wees vir die regskoste wat die verhuurder aangaan op 'n prokureur en kliënt skaal.

U kliënt wil die huurkontrak kanselleer en die verhuurder dagvaar vir agterstallige huurgeld tot datum van kansellering sowel as vir uitsetting en enige moontlike skade wat hy mag gely het.

U kliënt het geen aanmaning gedoen nie.

6.1 Watter stappe sal u u kliënt adviseer om te neem voordat hy die huurder vir uitsetting en skadevergoeding kan dagvaar? (2)

6.2 Op die veronderstelling dat u advies gevolg is, stel u kliënt se besonderhede van vordering op op die grondslag dat u dagvaar vir agterstallige huurgeld, uitsetting sowel as skadevergoeding vir kontrakbreuk wat gekwantifiseer is in die som van R100 000,00, synde die huurinkomste wat u kliënt verbeur het as gevolg van die kontrakbreuk. U word versoek om die partye te beskryf en om die smeekbedes uiteen te sit. (14)

6.3 Dui aan wie geregtig is om die besonderhede van vordering in die Hooggeregshof namens die eiser te onderteken. (2)

VRAAG 7

[4]

Noem die gronde waarop 'n hersiening van verrigtinge in 'n laërhof aan 'n provinsiale afdeling van die Hooggeregshof geneem mag word.

Costs:

In the event of the lessee committing a breach of this lease, it shall be liable for the legal costs incurred by the lessor on an attorney and client scale.

Your client wants to cancel the lease and sue the tenant for arrear rental to date of cancellation as well as for ejection and any possible damages suffered.

Your client has made no demand.

6.1 What steps would you advise your client should be taken before it can sue the tenant for ejection and damages? (2)

6.2 Assuming that your advice has been followed, prepare your client's particulars of claim on the basis that you sue for arrear rental, ejection as well as damages for breach of contract which has been quantified in the sum of R100 000,00, being the rental income which your client will forfeit as a result of the breach of contract. You are requested to describe the parties and to set out the prayers for relief. (14)

6.3 Indicate who should sign the particulars of claim on behalf of plaintiff in the High Court. (2)

QUESTION 7

[4]

Name the grounds on which the proceedings of any inferior court may be brought under review before a provincial division of the High Court.

VRAAG 8 [3]

Identifiseer 6 gevalle waar liassing van 'n spesiale pleit gepas sou wees.

VRAAG 9 [12]

Die beskuldigde pleit onskuldig by sy verhoor in die landdroshof. Die verhoor gaan voort en die beskuldigde is skuldig bevind en gevonniss. Gedurende die verhoor sowel as die vonnis prosedure is getuies deur beide die Staat en die verdediging geroep.

Sit kortliks uiteen die prosedure wat gevolg sal word van die begin van die saak totdat vonnis gevel is.

VRAAG 10 [3]

U tree op namens Mnr X, wat van diefstal aangekla is. Beskuldigde nommer 1 het besluit om sy eie verdediging te behartig en pleit skuldig aan diefstal. Namens u kliënt pleit u onskuldig. Beskuldigde nommer 1 word van sy regte verwittig en hy maak 'n verklaring in terme van Artikel 112(1)(b) waarin hy u kliënt impliseer in die misdaad.

Sit uiteen die prosedure wat gevolg sal word nadat die beskuldigdes gepleit het.

VRAAG 11 [4]

'n 80 jarige dame is in 'n klein plaaslike dorpie geleë in Limpopo, deur om en by 20 persone aangeval. Sy word beskuldig van hekserie en word blameer vir die geheimsinnige dood van twee jong kinders. Die groep mense het haar huis aangeval, dit met klippe bestook, vensters gebreek en uiteindelik die huis aan die brand gesteek. U tree op namens een van die tien beskuldigdes wie gearrester was na die voorval. U kliënt was deur 'n mede-beskuldigde uitgewys. Die klagtes teen die beskuldigdes is openbare geweld, poging tot moord en brandstigting.

