

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

15 FEBRUARIE 2000

09:00-12:00

Totaal: [100]

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.
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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

15 FEBRUARY 2000

09:00-12:00

Total: [100]

1. Candidates must answer all the questions.
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VRAAG 2 [5]

U kliënt wil aksies instel teen die volgende entiteite.

- 2.1 Mark en Jane Wholesalers BK, waarvan die lede Mark Mills en Jane Doe is.
- 2.2 XYZ (Edms) Bpk in likwidasie.
- 2.3 Die Jones-kindertrust.
- 2.4 Peter Moonsamy wat 17 jaar oud is.
- 2.5 Die beheerliggaam van Marine View, waarvan die trustees Bongani Zulu en Lindani Khoza is.

Hoe sal u die verweerder in elke geval beskryf? Maak gebruik van sodanige bykomende besonderhede as wat u nodig ag om die verweerders behoorlik te beskryf.

VRAAG 3 [4]

U word geraadpleeg deur mnr Smith wie se voertuig beskadig is tydens 'n motorbotsing. Ingevolge sy opdrag reik u dagvaarding uit teen die persoon wat die skade aan u kliënt se voertuig veroorsaak het. Hierdie persoon teken verskyning tot verdediging aan.

3.1 Kan u kliënt aansoek doen om summier vonnis? Motiveer u antwoord. (2)

3.2 Op sy beurt ontvang u kliënt 'n dagvaarding van die paneelklopper wat sy voertuig herstel het. U kliënt gee u opdrag om verskyning tot verdediging aan te teken. **Kan die paneelklopper aansoek doen om summier vonnis?** Motiveer u antwoord. (2)

VRAAG 4 [4]

Op watter stadium en vir watter doeleindes mag nader besonderhede versoek word in:

- 4.1 die Landdroshof? (2)
- 4.2 die Hooggeregshof? (2)

QUESTION 2 [5]

Your client wishes to institute actions against the following entities.

- 2.1 Mark and Jane Wholesalers CC, the members of which are Mark Mills and Jane Doe.
- 2.2 XYZ (Pty) Ltd in liquidation.
- 2.3 The Jones Children's Trust.
- 2.4 Peter Moonsamy, who is 17 years old.
- 2.5 The body corporate of Marine View, the trustees of which are Bongani Zulu and Lindani Khoza.

How would you describe the defendant in each instance? Use such additional details as you consider necessary in order to properly describe the various defendants.

QUESTION 3 [4]

You are consulted by Mr Smith whose vehicle was damaged in a motor collision. On his instructions you issue a summons against the person who caused the damage to his vehicle and who then enters an appearance to defend.

3.1 Can your client apply for summary judgment? Motivate your answer. (2)

3.2 Your client in turn receives a summons from the panel beater who repaired his vehicle. Your client instructs you to enter an appearance to defend. **Can the panel beater apply for summary judgment?** Motivate your answer. (2)

QUESTION 4 [4]

At what stage and for what purpose may further particulars be requested in:

- 4.1 the Magistrate's Court? (2)
- 4.2 the High Court? (2)

VRAAG 5 [8]

U kliënt gee u opdrag om dagvaarding uit te reik vir skadevergoeding van R20 000,00 ten opsigte van die koste van die herstel van sy voertuig wat beskadig is tydens 'n botsing veroorsaak deur die nalatigheid van die verweerder. Hy deel u mee dat hy op 1 Junie 1998 'n aanmaning aan die verweerder gestuur het waarin hy betaling geëis het binne tien dae vanaf die datum van die brief. 'n Afskrif van die hersteller se prysopgawe waarin uiteengesit word hoe die bedrag van R20 000,00 saamgestel en bereken word, is aangeheg by die brief.

- 5.1 Is u kliënt geregtig op rente op sy eis, en, indien wel, vanaf welke datum en teen welke koers? (2)
- 5.2 Stel die bewering(s) en die smeekbede op vir die eis vir rente in die dagvaarding. (4)
- 5.3 Vanaf welke datum en teen watter rentekoers sal u kliënt geregtig wees op rente, indien enige, indien geen aanmaning gestuur was nie? (2)

VRAAG 6 [8]

U konsulteer met u kliënt met die doel om eiser se repliek op te stel. Gedurende die konsultasie blyk dit dat daar 'n fout in die besonderhede van vordering is.

- 6.1 Watter stappe moet u doen om die pleitstuk reg te stel? (2)
- 6.2 Wat sal die posisie wees indien beswaar behoorlik aangeteken word teen die voorgename stap wat u wil doen? (3)
- 6.3 Hoe sal u antwoord verskil indien die fout in die besonderhede van vordering tot u kennis kom gedurende die verloop van die verhoor oor die aangeleentheid? (1)
- 6.4 Watter stappe sou u doen om 'n fout reg te stel in die geval waar u optree in mosieerrigtinge en 'n fout word ontdek in die funderende beëdigde verklaring van u kliënt, die applikant? (2)

QUESTION 5 [8]

Your client instructs you to issue summons for damages in the sum of R20 000,00 being the costs of repairing his vehicle which was damaged in a collision caused by the negligence of the defendant. He informs you that he has sent a letter of demand to defendant on 1 June 1998 requiring payment within ten days from the date of the letter. He enclosed with this letter a copy of the repairer's quotation setting out how the sum of R20 000,00 was made up and calculated.

