

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

12 FEBRUARIE 2002

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 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

12 FEBRUARY 2002

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 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 [12]

'n Ongetroude kliënt raadpleeg u en deel u mee dat hy hopeeloos insolvent is en boedel wil oorgee. Hy verwittig u dat hy die volgende bates besit:

1. Onroerende eiendom met 'n markwaarde van R450 000,00 waaroor daar 'n eerste verband geregistreer is. Die balans van die lening beloop tans R350 000,00.
2. Twee motorvoertuie, waarvan die waarde R100 000,00 en R150 000,00 onderskeidelik is en waarop afbetalingskoopkontrakte van toepassing is. Die bedrae verskuldig beloop R90 000,00 en R50 000,00 onderskeidelik.
3. Meubels en huishoudelike toebehore wat onbeswaard is ter waarde van R50 000,00.

U kliënt het borg gestaan by die bank vir skuld deur sy broer aangegaan en hierdie skuld is deur die bank opgeroep. Die uitstaande balans van hierdie skuld is R780 000,00. Hierbenewens het hy verskeie ander krediteure met eise ten bedrae van R25 000,00 en hy is ook aansienlik agterstallig met sy betalings aan die Ontvanger van Inkomste, aan wie hy R80 000,00 skuld.

Bespreek die verskillende stappe wat u u kliënt sal adviseer om te doen ten einde sy boedel oor te gee. Sonder om die nodige kennisgewing van mosie of ondersteunende beëdigde verklaring op te stel, sit uiteen watter bewerings sodanige beëdigde verklaring moet bevat met spesifieke verwysing na die toepaslike statutêre vereistes. Bespreek verder die benadering van die hof by beoordeling van die aansoek om 'n bevel soos aangevra, te verleen.

VRAAG 2 [13]

U kliënt gee u 'n dagvaarding uitgereik in die Hooggeregshof, Natal Provinsiale Afdeling. Die besonderhede van vordering bevat *inter alia* die volgende bewerings.

- (a) Eiser is John Smith, 'n meerderjarige sakeman woonagtig te Pinestraat 4, Pinetown, Natal.
- (b) Verweerder is Jack Jones, 'n meerderjarige pensionaris woonagtig te Bluffweg 7, Durban.
- (c) Op of omtrent 30 September 1998 het die eiser en verweerder, wat albei persoonlik opgetree het, 'n mondelinge koopkontrak gesluit.

QUESTION 1 [12]

You are approached by an unmarried client who informs you that he is hopelessly insolvent and wishes to surrender his estate. He informs you that he has the following assets:

1. Immovable property, the market value of which is R450 000,00 and which is subject to a first bond. The balance of the loan presently amounts to R350 000,00.
2. Two motor vehicles, the values of which are R100 000,00 and R150 000,00 respectively and which are subject to instalment sale agreements. The amounts owing amount to R90 000,00 and R50 000,00 respectively.
3. Furniture and other household effects to the value of R50 000,00 which are unencumbered.

Your client signed as surety to a bank in respect of a debt incurred by his brother and this debt has been called up by the bank. The amount outstanding in respect of this debt is R780 000,00. In addition he has various other creditors with claims amounting to R25 000,00 and he is also substantially in arrears with his payments to the Receiver of Revenue to whom he owes R80 000,00.

Discuss the various steps which you will advise your client to take in order to surrender his estate. Without drafting the necessary notice of motion or supporting affidavit, set out what such an affidavit should contain with specific reference to the statutory requirements applicable. Further discuss the approach that a court will adopt in deciding whether to grant an order as prayed.

QUESTION 2 [13]

Your client gives you a summons issued out of the High Court, Natal Provincial Division. The particulars of claim contain *inter alia* the following allegations.

- (a) Plaintiff is John Smith, an adult businessman resident at 4 Pine Street, Pinetown, Natal.
- (b) Defendant is Jack Jones, an adult male pensioner, resident at 7 Bluff Road, Durban.
- (c) On or about 30 September 1998 the plaintiff and the defendant both acting personally entered into an oral agreement of sale.

- (d) Ingevolge die genoemde mondelinge ooreenkoms het eiser aan verweerder te Durban 'n hoeveelheid bote vir gebruik by die bou van bote verkoop en gelewer.
- (e) Ingevolge die genoemde ooreenkoms was die koopprys betaalbaar op datum van lewering van die goedere en die goedere is op dieselfde dag gelewer.
- (f) Die ooreengekome koopprys vir die genoemde goedere, aldus verkoop en gelewer, was R180 000,00.
- (g) Nieteenstaande behoorlike aanmaning deur die eiser weier en/of versuim die verweerder om die genoemde bedrag aan die eiser te betaal.

Derhalwe smee eiser om vonnis teen verweerder vir:

- (a) betaling van die bedrag van R180 000,00;
- (b) rente daarop bereken vanaf 1 Julie 1997 *a tempora morae* tot datum van betaling;
- (c) koste van die geding;
- (d) verdere of alternatiewelike regshulp.

2.1 Die bogenoemde dagvaarding is gebrekkig. Spits u slegs toe op die bogenoemde bewerings en stel sodanige dokumente op wat nodig mag wees om die verweerder se regte te beskerm.

(8)

2.2 Daarbenewens deel die verweerder u mee dat die goedere defektief was en nie geskik vir die doel waarvoor dit aangekoop is nie. Stel die nodige pleit op die meriete op met inlywing van sodanige feite as wat nodig mag wees om die verweer volledig in die pleitstuk te openbaar.