QUESTION 8 [3]

Identify 6 instances when the filing of a special plea would be appropriate.

QUESTION 9 [12]

The accused pleads not guilty at a summary trial in the magistrates' court. The trial commences and the accused is found guilty and is duly sentenced. During the trial as well as the sentencing procedure, witnesses are called by both the prosecution and the defence.

Outline briefly the procedure which will be followed from the commencement of the matter until sentence has been passed.

QUESTION 10 [3]

You represent Mr X, who is accused number 2 and who is charged with theft. Accused number 1 has chosen to conduct his own defence and pleads guilty to theft. You tender a plea of not guilty on behalf of your client. Accused number 1 is advised of his rights and he makes a statement in terms of Section 112(1)(b) in which he implicates your client in the offence.

Describe the procedure that will be followed after the entering of the pleas.

QUESTION 11 [4]

An 80 year old woman was attacked in a small rural village in Limpopo by a mob of approximately 20 villagers who accused her of practising witchcraft and blamed her for the mysterious death of two infants. The mob attacked her home, pelted it with stones breaking windows and eventually set the house alight. You act on behalf of one of the ten accused who were arrested. Your client was pointed out by a co-accused. The charges preferred against all the accused are public violence, attempted murder and arson.

U kliënt pleit onskuldig ten opsigte van al die klagtes en beweer dat op die dag van die voorval, naamlik die 2de Junie 2007, was hy in Durban waar hy die Durban July Handicap perdewedren bygewoon het.

Stel 'n Artikel 115 verklaring op sonder die kopstuk.

VRAAG 12 [3]

Mnr A is skuldig bevind aan 'n aanklag van aanranding in die landdroshof nadat hy skuldig gepleit het. Daarna het hy die hof gevra om die saak uit te stel en hy nader u om hom by te staan by vonnisoplegging. Dit blyk duidelik vanuit sy instruksies aan u dat hy in selfverdediging opgetree het maar geen melding daarvan was in sy Artikel 112(1)(b) vermeld nie.

Watter prosedure sal u kortliks volg wanneer u namens Mnr A voor die hof verskyn?

VRAAG 13 [3]

Onder watter omstandighede mag 'n regsverteenvoerder, vooreen nadat die verhoor in aanvang geneem het, onttrek as regsverteenvoerdige van die beskuldigde?

VRAAG 14 [4]

Die volgende is 'n aanhaling uit die besonderhede van vordering in 'n landdroshof dagvaring wat beteken was op u kliënt en waarteen u 'n verskyning om te verdedig beteken het namens u kliënt:

- (i) Die Verweerder is die eienaar van 'n motor voertuig met registrasie nommer NP 1234 wat gebots het teen die eiser se winkel venster te 56 Loop Straat, Pietermaritzburg op die 1ste Augustus 2007;

Your client pleads not guilty to all charges and avers that on the day of the offences, namely the 2nd of June 2007, he was in Durban watching the Durban July Handicap horse race.

Prepare a section 115 statement without the heading.

QUESTION 12 [3]

Mr A pleaded guilty to a charge of assault in the magistrates' court and was duly convicted. He thereafter requested a postponement and instructs you to assist him with sentence. It is evident from his instructions that he acted in self-defence but this is not reflected in his Section 112(1)(b) plea explanation.

Explain briefly the procedure that you will adopt when you appear for Mr A in court.

QUESTION 13 [3]

Under which circumstances may an attorney, before and after commencement of the trial, withdraw from acting on behalf of an accused?

QUESTION 14 [4]

The following is an extract from particulars of claim in a magistrate's court summons which was served on your client and in respect of which you have entered an appearance to defend on his behalf:

- (i) The Defendant is the owner of a motor vehicle with registration number NP 1234 which crashed into the plaintiff's shop window at 56 Loop Street, Pietermaritzburg on 1st August 2007;

- (ii) Die oorsaak van die botsing is dat die verweerder se voertuig op 'n nalatige wyse bestuur was deur 'n persoon wat onbekend is aan die eiser.

