

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

18 FEBRUARY 2003

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

18 FEBRUARY 2003

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]

1.1 Reël 18 van die Hooggeregshofreëls het betrekking op pleitstukke in die algemeen. Met betrekking tot sake waarin 'n Eiser dagvaar vir skade bevat die Reël sekere spesifieke vereistes waaraan die besonderhede van vordering moet voldoen. Lys hierdie vereistes.

(5½)

1.2 Wat is die effek van nie nakoming van Reël 18?

(1)

1.3 U tree vir 'n Verweerder op wie beteken is met 'n dagvaarding, wat nie voldoen aan die bepalings van Reël 18 nie. Lys die stappe wat u sal doen om u kliënt se regte te beskerm.

(2)

Stel die dokument op wat die laaste stap in die proses verteenwoordig, in die veronderstelling dat die Eiser nie stappe gedoen het om die defek reg te stel nie. Geen ondersteunende eedsverklaring hoef deur u opgestel te word nie. Gebruik u eie feite soos wat nodig mag wees om u antwoord op te stel.

(3½)

VRAAG 2 [10]

U kliënt, Mnr John Jones, deel u mee dat hy goedere ten bedrae van R200 000 verkoop en gelewer het aan 'n Helmut Schröder, 'n sakeman woonagtig en gedomisileerd te Hochstrasse 5, Berlyn, Duitsland. Die koopsom is opeisbaar en betaalbaar maar is nie betaal nie. U lig Jones in dat ons houe nie jurisdiksie het om die aangeleentheid aan te hoor nie. Twee weke later lig u kliënt u in dat ABC (Edms) Bpk, 'n Suid-Afrikaanse maatskappy wat handeldryf Pretoria, 'n bedrag van R120 000 aan die Duitser verskuldig is.

U deel gevolglik u kliënt mee dat u nou in staat is om voort te gaan.

2.1 Wat word die eerste verrigtinge wat u van voorneme is om in te stel, genoem?

(½)

2.2 Maak u van die lang of kort vorm Kennisgewing van Mosie gebruik om die proses in werking te stel?

(½)

2.3 Op wie word die Kennisgewing van Mosie beteken?

(½)

2.4 Wie teken die Kennisgewing van Mosie?

(½)

2.5 Stel die funderende eedsverklaring op. Sorg dat u al die nodige bewerings maak ten einde die bevel te verkry. Sluit die bedes in. Laat die kopstuk weg.

(8)

QUESTION 1 [12]

1.1 Rule 18 of the Rules of The High Court relates to pleadings generally. With regard to matters in which a Plaintiff sues for damages, the Rule contains certain specific requirements, which must be complied with in the particulars of claim. List these requirements.

(5½)

1.2 What is the effect of non-compliance with Rule 18?

(1)

1.3 You act for a Defendant who is served with a summons, which does not comply with the provisions of Rule 18. List the steps that you will take to protect your client's rights.

(2)

1.4 Draft the document which is the last step in the process, assuming that the Plaintiff has not taken steps to rectify the defect. No supporting affidavit is required. Use such imaginary facts as may be necessary to draft your answer.

(3½)

QUESTION 2 [10]

Your client, Mr John Jones, informs you that he has sold and delivered goods to the value of R200 000 to one Helmut Schröder a businessman resident and domiciled at 5 Hochstrasse, Berlin, Germany. The purchase price is due and payable but has not been paid. You inform Jones that our courts do not have jurisdiction to entertain the claim. Two weeks later your client informs you that the German is owed an amount of R120 000 by a South African company ABC (Pty) Ltd which trades in Pretoria.

You accordingly advise your client that you can now proceed.

2.1 What are the initial proceedings you propose instituting called?

(½)

2.2 Do you use the long or the short form of Notice of Motion to institute the proceedings?

(½)

2.3 On whom do you serve the Notice of Motion?

(½)

2.4 Who will sign the Notice of Motion?

(½)

2.5 Draw the founding affidavit including all the allegations necessary to obtain an order and include the prayers. Omit the heading.

(8)

VRAAG 3 [3]

Dui aan of die volgende stellings waar of vals is. U hoef nie u antwoorde te motiveer nie.

- 3.1 Wanneer 'n verweerder 'n aansoek om summere vonnis teenstaan kan hy:
a. of 'n opponerende eedsverklaring liasseer waarin hy 'n bona fide verweer uiteensit, of
b. sekuriteit stel vir koste (1)
- 3.2 Partye wat van voorneme is om 'n egskeidingsgeding in te stel bereik 'n ooreenkoms oor al die geskiispunte en daar is niks in dispuut met betrekking tot die verboddeling van die huwelik, beheer en toesig, onderhoud, verdeling van die gemeenskaplike boedel of koste nie. Hulle mag derhalwe nou van die aansoekprosedure gebruik maak. (1)
- 3.3 Dagvaarding vir 'n gelikwedeerde geldsom is uitgereik en beteken op 'n verweerder. Die dies om verskyning aan te teken het verstryk. Alvorens die eiser aansoek kan doen vir vonnis by verstek, moet hy eers kennis aan die verweerder gee ten einde die audi alteram partem-reël na te kom. (1)

VRAAG 4 [10]

Identifiseer die foute of weglatings wat voorkom op die hieropvolgende sigblad van 'n dagvaarding.

Uitgereik deur Saak Nr. 1/2002 VORM 2
J. Ntuli Datumstempel R20 INKOMSTESÊL
Klerk van die Hof

No.2 DAGVAARDING WAARDEUR AKSIE BEGIN WORD (GEWOON)
Uitgeneem deur
JOHN CITIZEN INGELYF
1STE VLOER OOSGEBOU
OOSSTRAAT 123 JOHANNESBURG
POSADRES: POBOS 1000 JOHANNESBURG
DX 101 JOHANNESBURG TELEFOON 3011010 FAX 3011010
John Citizen Ingelyf
Handtekening van Eiser se Prokureur
Verwysing: Pete Smith

In die Landdroshof vir die Distrik PIETERMARITZBURG gehou te PIETERMARITZBURG

tussen

S.A. BANKS BEPERK Eiser

en

MNR. A. B. SALMON Verweerder

AAN DIE BOGENOEMDE VERWEERDER; minderjarige man, in diens van Die Durban City Travellers Bureau, Martin Westgebou, Smithstraat, DURBAN,

en wie se verdere besonderhede onbekend vir die eiser is

QUESTION 3 [3]

Indicate whether the following statements are true or false. You need not motivate your answers.

- 3.1 When resisting an application for summary judgment a defendant can
a. file an opposing affidavit, setting out a bona fide defence, or
b. furnish security for costs (1)
- 3.2 Parties who wish to institute divorce proceedings have reached a settlement on all the issues and no disputes exists regarding the breakdown of the marriage, custody, maintenance, division of the joint estate or costs. They may now use the application procedure. (1)
- 3.3 Summons in which a liquidated amount of money is claimed was issued and served on a defendant. The dies to enter an appearance to defend have expired. Before the plaintiff can apply for default judgment he must first give notice to the defendant to conform with the audi alteram partem rule. (1)

QUESTION 4 [10]

Identify the errors or omissions that have been made on the attached face of a summons.

