

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

19 AUGUSTUS 2015

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. 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 druip.

ATTORNEYS' EXAMINATION

PART 3 ATTORNEY'S PRACTICE

19 AUGUST 2015

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. 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

[55]

Mnr Merchant gee 'n groot aantal skulde vir invordering aan u oor. Alle eise val binne die jurisdiksie van die distriktshof. Mnr Merchant verwag nie dat skuldenaars die eise sal teenstaan nie.

- 1.1 Watter reëlings kan u met die handelaar oor u gelde (fooie) tref? Is daar 'n toepaslike tarief? Mag u op 'n gebeurlikheidsbasis (contingency) kragtens toepaslike wetgewing werk en indien wel, wat is die vereistes? (8)
- 1.2 Watter fooie en uitgawes mag u van skuldenaars verhaal teen wie u verstekvonniskry? (4)
- 1.3 Een skuldenaar kan wel niks betaal nie maar u kry 'n borgaktes deur die skuldenaar se een broer onderteken. Die borgaktes maak voorsiening vir twee broers om gesamentlik en afsonderlik as borge te teken. Teen wie:
- a) mag; en
b) sou u optree? Verduidelik. (6)
- 1.4 In verskeie gevalle is die skuldenaar se huidige adres onbekend. Hoe word die probleem gewoonlik hanteer en hoe verhaal u die betrokke koste? (4)
- 1.5 Skuldenaar X was 'n vennootskap. Na die skuld ontstaan het, het vennoot A sy belang aan vennoot B verkoop. Kan u nog teen A verhaal? (2)
- 1.6 Dit blyk dat skuldenaar Abe's Motors oorspronklik aan Abe behoort het en dat Abe die onderneming drie maande gelede aan Ben verkoop het en intussen gesekwestreer is. In welke omstandighede kan nog na die bates van die onderneming gekyk word vir die verhaal van die eis teen Abe se insolvente boedel? Hoe kon Ben homself beskerm het? (6)

QUESTION 1

[55]

Mr Merchant hands you a large number of debts to collect. All the claims fall within the jurisdiction of the district court. Mr Merchant does not think that any debtor will defend the claims.

- 1.1 What arrangements can you make with the creditor regarding fees? Is there an applicable tariff? May you work on a contingency basis in terms of applicable legislation and if so, what are the requirements? (8)
- 1.2 What fees and disbursements may you recover from debtors if you get default judgement? (4)
- 1.3 A specific debtor is known to be unable to pay but you are given a deed of suretyship signed by the debtor's one brother. The deed provides for two brothers to sign jointly and severally as sureties. Against whom
- a) may;
b) would you proceed? Explain. (6)
- 1.4 In several cases the debtor's present address is unknown. How is this problem normally dealt with and how would you recover the costs involved? (4)
- 1.5 Debtor X was a partnership. After the debt arose partner A sold his interest to partner B. Can you act against A for recovery of the debt? (2)
- 1.6 It appears that debtor "Abe's Motors" originally belonged to Abe who sold the business to Ben three months ago and has since been sequestrated. In what circumstances could the assets of the business still be looked to for recovery of the claim against Abe's insolvent estate? How could Ben have protected himself? (6)

1.7 Skuldenaar D het reeds 'n skuldbewys onderteken om R50 000 plus rente in maandelikse paaiemente van R5 000 elk te betaal. Dit bepaal ook dat as 'n paaiement nie betyds betaal word nie, "moet die Skuldeiser 14 dae skriftelik kennis gee om betaling te eis en indien D versuim om te betaal, hy die volle uitstaande bedrag mag opeis". Geen paaiemente is ooit betaal nie. Stel die toepaslike aanmaningsbrief op. (5)

1.8 U verkry vonnis by verstek teen Skuldenaar O wat 'n goeie salaris verdien, eienaar is van 'n betaalde motor en 'n eis teen sy broer het vir gelde geleen en voorgeskiet. Watter verhaalsmoontlikhede bestaan teenoor O? (5)

1.9 ABC (Edms) Bpk (in likwidasië) skuld mnr Merchant 'n bedrag van R100 000 vir goedere verkoop en gelewer. U kliënt het geen sekuriteit vir betaling van die bedrag nie. U word 'n brief getoon wat u kliënt van die likwidateur ontvang het wat meld dat die laste van die maatskappy in likwidasië sy bates ver oorskry.

1.9.1 Adviseer u kliënt omtrent die wenslikheid om 'n eis teen die gelikwideerde maatskappy te bewys; (5)

1.9.2 Indien u kliënt besluit om 'n eis te bewys, noem die dokumente wat u sal moet opstel vir hierdie doel. (4)

1.9.3 Skryf 'n brief aan u kliënt en beskryf die prosedure wat sal volg op die invul van die eisvorms totdat u kliënt 'n dividend ontvang. (6)

VRAAG 2 [10]

In welke omstandighede mag 'n prokureur weier om 'n mandaat te aanvaar? Wanneer is hy verplig om 'n mandaat te weier en is hy ooit verplig om 'n mandaat te aanvaar?