- 5.1 Is your client entitled to interest on his claim and, if so, from what date and at what rate? (2)
- 5.2 Draft the allegation(s) and the prayer for the claim for interest in the summons. (4)
- 5.3 If no letter of demand was dispatched, from what date and at what rate of interest would your client be entitled to interest, if at all. (2)

QUESTION 6 [8]

You consult with your client with a view to drafting plaintiff's replication. During the course of the consultation it becomes apparent that there is a mistake in the particulars of claim.

- 6.1 What steps would you take in order to rectify that pleading? (2)
- 6.2 What would the position be if a proper objection were noted to the proposed step which you intend adopting? (3)
- 6.3 How would you answer differ in the event of the mistake in the particulars of claim coming to your notice during the course of the hearing of the matter? (1)
- 6.4 If you were acting in motion court proceedings and a mistake in the founding affidavit of your client, the applicant, is discovered, what steps would you take to rectify that mistake? (2)

VRAAG 7 [14]

U word genader deur mev Prinsen wat getroud is met 'n Nederlandse burger ingevolge 'n huwelik wat voltrek is op 1 Januarie 1986 in Suid-Afrika. Haar eggenoot het die Republiek van Suid-Afrika verlaat en is tans permanent woonagtig in Rotterdam, Nederland.

Die partye is reeds vir 'n aantal jare vervreemd en mev Prinsen wil graag egskeidingsverrigtinge teen haar man instel in 'n Suid Afrikaanse hof. Die partye is getroud buite gemeenskap van goedere en met uitsluiting van die aanwasbedeling. Daar is geen kinders uit die huwelik gebore nie.

Stel die nodige beëdigde verklaring (met insluiting van die kopstuk) en die konsepbevel (uitsluitend die kopstuk) op ten einde uitvoering te gee aan u mandaat. Die verweerder se adres is Prins Kaiser Wilhelm Strasse 117, De Doorns, Rotterdam, Nederland.

VRAAG 8 [20]

Mnr X het langs die pad geloop toe 'n sleepwa, registrasienommer AAA123GP, getrek deur 'n trekker, registrasienommer AAA124GP wat aan die verkeerde kant van die pad gery het, hom getref het. Hy het 'n gebreke arm en enkel opgedoen. Hy het 'n paar dae in die hospitaal deurgebring. Geen toekomstige mediese uitgawes word in die vooruitsig gestel nie.

Ten tye van die botsing het mnr X in die loop en uitvoering van sy diensbetrekking met Boer Y, soos bedoel in artikel 1 van die Wet op Vergoeding vir Beroepsbeserings en -Siektes opgetree.

Mnr X raadpleeg u en bring die volgende dokumente saam:

- (a) 'n Rekening van die Pretoriase Akademiese hospitaal vir die bedrag van R3 200,00.
- (b) 'n Rekening van Medicentre-apteek ten bedrae van R556,00.
- (c) 'n Rekening van Mr Eyes Oogkundige ten bedrae van R500,00 ten opsigte van die vervangingskoste van sy bril.
- (d) 'n Sertifikaat van Sparkling Diamond Watches ten bedrae van R3 000,00 wat die vervangingswaarde van sy horlosie verteenwoordig.

QUESTION 7 [14]

You are approached by Mrs Prinsen who married a Netherlands citizen in South Africa on 1 January 1986. Her spouse has left the Republic of South Africa and is permanently resident in Rotterdam in the Netherlands.

The parties have been estranged for a number of years and Mrs Prinsen wishes to institute divorce proceedings against her husband out of a South African court. The parties are married out of community of property and with the exclusion of the accrual regime. No children were born of the marriage.

Draw the necessary affidavit (including the heading) and the draft order (excluding the heading) which are required to give effect to your mandate. The Defendant's address is 117 Prins Kaiser Wilhelm Strasse, De Doorns, Rotterdam, The Netherlands.

QUESTION 8 [20]

While Mr X was walking on the side of the road a trailer, reg no AAA123GP, drawn by a tractor, reg no AAA124GP, driving on the wrong side of the road collided with him. He sustained a broken arm and ankle. He spent a few days in hospital. No future medical expenses are envisaged.

Mr X was acting within the course and scope of his employment with Farmer Y as contemplated in section 1 of the Compensation for Occupational Injuries and Diseases Act at the time of the collision.

You are consulted by Mr X who brings you the following documents:

- (a) An account from the Pretoria Academic hospital in the sum of R3 200,00.
- (b) An account from the Medicentre pharmacy in the sum of R556,00.
- (c) An account from Mr Eyes Optometrist in the sum of R500,00 being replacement cost of his spectacles.
- (d) A certificate from Sparkling Diamond Watches in the sum of R3 000,00 being the replacement value of his watch.

Mnr X gee u opdrag om 'n derdeparty-eis in te stel.

You are instructed by Mr X to institute a third party claim.

8.1 Laat die bogenoemde feite, met inagneming van beserings opgedoen sowel as die omstandighede van die botsing, u toe om 'n eis vir skadevergoeding teen die Padongelukkefonds in te stel? Bespreek volledig die beginsels wat u moet oorweeg om tot 'n beslissing te kom, met inagneming van die omstandighede van die botsing.