Issued by Case No: 1/2002 FORM 2
J. Ntuli Date Stamp R20 REVENUE STAMP
Clerk of the Court

No.2 SUMMONS COMMENCING ACTION (ORDINARY)
Sued out by
JOHN CITIZEN INCORPORATED
1ST FLOOR EAST BUILDING
123 EAST STREET JOHANNESBURG
POSTAL ADDRESS: PO BOX 1000 JOHANNESBURG
DX 101 JOHANNESBURG TELEPHONE 3011010 FAX 3011010
John Citizen Incorporated
Signature of Plaintiff's Attorney
Refer To: Pete Smith

In the Magistrate's Court for the District of PIETERMARITZBURG held at PIETERMARITZBURG

between

S.A. BANKS LIMITED Plaintiff

and

MR. A. B. SALMON Defendant

TO THE ABOVE NAMED DEFENDANT; Minor Male, employed by The Durban City Travellers Bureau, Martin West Building, Smith Street, DURBAN,

and whose further particulars are to the plaintiff unknown

DEEL 1
HOFPROSEDURES
[100]

PART 1
COURT PROCEDURES
[100]

U word hiermee gedagvaar dat u binne 5 dae van die betekening van hierdie dagvaarding aan die Klerk van voormelde Hof en ook die eiser of sy prokureur by die adres hierin gespesifiseer, 'n skriftelike kennisgewing lewer of sorg dat dit gelewer word van u voorneme om hierdie aksie te staan en antwoord op die eis van die eiser, S.A. Banke Beperk, wat besigheid bedryf op die Grondvloer, Bank Arcade, Kaapstad, die eiser hierin, besonderhede waarvan hieronder geëndosseer is.

(1) Besonderhede

- (a) Eiser se eis teen die verweerder is vir betaling van die bedrag van R150 000,00 synde die bedrag verskuldig deur die verweerder vir geld uitgeleen gedurende ongeveer Januarie 1996, welke bedrag die verweerder, ten spyte van eise, versuim het om te betaal.
- (b) PLUS rente teen 35% op R150 000,00 vanaf 1 Januarie 1996 tot datum van betaling.

Derhalwe is eiser se bede vir uitspraak teen die verweerder in die vermelde bedrag plus rente plus kostes.

Koste, as die aksie nie verdedig word nie, sal soos volg wees:-

	Dagvaarding	Vonnis
Prokureurskoste	R277,00	R233,00
Hofgelde	R20,00	R
Geregsbodegelde	R	R
Geregsbodegelde by heruitreiking	R	R
Reël 33(23) uitbetalings (BTW)	R 38,78	R 32,62
	TOTAAL	TOTAAL

(Aanvaar al die vereiste kennisgewings verskyn op die rugkant van die dagvaarding).

VRAAG 5 [10]

U tree op vir 'n winkelleienaar wat gedagvaar word vir skadevergoeding in die Landdroshof, voortspruitend uit persoonlike beserings deur 'n bewering deur 'n eiser opgedoen wat gegly en geval het op 'n nat plas in u kliënt se winkel.

- 5.1 Lys die dokumente wat die eiser se prokureur moet lusseer voor die verhoor ten einde in staat te wees om getuigenis te lei om die quantum van die eiser se eis vas te stel. (3)
- 5.2 U kliënt deel u mee dat hy nie die integriteit van die mediese praktisyn wat die eiser gespreek het, vertrou nie en dat hy vermoed dat die praktisyn en die eiser saamsweer om die erns van die eiser se beserings op te blaas. Welke stappe behoort u te doen om voor te berei om hierdie aangeleentheid tydens die verhoor te hanteer? (3)
- 5.3 U kliënt lig u in dat die vloer in die gedeelte van die winkel waar die eiser geval het intussen verander is, maar hy het voor die verandering foto's daarvan geneem. U is van mening dat as die hof die foto's sou sien, dit sal toon dat die

You are hereby summoned that you do within 5 days of the service of this summons deliver or cause to be delivered to the Clerk of the aforesaid Court and also the plaintiff or his attorney, at the address specified herein, a notice in writing of your intention to defend this action and answer the claim of the plaintiff, S.A. Banks Limited, carrying on business at Ground Floor, Bank Arcade, Cape Town, the plaintiff herein, particulars whereof are endorsed hereunder.

(1) Particulars

- (a) Plaintiff's claim against the defendant is for payment of the sum of R150 000,00 being the amount due by the defendant for money lent during or about January 1996, which amount despite demand defendant has failed to pay.
- (b) PLUS interest at 35% on R150 000,00 from 1 January 1996 to date of payment.

Wherefore plaintiff prays for judgment against the defendant in the said sum plus interest plus costs.

Costs, if the action is undefended, will be as follows:-

	Summons	Judgment
Attorney's charges	R277,00	R233,00
Court fees	R20,00	R
Sheriff's fees	R	R
Sheriff's fees on re-issue	R	R
Rule 33(23) disbursements (Value added tax)	R 38,78	R 32,62
	TOTAL	TOTAL

(Assume all the required notices appear on the reverse of the summons).

QUESTION 5 [10]

You act for a shopkeeper who is being sued for damages in the Magistrate's Court arising from personal injuries allegedly suffered by a plaintiff who slipped and fell on a wet patch in your client's shop.

- 5.1 List the documents that the plaintiff's attorney will have to file before the hearing in order to be able to lead evidence to establish the quantum of the plaintiff's claim. (3)
- 5.2 Your client tells you that he is suspicious of the integrity of the medical practitioner that the plaintiff has consulted and he suspects that the practitioner and the plaintiff may have conspired with each other to exaggerate the severity of the plaintiff's injuries. What steps ought you to take to prepare to deal with this matter at the trial? (3)
- 5.3 Your client tells you that the floor in the part of the shop in which the plaintiff fell has since been altered but before it was altered he took photographs of it. You feel that if the court were to see the photographs it would show that the plaintiff's

discont

eiser se eis onwaarskynlik is. Watter stappe sal u doen om die foto's te gebruik in die hantering van u kliënt se saak? (2)

5.4 Indien nóg die eiser nóg sy regsverteenwoordiger op die dag en tyd wat vir die verhoor bepaal is, by die hof opdaag, welke bevel moet u die hof vra om uit te reik? (2)

VRAAG 6 [15]

U word geraadpleeg deur mnr Koos Geduld (u kliënt) wat 'n dagvaarding aan u oorhandig waarkragtens hy deur Goeie Vriende Beleggings BK aangespreek word vir betaling van skadevergoeding voortspruitend uit 'n motorbotsing. Die besonderhede van vordering is soos in Aanhangsel A (hieronder uiteengesit). U kliënt deel mee dat hy die bestuurder was van 'n Toyota Conquest motorvoertuig met registrasienommer CAW123 wat aan sy werkgewer mnr Jan Smit, 'n slagter van Hoofstraat 5, George, behoort. Ten tye van die botsing het u kliënt die vermelde voertuig gebruik vir privaatdoeleindes. Volgens u kliënt was die ander voertuig wat in die botsing betrokke was bestuur deur mnr O N Geluk, 'n sakeman van Stasieweg 10, George wie die voertuig van die eiser geleen het vir privaatdoeleindes.

Volgens u kliënt het die botsing plaasgevind by die kruising soos in die besonderhede van vordering vermeld wat 'n onbeheerde kruising is. Hy was egter reeds binne die kruising toe die ander voertuig met die regtersy van die Toyota Conquest bots en hy glo dat die botsing grootliks veroorsaak is deur die nalatigheid van die vermelde mnr O N Geluk. U opdrag is om die saak te verdedig en u kliënt te adviseer ten opsigte van sy regte.

6.1 Stel 'n versoek om nadere besonderhede tot Eiser se besonderhede van vordering op. Meld slégs die naam van die dokument maar laat die formele kopstuk en slot daarvan weg. (7)

6.2 U adviseer u kliënt dat hy ingevolge die bepalings van artikel 2(2)(b) van die Wet op Verdeling van Skadevergoeding, Wet 34 van 1956, kennis aan 'n mededader wat nie in die aksie aangespreek word nie, kan gee waarop sodanige mededader tot die aksie kan toetree. U word versoek om sodanige kennisgewing aan die betrokke persoon te stuur.