(5)

VRAAG 3

[7]

U kliënt, die eienaar van 'n winkel, skakel u en deel u mee dat hy een van sy skuldenaars (wie se rekening R30 000 agterstallig is) na u kantoor toe gaan stuur. Die skuldenaar het aangebied om hierdie bedrag, met rente, af te betaal by wyse van maandelikse paaiemente van R5 000. Hierdie reëling is aanvaarbaar vir u kliënt mits die skuldenaar u kom sien en die gepaste dokument onderteken wat u kliënt in staat sal stel om by wanbetaling die paaiemente te verhaal, so spoedig moontlik as wat toelaatbaar is ingevolge regsprosedure, en verkieslik van die skuldenaar se werkgewer.

Stel die nodige dokument op vir ondertekening deur die skuldenaar in puntvorm, maar met weglating van die kopstuk.

- (d) In terms of the said oral agreement plaintiff sold and delivered to the defendant at Durban a quantity of bolts for use in building boats.
- (e) In terms of the said agreement payment of the purchase price of the goods was due on date of delivery and the goods were delivered on the same date.
- (f) The agreed purchase price in respect of the said goods sold and delivered was R180 000,00.
- (g) Notwithstanding due demand by plaintiff, defendant fails and/or refuses to pay the said sum to the plaintiff.

Wherefor plaintiff prays for judgment against defendant for:

- (a) payment of the sum of R180 000,00;
- (b) interest on the said sum from 1 July 1997 *a tempora morae* to date of payment;
- (c) costs of suit;
- (d) further and/or alternative legal relief.

2.1 The above summons is defective. Confining yourself only to the above allegations, draft such documents as may be necessary to protect the defendant's rights.

(8)

2.2 In addition thereto the defendant informs you that the goods were defective and not suitable for the purpose for which they had been bought. Draft the necessary plea on the merits to incorporate such facts as may be necessary to fully disclose the defence in that pleading.

(5)

QUESTION 3

[7]

Your client, the owner of a shop, phones you and informs you that he wishes to send one of his debtors to you (whose particular account is R30 000 in arrears). The debtor has offered to pay this amount together with interest in instalments of R5 000 per month. This arrangement is acceptable to your client if the debtor calls on you and signs the necessary document which will enable your client in case of default to take such steps as are legally enforceable to collect the payments, preferably from the debtor's employer.

Draft the necessary documents in point format but leaving out the heading for signing by the debtor.

VRAAG 4 [6]

U konsulteer met Vinesh Naidoo wie se ouers ses maande vantevore 'n skootrekenaar aan hom geskenk het vir sy 18de verjaardag om in sy universiteitsstudies te gebruik. Vinesh deel u mee dat sy rekenaar beskadig is toe dit in die parkeergebied geval het nadat 'n universiteitsprofessor teen hom gebots het. Die koste om die rekenaar te herstel, beloop R2 000. Hy het nie daarin geslaag om die kostes te verhaal nie. Hy gee u opdrag om dagvaardiging uit te reik.

- 4.1 **Beskryf die eiser soos u sou doen in 'n dagvaardiging.** (1)
- 4.2 **As u aanvaar dat daar geen ander relevante feite is nie, teen wie moet dagvaardiging uitgereik word?** (1)
- 4.3 **Indien verskyning om te verdedig aangeteken word, is u geregtig om aansoek te doen vir summiere vonnis? Motiveer u antwoord.** (2)
- 4.4 **Indien Vinesh u meedeel dat hy nie in staat is om u fooie te betaal nie, is daar enige ander aksie wat u aan hom kan voorstel ten einde sy skade te verhaal (behalwe om in die Landdroshof te dagvaar)?** (2)

VRAAG 5 [6]

U het 'n kennisgewing van belet in 'n landdroshofaksie aan die verweerder se prokureur afgelewer en die tyd waarin die verweerder moet pleit, het verstryk. Geen verweerskrif is ontvang nie en u kliënt wil vonnis verkry.

Wat staan u te doen om vonnis te verkry en watter dokumente moet by die hof liasseer word, waar:

- 5.1 **die aksie gebaseer is op 'n likwiede dokument?** (2)
- 5.2 **die aksie gebaseer is op 'n gelikwiedeerde geldsom?** (2)
- 5.3 **dit 'n aksie is vir skadevergoeding as gevolg van laster?** (2)

QUESTION 4 [6]

You are consulted by Vinesh Naidoo who's parents six months ago gave him a laptop computer for his 18th birthday to use in furtherance of his university studies. Vinesh informs you that the computer was damaged when it fell in the parking area after a university professor collided with him. The cost of repairing the computer amount to R2 000. He has been unable to collect this amount. He instructs you to proceed with the issue of summons.

- 4.1 **Describe the plaintiff as you would in the summons.** (1)
- 4.2 **If you accept that there are no other relevant facts, against whom must summons be issued?** (1)
- 4.3 **In the event of an appearance to defend being delivered, are you entitled to apply for summary judgement? Motivate your answer.** (2)
- 4.4 **If Vinesh informs you that he is not able to pay your fees is there another course of action which you could suggest to him to enable him to recover his damages (other than issuing summons in the Magistrate's Court)** (2)

QUESTION 5 [6]

You have delivered a notice of bar in a magistrate's court action to the defendant's attorney and the time period within which the defendant must plead has elapsed. No plea has been received and your client wishes to obtain judgement.

