

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 assebliefslegs 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]

(i) U klient, 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.

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

(iii) Daarbenewens:-

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

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

c) Die Kommissaris het sy verlies van gelede inkomste en sy mediese en hospitaalonkoste betaal;

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:

Mediese en hospitaalonkoste
R 60 000,00

Gelede verlies van inkomste
R 20 000,00

Toekomstige verlies van
inkomste
R200 000,00

Algemene skadevergoeding
R100 000,00

TOTAAL R380 000,00

QUESTION 1

[5]

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

(iii) In addition:-

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

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

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:

Medical and hospital expenses
R 60 000,00

Past loss of earnings
R 20 000,00

Future loss of earnings
R200 000,00

General damages
R100 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 bepaling 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.

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]

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]

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 Peterse 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 sekwestrasie 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 geregistreeerde lede is van 'n geregistreeerde 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 gedomisilieer in Harare in Zimbabwe. Terwyl hy met vakansie is in Kaapstad het 'n motorvoertuig bestuur deur B, gebots met A se motor voertuig. 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 verhaaf. (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 wesenlike 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)

VRAAG 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:

9.1.1 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)

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

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

VRAAG 10 [4]

Onder watter omstandighede is hoorsê getuie nis toelaatbaar in strafregtelike verrigtinge?

VRAAG 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.

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)

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 days ago. Despite demand, the newspaper has declined to retract the article or to tender an apology. (1)

QUESTION 9 [5]

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

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

QUESTION 10 [4]

Under which circumstances is hearsay evidence admissible in criminal proceedings?

QUESTION 11 [5]

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 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 hospital 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 dae vanaf 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]

QUESTION 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.

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]

QUESTION 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.**

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.

VRAAG 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 teruggelower 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.

Met sy 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).

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.

QUESTION 16

[8]

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

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

17 FEBRUARY / 17 FEBRUARIE 2009

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

[5]

- 1.1 Where the claim is subject to an apportionment in terms of the Apportionment of Damages Act, the apportionment has first to be applied to the full common law damages proved in the damages action and the award is reduced accordingly.

The amount reduced by the apportionment has to be further reduced by the final award made by the Compensation Commissioner. (2)

TOTAL		R380 000,00	
Less: 50% Apportionment		R190 000,00	(1)
Sub total		R190 000,00	
Less: WCC Award:			
Hospital expenses	R 60 000,00		(½)
Past loss of earnings	R 20 000,00		(½)
Future loss of earnings	R 80 000,00		(½)
		R160 000,00	
Amount due to client		R 30 000,00	(½)

QUESTION 2**[2]**

- 2.1 If the Fund does not, within a period of sixty (60) days from the date on which a claim was sent by registered post or delivered by hand, object to the validity thereof, the claim shall be deemed to be valid in law in all respects. There are no remedies available to the Fund in these circumstances (Section 24(5) of the Act). (1)
- 2.2 The Fund shall not be obliged to compensate any person if the claimant refuses or fails to submit to the Fund an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out (see Section 19(f)(i) of the Act). (1)

QUESTION 3**[2]**

Yes. If part of the mechanism or equipment or the accessories to a motor vehicle become detached while the vehicle is being driven and cause injury to a third party, the injury arises out of the driving of the motor vehicle within the meaning of the phrase and in terms of Section 17(1) of the Road Accident Fund Act.

QUESTION 4**[11]**

1. Peter will be able to claim for special damages only, being the hospital expenses, the medical expenses and the loss of income (1)
2. Yes. Peter's claim is limited to R25 000,00 in respect of special damages only. (1)
3. No. Mr Jones cannot bring a claim on behalf of his daughter arising from his own negligence as little Mary is not only a member of the same household but he can only claim for bodily injuries sustained in the collision. (2)
4. Should it be proved that Peter was not wearing a seatbelt, an apportionment would be applied to the amount of damages that he has suffered, as he was contributorily negligent. (2)
5. Peter has a claim against Mr Jones in respect of:
- 5.1 Any amount of the special damages that exceeds the sum of R25 000,00; and (1)
- 5.2 The general damages in terms of the common law. (1)
6. In the event another vehicle was to blame for the accident, Peter will be entitled to claim both special and general damages against the Road Accident Fund. (3)

QUESTION 5

[5]

R25 000,00 in respect of passengers conveyed.