Die dagvaring beweer verder wat die omvang van die skade is en eis vonnis vir die herstelkoste asook ander gewone regshulp wat daarmee gepaard gaan. Stel die dokument op wat jy sou voorberei as die volgende stap in die voortsetting van u kliënt se verweer.

VRAAG 15 [5]

Die eiser dagvaar u kliënt vir skade voorspruitend uit 'n beweerde kontrak breuk deur u kliënt. By die sluit van eiser se saak, is jy van die mening dat die eiser se prokureur versuim het om te bewys dat u kliënt inderdaad die kontrak gesluit het.

- (a) Wat sou jy die landdros vra om te doen? (2)
- (b) Veronderstel die landdros voldoen aan jou versoek, watter opsies, indien enige, is beskikbaar aan die eiser indien hy steeds sy eis wil voortsit. (3)

VRAAG 16 [5]

U kliënt het 'n vonnis in die landdroshof gekry teen 'n verweerder wat 'n bestuurspos by 'n plaaslike vervaardigingsmaatskappy hou. U sukkel om vas te stel waar die verweerder woon en u kan geen inligting oor sy bates bekom nie.

- (a) Watter aksie kan u neem om die vonnis af te dwing? (1)
- (b) Indien die verweerder nie werksaam was by die plaaslike vervaardigingsmaatskappy nie maar vir 'n tak van die maatskappy in 'n ander provinsie. Watter stappe sal u dan neem? (1)

- (ii) The cause of the collision is that the defendant's vehicle was driven negligently by a person unknown to the plaintiff.

The summons goes on to allege the extent of the damage and to claim judgment for the cost of repair and other usual relief. Draw the document that you would prepare as the next step in the prosecuting of your client's defense.

QUESTION 15 [5]

The plaintiff sues your client for damages arising from an alleged breach of contract by your client. At the close of the plaintiff's case, you believe that the plaintiff's attorney has failed to show that your client in fact entered into the contract.

- a) What would you ask the magistrate to do? (2)
- b) Assuming the magistrate acceded to your request, what options, if any, would be available to the plaintiff if he wishes to pursue his claim? (3)

QUESTION 16 [5]

Your client has obtained a magistrate's court judgment against a defendant who holds a management position with a local manufacturing company. He has no assets at work. You are not able to establish where the defendant lives or obtain any details of his assets.

- a) What action can be taken to enforce the judgment? (1)
- b) If in fact, the defendant was not working for the local manufacturer but for its branch in another province, what steps would you then take? (1)

(c) U vind uit dat die verweerder 'n groot bedrag geld in 'n vaste belegging met XYZ bank hou. Watter stappe sal u neem om die vonnis te probeer bevredig?

(1)

(d) As die verweerder, as 'n gevolg van hierdie aksie, vir die eerste keer bewus word van die vonnis teen hom en hy nie voorheen geweet het van die eis of dat aksie teen hom ingestel is nie, watter stappe kan sy prokureur neem om betaling van die vonnis te vermy?

(1)

(e) As die verweerder vir 'n lang periode werkloos was en ander vonnisse teen hom het wat hy nie in staat is om dadelik te bevredig nie, watter posedure is beskikbaar vir sy beskerming?

(1)

VRAAG 17

[6]

(a) U kliënt is die verweerder in 'n aksie wat op die rol geplaas is vir verhoor in die landdroshof. Wanneer u kliënt die eiser se blootleggingsverklaring deurlees, sê hy dat hy bewus is van 'n sekere dokument wat nie blootgelê is nie maar wat hy glo in die eiser se besit is en wat hy dink van groot waarde sal wees tydens die verhoor. Stel die dokument op (los die formele aanhef en slot uit) wat u sou voorberei en bedien op die eiser se prokureur om blootlegging van hierdie dokument te verkry.