What must you do in order to obtain a judgement and which documents must be lodged at court where:

- 5.1 **the action is based on a liquid document?** (2)
- 5.2 **the action is based on a liquidated sum of money?** (2)
- 5.3 **the action is one for damages arising from defamation?** (2)

VRAAG 6 [6]

- 6.1 Tot op watter stadium in 'n geding mag 'n pleitstuk gewysig word? (2)
- 6.2 U kliënt, die verweerder in 'n saak teen wie summere vonnis aangevra word, wil nie op hierdie stadium sy verweer openbaar nie. Wat sal u hom adviseer om te doen om summere vonnis af te weer en om verlof om te verdedig te verkry? (2)
- 6.3 Mag u enige dokumente by die verhoor van 'n aksie in die landdroshof gebruik waar u kliënt nie versoek is om bloot te lê nie en nie blootgelê het nie? (2)

VRAAG 7 [4]

U tree op namens die MMF. Dit kom onder u aandag dat 'n eis wat deur die fonds ontvang is, ingedien is deur 'n assessor wat die eiser oortuig het om toe te laat dat hy die eis namens hom by die Fonds indien. Daar is ook tussen die eiser en assessor ooreengekom dat die assessor 15% van die kapitale bedrag ontvang wanneer die eis geskik word.

Hoe sal u die Fonds adviseer onder hierdie omstandighede met verwysing na die toepaslike artikels van die MMF Wet? Verskaf 'n volledige motivering vir u antwoord.

VRAAG 8 [7]

- 8.1 Watter dokumente moet by die MMF ingedien word en die MMF-eisvorm vergesel ten einde:
- (a) die eis van 'n weduwee en minderjarige kind te handhaaf waar hulle 'n verlies aan onderhoud gely het as gevolg van die dood van die man/broodwinner? (2)
- (b) aanspreeklikheid van die Fonds te bewys? (2)
- (c) die quantum van die eise te bewys? (2)
- 8.2 Hoe sal u die oorlede man se inkomste verdeel wanneer u die verlies van onderhoud wat sy familie gely het, uitwerk? (1)

QUESTION 6 [6]

- 6.1 Up to what stage in an action may a pleading be amended? (2)
- 6.2 Your client, the defendant in a matter against whom summary judgement is being sought, does not wish to disclose his defence at this stage. What would you advise him to do to avoid summary judgement being granted against him and to obtain leave to defend the action? (2)
- 6.3 May you use any documents at the trial of a matter in the magistrate's court where your client has not been requested to discover and has not discovered? (2)

QUESTION 7 [4]

You are acting on behalf of the RAF. It comes to your attention that a claim received by the Fund was submitted by an assessor who had approached the claimant and persuaded him to allow him to submit the claim on his behalf. It was also agreed between the claimant and the assessor that the assessor would be paid 15% of the capital when the claim is settled.

How would you advise the Fund in these circumstances with reference to the relevant provisions of the RAF Act? Motivate your answer fully.

QUESTION 8 [7]

- 8.1 What documents must be lodged with the RAF and accompany the MMF.1-Claim Form in order to:
- (a) establish the claim of a widow and minor child, who suffered a loss of support as a result of the death of the husband/breadwinner? (2)
- (b) establish the liability of the Fund? (2)
- (c) to prove the quantum of the claims? (2)
- 8.2 How will you apportion the deceased's income when calculating the loss of support his family has suffered? (1)

VRAAG 9 [2]

U kliënt is in 'n motorvoertuigongeluk betrokke. As gevolg hiervan is sy polshorlosie, bril en aktetas onherstelbaar beskadig.

Onder welke hoof van skadevergoeding kan u vir hierdie verlies van die MMF eis? Motiveer u antwoord.

VRAAG 10 [4]

Mnr Jones word erg beseer en word 'n parapleeg as gevolg van 'n motorbotsing wat plaasgevind het op 1 Oktober 2000. Hy sterf ses maande na die ongeluk as gevolg van die beserings wat hy opgedoen het daarin. Hy word oorleef deur sy vrou, sy seun wat self onderhoudend is en twee minderjarige kinders.

- 10.1 Wanneer begin verjaring loop ten aansien van die eise van die weduwee en minderjarige kinders?
- 10.2 Op watter datum moet die betrokke eisdokumente ingedien word ten einde verjaring van die eise te voorkom?
- 10.3 Sal u antwoorde op die vorige vrae verskil indien die eienaar of bestuurder van die ander voertuig wat in die ongeluk betrokke was nie geïdentifiseer kan word nie? Indien wel, hoe?

VRAAG 11 [2]

11.1 Dagvaarding is deur die Hooggeregshof uitgereik teen die MMF namens u kliënt, Joe Soap, vir betaling van skadevergoeding vir gelede en toekomstige mediese onkoste, verlies aan inkomste, verlies aan verdienvermoë en algemene skade vir pyn, lyding, gestremdheid en verminking. Kan 'n aansoek gebring word namens die eiser vir 'n tussentydse betaling en, indien wel, ten aansien van welke gedeelte van die eis?

11.2 Watter ander faktore moet bewys word voordat die Fonds aanspreeklik gehou kan word vir 'n tussentydse betaling?

VRAAG 12 [2]

U word geraadpleeg deur u kliënt wat u meedeel dat hy 'n passasier was op 'n motorfiets wat betrokke was in 'n botsing met 'n ander voertuig. U kliënt is beseer en het as gevolg van

QUESTION 9 [2]

Your client is involved in a motor vehicle accident. As a result thereof his wristwatch, spectacles and briefcase are damaged beyond repair.