- 1.1 for reward (1)
- 1.2 in the course and scope of their employment less any award by the Compensation Commissioner (1)
- 1.3 in the course of the lawful business of the owner/driver of that motor vehicle (1)
- 1.4 for the purposes of a lift club (1)
- 2. R25 000,00 for special damages only in respect of any ordinary passenger who does not fall into any of the above categories. (1)

QUESTION 6

[13]

**IN THE HIGH COURT OF SOUTH AFRICA
(----- DIVISION)**

Case No:.....

In the matter between:

Peter Brown

Applicant

and

John Smith

1st Respondent

and

Beryl Smith

2nd Respondent

NOTICE OF MOTION

Kindly take notice that application will be brought on behalf of the above-named applicant on at or as soon thereafter as counsel may be heard for an order in the following terms: (1)

- 1. Dispensing with the forms and service provided for in the rules of the above honourable court and entertaining this matter as one of urgency in terms of rule 6(12). (1)

2. That the estate of the first and second respondents be placed under provisional sequestration in the hands of the Master of the above honourable court. (2)
3. That a rule nisi be issued calling upon the respondents and all persons interested to show cause on the (date) (½) why the estate of the respondents should not be placed under final order of sequestration. (2)
4. That this order be served by
 - 4.1 the Sheriff of this honourable court on the respondents personally (½) / on all the registered trade unions representing the employees of the respondents (½) / and the South African Revenue Services (½) as prescribed in the Insolvency Act.
 - 4.2 by affixing copy of the order to a notice board accessible to the employees (½)
 - 4.3 by giving notice by registered post to all known creditors (½)
5. That the costs of this application be costs in the application. (1)
3. Further and or alternative relief.

Take further notice that the affidavit of the applicant attached hereto will be used in support of the application. (1)

Kindly enroll the matter accordingly. (1)

Dated at this day of 2008.

ABC Inc
Applicant's attorney
Address

To: The Registrar, High Court (½)

To: The Master, High Court (½)

QUESTION 7 **[4]**

- 1 Cape Provincial Division. (1)
- 2 Still Cape Provincial Division (1).
- 3 Apply to court by way of an ex parte application (1) for an order authorising service by way of edictal citation (1).

QUESTION 8 **[3]**

- 1 An urgent application for eviction. (2)
- 2 A combined summons. (1)

QUESTION 9 **[5]**

- 1.1 Ten court days. Day of service excluded, last day included. (1)
- 1.1 Twenty one calendar days, first day excluded, last day included but if last day falls on a Sunday or public holiday, such day is excluded and the following day included. (2)
- 1.2 Yes, provided default judgment has not been entered. (2)

QUESTION 10 **[4]**

- Each party against whom the evidence is to be adduced agrees to the submission thereof.
- During a bail application.
- When not presented to prove the truth of the communication.
- If the party tendering same intends calling as a witness the person who uttered the hearsay statement.
- If the court is of the opinion that such evidence should be admitted in the interests of justice.

QUESTION 11 **[5]**

- 1.1 There is no duty upon an attorney to advise the court as to the previous convictions of an accused if the state does not prove same. The practitioner may however not in his address on sentence refer to the previous convictions of the accused and state that the accused does not have previous convictions. Such an action shall amount to misleading the court. (3)
- 1.2 In terms of Section 60 (11B), an accused or his legal advisor is compelled to inform the court whether the accused has previously been convicted of any offence and whether there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges. (2)

QUESTION 12

[6]

As the offence is referred to in Schedule 6, the accused will have to adduce evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his release. The onus is accordingly on the accused to prove the presence of exceptional circumstances. The accused will invariably lead evidence first. The accused will accordingly be obliged to give evidence under oath. He will have to deal with the grounds referred to in Section 10(4) and particularly those grounds on which the State relies in refusing bail. He may be obliged to deal with the merits of the matter. The accused may also call other witnesses in support of his application.

The state may call witnesses. The investigating officer is invariably called to give evidence. The defence will have an opportunity of cross-examining the said witnesses. Once all evidence is led the defence and the prosecutor will address the court on the merits of the matter. The defence attorney will be obliged to convince the court that exceptional circumstances exist which in the interests of justice permit his release.