(4)

(b) Tydens die verhoor, produseer die eiser se prokureur 'n verdere dokument wat hy as getuienis wil aanbied. Hierdie dokument is ook nie blootgelê nie. Mag die dokument gebruik word tydens die verhoor en indien wel, onder watter omstandighede?

(2)

c) You discover that the defendant has invested a substantial sum of money on a fixed deposit with XYZ Bank. What procedure would you follow to try and get the judgment satisfied?

(1)

d) If the defendant, as a consequence of such action, became aware of the judgment for the first time and did not know of the existence of the claim or that proceedings had been entered against him, what action could his attorney take to try avoid him having to pay judgment?

(1)

e) If the defendant had previously been unemployed for a long time and had a number of other judgments and was not able to satisfy them all immediately, what procedure would be available for his protection?

(1)

QUESTION 17

[6]

a) Your client is the defendant in an action that has been set down for trial in the magistrates court. When he peruses the plaintiff's discovery affidavit, he tells you that he is aware of a certain document which has not been discovered and which he believes is in the plaintiff's possession and maybe of considerable evidential value at the trial. Draw the document (excluding heading and ending) that you would prepare and serve on the plaintiff's attorney to obtain discovery of this document.

(4)

b) At the trial the plaintiff's attorney produces a further document which he intends to use in evidence. This document has also not been discovered. May the document be used in the course of the trial and if so, under what circumstances?

(2)

VRAAG 18 [5]

U klient vertel u dat hy nou net per ongeluk ontdek het, dat 'n klant wat hom R90,000 skuld, al sy bates verkoop het en vir homself en sy vrou enkel vliegtuig kaartjies na Engeland gekoop het en dat hulle volgende week vertrek.

- (a) Wat is die korrekte regs-aksie om teen hierdie skuldenaar te neem?
- (b) Lys die dokumente wat u sou voorberei en sit uiteen die bewerings wat u moet maak.

QUESTION 18 [5]

Your client tells you he has just discovered by chance, that a customer who owes him R90,000 has disposed of all his assets and bought one-way tickets for himself and his wife, to go to England in the following week.

- (a) What is the appropriate legal action to take against this debtor?
- (b) List the documents that you would prepare and set out the allegations that you would make.

DIE EINDE

THE END

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

27 FEBRUARY / 27 FEBRUARIE 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

[4]

- 1.1 He can claim the two weeks pay he received over and above his sick-leave entitlement(1) because this was paid to him *ex gratia* by his employer (1). (2)
- 1.2 An orthopaedic surgeon. (1)
- 1.3 No. (1)

QUESTION 2

[5]

- 2.1 Compensation Commissioner (½)
Road Accident Fund (½)
His co-employee (½) (1½)
- 2.2 From the Compensation Commissioner he can claim all his special damages, i.e. R16 500,00. (½)
- From the RAF R25 000,00 in respect of his general and special damages subject to the Fund being entitled to deduct the amount of the Compensation Commissioner's award. (1)
- From his co-employee the balance of his damages that he is unable to recover from the Compensation Commissioner and the RAF. (1)

- 2.3 No. The employer is not responsible for the negligence of employees in his employ against each other. He is absolved from liability by statute. (1)

(Sec 35 of Compensation for Occupational Injuries and Diseases Injuries Act – COIDA).

QUESTION 3

[5]

The alternative plea and prayer would read as follows:

“Alternatively, and in the event of it being proved that the driver of the insured vehicle was negligent in any respect or at all (which is denied) (1), then the Defendant pleads that the Plaintiff was also negligent and that such negligence contributed to the collision (1) and accordingly in terms of the Apportionment of Damages Act any damages recoverable by the Plaintiff must be reduced by the extent to which he was negligent (1).

In the alternative, Defendant prays that the Plaintiff's claim be reduced by the extent to which this Honourable Court finds that the Plaintiff was negligent, and that such negligence contributed to the collision (1) and that this Honourable Court make such order as to costs as may be just and equitable. (1).