8.1 Do the facts set out above, relating to both the injuries sustained and the circumstances of the collision, entitle your client to a claim for damages against the Road Accident Fund? Discuss fully the principles you must consider in making your decision, bearing in mind the circumstances of the collision.

(6)

(6)

8.2 Dui aan ten opsigte van welke van die eise, gestaaf deur die dokumente wat aan u oorhandig is deur Mnr X, hy geregtig sou wees om te eis teen die Padongelukkefonds?

8.2 Indicate in respect of which of the claims supported by the documents handed to you by Mr X, he would be entitled to claim against the Road Accident Fund?

(1)

(1)

8.3 Het mnr X 'n eis teen enigiemand anders ten opsigte van daardie eise waar hy nie 'n eis teen die Padongelukkefonds het nie? Indien wel, meld teen wie en op welke grondslag.

8.3 In respect of those claims where Mr X does not have a claim against the Road Accident Fund, may he make a claim against anyone else? If so, against whom and on what basis.

(3)

(3)

8.4 Veronderstel dat mnr X die volgende skade gely het:

8.4 Assume that Mr X has suffered the following damages:

- (a) Voorafgaande hospitaal- en mediese uitgawes R3 756,00
- (b) Voorafgaande verlies aan inkomste R2 050,00
- (c) Algemene skade R20 000,00
- R25 806,00

- (a) Past hospital and medical expenses R3 756,00
- (b) Past loss of earnings R2 050,00
- (c) General damages R20 000,00
- R25 806,00

Mnr X word beoordeel as 30% bydraend nalatig vir die botsing en die Kommissaris vir die Wet op Vergoeding vir Beroepsbeserings en -Siektes het 'n finale toekenning van R5 806,00 gedoen.

Mr X is adjudged to have been 30% to blame for the collision and the Commissioner for Compensation for Occupational Injuries and Diseases has made a final award in the sum of R5 806,00.

Bereken die bedrag skadevergoeding wat mnr X geregtig sou wees om van die Fonds te eis.

Calculate the amount of damages that Mr X will be entitled to claim from the Fund.

(3)

(3)

8.5 Met inagneming van bogenoemde feite en met die gebruik van u eie bykomende feite waar nodig, stel die volgende paragrawe van die Besonderhede van Vordering van die dagvaarding op wat u versoek word om namens u kliënt teen die Padongelukkefonds uit te reik.

8.5 Bearing in mind the facts set out above and using your own additional facts where necessary, draft the following paragraphs of the Particulars of Claim in respect of the summons that you are instructed to issue against the Road Accident Fund for your client.

8.5.1 Die sitering van die eiser met inagneming van sy betrekking by Y.

8.5.1 The citation of the plaintiff bearing in mind his employment by Y.

(2)

(2)

8.5.2 Die omstandighede van die botsing.

8.5.2 The circumstances of the collision.

(3)

(3)

8.5.3 Die nodige bewerings met betrekking tot die finale toekenning van die Kommissaris. (2)

8.5.3 The necessary averments regarding the final award made by the Commissioner. (2)

VRAAG 9 [6]

QUESTION 9 [6]

9.1 Sit uiteen die klasse van passasiers in 'n motorvoertuig wie se eise beperk is ingevolge die Wet. (3)

9.1 Name the classes of passengers in a motor vehicle whose claims are limited in accordance with the Act. (3)

9.2 Wat is die beperking ten opsigte van sodanige passasiers se eise? (3)

9.2 What is the limitation in respect of such passengers' claims? (3)

VRAAG 10 [12]

QUESTION 10 [12]

U kliënt, George Jacobs, was in 'n kroeg in Proesstraat, Pretoria, op 21 Julie 1998. 'n Insident het plaasgevind tussen Jacobs en ene Flip Marais, wat 'n mes uitgetrek en Jacobs in die bo-arm gesteek het. Jacobs het dadelik 'n ysterstang gegryp en Marais een hou teen die kop geslaan. Dit het 'n besering veroorsaak wat Marais se dood veroorsaak het.

Your client, George Jacobs found himself in a tavern in Proes Street, Pretoria on 21 July 1998. An incident occurred between Jacobs and one Flip Marais who drew a knife and stabbed Jacobs in the upper arm. Jacobs immediately grabbed an iron bar and struck Marais one blow on the head inflicting an injury which resulted in Marais' death.

Jacobs is daarna aangekla van strafbare manslag en moet verskyn op 1 Junie 1999 in die Streekhof, Pretoria. Die saaknommer is RC1/15/99.

Jacobs is subsequently charged with culpable homicide and is to appear in the Regional Court, Pretoria on 1 June 1999, the case number being RC1/15/99.

U bekom 'n afskrif van die dossier, wat die lykskouingverslag met betrekking tot die oorledene, 'n foto-album van die toneel soos voorberei deur die polisiefotoograaf, 'n verslag wat bevestig dat die bloed op die ysterstang die van Marais is en 'n verdere verslag wat bevestig dat Jacobs se vingerafdrukke op die stang gevind is, bevat.

You obtain a copy of the police docket, which contains the post-mortem report relating to the deceased, a photo album of the scene of the incident prepared by the police photographer, a report which confirms that the blood found on the iron bar was that of Marais and a further report confirming that the fingerprints of Jacobs were found on the iron bar.

