

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

4AUGUSTUS 2009

09:00-12:15

Totaal: [100]

Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 3 uur volg dan.

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

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

4AUGUST 2009

09:00-12:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 3 hours then follows.

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

VRAAG 1 [1]

Neem aan dat die Padongelukfonds 'n verklaring van die bestuurder van die versekerde voertuig verkry het voor dagvaarding uitgereik is. Is u kliënt wat 'n eis teen die Fonds het, op 'n afskrif van sodanige verklaring geregtig?

VRAAG 2 [2]

Mnr Owen het beserings opgedoen terwyl hy op sy motorfiets gery het. Hy het vriende besoek en 'n paar biere gedrink. Oppad huistoe was hy in 'n ongeluk met 'n onbekende voertuig betrokke wat hom van agter gestamp het en ook nie na die ongeluk gestop het nie. Hy het aksie teen die Fonds ingestel. Daarna vra die Fonds dat hy hom aan 'n ondervraging moet onderwerp in terme van die Wet. Verder vereis hulle dat hy 'n beëdigde verklaring moet maak waarin hy die omstandighede van die ongeluk ten volle uiteensit.

Is u kliënt verplig om daartoe in te stem?

VRAAG 3 [2]

U kliënt se eis in verband met persoonlike beserings gaan verjaar binne die volgende sewe dae en ten spyte van 'n deeglike soektog kan u nie die hospitaalrekords opspoor nie en die hospitaal kan van geen verdere hulp wees nie. U het alreeds ander dokumente voltooi ten einde die eis te kan indien.

Watter stappe sal u doen om te verseker dat u betyds 'n geldige eis kan indien?

VRAAG 4 [2]

Joe, 'n voetganger, is op 6 Junie 2008 beseer as gevolg van die nalatige bestuur van die versekerde bestuurder. 'n Derde-party eis is namens Joe by die Padongelukfonds deur 'n eisekonsultant ingedien. Die Fonds weier om Joe se eis to aanvaar. Is die Fonds geregtig om dit te doen? Gee volledige redes vir u antwoord.

QUESTION 1 [1] *MVA*

Assume that the Road Accident Fund obtained a statement from the driver of the insured vehicle before summons was issued. Is your client who has a claim against the Fund, entitled to a copy of such statement?

QUESTION 2 [2] *MVA*

Mr Owen sustained injuries while riding his motor cycle. He advises you that he had visited his friends and he had a few beers. While returning to his house he was involved in an accident when an unknown vehicle collided with him from behind and the vehicle did not stop after the accident. He instituted action against the Fund. The Fund requests your client to submit to an interrogation in terms of Act and to make a sworn statement fully setting out the circumstances of the accident.

Is your client obliged to submit to such interrogation?

QUESTION 3 [2]

Your client's claim for personal injuries is about to prescribe in seven days' time and you have been unable to locate the hospital records despite an extensive search, and the hospital is unable to be of any further assistance. You already have other documents completed to enable you to lodge the claim.

What steps would you take to enable you to lodge a valid claim timeously?

QUESTION 4 [2] *MVA*

Joe, a pedestrian was injured on 6th June 2008 due to the negligent driving on the part of the insured driver. A third party claim on behalf of Joe was lodged with the Road Accident Fund by a claims consultants. The Road Accident Fund refuses to entertain Joe's claim. Is it entitled to do so?. Give full reasons for your answer.

VRAAG 5 [2]

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

Het u kliënt 'n eis teen die Padongelukfonds?

VRAAG 6 [1]

Teen watter koers en vanaf watter datum mag rente geëis word ten opsigte van 'n eis vir skadevergoeding onder Wet Nr 56 van 1996?

VRAAG 7 [7]

U word geraadpleeg deur u kliënt wat die omstandighede van 'n motorongeluk waarin hy betrokke was aan u verduidelik. Hy was 'n passasier in 'n voertuig wat met 'n andervoertuig op die pad tussen Pretoria en Johannesburg gebots het. Die voertuig waarin hy gereis het, was deur 'n mede-werknemer bestuur. Die bestuurder van die ander voertuig was vir die botsing verantwoordelik.