QUESTION 4

[4]

- 4.1 By delivering a written notice of acceptance of the offer to the Defendant. (1)
- 4.2 No. Your client is not entitled to interest (1). In terms of the Act, interest is only payable from a date 14 days after the grant of the Judgment, and not from the date of acceptance of the offer. (1)
- 4.3 Your client can apply for Judgment in terms of the offer on 5 days notice given to the Defendant in writing of his intention to do so. (2)

QUESTION 5

[7]

I will advise both Ben and Charlie that they have valid third party claims against the Road Accident Fund(1).

By virtue of the fact that the driver of motor vehicle CY 1126 was solely to blame for the collision, (1) Ben has an unlimited claim for both special and general damages (1). He will be awarded the total amount of damages that he may be able to prove e.

Charlie was a passenger in motor vehicle CY 1126 whose driver was solely to blame for the collision. As against the Road Accident Fund his claim in terms of Section of 18(1)(b) of Act No 56 of 1996 is limited to the sum of R25 000,00 for special damages only (1) (that is for past medical

and hospital expenses and past loss of earnings). (1) He does not receive any compensation in respect of general damages (1).

Insofar as the balance of his claim is concerned for special and general damages, Charlie may proceed against the driver/owner of (1) CY 1 126.

QUESTION 6

[18]

6.1

- a) ABC (Pty) Ltd must address a letter of demand to tenant in which it demands payment of arrear rental within a period of 10 (ten) days from date of delivery of the letter, stating that failing such payment the lease will be cancelled. (1)
- b) If the tenant fails to comply with the demand, a further letter should be addressed to the tenant notifying it of the cancellation of the lease. (1)

6.2

- 1 The plaintiff is ABC (Pty) Ltd, a private company duly registered in terms of the Company Laws of the Republic of South Africa with principal business / registered address at (set out any suitable physical address of the company). (1)
- 2 The defendant is XYZ CC, a close corporation duly registered in terms of the Close Corporations Act (or laws) of the Republic of South Africa, carrying on business at Shop Nr 1, Main Road Mall, King Williamstown, Eastern Cape. (1)
- 3 On the 1st March 20..., the defendant and plaintiff concluded a written Agreement of Lease (hereinafter referred to as the "Lease") in respect of Shop Nr 1, Main Road Mall, King Williamstown, Eastern Cape (hereinafter referred to as the "Premises"). (1)
- 4 The Lease provided *inter alia* as follows:
 - 4.1 the duration would be three years commencing on 1st March 20... and expiring on 28th February 20 ... (1)
 - 4.2 the defendant would pay rental to the plaintiff in the sum of R100 000,00 per month plus value added tax at the prescribed rate, monthly in advance on/before the 1st day of every month with effect from 1 March 20... (1)
 - 4.3 Should the lessee fail to pay the rental or any other amount due by it in terms of the lease or commit any other breach of any term or condition of the lease or fail to make such payment or remedy such breach within a period of 10 (ten) days after the given of written notice to that effect to it by the plaintiff, the plaintiff shall be entitled, but not obliged, to cancel the lease forthwith and claim possession of the premises without prejudice to its claim for any arrear rental and other sums payable in terms of the

lease or any damages which it may be suffer by reason of such breach and/or cancellation and/or to any other remedy which it may have against the defendant arising out of the lease or the law. (1)