1.7 Debtor D has already signed an acknowledgment of debt which provides for payment of R50 000 and interest in instalments of R5 000 each and that on failure to pay any instalment, "the creditor shall give 14 days notice in writing demanding payment and should D fail to pay he shall be entitled to claim the full outstanding balance". No instalment was ever paid. Draft the required letter of demand. (5)

1.8 You obtain default judgement against Debtor O. O earns a good salary, owns a fully paid motor vehicle and has a claim against his brother for money lent and advanced. What possible methods of recovery of the judgement debt apply in respect of O? (5)

1.9 ABC (Pty) Ltd (in liquidation) owes Mr Merchant an amount of R100 000 in respect of goods sold and delivered. Your client has no security for payment of the amount. You are shown a letter that your client received from the liquidator stating that the liabilities of the company in liquidation exceed its assets by far.

1.9.1 Advise your client as to the desirability of proving a claim against the liquidated company. (5)

1.9.2 If your client decides to prove a claim, name the documents you will have to prepare for this purpose. (4)

1.9.3 Write a letter to your client explaining the procedure that will follow from completing the claim forms to the point when your client receives a dividend. (6)

QUESTION 2 [10]

Under what circumstances may an attorney refuse to undertake a mandate? When is the attorney obliged to refuse a mandate and is he ever obliged to accept a mandate?

VRAAG 3 [15]

Skryf kort antwoorde op die volgende vrae:

- 3.1 Indien u nie seker is of 'n stap wat u wil doen eties toelaatbaar is of nie, hoe sou u te werk gaan om die antwoord te kry? (3)
- 3.2 Sal dit toelaatbaar wees om vooraf met 'n advokaat op die fooi vir verskyning in die hof ooreen te kom? (2)
- 3.3 Welke dokumente mag ingevolge die Wet op Prokureurs slegs deur 'n prokureur opgestel word in die verwagting van enige besoldiging, voordeel of beloning? (5)
- 3.4 U het 'n konsultasie gereël tussen u kliënt en 'n advokaat en beseft daarna dat u nie self die konsultasie sal kan bywoon nie. Mag die konsultasie in u afwesigheid plaasvind? (5)

VRAAG 4 [20]

Mnr Adam Smith verkoop sy drankwinkel aan John Brown. U tree vir die verkoper op. Die saak word bedryf op persele wat van ABC (Edms) Bpk gehuur word. Dit word "romp en stomp" (alles ingesluit) verkoop vir R500 000.

- 4.1 Adviseer die verkoper oor sekuriteit as die koopprys betaal word by wyse van 'n deposito van R100 000 en maandelikse paimente van R10 000. (5)
- 4.2 Welke opskortende voorwaardes behoort opgelê te word? (2)
- 4.3 Stel 'n versnellingsklousule op om die verkoper te beskerm. (3)
- 4.4 Stel die klousule op wat die verkoper sal beperk om 'n soortgelyke saak binne

QUESTION 3 [15]

Write short answers to the following questions:

- 3.1 If you are not sure whether a step you propose taking is ethically permissible, how would you go about getting an answer? (3)
- 3.2 Will it be in order to agree with counsel in advance on a fee for the latter's appearance in a court? (2)
- 3.3 What documents in terms of the Attorneys Act may only be prepared by an attorney with the expectation of a fee, gain or reward? (5)
- 3.4 You have arranged a consultation between your client and an advocate and subsequently discover that you are unable to attend the consultation. May the consultation take place without you? (5)

QUESTION 4 [20]

Mr Adam Smith sells his bottle store to John Brown. You act on behalf of the seller. The business which is operated from premises leased from ABC (Pty) Ltd is sold "Lock, stock and barrel" for the sum of R500 000.

- 4.1 Advise the seller on the issue of security if the purchaser pays a deposit of R100 000 and undertakes to pay the balance of the purchase price at the rate of R10 000 per month. (5)
- 4.2 What are the suspensive conditions that should be included in the deed of sale? (2)
- 4.3 Draft the acceleration clause that you would include in the agreement to protect the seller. (3)
- 4.4 Draft the clause that would be included in the agreement to restrain the seller from

Gauteng te bedryf. Die beperking moet vir vyf jaargeld. (5)

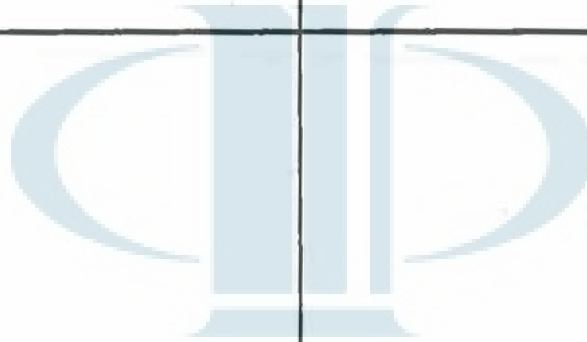
operating a similar business within the Gauteng area, where the business was operated, which restraint is to be for a period of five years. (5)

4.5 Stel die kennisgewing aangaande die verkoping op wat in 'n koerant moet verskyn ingevolge Artikel 34 van die Insolvensiewet. (5)

4.5 Draft the notice which must be published in a newspaper in terms of Section 34 of the Insolvency Act in regard to the sale of the business. (5)

- DIE EINDE -

- THE END -



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