U kliënt het 'n fraktuur van sy regte tibia en fibula in die botsing opgedoen. As gevolg daarvan is hy 5 weke in die hospitaal en na hy ontslaan is, is hy verplig om vir 'n verder 6 weke by die huis te bly. Toe eers kon hy terug werk toe gaan. Terwyl hy van die werk afwesig was, is hy ten volle betaal alhoewel hy net op drie weke siekverlof geregtig was. Sy werkgever het hom vir die verdere drie weke betaal, alhoewel hy nie deur u kliënt se dienskontrak verplig was om dit te doen nie. Die voertuig waarin hy passasier was, is bestuur gedurende die loop en uitvoering van die bestuurder se diens. Stel 'n gepaste brief

QUESTION 5 [2]

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.

Does your client have a claim for compensation against the RAF?

QUESTION 6 [1]

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

QUESTION 7 [7]

You are consulted by your client who explains the circumstances of a motor collision in which he was involved. He was a passenger in a vehicle which collided with another on the road between Pretoria and Johannesburg. The vehicle he was travelling in was being driven by his co-employee. The driver of the other vehicle was to blame for the collision.

Your client suffered a compound fracture of the right tibia and fibula in the collision. As a result, he was hospitalised for five weeks and, when discharged, he was obliged to stay at home for another six weeks. Only then could he return to work. Whilst away from work your client was paid in full, although he was only entitled to three weeks sick leave. His employer paid him for the extra three weeks although not obliged to do so in terms of your client's employment contract. The vehicle in which your client was a passenger was being driven in the course and scope of the driver's employment. Draft an appropriate letter

aan u kliënt se werkgever op waarin u die inligting wat u nodig het uiteensit ten einde u te help om u kliënt se eis vir verlies van inkomste te formuleer en daarna te substansieer. Neem in ag dat u kliënt sy volle salaris ontvang het terwyl hy van die werk weg was.

VRAAG 8 [5]

U word geraadpleeg deur u kliënt wat in 'n motorbotsing erg beseer is. Welke faktore sal u in ag neem wanneer u die kwantum van kliënt se algemene skadevergoeding bereken?

VRAAG 9 [3]

U kliënt is deur 'n ongeïdentifiseerde motorvoertuig op 1 April 2008 omgery. As gevolg van die ernstige kopbesering wat hy opgedoen het, is u kliënt bewusteloos en hy het sy bewussyn eers op 10 Mei 2008 herwin.

Voor watter datum moet u sy eis vir skadevergoeding teen die Padongelukfonds indien, ten einde te voorkom dat die eis verjaar. Motiveer u antwoord ten volle.

VRAAG 10 [15]

U word deur mnr James Jones, die enigste lid van Bargain Builders BK, genader met 'n koopvooreenkoms, waarkragtens die BK 'n eiendom Erf 247, Sentraal Port Elizabeth Registrasie afdeling Oos-Kaap, geleë te Hoofweg 1, Sentraal Port Elizabeth vanaf die Swart Familie Trust koop. Die Trust word deur John en Mary Swart, die trustees, verteenwoordig.

By nagaan van die koopvooreenkoms wat te Port Elizabeth op 12 Augustus 2007 gesluit is, merk u dat in terme van klousule 12 daarvan betaling van die koopsom gewaarborg moes word by wyse van 'n bankwaarborg vir die bedrag van R120 000 synde die volle koopsom betaalbaar op registrasie.

to your client's employer setting out all the information that you require to formulate and subsequently substantiate the claim for loss of earnings on your client's behalf. Bear in mind that your client received his full salary whilst away from work.

QUESTION 8 [5]

You are consulted by your client who was severely injured in a motor vehicle collision. What factors will you take into considerations when assessing the quantum of your client's general damages?

QUESTION 9 [3]

Your client was run down by an unidentified motor vehicle on the 1st April 2008. As a result of a serious head injury he sustained, he was rendered unconscious and only regained consciousness on 10th May 2008.

By when must you lodge his claim for damages against the RAF in order to avoid his claim becoming prescribed? Motivate your answer fully.

QUESTION 10 [15]

You are consulted by Mr James Jones, the sole member of Bargain Builders CC who hands you an agreement of sale in terms of which the close corporation had bought erf 247, Central Port Elizabeth, Registration Division, Eastern Cape situated at 1 Main Road, Central Port Elizabeth from the Black Family Trust duly represented by its trustees, John and Mary Black.