10.1 Stel 'n volledige artikel 115-verklaring op. Al die erkennings wat u kliënt bereid is om te doen om die verhoor vir sover moontlik te verkort, moet daarin ingesluit word. (10)

10.1 Prepare a complete Section 115 statement. All admissions that your client is prepared to make in order to curtail the proceedings as far as possible should be included. (10)

10.2 Ten opsigte van welke mindere misdade kan Jacobs skuldig bevind word indien hy nie aan strafbare manslag skuldig bevind word nie? (2)

10.2 Of what lesser offences can Jacobs be convicted if not convicted of culpable homicide? (2)

VRAAG 11 [4]

QUESTION 11 [4]

U kliënt is die eienaar van 'n losieshuis langs die plaaslike kroeg. Gedurende die vroeë ure van 1 Januarie 1999 breek 'n groep

Your client is the owner of a boarding house next to the local tavern. During the early hours of 1 January 1999 a group of

rumoermakers 'n aantal vensters in sy losieshuis. U kliënt verkry 'n kwotasie om die vensters te herstel ten bedrae van R3 700,00. Die polisie arresteer twee van die persone wat die skade veroorsaak het en hulle word aangekla van kwaadwillige saakbeskadiging en moet in die plaaslike landdroshof verskyn. U kliënt nader u met 'n versoek dat u hom moet bystaan om sy skade te verhaal.

Welke prosedure, kragtens die Strafprosesreg, sal u volg en wat sal die uiteindelige effek daarvan wees?

VRAAG 12 [4]

U kliënt, mnr X, is aangekla van gewapende roof en is vrygelaat op borg van R10 000,00. Voor sy volgende verskyning bekom die aanklaer sekere verdere inligting en toe mnr X weer verskyn, doen die aanklaer aansoek vir die terugtrekking van sy borg. **Sit vier gronde uiteen waarop die aanklaer kan staatmaak in sy aansoek.**

VRAAG 13 [2]

U kliënt is gevonnissen tot 'n boete van R10 000,00 of alternatiewelik 3 jaar gevangenisstraf. Hy is nie in 'n posisie om sy boete onmiddellik te betaal nie.

Welke prosedure sal u volg om te verhoed dat hy die gevangenisstraf moet uitdien?

VRAAG 14 [3]

14.1 U kliënt, die beskuldigde, stel voor dat sy vervreemde vrou geroep moet word om getuie te lewer tot sy voordeel. **Is sy 'n bevoegde en afdwingbare getuie?**

(1)

14.2 U kliënt se medebeskuldigde wil u kliënt se vrou roep om getuie in dieselfde verhoor te lewer. Sy weier. **Is sy 'n afdwingbare getuie?**

(1)

14.3 U kliënt word aangekla van aanranding en die klaer is die kind gebore uit die huwelik met sy eggenote. **Is u kliënt se eggenote 'n bevoegde en afdwingbare getuie om getuie teen hom as beskuldigde te gee?**

(1)

revellers break a number of windows in his establishment. Your client obtains a quotation in order to repair same in an amount of R3 700,00. The police arrest two of the persons who caused the damage and they are charged with malicious damage to property and are to appear in the local Magistrate's Court. Your client approaches you with the request that you assist him in recovering his damages.

What procedure, in terms of the Criminal Procedure Act, will you follow and what will the eventual effect thereof be?

QUESTION 12 [4]

Your client, Mr X, has been charged with armed robbery and has been released on bail of R10 000,00. Prior to his next appearance in court certain information comes to the knowledge of the prosecutor and when Mr X appears the prosecutor makes application to court that his bail be cancelled. **Name four grounds upon which the prosecutor may rely as justification for his application.**

QUESTION 13 [2]

Your client is sentenced to a fine of R10 000,00 or alternatively 3 years imprisonment. He is not in a position to pay the fine forthwith.

What procedure will you follow to avoid him having to serve the term of imprisonment?

QUESTION 14 [3]

14.1 Your client, the accused, suggests that his estranged wife be called as a witness to give evidence in his favour. **Is she a competent and compellable witness?**

(1)

14.2 The co-accused of your client wishes to call your client's wife to give evidence in the same hearing. She refuses to do so. **Is she a compellable witness?**

(1)

14.3 Your client is charged with assault and the complainant is the child born out of the marriage with his wife. **Is the wife a competent and compellable witness to give evidence against your client, the accused?**

(1)

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

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ATTORNEYS' EXAMINATION

PART 2 ESTATES

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VRAAG 1 [86]

U word deur Lettie, die weduwee van Jan Smit geraadpleeg. Sy is kragtens haar oorlede man se testament aangewys as eksekutrisse en erfgenaam van die helfte van sy boedel. Twee seuns (Piet en Koos) erf die oorblywende helfte. 'n Voltooiende sterfkennis en inventaris is aangeheg. Daarbenewens word die volgende versekeringspolis uit hoofde van Jan Smit se oorlye uitbetaal:

Polis no 123 aan Lettie Smit R500 000-00
Polis no 456 aan Piet en Koos Smit R200 000-00

Piet Smit boer op die plaas. Koos en sy moeder woon op die dorp. Koos beplan om te emigreer sodra hy sy studies voltooi.