- 4.4 In the event of the defendant committing a breach of the lease, it shall be liable for the legal costs incurred by the plaintiff on an attorney/client scale. (1)
5. In breach of the provisions of the lease, defendant has failed to pay the rental for the period (set out a three month period prior to the consultation date) and is currently in arrears in the sum of R300 000,00 plus value added tax thereon. (1)
- 6 The plaintiff has on (date) by written notice demanded payment of such arrear rental in terms of the provisions of the said lease but notwithstanding such notice/demand, defendant has failed or refused to pay the amount due or any part thereof. (1)
- 7 Plaintiff has elected to cancel the said lease and has done so by written notice to the plaintiff to this effect on (date). (1)
- 8 Defendant is presently in unlawful occupation of the leased premises. (½)
- 9
- 9.1 The rental value of the premises is R100 000,00 per month. (½)
- 9.2 As a result of the defendant's breach of contract, the cancellation of the lease and the defendant's continued unlawful occupation of the Premises the plaintiff has suffered a loss of rental income of R100 000,00. (1)
- 10 Plaintiff has complied with its obligations in terms of the lease.
- 11 In the premises plaintiff is entitled to the relief claimed hereunder.

WHEREFORE plaintiff claims against defendant :

- a) Ejectment; (½)
- b) payment of the sum of R342 000,00 (inclusive of VAT) in respect of arrear rental; (½)
- c) R100 000,00 in respect of damages; (½)
- d) costs of the action; (½)
- e) further/alternative relief
- 6.3 An advocate and plaintiff's attorney, alternatively an attorney with the right of appearance in the High Court. (2)

Note to examiner:

If the candidate answers that the particulars of claim must be signed by an attorney with the right of appearance as well as plaintiff's attorney (as is required in some divisions of the High Court) he/she should not be penalised.

QUESTION 7

[4]

Section 24.1

- 1 Absence of jurisdiction. **1 mark**
- 2 Interest in the cause, bias, malice or corruption on the part of the presiding officer. **1 mark**
- 3 Gross irregularity in the proceedings. **1 mark**
- 4 The admission of inadmissible evidence or the rejection of admissible evidence. **1 mark**

QUESTION 8

[3]

Any 6 of the following:

- lis pendens ½ mark**
- Res judicata ½ mark**
- Prescription ½ mark**
- Lack of jurisdiction ½ mark**
- Non joinder ½ mark**
- Arbitration ½ mark**
- Lack of locus standi ½ mark**

QUESTION 9

[12]

- 9.1 The Prosecutor reads out the charge sheet, a copy of which would have been furnished to the defence in advance before commencement of the trial.
- 9.2 The accused will then either in person or through his or her legal representative enter a plea of not guilty.
- 9.3 The accused's statement in terms of Section 115 prepared by his attorney or himself will be read out, that is if the accused chooses to set out the grounds of his defence.
- 9.4 If the accused is represented and the statement was read on his behalf then the magistrate will ask the accused to confirm the correctness of the Section 115 statement.
- 9.5 If there are any admissions made in the statement in terms of Section 115 the magistrate will enquire if the admissions can be recorded in terms of Section 220 of the Criminal Procedure Act and the admissions will be so recorded if the accused consents thereto.

- 9.6 The prosecutor will lead evidence by the witnesses that have been subpoenaed to prove the allegations against the accused and each witness will then be cross-examined by the accused or his legal representative. The prosecutor will be entitled to re-examine his witness once the said witness has been cross-examined by the other side and the same will apply when the attorney's witness has been cross-examined by the prosecutor. The court will be entitled to ask questions in clarification and allow both parties to ask further questions arising therefrom.
- 9.7 The state finalises its case and closes it and depending on circumstances the accused may apply for his acquittal in terms of Section 174 of the Criminal Procedure Act or he may close his case without himself giving evidence or calling any witnesses in his defence.
- 9.8 The accused may elect to give evidence and also call witnesses who will be cross-examined by the Prosecutor.
- 9.9 The accused closes his case and the Prosecutor argues on the merits of the case and asks the Court to accept the version of the State witnesses and to reject that of the accused and his witnesses.
- 9.10 The Defence addresses the court on the merits and may argue for the acceptance of the accused's version and the rejection of the version of the state witnesses, and ask for an acquittal.
- 9.11 The Magistrate summarises the evidence and gives reasons for accepting the one version and reasons for rejecting the other version and passes a judgement of guilty.
- 9.12 The prosecutor may elect to prove or not prove previous convictions and may also call witnesses in aggravation of sentence.
- 9.13 The defence may lead evidence in mitigation of sentence.
- 9.14 Both prosecutor and defence then address the Court on sentence.
- 9.15 The magistrate weighs the evidence and passes an appropriate sentence.