Upon perusal of the agreement entered into at Port Elizabeth on the 12th August 2007, you notice that in terms of clause 12 thereof, payment of the purchase price was to be guaranteed by way of a bank guarantee for the amount of R120 000 being the full purchase price, payable against transfer.

U stel by die oordragprokureurs vas dat die waarborge betyds ontvang was en verder dat u kliënt al die ander voorwaardes van die kontrak nagekom het. U kliënt dring aan dat oordrag van die eiendom moet plaasvind.

Die verkoper weier niteenstaande aanmaning om die oordrag dokumente te teken en beweer dat hulle 'n fout begaan het deur die eiendom vir R120 000 te verkoop.

U kliënt gee u instruksies om dagvaarding uit te reik sodat die eiendom oorgedra kan word aan die BK.

U besluit om 'n gekombineerde dagvaarding uit te reik in die Port Elizabeth Hoër Hof.

Stel die besonderhede van vordering tot die dagvaarding in die Hoër Hof op. Gebruik sodanige addisionele feite as wat u nodig vind.

VRAAG 11 [5]

11.1 Verduidelik kortliks die vereistes vir 'n versoek om nadere besonderhede in die Hoër Hof en op watter stadium tydens die verrigtinge dit aangevra kan word. (2)

11.2 Noem drie gevalle waar pleitstukke as gesluit beskou word (*litis contestatio*) kragtens reël 29. (3)

VRAAG 12 [5]

U verteenwoordig die eiser in 'n skadevergoedingsaksie in die Hoër Hof. U is in besit van vyf fotos wat u as getuieenis by die verhoor wil aanbied.

Stel die vereiste kennisgewing op.

VRAAG 13 [12]

Op Vrydag die 20ste Februarie 2003 om en by 22h00 het die oorledene en sy vriendin, beide van wie gedrink het vanaf vroeër die aand, 'n

You ascertain from the conveyancers attending to the transfer of the property that the guarantees were received timeously and that your client had complied with all that was required of him. Your client is adamant that he wants transfer.

The seller, however, despite lawful demand refuses or neglects to sign the transfer documents, claiming that they had made a mistake in selling for R120 000.

Your client instructs you to issue summons claiming an order for transfer of the fixed property to the CC.

You decide to issue a combined summons from the High Court in Port Elizabeth.

Using such additional facts as you may find necessary, draft the particulars of claim to the summons in the High Court.

QUESTION 11 [5]

11.1 Briefly explain what the requirements are for requesting further particulars in the High Court and at what stage of the proceedings these may be requested. (2)

11.2 Name three instances when pleadings are considered closed (*litis contestatio*) in the High Court in terms of rule 29. (3)

QUESTION 12 [5]

You act for the plaintiff in an action for damages in the high court. You are in possession of five photographs which you wish to tender in evidence at the trial.

Draft the necessary notice.

QUESTION 13 [12]

On Friday the 20th February 2003 at approximately 22h00 the deceased and his girlfriend, both of whom had been drinking since

kroeg binnegegaan. Hulle het op stoele langs beskuldigdes 1 en 2 gesit en die partye het aangehou drink. Later die aand het 'n argument ontstaan tussen die oorledene en die beskuldigdes en die kroegeienaar het die beskuldigdes, oorledene en sy vriendin beveel om die kroeg te verlaat. Dit was 'n donker nag en die enigste straatlig was ongeveer 200m van die kroeg. Volgens die oorledene se vriendin, die staat se enigste ooggetuie, het die argument tussen die partye voortgegaan in die straat voor die kroeg waar beskuldigdes 1 en 2 begin het om die oorledene met die vuus te slaan. Die oorledene het geval, opgestaan, weer neergeval en is verder deur beide beskuldigdes aangerand, wat hom daar in die straat bewusteloos gelos het. Sy vriendin het hom by 'n nabygeleë huis ingehelp. Om en by 02h00 die volgende oggend het sy broer hom na die hospitaal toe geneem omdat hy nie sy bewussyn herwin het nie. Die volgende dag is hy oorlede.

Alhoewel die staat in besit is van getuienis dat daar 'n aantal kliënte van die kroeg in die nabyheid was, kan geen van die persone 'n betroubare weergawe van dit wat daar gebeur het, gee nie.