1.1 Rig 'n brief aan die Meester van die Hooggeregshof om die boedel aan te meld. [8]

1.2 Die erfgename wil die bates herverdeel. Stel die herverdelingsooreenkoms op. [13]

1.3 Stel die volgende afdelings van die boedelrekening op: [59]

1.3.1 Die likwidasierekening. Lys die onderskeie items van die administrasiekoste wat tesame met die sterfbed- en begrafniskoste, (uitgesonderd eksekuteursloon) R42 900,00 bedra. Bereken die eksekuteursloon.

1.3.2 Die distribusierekening.

1.3.3 Die inkomste- en uitgawerekening.

1.3.4 Die boedelbelastingrekening.

1.3.5 Die eksekuteur se sertifikaat.

1.4 Aan wie sal u opdrag gee om die onderskeie bates te waardeer? [6]

VRAAG 2 [4]

Mnr Fritz wat in Johannesburg gewoon het en in Sasolburg 'n besigheid bedryf het, sterf in Durban terwyl hy met vakansie is.

QUESTION 1 [86]

You are consulted by Lettie, the widow of Jan Smit. In terms of his will she is nominated as executrix and heir to half the estate. Two sons (Piet and Koos) inherit the remaining half share. A completed Death Notice and Inventory are attached. In addition the following insurance policies became payable as a result of the death of Jan Smit:

Policy no 123 payable to Lettie Smit R500 000-00
Policy no 456 payable to Piet and Koos Smit R200 000-00

Piet Smit currently runs the farm while Koos and his mother live in town. Koos intends emigrating as soon as he has finished his studies.

1.1 Draft a letter reporting the estate to the Master of the High Court. [8]

1.2 The heirs wish to redistribute the assets. Draft the redistribution agreement. [13]

1.3 Prepare the following sections of the estate account: [59]

1.3.1 The liquidation account. List the various administration expenses and allocate R42 900,00 to cover these (excluding Executor's remuneration) and deathbed and funeral expenses. Calculate Executor's remuneration.

1.3.2 The distribution account.

1.3.3 The income and expenditure account.

1.3.4 The estate duty account.

1.3.5 The executor's certificate.

1.4 Who would you instruct to value the various assets? [6]

QUESTION 2 [4]

Mr Fritz, who lived in Johannesburg and owned a business in Sasolburg, dies while on holiday in Durban.

2.1 By welke Meester moet die boedel aangemeld word?

[2]

2.2 Is dit moontlik om jurisdiksie van een Meester na 'n ander oor te plaas?

[2]

Verskaf redes vir u antwoorde.

VRAAG 3 [10]

Klousule 4 van Pieter Nel se testament gedateer 17 Mei 1993 lui soos volg:

"Ek bemaak my hele boedel aan my vrou Sannie en my twee kinders James en Bettie."

Die huwelik tussen Pieter en Sannie is op 7 Augustus 1998 deur 'n egskeiding beëindig. Pieter het op 19 September 1998 met Mary in die huwelik getree en hy sterf op 28 Oktober 1998 in 'n motorongeluk.

U word deur James en Bettie geraadpleeg en hulle wil by u weet wat hulle regte kragtens hulle oorlede vader se testament is. Adviseer hulle en motiveer u advies.

2.1 To which Master must the estate be reported?

[2]

2.2 Is it possible to transfer jurisdiction from one Master to another?

[2]

Give reasons for your answers.

QUESTION 3 [10]

Clause 4 of the will of Pieter Nel dated 17 May 1993, reads as follows:

"I bequeath my estate to my wife Sannie and my two children, James and Bettie."

The marriage between Pieter and Sannie was dissolved by divorce on 7 August 1998. Pieter married Mary on 19 September 1998 and died in a car crash on 28 October 1998.

You are consulted by James and Bettie who want to know what their rights under their late fathers's will are. Advise them and motivate your advice.

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

16 FEBRUARIE 2000

09:00-11:00

Totaal: [100]

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

ATTORNEYS' EXAMINATION

PART 3 ATTORNEY'S PRACTICE

16 FEBRUARY 2000

09:00-11:00

Total: [100]

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

VRAAG 1 [13]

Welke dokumente moet by die Registrateur van Maatskappye ingedien word om hom in staat te stel om 'n nuwe privaat maatskappy met beperkte aanspreeklikheid te registreer en om 'n Sertifikaat om Besigheid te begin, ten opsigte daarvan uit te reik?

In u antwoord moet u nie slegs die naam of nommer van die dokumente gee nie. U moet ook kortliks uiteensit wat die doel van elk is.

VRAAG 2 [28]

U word geraadpleeg deur die Verkoper en Koper van 'n Kafeebesigheid. Hulle deel u mee dat hulle ooreengekom het oor die meeste van die voorwaardes van die transaksie, maar dat die Koper 'n verband sal moet registreer oor sy huis om die koopprys te bekom en nie een van die partye 'n finale en bindende koopkontrak wil sluit voordat daar sekerheid is oor hierdie aspek nie. Die partye is ook nie seker watter voorsiening gemaak moet word in verband met die bepaling van die waarde van die voorraad in die besigheid op datum van oorname of hoe om te bepaal dat die Verkoper nie 'n soortelyke besigheid in die omgewing sal bedryf nie. Die partye vra u om konsepklousules handelende met die drie aspekte op te stel vir hulle oorweging om ingesluit te word in die finale koopkontrak wat regverding teenoor beide partye sal wees.