Under which head of damages can you claim for this loss from the RAF? Motivate your answer.

QUESTION 10 [4]

Mr Jones is seriously injured and rendered a paraplegic in a motor collision that occurred on 1 October 2000. He dies six months after the accident as a result of the injuries sustained. He is survived by his wife, his son who is self supporting and two minor children.

- 10.1 When does prescription start to run in respect of the claims of the widow and the minor children?
- 10.2 By which date must the relevant claim forms be lodged to prevent prescription of the claims?
- 10.3 Would your answers to the above questions be different if it was not possible to identify either the owner or driver of the other vehicle involved in the collision? If so, how?

QUESTION 11 [2]

11.1 Summons has been issued out of the High Court against the RAF on behalf of your client, Joe Soap, for payment of damages in respect of past and future medical expenses, loss of income, loss of earning capacity and general damages for pain, suffering, disablement and disfigurement. May an application be brought on plaintiff's behalf for an interim payment and if so, in respect of what portion of the claim?

11.2 What other factors have to be established before the Fund can be held liable for an interim payment?

QUESTION 12 [2]

You are consulted by your client who advises you that he was a pillion passenger on a motorcycle which was involved in a collision with another vehicle. Your client was injured and has

die ongeluk skade gely. Is hy geregtig om te eis in terme van die MMFWet? Is daar enige spesiale voorwaardes ten opsigte van so 'n eis?

VRAAG 13 [3]

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

13.1 Het u kliënt 'n eis kragtens die MMFWet?

13.2 Indien die ander voertuig op 'n later stadium geïdentifiseer word, sal u antwoord op die vorige vraag verskil en indien wel, hoe?

VRAAG 14 [1]

Teen watter koers en vanaf watter datum mag rente geëis word ten opsigte van 'n eis vir skadevergoeding onder die MMFWet?

VRAAG 15 [8]

U kliënt is mnr A. Hy word daarvan aangekla dat hy 'n motorvoertuig ter waarde van R30 000.00 gesteel het. U opdrag is om aansoek te doen om borg.

15.1 Kan u hierdie aansoek buite hofure bring? Motiveer u antwoord. (2)

15.2 Tydens die eerste verskyning in die hof deel u die aanklaer mee dat u aansoek gaan doen om borg. Die aanklaer doen aansoek om 'n uitstel om die saak verder te ondersoek. Wat is die regsposisie? (2)

15.3 Wat is u kliënt se regsposisie indien die Staat borgtog teëstaan? Motiveer u antwoord. (4)

VRAAG 16 [17]

U kliënt is 'n negentienjarige damestudent en word skuldig bevind aan dronkbestuur. Twee mense is ernstig beseer as gevolg van haar bestuursvermoë op die betrokke dag. Sy het geen vorige veroordelings nie maar dit blyk asof die jolige

suffered damages as a result. Is he entitled to claim under the RAF Act. Are there any special provisions relating to such a claim?

QUESTION 13 [3]

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

13.1 Does your client have a claim in terms of the RAF Act?

13.2 If the vehicle is identified at a later stage, will this affect your answer to the foregoing question, and if so, in what respect?

QUESTION 14 [1]

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

QUESTION 15 [8]

Your client, Mr A, is charged with the theft of a motor vehicle valued at R30 000.00. You receive instructions to bring an application for bail on his behalf.

15.1 Can this application be brought outside court hours? Motivate your answer. (2)

15.2 At the first appearance in court you advise the prosecutor that you intend applying for bail. The prosecutor applies for a postponement for further investigation. What is the legal position? (2)

15.3 What is your client's legal position in the event of the State opposing bail? Motivate your answer. (4)

QUESTION 16 [17]

Your client, a nineteen year old woman student, is convicted of drunken driving. Two persons were seriously injured as a consequence of the manner in which she drove the vehicle on the day in question. She has no previous convictions but it

studentelewe 'n geneigdheid tot drankmisbruik by haar laat posvat het.

16.1 Dui volledig aan hoe u te werk sal gaan om voor te berei vir vonnisoplegging. U oogmerk is om die hof te oortuig om u kliënt, wat nie geld vir 'n boete het nie, te straf op 'n manier dat sy nie tronk toe sal gaan nie.

(10)

16.2 Ten spyte van u pogings word u kliënt gevonniss tot direkte gevangenisstraf van drie jaar sonder die keuse van 'n boete. Haar instruksies na oplegging van vonnis is om appèl aan te teken teen die vonnis en haar vrylating hangende bogemelde appèl te bewerkstellig.

16.2.1 Verduidelik hoe u te werk sal gaan om u opdrag uit te voer.

(3)

16.2.2 Stel die nodige dokumentasie ter ondersteuning van u aansoek op, met inbegrip van die kopstuk.

(4)

appears that as a consequence of a jovial student life she has developed an inclination to abuse liquor.

16.1 Discuss in detail how you will go about preparing for sentence. Your aim is to convince the court to impose a sentence on your client, who does not have money to pay a fine, that will keep her out of jail.

(10)

16.2 In spite of your efforts your client is sentenced to direct imprisonment of three years without the option of a fine. Immediately after sentence has been imposed you receive instructions to note an appeal against the sentence and to ensure that she is released from custody pending the appeal.