Die beskuldigdes adviseer u dat die oorledene die argument in die kroeg begin het sowel as die bakleiery in die straat. Hulle was dus verplig om hulself te verdedig teen die oorledene deur hom met die vuus te slaan. Hulle erken die oorsaak van dood soos beskryf deur die distriks-geneesheer.

Die distriks-geneesheer deel die hof mee dat die oorledene dood is as gevolg van 'n "intra-kraniale bloeding" veroorsaak deur trauma aan die kop.

13.1 Noem die moontlike klagtes wat teen die beskuldigdes gebring kan word. (3)

13.2 Die twee beskuldigdes verskyn in die streekhof en pleit onskuldig. Stel

earlier the evening, entered a tavern. They occupied chairs next to accused 1 and 2 and the parties continued drinking. As the night wore on an argument erupted between the deceased and the two accused and the tavern owner requested all of them to leave. It was a dark night with the only street lamp approximately 200 metres from the tavern. According to the deceased's girlfriend, the only state eye-witness, the argument continued in the street where accused 1 and 2 started hitting the deceased with fists. The deceased fell, rose to his feet, tripped and was further assaulted by both accused who left him lying there unconscious. He was helped into a nearby house by his girlfriend. At about 02h00 the next morning his brother took him to hospital as he had not regained consciousness. He died the next day.

Although the state has evidence that there were a number of other patrons of the tavern in the vicinity, none of these persons could give a reliable description as to what had occurred during the incident.

The accused advise you that the deceased started the argument in the tavern and the fight in the street. They were obliged to defend themselves by warding off the attack by hitting him with fists. They admit the cause of death as described by the district-surgeon.

The district-surgeon told the court that the deceased died as a consequence of an intracranial haemorrhage caused by trauma to the head

13.1 What possible charges can be brought against the accused? (3)

13.2 The two accused appear in the regional court and plead not guilty. Draft the Section

beskuldigde 1 se verklaring in terme van Artikel 115 op, waarin u handel met die waarskynlike hoofklag. Sluit die kopstuk in. (5)

13.3 Sit uiteen die verskeie aspekte wat u sal opper in u argument vir die onskuldigvinding van die beskuldigdes. (4)

VRAAG 14 [6]

U kliënt is aangekla van die bestuur van 'n motorvoertuig op 'n publieke pad terwyl hy onder die invloed van alkohol was. Die mediesebeampte het 'n bloedmonster van sy liggaam binne twee ure van bestuur getrek en u is tevrede dat die bloedmonster akkuraat geanaliseer is en dat die alkoholinhoud van die bloed van die beskuldigde, uitgedruk in gram per honderd millimeters van bloed, 0.11% is. U adviseer u kliënt om skuldig te pleit tot die alternatiewe klagte naamlik die bestuur van 'n motorvoertuig op 'n publieke pad terwyl die alkoholinhoud van sy bloed die regsliemiet van 0.05% oorskry.

Stel die beskuldigde se Artikel 112 verklaring, sonder die kopstuk, op.

VRAAG 15 [5]

Artikel 60 (4) verklaar dat:

"Die belang van geregtigheid laat nie die vrylating uit aanhouding van 'n beskuldigde toe nie waar een of meer van die volgende gronde vasgestel word...."

Noem die vyf gronde vermeld in die Artikel.

VRAAG 16 [2]

Mej X forseer 'n bottelnek binne-in die anus van 'n 16 jarige seun. Van watter misdaad kan sy aangekla word. Verduidelik die rede vir u antwoord.

115 statement in respect of the 1st accused, including the heading, in answer to the probable main charge. (5)

13.3 Set out the various points that you will raise in your argument for an acquittal in respect of both accused. (4)

QUESTION 14 [6]

Your client is charged with the offence of driving a motor vehicle on a public road in Soweto whilst under the influence of alcohol. The medical officer drew blood samples from his body within two hours of his driving the vehicle and you are satisfied that the process of analyzing the blood sample is accurate and that the accused's blood alcohol count, expressed in grams per hundred milliliters of blood, was 0.11%. You advise your client to plead guilty to the alternative charge of driving a motor vehicle on a public road whilst the alcohol content of his blood exceeded the legal limit of 0.05%

Draw the Section 112 statement that you will present to the court. Do not include the heading.

QUESTION 15 [5]

Section 60 (4) states that:

"The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:"

Name the five grounds referred to in the Section.