Stel die nodige klousules op.

VRAAG 3 [16]

U word geraadpleeg deur mnr X wat u meedeel dat hy en sy vrou in 'n duur huis, geleë in 'n stil en uitgesoekte buurt, woon. Hy deel u verder mee dat die huis langsaan onlangs verkoop is en dat sy nuwe buurman 'n nagklub op die perseel bedryf teenstrydig met die munisipale bywette en die titelvoorwaardes wat betrekking het op die eiendom. Sy probleem is dat die geraas wat tot vroeg in die oggend afkomstig is van die eiendom, ondraaglik is en dat die heen-en-weerryery van voertuie te alle tye, die lewe onmoontlik maak vir hom en sy vrou.

U kliënt verlang dat u 'n hofaanzoek moet bring en alle ander moontlike stappe moet doen om sy buurman te verhoed om met sy aktiwiteite voort te gaan. U adviseer dat enige optrede deur 'n brief voorafgegaan moet word waarin die stappe wat u kliënt sal doen, uiteengesit word. U kliënt aanvaar u advies en gee 'n opdrag om die nodige brief te skryf.

QUESTION 1 [13]

Which documents must be lodged with the Registrar of Companies together with the Memorandum and Articles of Association to enable him to register a new private company with limited liability and to issue a Certificate to Commence Business in respect thereof?

In your answer you must not only set out the name or number of each document but you must state shortly what the purpose of each is.

QUESTION 2 [28]

You are consulted by the Seller and the Purchaser of a Café business. They tell you that they have agreed most of the terms of the sale but that the purchaser will have to register a bond over his house to raise the purchase price and neither party wishes a final and binding sale to be concluded before certainty is obtained in this regard. They are also not certain what provision should be made to determine the value of the stock in the business on the take-over date or how to provide that the Seller will not conduct a similar business in the area. They ask you to draw draft clauses for their consideration which to be included in the deed of sale covering these three aspects which are fair to both parties.

Draft the necessary clauses.

QUESTION 3 [16]

You are consulted by Mr X who tells you that he and his wife live in an expensive house which he owns in a quiet and exclusive suburb. He further tells you that the house next door has recently changed hands and that his new neighbour is conducting a nightclub on the property contrary to the municipal bylaws and the conditions of title relating to the property. He tells you that his problem is that the noise coming from the property until all hours of the morning is unbearable and that the coming and going of motor vehicles at all times is making the life impossible for him and his wife.

Your client wishes you to bring a court application and take all the possible steps to stop his neighbour's activities. You advise him that these steps should be preceded by a letter setting out the steps your client intends taking. He accepts your advice and instructs you to send the letter.

Stel die nodige brief aan die buurman op waarin die stappe wat gedoen sal word, uiteengesit word. U mag enige ander denkbeeldige feite wat u nodig ag, gebruik.

Draw the necessary letter to the neighbour stating the steps which will be taken if his conduct is continued. You may make use of any other imagination facts you consider necessary.

VRAAG 4 [17]

QUESTION 4 [17]

Verduidelik die betekenis van die volgende:

Explain the meaning of the following:

- 4.1 Pro amico optree; (3)
- 4.2 Optree op 'n prokureur-en-eie-kliëntfooibasis; (3)
- 4.3 Optree op 'n gebeurlikheidsbasis; (5)
- 4.4 Koste de Bonis Propriis; (3)
- 4.5 'n Bevel dat koste koste in die geding moet wees. (3)

- 4.1 Acting pro amico; (3)
- 4.2 Acting on an attorney and own client fee basis; (3)
- 4.3 Acting on an contingency basis; (5)
- 4.4 Costs de Bonis Propriis; (3)
- 4.5 An order that the costs should be costs in the Cause. (3)

VRAAG 5 [16]

QUESTION 5 [16]

- 5.1 U het onlangs gekwalifiseer as 'n prokureur en het u eie eenmanspraktyk begin. 'n Vriend bied u 'n vennootskap in 'n rekenaarsbesigheid aan.
Mag u die aanbod aanvaar en voortgaan met u praktyk? Bespreek kortliks. (4)
- 5.2 Is dit professioneel korrek vir u, 'n prokureur, om 'n ongekwalifiseerde persoon wat ervare is met skuldinvorderings aan te stel om sonder u toesig die skuldinvorderings wat aan u firma toevertrou is, te behartig?
Bespreek kortliks die beginsels wat van toepassing is. (4)
- 5.3 Mag 'n prokureur 'n onderhoud voer met 'n getuie in 'n siviele saak wat deur die teenkant gedagvaar is om te getuig, indien hy van mening is dat daardie persoon se getuie is relevant mag wees tot sy kliënt se saak? Indien u antwoord bevestigend is, bespreek kortliks die prosedure wat u sal volg. (4)