6.2.1 Stel die kennisgewing op met inagneming van die feite hierbo vermeld en uiteengesit in die aangehegte besonderhede van vordering. Laat die formele kopstukke en slot weg. (6)

6.2.2 Op watter stadium van die verrigting moet sodanige kennisgewing aan 'n betrokke mededader gegee word? (2)

A ^W claim is improbable. What steps would you take to use the photographs in the conduct of your client's case? (2)

5.4 If, at the date and time on which the matter has been set down for trial, neither the plaintiff nor his legal representative attend court, what order should you ask the court to make? (2)

*abs from motion
- intro (2) → dit is die (2)*

QUESTION 6 [15]

You are consulted by Mr Koos Geduld (your client) who hands you a summons in terms whereof he is sued by Goeie Vriende Beleggings BK for payment of damages arising from a motor accident. The particulars of claim appears from annexure "A" hereto (set out hereunder). Your client advises you that he was the driver of a Toyota Conquest motor vehicle registration number CAW123, the property of his employer, Mr Jan Smit, a butcher of 5 Hoof Street, George. At the time of the collision your client was using the vehicle for private purposes. According to your client the other vehicle CAW567 which was involved in the accident was driven by Mr O N Geluk, a businessman of 10 Stasie Road, George, who had borrowed the vehicle from the Plaintiff for private use.

According to your client the collision occurred at the intersection referred to in the particulars of claim. The intersection was an uncontrolled one. He had already entered the crossing when the other vehicle collided with the right side of the Toyota Conquest and he believes that the collision was largely caused by the negligence of the said Mr O N Geluk. Your instructions are to defend the action and to advise your client of his rights.

6.1 Draft a request for further particulars to Plaintiff's particulars of claim. Mention the name of the document but do not draft the formal heading or conclusion. (7)

R 16 w^o f 16 (7)

6.2 You advise your client that in terms of section 2(2)(b) of the Apportionment of Damages Act No. 34 of 1956, notice may be given to a joint wrongdoer who has not been joined in the action in terms whereof such joint wrongdoer can intervene in the action. You are requested to draw the notice and send it to the relevant person.

6.2.1 Draft the notice bearing in mind the facts referred to above and the facts as they appear from the annexed particulars of claim. Leave out the formal headings and conclusion. (6)

6.2.2 At what stage of the proceedings must such notice be given to the joint wrongdoer? (2)

B y j m t

AANHANGSEL "A"

BESONDERHEDE VAN EIS

1. Die Eiser is Goeie Vriende Beleggings BK, 'n beslote korporasie behoorlik geregistreer ingevolge die bepalings van die Wet op Beslote Korporasies No 69 van 1984, met geregistreerde adres as Yorkweg 50, George.
2. Die Verweerder is Koos Geduld, 'n volwasse man wie se verdere besonderhede nie aan die Eiser bekend is nie, woonagtig le Bothastraat 60, George.
3. Op of omtrent 1 Maart 1992 en by of naby die kruising van Berg- en Breëstraat, George, was 'n motorvoertuig, registrasienommer CAW123, op daardie tydstip bestuur deur die Verweerder, betrokke in 'n botsing met 'n Opel Kadett Cub-motorvoertuig, registrasienommer CAW567, die eiendom van die Eiser.
4. Genoemde botsing is veroorsaak deur die uitsluitlike nalatigheid van die Verweerder.
5. As gevolg van genoemde botsing het Eiser skade in die bedrag van R9 200,00 (BTW ingesluit) gely.
6. Die Verweerder is regtens aanspreeklik vir die betaling aan Eiser van genoemde skadevergoeding, maar ten spyte van vordering, weier of versuim hy om genoemde bedrag aan die Eiser te betaal.

Derhalwe vra Eiser uitspraak teen die Verweerder vir :-

1. Betaling van die bedrag van R9 200,00;
2. Rente daarop teen 15.5% per jaar;
3. Koste van aksie

VRAG 7

[9]

U is aangestel as 'n landdros in 'n siviele hof in die platteland. Die saak waarin u moet uitspraak gee, is 'n aksie vir voorlopige vonnis gegrond op 'n gedishonoreerde tjek vir R100 000.00 deur die verweerder, JACOBUS BOER, getrek ten gunste van die eiser, BEST FERTILIZER MANUFACTURERS [EDMS] BPK.

J Boer, in sy opponerende eedsverklaring, erken dat hy die tjek ten gunste van die eiser getrek het en betaling van die tjek gestop het. Hy verduidelik dat die tjek gegee is as die koopprys vir kunsmis wat hy van die eiser gekoop het. Hy meld dat direk na die kunsmis op sy plaas gelewer is en hy sy tjek oorhandig het, het hy die kunsmis ondersoek en bevind dat dit vol klippe was. Hy beweer dat die kunsmis gevolglik nie geskik was vir die doel waarvoor dit verkoop is nie en dat dit nie in 'n kunsmisprinkelaar gebruik kan word nie. Hy sê verder dat die standaardmetode om kunsmis te versprei, is deur gebruik te maak van 'n sprinkelaar en as die kunsmis klippe bevat sal die sprinkelaar beskadig word en sal die kunsmis nie

ANNEXURE "A"

PARTICULARS OF CLAIM

vicarious liability

1. The Plaintiff is Goeie Vriende Beleggings CC, a close corporation duly registered in accordance with the provisions of the Close Corporations Act No. 69 of 1984, with registered address at 50 York Road, George.
2. The Defendant is Koos Geduld, an adult male whose further particulars are unknown to the Plaintiff, residing at 60 Botha Street, George.
3. On or about 1 March 1992 and at or near the intersection of Berg and Breë Streets, George, a motor vehicle, registration number CAW123, driven at the time by the Defendant, collided with an Opel Kadett Cub motor vehicle, registration number CAW567, the property of the Plaintiff.
4. The said collision was caused by the sole negligence of the Defendant.
5. As a result of the said collision Plaintiff has sustained damages in the sum of R9 200,00 (including VAT).
6. The Defendant is legally liable to the Plaintiff for payment of the said damages, but despite demand refuses or fails to pay the said sum to the Plaintiff.

Wherefore Plaintiff prays for judgment against the Defendant for :-

1. Payment of the sum of R9 200,00;
2. Interest thereof at 15.5% per annum;
3. Costs of suit

QUESTION 7

[9]

You have been appointed as a magistrate in a civil court in a rural area. The matter in which you must give judgement is an action for provisional sentence based on a dishonoured cheque for R100 000.00 drawn by the defendant, JACOBUS BOER, in favour of the plaintiff, BEST FERTILIZER MANUFACTURERS [PTY] LTD.

J Boer, in his opposing affidavit, admits that he drew the cheque in favour of the plaintiff and that he stopped payment on the cheque. He explains that the cheque was given as the purchase price for fertilizer he purchased from the plaintiff. He says that immediately after the fertilizer was delivered to his farm and he had handed over his cheque, he examined the fertilizer and found it to be full of stones. He says that the fertilizer was, as a consequence, not fit for the purpose for which it was sold in that it was not capable of being used in a fertilizer spreader. He says further that the standard method of spreading fertilizer is by use of such fertilizer spreader and that if fertilizer containing stones is used in the spreader the spreader

egalig genoeg versprei word nie. Hy meld dat hy die eiser onmiddellik in kennis gestel het en aangebied het om die kunsmis terug te gee, soos hy nou nog doen. Die verweerder het geen ander dokumente geliasseer nie.

Die eiser se fabrieksbestuurder het 'n eedsverklaring ingedien in antwoord waarin hy beweer dat in sy verskeie jare as fabrieksbestuurder in beheer van kunsmisproduksie by die eiser se manganleg, hy nooit 'n insident gehad het waar daar klip in die kunsmis was wat hulle in die aanleg produseer nie. In elk geval, voordat dit in sakke gegooi word, word die kunsmis gesif om alle items van groter as die korrekte grootte te verwyder. Hy ontken dus dat die kunsmis wat verkoop is, klip bevat het. Hy ontken ook dat die koper voorheen aangebied het om die kunsmis terug te gee.

- 7.1 Watter uitspraak sal u as landdros gee? (2)
- 7.2 Gee kortliks redes vir u uitspraak met aanduiding van die regsbeginsels wat toepaslik is. (4)
- 7.3 Nieteenstaande wat u antwoord in 7.1 is, aanvaar dat die landdros voorlopig vonnis toegestaan het ten gunste van die eiser maar die verweerder is vasbeslote om die aksie teë te staan. Wat moet die verweerder doen om toegelaat te word om met die verweer voort te gaan? (3)

VRAAG 8 [6]

Die eiser het drie dagvaardings uitgereik uit die Landdroshof met die volgende oorsake van aksie:-

Maar dat die verweerders verdediging aangeteken het. Mag die eiser aansoek doen om summere vonnis in die volgende gevalle?

