

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

10 FEBRUARIE 2016

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

10 FEBRUARY 2016

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.

NOTAS:

1. Die lengte van die antwoord en die hoeveelheid detail hang af van die aantal punte.
2. Antwoorde word beoordeel met inagneming van die opstelwerk.
3. Kandidate word geenaliseer vir oortollige irrelevante antwoorde.

VRAAG 1 [10]

Formuleer daardie klousule(s) in 'n ooreenkoms vir die verkoop van 'n besigheid wat die werking van die ooreenkoms opskort tot tyd en wyl voldoende reëlings met die verhuurder van die perseel vanwaar die besigheid bedryf word, getref is ten einde die voortsetting van die besigheid op daardie perseel te verseker. Die klousule(s) moet voorsiening maak vir:

- 1.1 Die sessie en delegasie van die regte en verpligtinge kragtens die bestaande huurkontrak vanaf die huurder aan die koper met die toestemming van die verhuurder; of (5)
- 1.2 Die sluit van 'n nuwe huurkontrak tussen die koper en die verhuurder tesame met die kansellering van die bestaande huurkontrak. (5)

VRAAG 2 [20]

Mnr A (wat eersdaags oorsese gaan) wil 'n private maatskappy (B) met 'n bepaalde naam oprig om transport te neem van 'n sake-erf wat tans op sy eie naam geregistreer is. Hy raadpleeg u.

- 2.1 Lys die dokumente wat hy moet onderteken om u in staat te stel om in sy afwesigheid oprigting van B by CIPC te bewerkstellig; (3)

NOTES:

1. The length of answers and the amount of details should be based on the number of marks awarded.
2. Answers will be assessed with due regard to the draftmanship displayed.
3. Candidates will be penalised for answers padded with irrelevant material.

QUESTION 1 [10]

Draft the clause(s) 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(s) should allow for either:

- 1.1 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 (5)
- 1.2 The conclusion of a new lease agreement between the purchaser and the landlord together with the cancellation of the previous lease. (5)

QUESTION 2 [20]

Mr A (who is shortly going overseas) wishes to incorporate a private company (B) with a specific name which company is to take transfer of a business stand which is currently registered in his own name. He consults you to assist him.

- 2.1 List the documents he must sign to enable you to effect the incorporation of the private company, with CIPC: (3)

2.2 Noem die soorte maatskappye met winsmotief wat kragtens die Maatskappywet gevorm en ingelyf kan word?

(4)

2.3 U verduidelik aan A dat hy nou die vereiste koopakte van die erfkan onderteken a) as verkoper; en ook b) as trustee; vir 'n maatskappy (B) wat opgerig staan te word, as koper. Welke stappe sou daarna vereis word om 'n geldige koopakte tot stand te bring?

(3)

2.4 Gestel mnr A is bereid om te wag en vra u om namens hom (na oprigting van B) as verkoper te teken. Stel die dokument op wat u sal magtig om die koopakte as verkoper te teken.

(10)

VRAAG 3

[4]

In 'n siviele verhoor oor 'n motorbotsing bevind die hof dat A se skade R150 000 was maar dat hy 40% nalatig was. Verweerder B se skade was R160 000 en nalatigheid 60% was. Wat is die netto effek? U het ooreengekom op gebeurlikheidsgelde van 20% van wat u kliënt A verhaal. Wat is u fooi? Wys u berekeninge.

VRAAG 4

[28]

U word geraadpleeg deur u gevestigde kliënt Mnr A, wat 'n winsgewende maar riskante onderneming bedryf en sy aanstaande, mev B, 'n geskeide dame. Sy is welgesteld maar haar vorige man (met wie sy getroud was buite gemeenskap van goed), het haar bates en beleggings behartig. Mnr A en mev B wil in die huwelik tree en benodig u raad oor persoonlike en sakebelange. Mev B is byvoorbeeld besorg dat mnr A geldelike teenspoed mag kry. Dui aan hoe u as prokureur die volgende kwessies sal hanteer:

2.2 List the forms of profit companies that can be formed and incorporated in terms of the Companies Act.

(4)

2.3 You explained to Mr A that he could now sign the deed of sale relating to the stand a) as seller; and also b) as trustee for a company (B) to be incorporated as purchaser. What steps would thereafter be required to arrive at a valid deed of sale?

(3)

2.4 Assume that Mr A is prepared to wait and requests you to sign as seller on his behalf once the company B is incorporated. Draw the document you will require as authority to sign the deed of sale as seller?

(10)

QUESTION 3

[4]

In a civil trial involving a motor collision the Court finds that your client A suffered damage of R150 000 but was 40% negligent. The defendant B was 60% negligent and his damage was R160 000. What is the net effect? You contracted with A that your fee would be 20% of what he recovers. What is your fee? Show all calculations.