- 5.1 You have just qualified as an attorney and have started your own one-man practice. A friend offers you a partnership in a computer business.
May you accept the offer and continue with your practice? Discuss briefly. (4)
- 5.2 Is it professionally acceptable for you, as an attorney, to appoint an unqualified person who is experienced in debt collections to deal with debt collections entrusted to your firm on his/her own without your supervision?
Discuss the principles applicable briefly. (4)
- 5.3 May an attorney interview a witness in a civil matter who has been subpoenaed by the other side if he believes that this person's evidence may be relevant to his client's case? If your answer is in the affirmative, discuss the procedure you would follow. (4)

5.4 U tree opnamens 'n kliënt ten opsigte van 'n beperkte tipe werk alleenlik. U word gevra deur 'n persoon om 'n aksie teen die eerste kliënt in te stel in verband met 'n skuldoorsaak wat niks te doen het met die werk wat u vir die eerste kliënt doen. **Mag u die mandaat aanvaar? Bespreek kortliks.** (4)

VRAAG 6 [10]

U word gekonsulteer deur 'n kliënt wat sy voertuig wil verkoop aan 'n koper wat onmiddellik 'n deposito kan betaal en die balans van die koopprys in 12 gelyke maandelikse paaielemente. U kliënt wil sy regte beskerm indien die koper versuim om sy paaielemente te betaal nadat die voertuig afgelewer is. U kliënt is ook bekommerd oor wat sal gebeur indien die voertuig beskadig of gesteel word voordat die koopprys ten volle betaal is.

Stel die klousules op om u kliënt te beskerm wat u dink ingesluit moet word in die koopooreenkoms.

5.4 You act for client in respect of a limited type of work only. You are requested by a person to institute an action against your first client in respect of a cause of action which is totally divorced from the type of work that you do for the first client. **Can you accept the mandate? Discuss briefly.** (4)

QUESTION 6 [10]

You are consulted by a client who wishes to sell his motor vehicle to a buyer who can pay a deposit immediately and the balance of the purchase price in 12 equal monthly installments. Your client wishes to protect his rights should the buyer default in his payments after delivery of the vehicle and should it be damaged or stolen before the purchase price is paid in full.

Draft the clauses which you consider should be included in the agreement of sale to protect your client.

PROKUREURSEKSAMEN

DEEL 4 BOEKHOU

16 FEBRUARIE 2000

14:00-16:00

Totaal: [100]

1. Die vrae mag in Afrikaans of Engels beantwoord word.
2. Kandidate mag sakrekenaars gebruik.
3. By beantwoording van vrae moet die betrokke inskrywings duidelik geïdentifiseer, omskryf en uiteengesit word.
4. Afsonderlike besigheids- en trustkasboeke, asook kliëntegrootboekrekeninge moet geopen word en moet nie gekombineer word nie. Joernaalinskrywings moet behoorlik beskryf en geïdentifiseer word.
5. Skryf asseblief slegs op die regterkantse bladsye.
6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep' as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.

ATTORNEYS' EXAMINATION

PART 4 BOOKKEEPING

16 FEBRUARY 2000

14:00-16:00

Total: [100]

1. The questions may be answered in English or Afrikaans.
2. Candidates may use calculators.
3. In answering the questions you should ensure that the relevant entries are clearly identified, narrated detailed.
4. Separate business and trust cash books and clients' ledger accounts must be opened and are not to be combined. Journal entries must be properly identified and narrated.
5. Please write only on the right-hand pages.
6. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this part.

VRAAG 1 [30]

- 1.1 **Definieer:**
- 1.1.1 BTW-Insetbelasting (2)
 - 1.1.2 BTW-Uitsetbelasting (2)
- 1.2 **Wanneer is 'n praktisyn verplig om as 'n BTW-ondernemer te registreer?** (2)
- 1.3 **Beskryf in besonderhede al die inligting wat op 'n trustkwitansie moet verskyn.** (8)
- 1.4 **Beskryf in besonderhede al die inligting wat op die teenblad van 'n trustjek moet verskyn.** (6)
- 1.5 **U kliënt betaal u prokureur-en-kliëntrekening vir dienste gelewer in 'n bestrede siviele aksie. U takseer u party-en-partykosterekening en die verweerder se prokureur betaal u die getakseerde koste.**
- 1.5.1 **In watter bankrekening sal u die betaling deponeer?** (2)
 - 1.5.2 **Beskryf hoe u aan u kliënt sal verreken.** (3)
- 1.6 **Definieer die term "Trustrekonsiliasie".** (5)

VRAAG 2 [40]

U korrespondent gee u opdrag in die volgende aangeleenthede:

1. Om R5 000 in te vorder van Enver vir sy kliënt Cassim. U hef 'n opdragfooi van R60. U betaal 'n opsporingsagent R200 uit u besigheidsrekening. Enver betaal R2 000 en u hef 'n invorderingsfooi van R200.
2. Om R2 000 in te vorder van Romeo vir sy kliënt Juliet. U hef 'n opdragfooi van R60 en aanmaningsbrief en dagvaardingsfooi van R200. Romeo betaal R1 000 en u hef 'n invorderingsfooi van R100.