QUESTION 16 [2]

Ms X forcibly inserted the neck of a bottle into the anus of a 16 year old boy. With what offence can she be charged? Give reasons for your answer

VRAAG 17 [8]

U is besig om voor te berei vir 'n verhoor in die landdroshof, waarin u kliënt skade eis vir beserings wat hy opgedoen het toe die verweerder se hond hom gebyt het terwyl hy in die straat gedraf het.

17.1 Watter kennisgewings moet u liasseer sodat u die getuienis van 'n mediese spesialis kan lei rakende die beserings? Verduidelik wat sodanige kennisgewings behoort te bevat sonder om die kennisgewings op te stel. (5)

17.2 U kliënt het fotos van die wonde wat hy opgedoen het, laat neem en u wil hierdie fotos gebruik as getuienis by die verhoor. Welke stappe sal u doen in hierdie verband? (3)

VRAAG 18 [5]

U tree op namens James Brown. U kliënt het 'n ooreenkoms aangegaan met Billy Jones BK, verteenwoordig deur die alleen lid – Billy Jones. Kragtens die ooreenkoms het die BK onderneem om by jou kliënt se huis 'n swembad te bou teen 'n kontrakprys van R40 000,00. Die R40 000,00 was betaalbaar soos volg:

- (a) R20 000,00 by ondertekening van die kontrak;
- (b) R10 000,00 sodra die opgrawings gedoen is;
- (c) R10 000,00 by voltooiing.

U kliënt het die kontrakteur die R20 000,00 betaal en daarna 'n verdere R10 000,00 nadat die kontrakteur aangedui het dat hy finansiële probleme het. Die kontrakteur het van die werk gedoen en daarna verdwyn. Gevolglik het u kliënt die kontrak gekanselleer en die dienste van New Pool CC bekom om die werk te voltooi teen 'n koste van R25 000,00.

QUESTION 17 [8]

You are preparing for trial in a case in the magistrate's court in which your client claims damages for the injuries he suffered as a consequence of being bitten by the defendant's dog, whilst your client was jogging down the street.

17.1 What notices would you have to file so that you could lead evidence from a medical specialist about the injuries? Explain what such notices should contain without drafting any of the notices. (5)

17.2 Your client has had photographs taken of the wounds he sustained and you want to introduce these photographs into evidence at the hearing. What steps would you take in this regard? (3)

QUESTION 18 [5]

You act for James Brown. Your client entered into an agreement with Billy Jones CC represented by its sole member, Billy Jones. In terms of the agreement, the Close Corporation undertook to construct a swimming pool at his home for a total contract price of R40 000,00. The R40 000,00 was to be paid as follows:

- a) R20 000,00 on signing of the contract;
- b) R10 000,00 once the excavations were completed;
- c) R10 000,00 on completion.

Your client paid the Contractor the initial R20 000,00 and after the Contractor indicated that he had financial problems, he advanced him a further R10 000,00. The Contractor undertook certain work and then absconded. As a result your client cancelled the contract and obtained the services of New Pool CC who undertook to complete the work at a cost of R25 000,00.

Stel die nodige besonderhede van eis op waarin u kliënt sy skade verhaal (geen kopstuk en slot word benodig nie).

VRAAG 19 [3]

U kliënt oorhandig aan u 'n dagvaarding, uitgereik in Durban, waarin hy gedagvaar word deur Kurt Schmitt, 'n inwoner van Munich, Duitsland. U kliënt dui aan dat hy 'n goeie verweer het maar dat hy bekommerd is oor die verhaal van sy koste indien hy suksesvol sou wees. Adviseer u kliënt oor die stappe wat geneem kan word om sy belange te beskerm.

VRAAG 20 [3]

U kliënt oorhandig aan u 'n dagvaarding waarin hy gedagvaar word vir R30 000,00 in die landdroshof voortspruitend uit 'n motorongeluk. Hy word daarvan beskuldig dat hy nalatig opgetree het. Sy motor was nie in die ongeluk beskadig nie. Uit die inligting oor die omstandighede van die ongeluk, blyk dit dat die eiser bydraend nalatig was. U is van mening dat albei partye ewe aanspreeklik is vir die ongeluk.