- 8.1 Vir betaling van agterstallige huurverskuldig deur 'n huurder wat die perseel ontruim het wat hy van die eiser gehuur het en vir die vervanging van die tapyt wat hy met sigaretbrandplekke vernietig het (2)
- 8.2 Vir lewering van 'n motorkar wat die eiser gekoop en die prys aan die verweerder betaal het, maar die verweerder weier om die kar te oorhandig. (2)
- 8.3 Vir die koste van werk gedoen en materiaal voorsien. (2)

will be damaged and the fertilizer will not be distributed evenly. He states that he had immediately notified the plaintiff and tendered return of the fertilizer which he continues to do. The defendant filed no other documents.

The plaintiff's factory manager filed an affidavit in reply in which he averred that in his several years as a factory manager in charge of fertilizer production at the plaintiff's mixing plant he had never come across an occasion where there were stones in the fertilizer produced in the plant. In any event, before being bagged, the fertilizer was passed through a sieve which removed any particles larger than the correct size. He accordingly denies the fertilizer sold contained stones. He also denies that the defendant had tendered the return of the fertilizer previously.

- 7.1 As magistrate what judgment would you give? (2)
- 7.2 Give brief reasons for your judgment indicating the legal principles that apply (4)
- 7.3 Notwithstanding your answer to 7.1, assume that the magistrate granted provisional sentence in favour of the plaintiff but the defendant remains determined to defend the action. What is the defendant required to do in order to be entitled to proceed with his defence? (3)

QUESTION 8 [6]

The plaintiff has issued three summonses out of the Magistrate's Court with the following causes of action:-

Assuming that the defendants have entered appearance to defend. May the plaintiff apply for summary judgment in the following cases?

- 8.1 For payment of arrear rental due by a tenant who has vacated the premises which he rented from the plaintiff and for the cost of replacing the carpet that he destroyed with cigarette *illeg. bums.* *damages* (2)
- 8.2 For delivery of a motor car purchased by the plaintiff for which the plaintiff has paid the price to the defendant but the defendant has refused to hand over. *specified movable* (2)
- 8.3 For the cost of work done and material supplied. (2)

*liquid due
liquidated claim*

*quest
d. l. c. m.*

VRAAG 9 [18]

U word geraadpleeg deur u kliënt, mnr Smuts, en sy opdragte aan u is as volg.

- (a) Hy is buite gemeenskap van goedere getroud met 'n voorhuwelikskontrak;
- (b) Sy vrou was 'n kinderarts en het 'n suksesvolle en gewilde praktyk gehad.
- (c) Drie kinders is uit hul huwelik gebore en hul oudste dogter wat 23 jaar oud is studeer geneeskunde aan die Universiteit van die Witwatersrand. Die ander kinders is 19 en 13 jaar oud en steeds op hoërskool. Die 19 jarige is 2 jaar agter met sy skoolloopbaan.

U kliënt is 'n gekwalifiseerde boekhouer en was voorheen in diens van sy vrou in haar praktyk as algemene boekhouer en bestuurder van die praktyk. Hy het 'n vaste maandelikse salaris verdien. Sy vrou se jaarlikse inkomste was viermaal syne.

(e) Hulle was finansiëel welgesteld en het in 'n mooi, vooraanstaande Pretoriase voorstad gewoon. Hulle het een keer per jaar oorsee gereis.

(f) Sy vrou, Johanna, was in 'n kop-aan-kop botsing betrokke en 3 dae na die ongeluk is sy oorlede as gevolg van haar beserings. Die bestuurder van die ander motor is van nalatige bestuur skuldig bevind. Die hof het bevind dat hy aan die verkeerde kant van die pad gery het, in die pad van aankomende motors. Daar is egter ook bevind dat dr Smuts 0,006mg alkohol per 100ml van bloed gehad het. Sy het 'n skemerparty verlaat net voor die ongeluk.

(g) Hy het haar praktyk verkoop en is nou sonder werk.

(h) U is opgedra om 'n eis van onderhoudsverlies in te stel.

9.1 Is u kliënt en enige van sy kinders op 'n eis van onderhoudsverlies geregtig? Motiveer u antwoord. (3)

9.2 Indien dit aanvaar word dat die antwoord op die vorige vraag "ja" is bespreek die volgende:

9.2.1 Wie moet die eis(e) indien? (2)

9.2.2 Voor welke datum moet Mnr Smuts en sy oudste dogter hul eise indien om geldig te wees? (1)

9.2.3 Ten einde met enige van die eise te slaag, watter bewys is nodig om alle aspekte van aanspreeklikheid te bewys? (4)

QUESTION 9 [18]

You are consulted by Mr Smuts who instructs you as follows.

(a) He is married out of community of property by virtue of an antenuptial contract;

(b) His wife was a paediatrician who had a successful and popular private practice;

(c) They have three children, and their eldest daughter who is 23 years of age is studying medicine at the University of the Witwatersrand. The younger children, aged 13 and 19 are still in high school. The 19 year old is slow and is 2 years behind with his schooling.

(d) Your client is a qualified Bookkeeper and was formerly employed by his wife in her practice as a general bookkeeper and administrator of the practice. He earned a fixed monthly salary. His wife's annual income exceeded his income fourfold;

(e) They lived in an up-market Pretoria suburb and were financially well off. They enjoyed a holiday overseas every year;

(f) His wife Johanna was involved in a head-on motor collision and died from the injuries she sustained three days after the collision. The driver of the other vehicle was convicted of negligent driving. The court found that he drove his vehicle on the wrong side of the road and encroached into the path of oncoming vehicles. Dr Smuts was found to have 0,006mg of alcohol per 100ml of blood. She had left a cocktail party immediately prior to the collision.

(g) He has now sold the practice and he is unemployed;

(h) You are instructed to institute a claim for loss of support.

9.1 Is your client and any of the children entitled to a claim for loss of support? Motivate your answer. (3)

9.2 If it is accepted that the answer to the question above is affirmative, discuss the following aspects:

9.2.1 Who must lodge the claim(s)? (2)

9.2.2 By when must Mr Smuts and his eldest daughter lodge their claims for them to be valid? (1)

9.2.3 To succeed with any of the claims mentioned above what proof is required to establish all aspects of liability? (4)

bodily injury & death caused
(1) m v - RSA
(2) negligence
(3)

9.2.4 Van watter dokumentasie kan u gebruik maak om te bewys dat dr Smuts oorlede is as gevolg van die beserings opgedoen in die botsing?

(2)

9.3 Adviseer u kliënt op sy kans van sukses om te bewys dat enige eis(e) vir verlies van onderhoud ontstaan het as gevolg van die nalatige bestuur van 'n motor soos voorgesien in Artikel 17 van die Padongelukke Fonds Wet van 1996. In sulke advies aan u kliënt, moet u die moontlikheid bespreek van die toepassing van 'n verdeling van aanspreeklikheid in terme van die Verdeling van Skade Wet, Nr 34 van 1956.

(3)

9.4 Die eis(e) teen die Fonds is geskik voor die uitreik van dagvaarding(s). Het u kliënt enige eise ten opsigte van koste teen die Fonds en indien wel, wat is die basis van sodanige verhalings?

(1)

9.5 Wanneer begin verjaring loop ten opsigte van elke eis?

(2)

VRAAG 10

[5]

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

U moet die verweerder se pleit, insluitende die smeekbede, opstel waarin u bydraende nalatigheid aan die kant van die eiser pleit.

VRAAG 11

[2]

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

11.1 Hoe sal u die Fonds laat weet dat u kliënt die aanbod aanvaar?

(1)

11.2 Betaling van die aanbodsbedrag is eers twee maande na aanvaaring van die aanbod, ontvang. Is u kliënt geregtig op rente en, indien wel, van wanneer af en teen watter koers?