QUESTION 10**[3]**

- 10.1 After the pleas have been entered the prosecution will ask for a separation of the trials.
- 10.2 The magistrate will then proceed to deal with the plea and admissions of accused number 1 and then pass a verdict of guilty against accused number 1.
- 10.3 The case against Mr X will continue before a magistrate other than the one who convicted number 1.

QUESTION 11**[4]****STATEMENT IN TERMS OF SECTION 115 : PUBLIC VIOLENCE, ATTEMPTED MURDER AND ARSON**

I, the undersigned hereby declare that:

1. I am the accused in this matter and I plead not guilty to all the charges.
2. I deny that I committed any of the offences preferred against me.
3. On the 1st June 2000 I left my home in Limpopo and drove to Durban with my wife and we only returned on the 4th June 2000.
4. I was therefore not at the scene of the crimes.

QUESTION 12**[3]**

1. Inform the Prosecutor of your instructions and that you intend changing the plea of guilty to not guilty in terms of Section 113.
2. Either prepare a statement to be read out to court setting out the reasons why the accused pleaded guilty as well as the nature of his defence. Alternatively the accused may be obliged to lead evidence explaining why he pleaded guilty instead of not guilty.
3. Make a formal application to Court that a plea of not guilty be entered.

QUESTION 13**[3]**

The general principle is that when an accused has placed his case in the hands of his legal representative the legal representative is in full control of the case and the accused cannot repudiate his actions. Where the attorney and the client do not agree in respect of the handling of the case or acts contrary to the advice of the attorney, the attorney ought to withdraw. An attorney is also obliged to withdraw where the attorney / client relationship between him and his client has broken down eg. when the client accuses the attorney of unprofessional conduct or requires the attorney to act in an unprofessional manner.

A conflict of interests between more than one accused may develop during the trial and the attorney must withdraw from the case. An attorney may also be entitled to withdraw if the client gives contradictory instructions. An attorney may also withdraw if his client does not pay him, depending on the circumstances.

QUESTION 14**[4]**

The document required is an exception based on the failure of the plaintiff's to allege a valid cause of action. The notice must state:

- a. summons does not disclose the cause of action
- b. the grounds on which the exception is founded (viz. The fact that defendant owns the vehicle does not per se make him liable for the driver's negligence).

QUESTION 15**[5]**

- a. Grant absolution from the instance. (2)
- b. Issue a fresh summons or, if the plaintiff feels he did show that defendant in fact entered into the contract, he can appeal. (3)

QUESTION 16**[5]**

- a. section 65 proceedings (1)
- b. obtain a certified copy of the judgment (civil extract) and send them with an affidavit in terms of section 65 to your correspondent in that town. (1)
- c. garnishee proceedings (1)
- d. apply for rescission of judgment (plus one bonus mark if candidate says apply for an order staying plaintiff's execution of judgment). (1)

administration order (unlikely that he would be entitled to relief under NCA). (1)

QUESTION 17 **[6]**

1. notice in terms of rule 23 (4) (4)
2. as a general rule it may not be used though it may be if you consent or if the court agrees to it being used but the court would, at your request, adjourn the hearing if you asked them to do so at the plaintiff's costs. (2)

QUESTION 18 **[5]**

1. arrest *tanquam suspectus de fuga*.
2. ex parte application and supporting affidavit (and the order to be granted). The affidavit would allege the existence of a debt greater than R40.00 and the facts to justify the allegation that the respondent is about to leave the RSA and that the applicant holds no security for the debt.

TOTAL [100]