QUESTION 1 [30]

- 1.1 **Define:**
- 1.1.1 Input VAT (2)
 - 1.1.2 Output VAT (2)
- 1.2 **When is a practitioner obliged to register as a VAT vendor?** (2)
- 1.3 **Describe in detail all the information that must be recorded on a trust receipt.** (8)
- 1.4 **Describe in detail all the information that must be recorded on the counterfoil of a trust cheque.** (6)
- 1.5 **Your client pays your attorney and client account for services rendered in a defended civil action. You tax your party and party bill of costs and the defendant's attorney pays you the amount of the taxed account.**
- 1.5.1 **Into which banking account will you deposit the payment?** (2)
 - 1.5.2 **Describe how you will account to your client.** (3)
- 1.6 **Define the term "Trust Reconciliation".** (5)

QUESTION 2 [40]

Your correspondent instructs you in the following matters:

1. To collect R5 000 from Enver for his client Cassim. You charge an instruction fee of R60. You pay a tracing agent R200 from your business account. Enver pays R2 000 and you charge a collection fee of R200.
2. To collect R2 000 from Romeo for his client Juliet. You charge an instruction fee of R60, and a letter of demand and summons fee of R200. Romeo pays R1 000 and you charge a collection fee of R100.

U word gevra om:

- 2.1 Die transaksies in u rekeningboeke aan te teken;
- 2.2 Die toegelate bedrag na u besigheidsrekening oor te plaas;
- 2.3 Volledig aan u korrespondent te verreken en 'n verrekeningsstaat op te stel.

Maak afsonderlike rekeninge oop vir elke transaksie. Geen voorsiening vir BTW is nodig nie. U en u korrespondent het ooreengekom op 'n toelaag van 20% op fooie.

VRAAG 3 [30]

U verteenwoordig mev Eagle in 'n eiendomstransaksie. Sy gee u opdrag om 'n verkoop-ooreenkoms op te stel ingevolge waarvan sy haar eiendom aan mnr Hawk verkoop vir R750 000, wat soos volg betaalbaar is:

1. 'n Kontantdeposito van R150 000 wat in trust gehou moet word totdat oordrag geneem word.
2. Die balans word verseker deur 'n eerste verband van R500 000 ten gunste van 'n bouvereniging en 'n tweede verband van R100 000 ten gunste van u ander kliënt, mnr Owl.

Die ooreenkoms bepaal dat die koper die oordragskoste, insluitend hereregte en verbandkoste van R50 000 sal betaal, terwyl die koste van R1 000 verbonde aan die opstel van die ooreenkoms gelykop verdeel sal word.

Op 4 Februarie 2000 teken die partye die ooreenkoms en mnr Hawk gee u twee tjeks ter waarde van R150 000 en R50 500 vir onderskeidelik die deposito, die pro forma-koste en sy deel van die koste verbonde aan die opstel van die ooreenkoms.

Op 5 Februarie 2000 word die hereregte van R35 000 betaal.

Op 8 Februarie 2000 stel u bank u in kennis dat mnr Hawk se tjek van R150 000 betaal is, maar dat die tjek van R50 500 onteer is.

Op 9 Februarie 2000 betaal mnr Hawk u R50 500 in kontant.

Op 10 Februarie 2000 verskaf die bouvereniging se transportbesorgers 'n waarborg aan u vir R500 000.

U hou die saldo van die koopsom, te wete R100 000, in trust vir mnr Owl.

You are required to:

- 2.1 Record the transactions in your accounting records;
- 2.2 Transfer whatever you are entitled to transfer, to your business account;
- 2.3 Account fully to your correspondent and prepare an accounting statement.

Open separate accounts for each matter. No provisions is to be made for VAT. You and your correspondent have agreed on an allowance of 20% on fees

QUESTION 3 [30]

You act for Mrs Eagle in a property transaction. She instructs you to draw a sale agreement in terms of which she sells her property to Mr Hawk for R750 000, payable as follows:

1. A cash deposit of R150 000 to be held in trust pending transfer.
2. The balance to be secured by a first mortgage bond in favour of a building society for R500 000 and a second mortgage bond in favour of your other client, Mr Owl, for R100 000.

The agreement provides for the conveyancing costs including transfer duty and bond costs of R50 000 to be paid by the purchaser and the costs of drawing the agreement of R1 000 to be shared equally.

On 4 February 2000 the parties sign the agreement and Mr Hawk gives you two cheques for R150 000 and R50 500 being the deposit and pro forma costs, and his share of the agreement costs.

On 5 February 2000 transfer duty of R35 000 is paid.

On 8 February 2000 your bank advises you that Mr Hawk's cheque for R150 000 has been paid but the cheque for R50 500 has been dishonoured.

On 9 February 2000 Mr Hawk pays you R50 500 in cash.

On 10 February 2000 the building society's conveyancers give you a guarantee of R500 000.

You hold the balance of the purchase price of R100 000 in trust for Mr Owl.

Op 15 Februarie 2000 word die oordrag en verbande geregistreer. U verreken aan mev Eagle en sluit 'n bedrag van R500 in as synde haar helfte van die kostes vir die opstel van die ooreenkoms.

U moet die bogemelde transaksies in die kasboeke, grootboeke, foiejoernaal en oordragjoernaal aanteken. Geen voorsiening moet gemaak word vir BTW nie.

On 15 February 2000 the transfer and bonds are registered. You account to Mrs Eagle and include an amount of R500 for her half share of the costs of the agreement.

You are required to record the above transactions in the cash book, ledgers, fees journal and transfer journal. No provision is to be made for VAT.