(1)

VRAAG 12

[14]

U kliënt word skuldig bevind op 'n aanklag van bedrog van 'n bedrag van R85 000-00 welke bedrag nog nie aan die klaer terugbetaal is nie. U kliënt is 45 jaar oud en 'n redelike suksesvolle besigheidsman.

9.2.4 What documentation can you use to prove that Dr Smuts died as a result of the injuries sustained in the collision?

(2)

9.3 Advise your client on his prospects of success in showing that any claim(s) for loss of support arose from the negligent driving of a motor vehicle as contemplated in Section 17 of the Road Accident Fund Act of 1996. In your advice to client discuss the possibility of apportionment of liability in terms of the Apportionment of Damages Act, No 34 of 1956.

(3)

9.4 The claim(s) against the Road Accident Fund are settled before Summons(es) are issued. Is your client entitled to recover any costs against the Road Accident Fund and if so what is the basis for such recovery?

9.5 When will prescription begin to run in respect of each claim?

(2)

QUESTION 10

[5]

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

Draft the defendant's plea, including the prayer, wherein you plead contributory negligence on the part of the plaintiff.

QUESTION 11

[2]

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

11.1 How do you advise the Fund of your client's acceptance of his offer?

(1)

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

(1)

QUESTION 12

[14]

Your client is convicted of fraud involving R85 000-00 which has as yet not been repaid to the complainant. Your client is 45 years of age and is a relatively successful businessman. He is married with three

Hy is getroud en het drie kinders van skoolgaande ouderdom. Hy is 'n aktiewe politikus in die plaaslike gemeenskap en is lid van verskeie diens organisasies. As gevolg van sy bekendheid het sy bedrog wye publisiteit geniet in die plaaslike koerante soveel so dat hy as politikus en van die organisasies moes bedank. Hy is nie in 'n posisie om huidiglik die R85 000-00 in 'n lomsom terug te betaal nie, maar kan dit wel doen in maandelikse paaiemente. Hy het een vorige veroordeling van winkeldiefstal waarby 'n item ter waarde van R25-00 betrokke is en wat twaalf jaar gelede plaasgevind het.

As gevolg van die erns van die misdryf en die feit dat bedrog 'n algemene verskynsel is verwag u dat u kliënt tot direkte gevangenisstraf gevonnissal word deur die hof.

12.1 Stel u betoog ten aansien van strafversagting op. (6)

Bespreek spesifiek die aard en aanvaarbaarheid al dan nie van die alternatiewe strawe wat opgelê kan word deur die hof. (8)

VRAAG 13 [11]

U kliënt, I M Drunk is 35 jaar oud, getroud en het twee minderjarige kinders. Hy is 'n eerste oortreder en pleit skuldig aan die alternatiewe klag van dronkbestuur synde die bestuur van 'n voertuig terwyl die alkohol inhoud in sy bloed te alle relevante tye die regslimiet oorskry het. Hy word gevonniss tot twaalf maande direkte gevangenisstraf.

13.1 Sit die procedure wat u sal volg uiteen om appèl teen die vonnis aan te teken. (5)

13.2 Stel die kennisgewing van appèl op insluitende die kopstuk. (6)

children, all of whom are at school. He is furthermore active in local politics as well as various service clubs. His case has attracted a large amount of publicity in the press and he has been obliged to resign from his political post and service clubs. He is not in a position to repay the R85 000-00 involved immediately but will be able to do so in monthly instalments. He furthermore has one previous conviction for shoplifting, involving an object valued at R25-00 which occurred twelve years ago.

Because of the prevalence and the seriousness of the offence, you have every reason to believe that a term of imprisonment will be imposed by the court.

12.1 Draft your address in mitigation of sentence. (6)

12.2 Specifically address the alternative sentences which the court may impose shortly pointing out the suitability or otherwise of each sentence. (8)

*person with
attorney
imprisonment*

QUESTION 13 [11]

Your client, I M Drunk is 35 years of age, married with two young dependants. He is a first offender and pleads guilty to driving a motor vehicle whilst the alcohol contents of his blood exceeds the legal limit. He is sentenced to direct imprisonment of 12 months.

13.1 Set out the procedure that you will follow in noting an appeal against the sentence. (5)

13.2 Draw the notice of appeal, including the heading. (6)

*next -> in 10 days of J/mk
glt reasons
15 days given
- notice of appeal
- pur of attorney
- cont record*

PROKUREURSEKSAMEN

DEEL 2 BOEDELS

18 FEBRUARY 2003

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. 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 2 ESTATES

18 FEBRUARY 2003

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. 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

[59]

John Smith sterf op 27 Julie 2002 sonder om 'n testament na te laat. Hy word oorleef deur die volgende persone:

- sy eggenote Dorothy, met wie hy buite gemeenskap van goed sonder aanwasing getroud was.
- hulle minderjarige seun James.
- Jane, 'n ongetroude dogter uit Jan se vorige huwelik met Mary, van wie hy geskei is.
- Mary se meerderjarige buite-egtelike dogter Anne, wat gebore is uit haar moeder se verhouding met X voordat sy met die oorledene getroud is.
- Timothy, 'n meerderjarige, wat deur hom en Mary tydens hulle huwelik wetlik aangeneem is.

U word in u hoedanigheid as familieprokureur deur Dorothy geraadpleeg met die versoek om die boedel te hanteer, wat soos volg daar uitsien:

Bates

- 'n Vaste belegging van R200 000,00 by 'n Bank
- 'n Spaarrekening by dieselfde bank met 'n saldo van R18 250,00 op datum van afsterwe
- 500 aandele in 'n genoteerde maatskappy en wat u vir Dorothy geadviseer het om uit die boedel te verkoop. Die aandele is deur 'n makelaar teen 1200 sent per aandeel verkoop en sy kommissie beloop 5% van die opbrengs

Laste

- Die totale administrasie koste beloop R12 650,00
- Lewer en Longe Slaghuis: uitstaande balans van rekening op datum van afsterwe is R110,00
- Happy Ending Funeral Parlour: R4 000,00 vir begrafnis onkoste

Lewensversekeringspolis

Die oorledene het die volgende lewenspolis in sy naam gehad en die besonderhede is soos volg:

- 'n polis waarkragtens Dorothy, sy nagelate eggenote, as begunstigde benoem is en wat 'n opbrengs van R150 000,00 uitbetaal het.
- 'n Tweede polis waarin geen begunstigde benoem is nie en waarvan die opbrengs R100 000,00 beloop het.

QUESTION 1

[59]

John Smith died on 27 July 2002 ^{intestate} without leaving a will. He is survived by the following persons:

- his wife Dorothy to whom he was married out of community of property excluding the accrual system.
- their minor son James. ^{Dorothy James}
- Jane, an unmarried daughter from John's previous marriage to Mary, from whom he had been divorced. ^{ex-wife}
- Mary's major daughter, Anne, born out of wedlock from her mother's relationship with X before she married the deceased.
- Timothy, a major, who had been legally adopted by him and Mary during their marriage.

You are consulted as family attorney by Dorothy, who requests you to handle the estate, which comprises the following:

Assets

- Who awarded to*
- A fixed deposit of R200 000,00 at a Bank
 - A savings account at the same Bank reflecting a balance of R18 250,00 as at the date of death
 - 500 shares in a listed company, which you advised Dorothy to sell out of the estate. The shares were eventually sold at 1 200 cents per share and the commission of the broker who handled the transaction amounted to 5% of the proceeds

Liabilities

- The administration expenses total R12 650,00
- Lung and Liver Butchery: outstanding balance on account as at date of death is R110,00
- Happy Ending Funeral Parlour: R4 000,00 in respect of funeral expenses

Life insurance policies

The deceased had the following life insurance policies in his name and the particulars are as follows:

- a policy in terms of which his surviving spouse Dorothy was nominated as beneficiary and which paid out an amount of R150 000,00.
- a second policy with no beneficiary appointed, the proceeds of which amounted to R100 000,00.