The presiding officer will then make a finding relating to the question of bail.

QUESTION 13

[7]

3.1

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF GERMISTON
HELD AT GERMISTON**

Case No: 61/321/08

In the matter between:

APPLICANT

and

RESPONDENT

THE STATE

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that the Applicant intends to apply on a date to be arranged by the clerk of the court for leave to appeal to the Supreme Court of South Africa (Witwatersrand Local Division) against his conviction on the charge of culpable homicide and the sentence imposed by the Learned Magistrate, Mr B, in the District Court Germiston held at Germiston, on the 30th of June 2008, on the following grounds:

GROUND CONVICTION:

- That the Learned Magistrate erred in rejecting the evidence of the Applicant that he had been placed in a sudden emergency situation when the left front tyre of his vehicle burst causing him to lose control over the said vehicle, as being reasonably possibly true.
- That the Learned Magistrate erred in rejecting the evidence of the District Surgeon that the death of the deceased could have been caused by pneumonia contracted whilst the deceased was in hospital as not being reasonably possibly true.

GROUND SENTENCE:

- The sentence imposed upon the Applicant induces a sense of shock;
- The Learned Magistrate failed to take into consideration the personal circumstances of the Applicant and in particular that he is a first offender, is in fixed employment and supports his aged mother;
- The Magistrate erred in not taking into consideration the degree of negligence as being fairly slight and tempering the sentence accordingly.
- The Magistrate erred in finding that imprisonment was the only suitable sentence and furthermore erred in not considering the imposition of a sentence which would have the effect of keeping the Applicant out of jail.

DATED AT GERMISTON ON THIS THE 2nd DAY OF JULY 2008.

APPLICANT'S ATTORNEYS

TO: THE CLERK OF THE COURT
PRETORIA

AND TO: THE DIRECTOR OF PUBLIC PROSECUTIONS
c/o
THE SENIOR PUBLIC PROSECUTOR
GERMISTON

(6)

3.2 Fourteen days.

(1)

QUESTION 14

[3]

It is clear that there is a conflict of interest between all the accused in that accused number 1 implicates his co-accused. To defend each accused you will be obliged to cross examine and discredit the said accused, using information that you have obtained from the said accused and which is subject to attorney/client privilege. This can obviously not be done by an attorney acting on behalf of all the parties. You will be obliged to withdraw from acting for any of the said persons.

QUESTION 15

[10]

1. Plaintiff is an unassisted minor.
2. Plaintiff should have full name set out.
3. Court has no jurisdiction – defendants do not live in Johannesburg.
4. Must allege suretyship is in writing.
5. No allegation that plaintiff fulfilled his part in the contract.
6. Amount of R110 000 exceeds jurisdiction.
7. No allegation claim against both jointly and severally.
8. Interest rate wrong.
9. Date from which interest was calculated is wrong.
10. No basis for costs between attorney and client.

NOTE: National Credit Act does not apply)

QUESTION 16

[8]

APPLICATION FOR RESCISSION OF DEFAULT JUDGMENT

Please take notice that application will be made to this Honourable Court on 1st of January 2009 at 09:00 a.m for an order in the following terms:

1. That the late filing of this application is hereby condoned;
2. That the default judgment granted by this honourable court on 1st November 2007 be and is hereby rescinded;

- 1. That the applicant be granted leave to defend this action;
- 2. That the respondent pay the costs of this application in the event of it being opposed.

Further take notice that the affidavit of Billy Naidoo annexed will be used in support of this application.

QUESTION 17 **[5]**

Please take notice that application will be made to this Honourable Court on 1st January 2009 at 19:00 for an order in the following terms:

- 1. That the respondent (plaintiff) furnish a response to the applicant's (defendant's) request for further particulars to his summons written 5 days of service of this order on him.
- 2. That the respondent be ordered to pay the costs of this application.

QUESTION 18 **[2]**

I would issue a section 65 A(1) notice addressed to the director to attend an enquiry into the company's financial position and to bring the company's books of account with him. Once I establish what is owing to the debtor company I would issue a garnishee order against the person that owes the money (or get the court to make such an order at the enquiry).