16.2.1 Explain how you will proceed to carry out these instructions.

(3)

16.2.2 Draft the relevant documentation in support of your application, including the heading.

(4)

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

12 FEBRUARIE 2002

14:00-16:15

Totaal: [100]

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PART 2 ESTATES

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VRAAG 1

[66]

Ben Johnson, 'n afgetrede boer, sterf op 30 Junie 2001. Hy was binne gemeenskap van goed met Marie getroud.

Die oordene was die eienaar van die plaas ONTSPAN, wat deur 'n Landbankwaardeerder vir R500 000,00 gewaardeer is. Die plaas is vanaf 1 Januarie 1997 vir 5 jaar verhuur aan Piet Verdriet. Die huurgeld is R30 000,00 per jaar betaalbaar 6 maandeliks vooruit.

Marie beweer dat die meubels en huishoudelike goedere (gewaardeer teen R50 000,00) haar eiendom is omdat dit aan haar geskenk is deur haar oorlede eggenoot. Sy het ook 'n spaarrekening in haar naam waarvan die saldo op 30 Junie 2001 R15 000,00 was.

Die opbrengs van 'n polis wat aan die eksekuteur betaal is, is R40 000,00 na aftrekking van die bedrag van 'n lening van R25 000,00 wat aan die versekeringsmaatskappy verskuldig was.

'n Polis van R500 000,00 is aan Marie, wat deur die oordene as begunstigde van die polis benoem is, betaal.

Die oordene het gedurende sy leeftyd 'n polis op die lewe van sy vrou uitgeneem. Hy het die premies betaal. Die afkoopwaarde van die polis op 30 Junie 2001 is R18 000,00.

'n Bedrag van R2 500,00 is verskuldig kragtens die finale inkomstebelastingaanslag.

Kragtens die bepalings van die gesamentlike testament van die oordene en sy nagelate eggenote vererf die gesamentlike boedel by die afsterwe van die eerssterwende as volg.

- a) Die plaas word aan hulle enigste seun James, wat by hulle ingewoon het, bemaak.
- b) Die restant van die boedel word aan die nagelate eggenote bemaak.
- c) Die langsliewende eggenote word as eksekuteur benoem.
- d) Die oordene se liggaam word aan die plaaslike universiteit geskenk vir mediese navorsing.

U is die familie se prokureur en word opgedra om die boedel te bereedder namens die eksekutrice wat besluit het om te adieer.

Stel die volledige Likwidasië- en Distribusierekening in behoorlike vorm op. Spesifiseer die administrasiekoste wat in totaal R28 500,00 beloop.

QUESTION 1

[66]

Ben Johnson, a retired farmer, died on 30 June 2001. He was married in community of property to his wife Marie.

The deceased was the owner of the farm ONTSPAN which has been valued by a Land Bank appraiser at R500 000,00. This farm has been let to Piet Verdriet in terms of a 5 year lease which commenced on 1 January 1997. Rental of R30 000,00 per annum is payable at 6 months intervals in advance.

Marie considers all the furniture and household effects (valued at R50 000,00) to belong to her, having been donated to her by her late husband. She also has a savings account in her name with a balance of R15 000,00 as at 30 June 2001.

Policy proceeds of R40 000,00 are paid to the executor, after deduction by the insurance company of a loan against the policy of R25 000,00.

A policy of R500 000,00 is paid to Marie whom the deceased had nominated as the beneficiary of this policy.

During his lifetime the deceased took out a policy on his wife's life. He paid the premiums. The surrender value of this policy as at 30 June 2001 is R18 000,00.

An amount of R2 500,00 is owing in terms of the final income tax assessment.

In terms of the joint will of the deceased and his surviving spouse their joint estate is disposed of upon the death of the first-dying as follows.

- a) The farm is bequeathed to their only child, James, who had been living with them.
- b) The residue of the estate is left to the surviving spouse.
- c) The surviving spouse is nominated as executor.
- d) The deceased's body is donated to the local university for medical research.

You, as the family's attorney, have been instructed to administer the estate on behalf of the executrix who has elected to adiate.

Draw the complete Liquidation and Distribution Account in proper form. Specify the administration expenses which amount in total to R28 500,00.

VRAAG 2 [16]

'n Man en vrou is binne gemeenskap van goed met mekaar getroud. Dit is hulle begeerte dat beide hulle boedels met die dood van die eersterwende op hulle enigste kind vererf onderworpe aan die lewenslange vruggebruik van die langlewende.

- 2.1 Stel die klousule in die gesamentlike testament op wat uitvoering gee aan die begeerte. (5)
- 2.2 Stel die adiasiesertifikaat op wat ooreenkomstig die bostaande feite vir die Meester van die Hooggeregshof aanvaarbaar sal wees. (11)

VRAAG 3 [18]

S sterf intestaat en word deur die volgende persone oorleef.

- a) Sy eggenote B met wie hy binne gemeenskap van goed getroud was.
- b) Sy geskeide eggenote C.
- c) Sy seuns D en E gebore uit sy huwelik met B.
- d) Sy seun F gebore uit sy huwelik met C.
- e) Sy buite-egtelike dogter G wat deur P aangeneem is.
- f) Sy aangenome dogter H.
- g) V, die weduwee van sy vooroorlede seun T.

Die netto waarde van die gesamentlike boedel is R800 000,00.

- 3.1 Gee 'n uiteensetting van hoe S se boedel sal vererf en die bedrag wat aan elke erfgenaam toegeken sal word? (15)
- 3.2 Indien F, 'n meerderjarige, afstand doen van sy erfenis, hoe sal S se boedel vererf? (3)

QUESTION 2 [16]

A husband and wife married out of community of property to each other, wish to leave their estates to their only child upon the death of the first dying of them, subject to the lifelong usufruct of the survivor.