182 190 Claim in favour of the estate

Gevra:

- 1.1 Skryf 'n brief aan die Meester van die Hooggeregshof om die boedel te rapporteer en waarin u die dokumente lys wat u onder dekking daarvan afstuur. (10)
- 1.2 Stel die volgende onderafdelings van die boedelrekening op en verskaf u eie besonderhede en syfers waar nodig. Spesifiseer die administrasiekoste.
- 1.2.1 Die opskrif (5)
- 1.2.2 Die likwidasierekening (18)
- 1.2.3 Die rekapitulatieopgawe (3)
- 1.2.4 Die distribusierekening (13)
- 1.2.5 Die boedelbelastingssaddendum (10)

VRAAG 2 [28]

Mnr en Mev A, wat binne gemeenskap van goed met mekaar getroud is, gee u as hulle prokureur opdrag om hulle testament op te stel. Hulle wil hulle hele gemeenskaplike boedel soos volg bemaak:

1. Die familieplaas aan hulle getroude seun, maar die langsliewende eggenoot moet die reg hê om op die plaas te woon en dit ook te verhuur en die huurinkomste vir haarself te gebruik.
2. Die langsliewende eggenoot erf die restant.

Indien mnr en mev A gelyktydig te sterwe sou kom, wil hulle hê dat hulle seun albei van hulle se boedels erf.

Die langsliewende eggenoot bemaak sy/haar hele boedel aan hulle seun.

U moet die eksekuteur van beide boedels wees.

U kliënte wil nie hê dat hulle seun se vrou enige voordeel uit die seun se erfenis moet trek nie.

Mnr A het die algehele gebruik van albei sy hande in 'n ongeluk verloor.

Stel die testament op wat uit ten minste twee bladsye moet bestaan.

VRAAG 3 [13]

Joe Seep sterf en laat die volgende bates na wat vir verdeling tussen sy erfgename beskikbaar is:

Required:

- 1.1 Write a letter to the Master of the High Court for purposes of reporting the estate, listing the documents you are forwarding under cover thereof. (10)
- 1.2 Draw the following sections of the estate account and supply your own particulars and figures where necessary. Specify the administration expenses.
- 1.2.1 The heading (5)
- 1.2.2 The liquidation account (18)
- 1.2.3 The recapitulation statement (3)
- 1.2.4 The distribution account (13)
- 1.2.5 The estate duty addendum (10)

QUESTION 2 [28]

Mr and Mrs A, who are married to each other in community of property, instruct you as their attorney to draw their will. They wish their entire joint estate to be disposed of as follows:

1. The family farm is to be left to their married son, but the surviving spouse must be able to live on the farm and also to let it and enjoy the rental income. — *usufruct*
2. The residue is to be left to the surviving spouse.

In the event of their simultaneous death they want their son to inherit both their estates.

The surviving spouse leaves his/her whole estate to their son.

You are to be executor of both estates.

Your clients do not want their son's wife to enjoy any benefit from their son's inheritance. — *previous or present spouses*

Mr A lost the total use of both his hands in an accident.

Draw the will which is to comprise of at least two pages.

QUESTION 3 [13]

Joe Soap died leaving the following assets available for distribution amongst his heirs:

DEEL 2
BOEDELS
[100]

PART 2
ESTATES
[100]

- Hoewe 407 Winterveld Landbouhoewes	R130 000,00
- Kontant	R20 000,00
- Motorvoertuig	R30 000,00
	<u>R180 000,00</u>

- Holding 407 Winterveld Agricultural Holdings	R130 000,00
- Cash	R20 000,00
- Motor vehicle	R30 000,00
	<u>R180 000,00</u>

Joe se twee meerderjarige seuns, Kenneth en Charles, is sy erfename in gelyke dele, maar die betrokke owerhede het geweier om toestemming te gee vir die onderverdeling van die onroerende eiendom of die transporterings daarvan in onverdeelde aandele. Die erfename het gevolglik ooreengekom dat die onroerende eiendom aan Kenneth toegeken word en dat Charles die ander bates kry, plus 'n kontantbetaling deur Kenneth om die verdeling gelyk te maak. Charles is as eksekuteur aangestel.

Stel die ooreenkoms tussen Kenneth en Charles op ten einde aan bogemelde gevolg te gee.

Kenneth and Charles, Joe Soap's major sons, are heirs in equal shares, but the relevant authorities have refused to allow the immovable property to be subdivided or to be transferred to the heirs in undivided shares. The heirs agreed that the said immovable property be awarded to Kenneth. Charles will receive the other assets and a cash contribution by Kenneth to equalize the distribution. Charles has been appointed as the executor.

Draw the agreement between Kenneth and Charles, to give effect to the above.

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

19 FEBRUARY 2003

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

19 FEBRUARY 2003

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.
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VRAAG 1 [10]

Skryf 'n aantekening oor die toelaatbaarheid as getuieis van 'n brief wat deur een prokureur aan 'n ander geskryf word sonder benadeling van regte en in die loop van 'n hofgeding tussen hulle onderskeie kliënte. Sal 'n lasterlike bewering in so 'n brief kan dien as skuldoorsaak in 'n lasterels?

VRAAG 2 [12]

Mag 'n prokureur ten opsigte van 'n regsding met die kliënt ooreenkom dat die prokureur slegs gelde sal hef as die ding suksesvol afgehandel word en dat die prokureur dan hoë gelde mag vra as wat gehel sou kon word sonder sodanige ooreenkoms? Met ander woorde, is 'n prokureur geregtig op sogenaamde gebeurlikheidsgelde? Motiveer u antwoord met verwysing na toepaslike wetgewing.

VRAAG 3 [8]

Beantwoord kortliks die volgende vrae

- 3.1 Indien 'n werknemer van 'n prokureur trustgelde steel kan die verlies verhaal word deur die prokureurse trustkrediteure en indien wel van wie? (3)
- 3.2 Mag 'n prokureur by wyse van besoldiging aan 'n werknemer aan daardie werknemer 'n aandeel in die winste van die praktyk gee? (1)
- 3.3 Mag 'n prokureur 'n ongekwalifiseerde persoon in diens neem vir die nie-professionele gedeelte van die praktyk en hom/haar gedeeltelik of geheel op 'n kommissie-basis vergoed? (1)
- 3.4 Is dit onprofessionele gedrag vir 'n prokureur om nate laat om kliënte se briewe te beantwoord? (1)
- 3.5 Mag 'n prokureur 'n onderhoud voer met 'n getuie wat deur die ander kant gedagvaaris in 'n sivele ding as geglo word dat die getuie relevante getuieis vir kliënt se saak het? Welke prosedure sal u volg? (2)

VRAAG 4 [20]

XYZ Eiendomsbeleggings (Edms) Bpk is die verhuurder van sekere persele. 'n Huurkontrak is gesluit met ABC Beleggings (Edms) Bpk as huurder om die persele te huur. Dit is 'n voorwaarde van die huurkontrak dat die twee direkteure van ABC Beleggings (Edms) naamlik James Modise en Derek Coetzee 'n borgakte onderteken vir die verpligtinge van ABC Beleggings (Edms) Bpk

QUESTION 1 [10]

Write a note on the admissibility in evidence of a letter written without prejudice by one attorney to another in the course of litigation between their respective clients. Would a defamatory statement made in such a letter be a cause of action for a defamation action?

QUESTION 2 [12]

May an attorney in respect of litigation proceedings agree with a client to charge fees only if the proceedings are successfully concluded, and then to charge higher fees than would have been charged in the absence of such an agreement? In other words, is an attorney entitled to so-called contingency fees? Motivate your answer with reference to applicable legislation.