Adviseer jou kliënt hoe hy die saak kan benader in terme van die reëls van die hof ten einde die aangaan van verdere regskoste te beperk.

VRAAG 21 [5]

U reik dagvaarding uit namens Sifiso Cele teen die bestuurder van 'n vragmotor wat gebots het teen sy muur wat skade veroorsaak het ten bedrae van R40 000,00. Die prokureur wat die bestuurder van die vragmotor verteenwoordig, teken verskyning om te verdedig aan en liasseer 'n pleit waarin hy ontken dat sy kliënt aanspreeklik is weens die feit dat hy nie 'n geldige bestuurslisensie gehad het ten tye van die ongeluk nie. Stel die document op wat u behoort te liasseer na ontvangs van so 'n pleit (geen opskrif en einde word benodig).

Draft the necessary Particulars of Claim in which your client seeks to recover the damage he has suffered. (Omit heading and prayer).

QUESTION 19 [3]

Your client provides you with a Summons issued in Durban in which he has been sued by Kurt Schmitt, a resident of Munich, Germany. Your client instructs you that he has a good defence to the action but is concerned as to how he would recover his costs should he be successful. Advise your client what steps you will take so as to protect his interest.

QUESTION 20 [4]

Your client provides you with a Summons in which he has been sued for R30 000,00 in the magistrate's court as a result of a motor collision in which it is alleged that he has been negligent. His car was not damaged in the collision. Your client instructs you as to the circumstances of the collision which appear to indicate that there has been contributory negligence on the part of the plaintiff and you are of the opinion that each party is equally to blame for the collision.

Advise your client what steps he should take in terms of the Rules of Court so as to try to curtail further costs.

QUESTION 21 [5]

You issue summons on behalf of Sifiso Cele who has a claim against the driver of a heavy duty vehicle which crashed into the wall of your client's property causing R40 000,00 damage. The attorney representing the defendant entered appearance to defend and filed a plea in which he denied his client was liable because he was not licensed to drive a heavy duty vehicle. Draft the document which you ought to file in response to such a plea. Omit heading and ending.

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

4 AUGUST / 4 AUGUSTUS 2009

ANSWERS/ANTWOORDE

**PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE A
CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF READING.**

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[1]

Yes, in terms of Section 22 of the Road Accident Fund Act, the Fund shall furnish the third party or its agent with a copy of the information and statements which the owner/driver furnished in terms of Section 22(1) together with all statements which were obtained from witnesses to the accident.

QUESTION 2

[2]

No, he is not obliged to furnish an affidavit or even to attend the interrogation. The Fund can only call for this interrogation before action.

QUESTION 3

[2]

You can have the claimant examined by a medical practitioner who has fully satisfied himself regarding the nature and treatment of the bodily injuries in respect of which the claim is made and to then prepare a medical report.

QUESTION 4

[2]

Yes. Claims may only be lodged by the claimant, by his/her attorney or any person in the Public Service.

QUESTION 5

[2]

Prior to *Bezuidenhout vs Road Accident Fund* 2003 (6) SA 61 (SCA) the client had to prove an actual collision between the unidentified motor vehicle and himself. *Bezuidenhout's* case states that there does not have to be physical contact with an unidentified vehicle. The Regulation promulgated pursuant to the Road Accident Fund Act falls outside the object and purpose of the Act and is therefore *ultra vires*. Your client has a case

QUESTION 6**[1]**

15,5% per annum from 14 days after judgement has been given.

QUESTION 7**[7]**

The letter must contain the following:

- 7.1 The employer must be advised that you are acting on behalf of their employee in regard to his claim for damages arising from the injuries he sustained in the motor accident. Details of the time and place of the accident should be furnished (½)
- 7.2 The employer must be asked to furnish a certificate (½) confirming your client's employment with the company (1), advising of the length of his employment with them (½), the salary that your client earned over the 12 months preceding the accident (½), details of any "employment perks" he may have received, and his annual leave and sick leave entitlements (1½) and the period he was absent from work (½).
- 7.3 The employer must be specifically asked what payments your client received whilst he was away from work recovering from his injuries (½). The employer must be asked to state whether these payments arose out of his conditions of employment (basically whether he was entitled to sick leave pay) (½) or whether the payment of salary was *ex gratia* (1). Full details must be furnished by the employer.