- 2.1 Draft the clause in their joint will which gives effect to their wishes. (5)
- 2.2 Draft the adiation certificate which will be acceptable to the Master of the High Court in the circumstances set out above. (11)

QUESTION 3 [18]

S dies intestate and is survived by the following persons:

- a) His wife B to whom he was married in community of property.
- b) His divorced wife C.
- c) His sons D and E by his marriage to B.
- d) His son F by his marriage to C.
- e) His illegitimate daughter G who has been adopted by P.
- f) His adopted daughter H.
- g) V, the widow of his predeceased son, T

The net value of the joint estate is R800 000,00

- 3.1 How will S's estate devolve and what is the amount of each heir's inheritance? (15)
- 3.2 If F, a major, renounces his right to his inheritance how would S's estate devolve? (3)

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

13 FEBRUARIE 2002

09:00-11:15

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 2 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 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

13 FEBRUARY 2002

09:00-11:15

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 2 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 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 [10]

Sekere klousules is algemeen in talle kommersiële kontrakte. Stel 'n toepaslike domicilium-klousule op in 'n ooreenkoms vir die verkoop van 'n besigheid, waarin u handel met die betekening van proses en die gee van kennis per hand en deur middel van geregistreerde pos en faksimilee.

VRAAG 2 [5]

Watter basiese beginsels moet u as prokureur in ag neem wanneer u wil onttrek as prokureur van rekord namens 'n litigant in 'n siviele saak?

VRAAG 3 [3]

Welke dokumente mag u as prokureur in u besit hou totdat u kliënt u rekening ten volle betaal het?

VRAAG 4 [7]

U kliënt wil haar woonhuis verkoop en gee u opdrag om 'n koopkontrak op te stel. Sy vertel u dat verskeie eiendomsagente 'n mandaat van haar gehad het om 'n koper te vind maar dat die koper wat haar genader het, haar vertel het dat hy nie by 'n eiendomsagent van die eiendom verneem het nie, maar by 'n vriend.

Stel die klousule in die ooreenkoms op waarin gehandel word met die agent se kommissie ten einde die belange van beide partye te beskerm.

VRAAG 5 [12]

'n Kontrak vir die verkoop van 'n hardewarebesigheid as lopende saak moet 'n klousule bevat rakende voorraad en voorraadopname by afsluiting van besigheid op die dag voor die effektiewe datum. Stel die toepaslike klousule op waarin gehandel word met die waardasie van voorraad en nie-verkoopbare voorraad.

VRAAG 6 [15]

Is dit toelaatbaar vir 'n prokureur om 'n opdrag te weier? Is aanvaarding van 'n opdrag ooit verpligtend? Bespreek.

QUESTION 1 [10]

Certain clauses are common to many commercial contracts. Draft a suitable domicilium clause in an agreement for the sale of a business dealing with the service of process, and the service of notice by hand and by means of registered post and telefacsimile.

QUESTION 2 [5]

What are the basic principles which you, as an attorney, must take into account when you wish to withdraw as an attorney of record on behalf of a litigant in a civil case?

QUESTION 3 [3]

Which documents may you as an attorney retain in your possession until your client has paid your account in full?

QUESTION 4 [7]

Your client wants to sell her home and instructs you to prepare a deed of sale. She tells you that several estate agents had a mandate from her to find a purchaser but that the purchaser who approached her, told her that he was not introduced to the property by an estate agent but that he was informed about it by a friend.

Draft the clause in the agreement dealing with agent's commission in order to protect the interests of both parties.

QUESTION 5 [12]

A contract of sale of a hardware business as a going concern must include a clause relating to stock and stocktaking at the close of business on the day before the effective date. Draft the appropriate clause dealing with the valuation of stock and non-saleable stock.

QUESTION 6 [15]

Is it permissible for an attorney to refuse a mandate? Is acceptance of a mandate ever obligatory? Discuss.

VRAAG 7 [15]

U kliënt verwittig u dat hy gevra is en ingestem het om 'n bedrag van R10 000,00 aan sy swaer te leen en u kry opdrag om 'n toepaslike skulderkenning op te stel, waarin voorsiening gemaak word vir terugbetaling van die kapitaal en rente teen 10% per jaar by wyse van maandelikse paaieimente oor 'n twaalfmaande tydperk, met 'n verdere bepaling dat die volle uitstaande balans opeisbaar en betaalbaar sal word in die geval van versuim om enige paaieiment te betaal.

Stel die Skulderkenning op en voorsien self sodanige verdere bepalings as wat u toepaslik ag.

VRAAG 8 [8]

U ontvang opdrag van die verkoper en koper, twee natuurlike persone, om 'n koopkontrak op te stel in 'n eiendomstransaksie. Die betrokke eiendom is 'n woonhuis en die koopprys is R240 000,00.

Stel slegs die klousule op waarin u handel met die statutêre "afkoel"-periode ten gunste van die koper.

VRAAG 9 [10]

9.1 Wat is die algemene beginsels vervat in die Wet op Huweliksgoedere ten aansien van die regte van eggenotes getroud in gemeenskap van goedere om met die bates van die gemeenskaplike boedel te handel?

(5)

9.2 Noem ten minste vier uitsonderings op die voormelde algemene beginsels.

(5)

VRAAG 10 [5]

Beskryf kortliks hoe 'n ledebelang in 'n beslote korporasie oorgedra word vanaf een persoon na 'n ander.