QUESTION 3 [8]

Answer the following questions briefly:

- 3.1 In the event of theft of trust monies by an employee of an attorney, can this loss be recovered by the attorney's trust creditors and if so, from whom? (3)
- 3.2 May an attorney, by way of remuneration of an employee, give that employee a share in the profits of the practice? (1)
- 3.3 May an attorney employ an unqualified person in respect of the non-professional part of the practice and remunerate him/her partly or entirely on a commission basis? (1)
- 3.4 Is it regarded as unprofessional conduct for an attorney to fail to reply to letters from clients? (1)
- 3.5 May an attorney interview a witness who has been subpoenaed in a civil trial by the other side where it is believed the witness is in possession of evidence relevant to the client's case? What procedure would you follow? (2)

QUESTION 4 [20]

XYZ Property Holdings (Pty) Ltd is the landlord of certain premises. A lease is concluded with ABC Investments (Pty) Ltd as tenant to hire the premises. It is a condition of the lease that the two directors of ABC Investments (Pty) Ltd, namely James Modise and Derek Coetzee, sign a deed of suretyship for the obligations of ABC Investments (Pty) Ltd to XYZ Property Holdings (Pty) Ltd in terms

teenoor XYZ Eiendoms Beleggings (Edms) Bpk kragtens die huurkontrak. Die persele is geleë te erf 123 Rosebank, Johannesburg.

Stel 'n volledige borgakte op met u eie feite soos nodig.

VRAAG 5 [10]

Shirley Naidoo huur woonstel 10 Bayswater Heights van Tony Watson kragtens 'n skriftelike huurkontrak wat 'n kansellasie klousule bevat. Die huurkontrak bepaal dat die maandelikse huurgeld R1000-00 beloop. Shirley Naidoo is agterstallig met huurgeld vir die maande Julie, Augustus, September en Oktober 2002. Tony Watson se prokureur het reeds aan Shirley Naidoo die gepaste kennisgewing kragtens die huurkontrak gestuur om haar versuim reg te stel. Shirley Naidoo het die verhuurde perseel as *domicilium citandi et executandi* gekies.

Stel 'n paslike brief op wat gerig is aan Shirley Naidoo om die huurkontrakte beëindig, betaling van die agterstallige huurtêis en die voorgenome aksie van Tony Watson aan te dul.

VRAAG 6 [10]

Stel 'n klousule op in 'n ooreenkoms vir die verkoop van 'n besigheid wat die hele ooreenkoms opskort totdat paslike reëlings getref is met die elenaars van die perseel waaruit die onderneming bedryf word ten einde okkupasie van die perseel deur die onderneming te verseker. Die klousule moet voorsiening maak vir die moontlikheid van:

- 6.1 sessie en delegasie van die regte en verpligtinge kragtens die bestaande huurkontrak van die huurder na die koper met die toestemming van die verhuurder; of
- 6.2 die sluit van 'n nuwe huurkontrak tussen die koper en die verhuurder tesame met 'n kansellasie van die vorige huurkontrak.

VRAAG 7 [10]

- 7.1 Waar sal u 'n trust registreer wat u namens u kliënt gestig het? (1)
- 7.2 Welke dokumente moet ingedien word wanneer u 'n trust registreer? (3)
- 7.3 Watter ander inligting sal u aan die betrokke owerhede voorlê wanneer u 'n trust registreer? (3)

of the lease. The premises are situated at erf 123 Rosebank, Johannesburg.

Draft a comprehensive deed of suretyship, using your own facts if necessary.

QUESTION 5 [10]

Shirley Naidoo hires flat 10 Bayswater Heights from Tony Watson in terms of a written agreement of lease which contains a cancellation clause. The lease provides for payment of rental of R1 000,00 per month. Shirley Naidoo is in arrears with rental for the months of July, August, September and October 2002. Tony Watson, through his attorneys, has already given Shirley Naidoo the appropriate notice in terms of the agreement to remedy her breach. Shirley Naidoo has elected the leased premises as her *domicilium citandi et executandi*.

Draft a suitable letter addressed to Shirley Naidoo terminating the lease, demanding payment of the arrears and indicating the action which Tony Watson intends to take.

QUESTION 6 [10]

Draft a clause in an agreement for the sale of a business suspending the entire sale agreement until such time as suitable arrangements have been made with the landlord of the premises from which the business is conducted to secure the tenure of the business in the premises. The clause should allow for the possibility of:

- 6.1 cession and delegation of the rights and obligations in terms of the existing lease from the tenant to the purchaser with the consent of the landlord; or
- 6.2 the conclusion of a new lease agreement between the purchaser and the landlord, together with the cancellation of the previous lease.

QUESTION 7 [10]

- 7.1 With whom would you register a Trust that you formed on behalf of your client? (1)
- 7.2 What documents must be lodged when registering a Trust? (3)
- 7.3 What other information will you submit to the relevant authorities when registering a Trust? (3)

7.4 Welke seëlregte moet aangebring word wanneer u 'n trust laat registreer?

(1)

7.5 Wat is die wesentlike kenmerk van 'n diskreslonêre trust?

(2)

VRAAG 8 [10]

8.1 Hoe word die geldigheid en afdwingbaarheid van 'n geskrewe ooreenkoms geraak deur die feit dat dit nie geseël is soos kragtens die Seëlregtewet vereis nie?

(5)

8.2 Hoe en deur wie moet Inkomsteseëls op so 'n dokument gekanselleer (geroJeer) word?

(5)

VRAAG 9 [10]

U het 'n kontrak vir die verkoop van 'n besigheid namens u kliënt opgestel. U mandaat is afgehandel en u moet 'n rekening aan u kliënt stuur.

Noem kortliks die verskillende faktore wat in berekening gebring word ten einde 'n redelike fooi vir u professionele dienste vas te stel.

7.4 What stamp duty will you pay when registering a Trust?

(1)

7.5 What is the essential characteristic of a discretionary Trust?

(2)

QUESTION 8 [10]

8.1 How is the legality and enforceability of a written agreement influenced by the fact that it has not been stamped as it should have been in terms of the Stamp Duties Act?

(5)

8.2 In what way and by whom should revenue stamps on a document be cancelled?

(5)

QUESTION 9 [10]

You drafted a contract for the sale of a business on behalf of your client. Your mandate has been completed and your client now has to receive an account.

Briefly state the various factors to be taken into account in determining a reasonable fee for your professional services.

PROKUREURSEKSAMEN

DEEL 4 BOEKHOU

19 FEBRUARY 2003

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 kliëntegrootboekrekeninge moet geopen word en moet nie gekombineer word nie. Joemaalinskrywings 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% of 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

19 FEBRUARY 2003

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 and 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 [15]

U moet 'n trust bankrekonsiliasiestaat vir u praktyk soos op 28 Februarie 2002 opstel. Die volgende inligting word voorsien:

REKONSILIASIESTAAT OP 31 JANUARIE 2002

Balans soos per bankstaat			64 739
<u>Min</u> Uitstaande tjeks:	287	500	
	293	<u>1 250</u>	<u>1 750</u>
			62 989
<u>Plus</u> Uitstaande deposito			<u>30 000</u>
Saldo soos per Kasboek			<u>92 989</u>

TRUSTKASBOEK - FEBRUARIE 2002

Saldo	92 989	Tjek 294	27 212
Deposito	6 843	Tjek 295	1 720
Deposito	18 809	Tjek 296	183
Deposito	217	Tjek 297	4 820
Deposito	8 639	Tjek 298	2 929
		Saldo	90 633
	<u>127 497</u>		<u>127 497</u>

BANKSTAAT - FEBRUARIE 2002

Saldo			64 739
Tjek 295	1 720		
Deposito		30 000	93 019
Tjek 297	4 820		88 199
Deposito		6 843	95 042
Tjek 294	27 212		67 830
Deposito		18 809	86 639
Tjek 296	183		
Tjek 293	1 205		85 251
Deposito		217	
VT Tjek	2186		83 282

Addisionele inligting:

- Tjek 293 is foutiewelik in u kasboek as R1 250 aange-teken.