QUESTION 8**[5]**

1. Age and sex of the claimant (½)
2. The nature and extent of the injuries (1)
3. Pain, suffering, shock and disfigurement suffered (1)
4. Loss of amenities of life (1)
5. Disability – both temporary and permanent suffered (½)
6. Awards made in comparable cases which must be adjusted for inflation to reflect present monetary values (1)

QUESTION 9**[3]**

Prescription will run from the date of the accident (1). Because he was struck by an unidentified vehicle the claim will prescribe 2 years from the date of the accident (see regulation 3) (1). You must therefore lodge your client's claim on or before 31st March 2010 (1).

QUESTION 10**[15]**

1. Plaintiff is Bargain Builders CC, a close corporation, duly registered in terms of the Close Corporations Act / statutes of the Republic of South Africa with registered address / principal place of business at (2)
2. First Defendant is John Black N.O., an adult male business man, residing at (address), Port Elizabeth in his capacity as trustee of the Black Family Trust. (2)
3. Second Defendant is Mary Black N.O., an adult female housewife residing at (address), Port Elizabeth in her capacity as trustee of the Black Family Trust. (2)
4. On(date) (1/2) at(place) (1/2) plaintiff duly represented by(1/2) and 1st and 2nd defendants entered into a written agreement (1/2) in terms of which plaintiff purchased from the 1st and 2nd defendants Erf 247 Central Port Elizabeth (1/2) for a purchase price of R120 000 payable against transfer (1/2).
5. A copy of the said agreement is annexed hereto marked Annexure "A". (1)
6. Plaintiff has duly provided a guarantee for the payment of the purchase price required in clause 12 of the Annexure "A" and has fulfilled all other obligations imposed on him in terms of the said agreement. (1)
7. Despite demand, 1st and 2nd defendant refuse to pass transfer to plaintiff by neglecting or refusing to sign the transfer documents. (1)

WHEREFORE plaintiff claims:

- a) An order directing 1st and 2nd defendants to take all the necessary steps to pass transfer of Erf 247, Central Port Elizabeth / sign all documents necessary to pass transfer of Erf 247, Central Port Elizabeth to the plaintiff. (1)
- b) An order that should defendants fail within 14 days of the court order to take the necessary steps, the sheriff of Port Elizabeth is authorised to take such steps on the defendants' behalf. (1)
- c) Costs. (1)
- d) Further and/or alternative relief. (1)

QUESTION 11**[5]**

- 11.1 A party may only request such further particulars as are strictly necessary to enable him to prepare for trial. Such request may be delivered after close of pleadings not less than 20 days before the trial. (2)

11.2 Pleadings are considered closed –

- a) if either party has joined issue without alleging any new matter, and without adding any further pleading. (1)
- b) if the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed; (1)
- c) if the parties agree in writing that they are closed and such an agreement is filed with the Registrar; **OR** (1)
- d) if the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed. (1)

QUESTION 12

[5]

NOTICE IN TERMS OF RULE 36(10)(a)

Please take Notice that Plaintiff intends (1) to tender in evidence at the trial (1) of this matter 5 (five) photographs depicting the damages to this motor vehicle (1) / bodily injuries suffered / the scene of the collision* and hereby offers inspection (1) thereof to defendant who is required to admit (1) the same within 10 (ten) days after receipt of this notice. #

* Note to examiner: the description of the photographs could vary from case to case.

* Note to examiner: candidates adding that "if the other party fails to respond the photos shall be received in evidence upon its mere production" or "if he does not admit them the photos may be proved at the hearing" should not be penalised.

QUESTION 13

[12]

- 13.1
- Murder
 - Culpable Homicide
 - Assault with intent to do grievous bodily harm
- (3)

13.2

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF NORTHERN GAUTENG HELD AT PRETORIA

CASE NO: 1247/2003

In the matter between:

X

THE STATE

STATEMENT IN TERMS OF SECTION 115 OF ACT 51 OF 1977

I the undersigned

X

hereby declare as follows:

1.
I am the accused in this matter and the facts hereinafter set out are true and correct.
2.
I plead not guilty to the charge of murder.
3.
I admit that the deceased in this matter is one J. RANDAL and that he died on the 21st February 2003 as a result of injuries indicated in the post-mortem report.
4.
I deny that the injuries that caused the death of the deceased were caused by my co-accused and/or myself.
5.
I admit that on the day in question the deceased started a fight with my co-accused and we were obliged to ward off the attack by hitting the deceased with fists in self defence.