VRAAG 11 [10]

11.1 U ontvang opdrag om 'n dagvaarding uit te reik op grond van 'n koopkontrak. Uit die dokument stel u vas dat die eis verjaar het.

QUESTION 7 [15]

Your client advises you that he has been asked and has agreed to lend an amount of R10 000,00 to his brother-in-law and he instructs you to prepare a suitable acknowledgement of debt, providing for repayment of the capital and interest at the rate of 10% per annum by way of monthly instalments over a 12 month period, with a further provision that the full outstanding balance will become due and payable in the event of failure to pay any instalment.

Draft the Acknowledgement of Debt, fabricating such further provisions as you consider appropriate.

QUESTION 8 [8]

You are instructed by the seller and purchaser, two natural persons, in a property transaction to draft the deed of sale. The property in question is a dwelling house and the purchase price is R240 000,00.

Draft only the clause dealing with the statutory "cooling off" period in favour of the purchaser.

QUESTION 9 [10]

9.1 What are the general principles contained in the Matrimonial Property Act as to the rights of the spouses married in community of property to deal with assets in the joint estate?

(5)

9.2 Name at least four exceptions to the aforesaid general principles.

(5)

QUESTION 10 [5]

Describe briefly how a member's interest in a close corporation is transferred from one person to another.

QUESTION 11 [10]

11.1 You are instructed to issue summons based on a deed of sale. From the document you discover that the claim has prescribed.

Is dit professioneel korrek om met die saak voort te gaan? Indien wel, hoe sal u die kliënt/eiser oor die situasie adviseer? Indien nie, welke advies kan u aan u kliënt gee?

(5)

11.2 U ontvang opdrag om 'n dagvaarding uit te reik ingevolge 'n koopkontrak. Alhoewel dit 'n eenvoudige saak is, veroorsaak u nalatiglik dat die eis verjaar. Hoe sal u optree om die probleem te hanteer?

(5)

Is it professionally correct to continue with the matter? If so, how will you advise the client/plaintiff of the position? If not, what advice can be given to your client?

(5)

11.2 You are instructed to issue summons in terms of a deed of sale. Although it is a straightforward matter, you negligently allow the claim to prescribe. How will you act in order to deal with the problem?

(5)

PROKUREURSEKSAMEN

DEEL 4 BOEKHOU

13 FEBRUARIE 2002

14:00-16:15

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 2 uur volg dan.

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 kliëntegrootboekrekening 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

13 FEBRUARY 2002

14:00-16:15

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 2 hours then follows.

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 section.

VRAAG 1 [20]

Op 30 September 2001 toon u trustkasboek 'n saldo van R65 000. Die bankstaat toon 'n saldo van R114 516 op dieselfde dag.

'n Vergelyking van die kasboek en die bankstaat vir September 2001 toon die volgende:

- (i) rente van R7 100 op die gunstige saldo is nog nie in die kasboek aangeteken nie.
- (ii) 'n tjek vir R1 800 wat op 8 Desember 2000 uitgereik is, is nog steeds nie by die bank vir betaling aangebied nie.
- (iii) tjeks ter waarde van R17 200 is nog nie by die bank vir betaling aangebied nie.
- (iv) 'n deposito van R3 114 wat op 28 September 2001 gemaak is, verskyn nie op die bankstaat nie.
- (v) 'n tjek vir R2 736 wat op die besigheidsbankrekening getrek is, is verkeerdelik deur die bank uit die trustrekening betaal.
- (vi) 'n onbetaalde tjek van R734 is nog nie in die kasboek aangeteken nie.
- (vii) 'n telegrafiese oorplasing van R30 000 van 'n kliënt is nog nie in die kasboek aangeteken nie.

Stel die volgende op:

- 1.1 die aanvullende kasboek vir September 2001; en
- 1.2 die bankrekonsiliasiestaat op 30 September 2001.

VRAAG 2 [30]

U korrespondent gee u opdrag om R4 000 te verhaal van Charles Glass, namens sy kliënt Hennies Skoenwinkel. Die volgende handeling word verrig ter uitvoering van die opdrag.

- (i) U reik 'n dagvaarding uit en debiteer fooie van R270.
- (ii) U betaal die Balju se koste van R150.
- (iii) Charles Glass betaal die volle kapitale bedrag tesame met koste.

Debiteer die fooie waarop u geregtig is. Maak voorsiening vir BTW. Die gewone eenderde-toelaag op fooie is van toepassing.

QUESTION 1 [20]

Your trust cash book balance at 30 September 2001 reflected a balance of R65 600. The bank statement balance at the same date was R114 516.

A comparison of the cash book and the bank statement for September 2001 reveals the following:

- (i) interest of R7 100 on the favourable balance had not been entered in the cash book.
- (ii) a cheque for R1 800 which was issued on 8 December 2000 has still not been presented for payment to the bank.
- (iii) cheques totalling R17 200 have not yet been presented for payment to the bank.
- (iv) a deposit of R3 114 made on 28 September 2001 is not reflected on the bank statement.
- (v) a cheque for R2 736 drawn on the business banking account has been erroneously paid by the bank from the trust account.
- (vi) an unpaid cheque of R734 has not been entered in the cash book.
- (vii) a telegraphic transfer of R30 000 from a client has not been entered in the cash book.

You are required to prepare:

- 1.1 the supplementary cash book for September 2001; and
- 1.2 the bank reconciliation statement at 30 September 2001.