Stel die volgende op:

- die aanvullende kasboek vir Februarie 2002
- die bankrekonsiliasiestaat op 28 Februarie 2002

VRAAG 2 [35]

U word opdrag gegee deur u korrespondent om R5 000 ter verhaal van Ben Smith namens sy klient ABC Bpk. Met die uitvoer van die opdrag, word die volgende transaksies aangegaan:

*Add Bank Errors
Less Outstanding Cheques
Add Deposits*

QUESTION 1 [15]

You are required to prepare a Trust Bank Reconciliation Statement for your practice as at 28 February 2002. The following information is provided:

RECONCILIATION STATEMENT AS AT 31 JANUARY 2002

Balance as per Bank Statement			64 739
<u>Less</u> Outstanding cheques:	287	500	
	293	<u>1 250</u>	<u>1 750</u>
			62 989
<u>Add</u> Outstanding deposit			<u>30 000</u>
BALANCE as per Cash Book			<u>92 989</u>

TRUST CASH BOOK - FEBRUARY 2002

Balance	92 989	Cheque 294	27 212
Deposit	6 843	Cheque 295	1 720
Deposit	18 809	Cheque 296	183
Deposit	217	Cheque 297	4 820
Deposit	8 639	Cheque 298	2 929
		Balance	90 633
	<u>127 497</u>		<u>127 497</u>

BANK STATEMENT - FEBRUARY 2002

Balance			64 739
Cheque 295	1 720		
Deposit		30 000	93 019
Cheque 297	4 820		88 199
Deposit		6 843	95 042
Cheque 294	27 212		67 830
Deposit		18 809	86 639
Cheque 296	183		
Cheque 293	1 205		85 251
Deposit		217	
RD Cheque	2186		<u>83 282</u>

Additional information:

- Cheque 293 was incorrectly entered in your cash book as R1 250.

Prepare the following:

- a supplementary cash book for February 2002
- a bank reconciliation statement at 28 February 2002

QUESTION 2 [35]

You are instructed by your correspondent to recover R5 000 from Ben Smith on behalf of his client ABC Ltd. In executing the mandate the following transactions occur:

1. U hef 'n opdrag fooi van R120 (BTW uitgesluit).
2. U betaal 'n opsporingsagent R100 (ignoreer BTW implikasies).
3. U reik 'n dagvaardiging uit en hef 'n fooi van R180 (BTW uitgesluit).
4. Ben Smith betaal u R2 400 van die skuld.

Met die debitering van die fooie waarop u geregtig is, moet voorsiening gemaak word vir BTW teen 14%. Die gewone 1/3-toelaag op fooie is ook van toepassing.

U moet:

Die bovermelde transaksies in u rekeningboeke aanteken en die bedrag verskuldig aan u korrespondent betaal. Plaas die bedrag waarop u geregtig is oor na die besighedsrekening.

VRAAG 3 [20]

- 3.1 Watter rekening, indien enige, mag wettiglik 'n debietsaldo in die trustgrootboek toon? (2)
- 3.2 Mag twee prokureurs ooreenkom:
 - 3.2.1 op geen toelaag op fooie nie?
 - 3.2.2 op 'n toelaag van 40% op fooie? (2)
- 3.3 Mag 'n prokureur die deponering van trustgelde weerhou om 'n trustkrediteur in kontant te betaal? (2)
- 3.4 Hoe bereken 'n prokureur die bedrag oorplaasbaar vanaf die trust na die besighedsrekening? (3)
- 3.5 Hoe betaal u borggeld in kontant as u geld op trust het vir 'n betrokke kliënt? (3)
- 3.6 Wat is:
 - 3.6.1 Inset BTW?
 - 3.6.2 Uitset BTW? (2)
- 3.7 U het per abuis 'n trust krediteur R1 000 betaal in stede van R100. Hoe sal u die fout regstel? (4)
- 3.8 Kan 'n prokureur sonder 'n trustrekening praktiseer? (2)


1. You charge an instruction fee of R120 (excluding VAT).
2. You pay a tracing agent R100 (ignore VAT implications).
3. You issue summons and charge fees of R180 (excluding VAT).
4. Ben Smith pays you R2 400 of the debt.

In debiting the fees you are entitled to, provision should be made for VAT at 14%. The usual 1/3 allowance is also applicable.

Required:

Record the above transactions in your books of account, pay the amount due to your correspondent and transfer what you are entitled to the business account.

QUESTION 3 [20]

- 3.1 Which accounts, if any, may legitimately reflect a debit balance in your trust ledger?  (2)
- 3.2 May two attorneys agree:
 - 3.2.1 not to grant any allowance on fees?
 - 3.2.2 on an allowance of 40% on fees? (2)
- 3.3 May an attorney withhold the banking of trust money to pay cash to a trust creditor? (2)
- 3.4 How does an attorney determine the amount transferable from trust to business accounts? (3)
- 3.5 How do you pay bail in cash when you are holding trust funds for a specific client? (3)
- 3.6 What is:
 - 3.6.1 Input VAT?
 - 3.6.2 Output VAT? (2)
- 3.7 You erroneously paid a trust creditor R1 000 instead of R100. How do you rectify the error? (4)
- 3.8 Can an attorney operate without a trust account? (2)

VRAAG 4

[30]

U verteenwoordig Mnr Flint in 'n eiendomstransaksie. Hy gee u opdrag om 'n verkoopsooreenkoms op te stel ingevolge waarvan hy sy eiendom aan Mnr Adams verkoop vir die bedrag van R300 000, wat soos volg betaalbaar is:

- 'n kontantdeposito van R300 000 wat in trustgehou moet word totdat oordrag geneem word.
- die balans word verseker deur 'n eerste verband van R270 000 ten gunste van 'n bouvereniging. U is gemagtig om die deposito in 'n rentedraende trustbeleggingsrekening te belê vir voordeel van Mnr Adams.

Die ooreenkoms bepaal dat die koper die oordragkoste, insluitend hereregte en verbandkoste van R20 000 sal betaal.

Op 4 Februarie 2002 teken die partye die ooreenkoms en mnr Adams gee u twee tjeks ter waarde van R30 000 en R20 000 onderskeidelik vir die deposito en die pro-forma koste.

Op 5 Februarie 2002 word die hereregte van R17 000 betaal.

Op 8 Februarie 2002 stel u bank u in kennis dat mnr Adams se tjek van R30 000 betaal is, maar dat die tjek van R20 000 onteer is.

Op 9 Februarie 2002 betaal mnr Adams R20 000 in kontant.

Op 10 Februarie 2002 verskaf die bouvereniging se transportbesorgers aan u 'n waarborg vir R270 000.

Op 15 Februarie 2002 word die oordrag geregistreer. U verreken aan mnr Flint. Met die sluiting van die beleggingsrekening ontvang u rente van R120.

U moet:

Teken die bogemelde transaksies aan in die kasboeke, grootboeke, fooiejoernaal en oordragjoernaal. Maak voorsiening vir BTW teen 14%.

QUESTION 4

[30]

You act for Mr Flint in a property transaction. He instructs you to prepare a sale agreement in terms of which he sells his property to Mr Adams for R300 000, payable as follows:

- a cash deposit of R300 000 to be held in trust pending transfer.
- the balance to be secured by a first mortgage bond in favour of a building society for R270 000. You are authorised to invest the deposit in an interest bearing trust investment account for the benefit of Mr Adams.

The agreement provides for the conveyancing costs including transfer duty and bond costs of R20 000 to be paid by the purchaser.

On 4 February 2002 the parties sign the agreement and Mr Adams gives you two cheques, for R30 000 and R20 000 respectively, for the deposit and pro-forma costs respectively.

On 5 February 2002 transfer duty of R17 000 is paid.

On 8 February 2002 your bank advises you that Mr Adams cheque for R30 000 was paid, but the cheque of R20 000 was dishonoured.

On 9 February 2002 Mr Adams pays you R20 000 cash.

On 10 February 2002 the building society's conveyancers give you a guarantee of R270 000.

On 15 February 2002 the transfer is registered. You account to Mr Flint. On closing the investment account you receive an additional R120 as interest.

Required:

Record the above transactions in the cash books, ledgers, fees and transfer journals. Make provision for VAT at 14%.