DATED at PRETORIA on this the 30th day of November 2004

Signed Accused

(5)

13.3

- The deceased was the aggressor.
- The accused acted in self defence.
- The accused used their fists and it thus cannot be argued that they had an intention to kill.
- The deceased was drunk and could have fallen and hit his head against a rock after he parted company with the accused.
- He may also have bumped his head against a door frame when entering the house whilst being assisted by his girlfriend taking into consideration their state of sobriety.
- The fatal trauma to the head could have caused by an incident other than the fist fight.

- The girlfriend is a single witness, was drunk, and could have a motive (cautionary rule to apply).
- The lighting was poor
(this list is not exhaustive)

(4)

QUESTION 14

[6]

I the undersigned

John Smith

do hereby declare in terms of Section 112 of Act 51 of 1977 as follows:

1. I am the accused in this matter and I plead guilty to the alternative charge.
2. I confirm that my declaration to plead guilty was made freely and voluntarily and without any undue influence having been exerted on me.
3. I admit that on the 3rd JUNE 2008 I was the driver of motor vehicle namely PAJERO with registration number HCC 191 GP.
4. I drove the said motor vehicle along Mocke Street in Soweto which is a public road.
5. I admit that at the time of my driving the motor vehicle the content of alcohol in my blood was 0.11% which is above the legal limit.
6. I admit that a blood sample was drawn from my body within two hours of my driving the vehicle and that it was correctly analyzed.
7. I confirm that at all relevant times hereto I was aware of the fact that it is an offence to drive a motor vehicle whilst the alcohol content of one's blood exceeds 0.05%.

DATED at Johannesburg on this theday of July 2008.

ACCUSED

QUESTION 15

[5]

Vide Section 60(4) of CPA

The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

- (a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence, or
- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence, or

- (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence, or
- (d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system,
- (e) where in exceptional circumstance there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security, or

QUESTION 16

[2]

Rape. Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with the definition of "sexual penetration" in Section 1 creates the offence of rape in the circumstance set forth in the question.

QUESTION 17

[8]

17.1 File a notice at least 15 days before the date of the hearings that you intend calling an expert.

File a further notice at least ten days before the hearing setting out a summary of the expert's opinions and his reasons for such opinion which should include qualifying him as an expert, that he has examined the plaintiff and what he has found. (5)

17.2 At least 10 days before hearing give notice of your intention to use the photographs and invite inspection thereof and state that if the defendant does not object they may be admitted without further proof. (3)

QUESTION 18

[5]

1. Plaintiff is James Brown, adult male, engineer who resides at 1 Smith Street, Johannesburg.
2. Defendant is Billy Jones CC, a swimming pool contractor, registered office 1 West Street, Johannesburg.
3. On or about 1st January 2009 an agreement was entered into between plaintiff and defendant, the material terms of which were:
 - (a) Defendant would construct etc.
 - (b) Plaintiff would pay R40 000,00 as follows etc.
4. Plaintiff paid to defendant the sum of R30 000,00.
5. Defendant partially completed the excavations and abandoned the contract.
6. As a result thereof the plaintiff duly cancelled the agreement.

7. Plaintiff engaged New Pool CC who completed the contract work at a cost of R25 000,00 which is a fair and reasonable price.
8. As a result the plaintiff has suffered damages in the sum of R15 000,00.
9. Despite demand on 1st June 2009 defendant has failed to pay the said amount.

QUESTION 19

[3]

Firstly I would enter an appearance to defend then I would file a notice in which I ask the plaintiff to provide security for costs.

QUESTION 20

[4]

He should tender the amount of R15 000,00 plus costs to date (being 50% of the claim). His offer would be without prejudice and he would tender the costs to date of this notice.

QUESTION 21

[5]

EXCEPTION

To the Clerk of the Court

and

XYZ Defendant's attorneys

Sirs,

Please take notice that the plaintiff excepts to the defendant's plea on the grounds that it does not disclose a defence.

Particulars

The fact that the driver did not have a licence does not excuse his negligence in colliding into the wall and thus is not a defence.

Prayer

That this exception be upheld with costs.