QUESTION 4

[28]

You are consulted by Mr A, who runs a profitable but risky business, and Mrs B, his fiancée, a divorced lady. She is quite wealthy but her former husband (to whom she was married out of community of property) used to manage most of her assets and ventures. Mr A and Mrs B intend getting married and need your advice on aspects of the personal and business affairs. Mrs B is inter alia concerned that Mr A may land in financial difficulties. Indicate how, as their attorney, you would deal with the following issues:

4.1 Hulle wil weet welke moontlike huweliks-bedelings bestaan; hoe 'n mens die verskillende bedelings bewerkstellig en watter een u vir hulle aanbeveel. Wat vertel u hulle? (10)

4.1 They wish to know all possible regimes that can apply to their proposed marriage, how one goes about achieving the various marital regimes and which one you recommend. What do you tell them? (10)

4.2 Hulle vra wat die uitwerking op mev B se bates sal wees as mnr A gesekwestreer word na die huwelik. Skryf aan haar oor die moontlike gevolge en wat sy in so 'n geval sal moet doen om haar belange te beskerm en haar regte af te dwing. (10)

4.2 They enquire what the effect on Mrs B's assets would be if Mr A were to be sequestrated after marriage. Write her a letter to advise her of the potential risks and what she would have to do to protect her interests and to enforce her rights in such an event. (10)

4.3 Ten einde probleem te vermy, oorweeg mev B om 'n *inter vivos* trust vir haar minderjarige kinders te skep. By wie word so 'n trust geregistreer, welke dokumente moet ingedien word en watter verdere inligting moet aan die owerhede verstrekk word vir registrasie? (8)

4.3 In order to avoid possible risks Mrs B considers creating an *inter vivos* trust for her minor children. With whom would such a trust be registered, what documents must be lodged and what further information must be submitted to the authorities to obtain registration? (8)

VRAAG 5 [10]

QUESTION 5 [10]

'n Ou skoolmaat wat op trou staan, vra u wat die jongste posisie is wat betref die regte van eggenotes wat binne gemeenskap van goedere getroud is om met die bates van die gemeenskaplike boedel te handel.

An old school friend who is getting married asks you what the position is relating to the rights of spouses married in community of property to deal with the assets of the joint estate.

5.1 Verduidelik die algemene beginsels; (4)

5.1 Explain the general principles. (4)

5.2 Geeminstens ses uitsonderings. (6)

5.2 Name at least six exceptions. (6)

VRAAG 6 [17]

QUESTION 6 [17]

Verduidelik en bespreek kortliks die volgende:

Explain and discuss briefly the following:

6.1 Optrede pro amico; (2)

6.1 Acting pro amico; (2)

6.2 Optrede pro bono; (2)

6.2 Acting pro bono; (2)

6.3 Optrede op gebeurlikheidsgrondslag; (5)

6.3 Acting on a contingency basis; (5)

6.4 Koste de bonis propiis; (3)

6.4 Costs de Bonis Propriis; (3)

6.5 'n Bevel dat koste in die geding moet wees; (2)

6.5 An order that the costs should be costs in the Cause; (2)

6.6 Party en party koste. (3)

6.6 Party and party costs. (3)

VRAAG 7 [11]

QUESTION 7 [11]

7.1 U is nie seker of iets wat u voornemens is om te doen, eties korrek is nie. Hoe sal u vasstel of u dit mag doen? (2)

7.1 If you are not sure whether some or other step you propose taking is ethically permissible, how would you go about getting an answer? (2)

7.2 Watsal gebeur as u versuim om u ledegeld aan u betrokke Prokureursorde te betaal? (2)

7.2 What will happen if you fail to pay your membership fees to the Law Society of which you are a member? (2)

7.3 Vir watter doel is die Getrouheids-waarborgfonds vir Prokureurs gestig? (2)

7.3 What is the purpose for which the Attorneys Fidelity Fund was established? (2)

7.4 Waarom sou u u kliënt adviseer om 'n testament op te stel? (2)

7.4 Why would you advise your client that he should draw up a Will? (2)

7.5 Mag 'n praktisyn:

7.5 May a practitioner:

7.5.1 gelde wat verdien is met sy/haar kandidaatprokureur deel? (1)

7.5.1 share fees earned with his/her Candidate Attorney? (1)

7.5.2 'n kandidaatprokureur'n kommissie, bereken op die gelde wat die kandidaat prokureur self gegenereer het betaal? (1)

7.5.2 pay the Candidate Attorney a commission based on the fees that the candidate attorney generates? (1)

7.5.3 gelde met advokaat deel? (1)

7.5.3 share fees with Counsel? (1)

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- THE END -