QUESTION 2 [30]

You are instructed by your correspondent to recover R4 000 from Charles Glass on behalf of his client Hennies Shoe Store. In executing the mandate the following actions take place.

- (i) You issue summons and debit fees of R270.
- (ii) You pay the Sheriff's charges of R150.
- (iii) Charles Glass pays the full capital plus costs.

Debit the fees that you are entitled to. Make provision for VAT. The usual one third allowance on fees is applicable.

Teken bogenoemde transaksies in u rekeningboeke aan en verreken aan u korrespondent deur 'n verrekeningstaat op te stel.

You are required to record the above transactions in your books of account and to account fully to your correspondent, by preparing an accounting statement.

VRAAG 3 [40]

QUESTION 3 [40]

U kliënt, mnr Koper, konsulteer u in verband met die koop van 'n huis wat hy onderhandel het om van mnr Verkoper te koop vir R500 000. Hy het R50 000 as deposito beskikbaar. Die bouvereniging het ingestem tot 'n verband van R300 000. Hy vra u om 'n tweede verband vir R150 000 te reël. U nader u kliënt, mnr Lener, namens wie u R200 000 op trust hou, en hy stem in om die bedrag op sekuriteit van 'n tweede verband uit te leen. Alle transport- en verbandkoste is deur die koper betaalbaar.

Your client Mr Purchaser consults you about the purchase of a home which he has negotiated to purchase from Mr Seller for R500 000. He has R50 000 available as a deposit. The building society has agreed to grant him a bond for R300 000. He asks you to arrange a second bond for R150 000. You speak to your client Mr Lender who has R200 000 in your trust account. Mr Lender agrees to advance the money on registration of a second bond. All costs of registration of transfer and bond are to be paid by the purchaser.

Hieronder is die betrokke besonderhede.

The following are the details.

- Julie 06 Mnr Koper betaal u die deposito van R50 000 kontant en R25 000 per tjek vir oordrag- en verbandkoste.
- 07 U ontvang die bouverenigingwaarborg vir R300 000.
- 08 U betaal hereregte van R18 000.
- 11 U belê R50 000 in 'n bouvereniging ten voordeel van die koper.
- 11 U belê R200 000 wat u in trust vir mnr Lener hou in 'n bouvereniging ten voordeel van mnr Lener.
- 26 Die oordrag en verbande word geregistreer.
- 26 U verreken aan mnr Verkoper en mnr Koper. U debiteer mnr Koper met R200 fooie en mnr Lener met R300 fooie. U ontvang R5 000 rente namens mnr Koper en R10 000 namens mnr Lener.

- July 06 Mr Purchaser pays you the deposit of R50 000 in cash and R25 000 by cheque for the transfer and bond costs.
- 07 You receive the building society guarantee for R300 000.
- 08 You pay transfer duty of R18 000.
- 11 You invest the R50 000 in a building society for the benefit of the purchaser.
- 11 You invest R200 000 held in trust for Mr Lender in a building society account for the benefit of Mr Lender.
- 26 The transfer and bonds are registered.
- 26 You account to Mr Seller and Mr Purchaser, debiting Mr Purchaser a fee of R200 and Mr Lender a fee of R300. You receive R5 000 interest for Mr Purchaser and R10 000 for Mr Lender.

U moet die inskrywings in u trust- en besigheidsrekeningboeke doen. Afsonderlike rekeninge moet geopen word vir mnr Koper en mnr Lener. Plaas die bedrag waarop u geregtig is, oor na die besigheidsbankrekening. Geen voorsiening vir BTW is nodig nie.

You are required to make all the entries in your trust and business books of account. Open separate accounts for Mr Purchaser and Mr Lender. Transfer the amount you are entitled to to your business banking account. No provision need be made for VAT.

VRAAG 4 [10]

QUESTION 4 [10]

4.1 Verduidelik die begrippe:

4.1 Explain the terms:

- 4.1.1 uitsetbelasing
- 4.1.2 insetbelasting

- 4.1.1 output tax
- 4.1.2 input tax

(2)

(2)

- | | | | | | |
|-----|--|-----|-----|--|-----|
| 4.2 | Wat is die doel van 'n foiejoernaal? | (1) | 4.2 | What is the purpose of a fees journal? | (1) |
| 4.3 | Mag twee prokureurs ooreenkom op 'n toelaag van slegs 15%? | (1) | 4.3 | May two attorneys agree on an allowance of 15% only? | (1) |
| 4.4 | Wat is die doel van 'n trustproefbalans? | (1) | 4.4 | What is the purpose of a trust trial balance? | (1) |
| 4.5 | Verduidelik die verskil tussen 'n belegging kragtens artikel 78(2A) en artikel 78(2)(a). | (2) | 4.5 | Explain the difference between an investment made in terms of section 78(2A) and section 78(2)(a). | (2) |
| 4.6 | Hoe word 'n foutiewe debietinskrywing in die grootboek reggestel? | (1) | 4.6 | How do you correct an incorrect debit entry in the ledger? | (1) |
| 4.7 | Mag die joernaal gebruik word om 'n foutiewe inskrywing in die kasboek reg te stel? | (1) | 4.7 | May the journal be used to correct an entry in the cash book? | (1) |
| 4.8 | Mag 'n prokureur 'n "KONTANT"-trusttjek uitreik ter betaling van borggeld? | (1) | 4.8 | May an attorney issue a "CASH" cheque from trust to pay bail? | (1) |