

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

15 FEBRUARIE 2017

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

15 FEBRUARY 2017

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 [25]

Mnr Adam Smith verkoop sy drankwinkel aan John Brown. U tree vir die verkoper op. Die besigheid word bedryf op 'n perseel wat by ABC (Edms) Bpk gehuur word. Die hele besigheid met al sy bates word verkoop vir R500 000.

- 1.1 Adviseer die verkoper oor watter tipe sekuriteit vir betaling aan hom verskaf kan word as die koopprys betaal word by wyse van 'n deposito van R100 000 en maandelikse paaiemente van R10 000. (5)
- 1.2 Gegewe die feitestel, welke opskortende voorwaardes behoort opgelê te word? (5)
- 1.3 Stel 'n versnellingsklousule op om die verkoper te beskerm. (3)
- 1.4 Stel die klousule op wat die verkoper sal beperk om 'n soortgelyke besigheid binne Gauteng te bedryf. Die beperking moet vir twee jaar geld. (7)
- 1.5 Stel die kennisgewing aangaande die verkoping op wat in 'n koerant moet verskyn ingevolge Artikel 34 van die Insolvensiewet. (5)

VRAAG 2 [15]

Stel enige drie van die volgende klousules op vir gebruik in enige ooreenkoms:

- 2.1 Volle ooreenkoms; (5)
- 2.2 Wysigings; (5)
- 2.3 Jurisdiksie van landdroshowe; (5)
- 2.4 Verdeelbaarheid van bepalings. (5)

QUESTION 1 [25]

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

- 1.1 Advise the seller on the issue of payment and what security can be provided for payment 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)
- 1.2 Given the facts stated, what suspensive conditions should be imposed? (5)
- 1.3 Draft the acceleration clause that you would include to protect the seller. (3)
- 1.4 Draft the clause that would be included to restrain the seller from operating a similar business within the Gauteng area, which restraint is to be for a period of two years. (7)
- 1.5 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)

QUESTION 2 [15]

Draft any three of the clauses listed below for inclusion in any agreement:

- 2.1 Whole agreement; (5)
- 2.2 Variation; (5)
- 2.3 Jurisdiction of magistrate's courts; (5)
- 2.4 Severability of provisions. (5)

VRAAG 3 [15]

- 3.1 U kliënt Mnr A raadpleeg u. Hy het onlangs 'n tweedehandse voertuig by 'n nasionale motor-handelaar gekoop. Vier maande nadat hy dit ontvang het, het die voertuig se ratkas gebreek. Dit word vasgestel dat die gebrek reeds bestaan het toe hy die voertuig gekoop het en dat die voertuig nie in 'n goeie werkende toestand was op datum van koop nie. Met spesifieke verwysing na wetgewing wat ten doel het om verbruikers te beskerm, adviseer u kliënt met betrekking tot sy regte en remedies. (12)
- 3.2 Sou u advies verskil indien die ooreenkoms tussen die handelaar en u kliënt 'n voetstoots klousule bevat het? (3)

VRAAG 4 [10]

- 4.1 'n Kliënt dring daarop aan dat u dagvaarding uitreik vir 'n eis wat klaarblyklik verjaar het. Hoe verduidelik u die posisie aan u kliënt? (6)
- 4.2 U vennoot het 'n beëdigde verklaring in 'n dringende Hoë Hof aansoek opgestel. Geen Kommissaris van Ede is beskikbaar nie. Kan u die eed afneem? Sou die posisie anders gewees het as dit 'n aktesaangeleentheid was en indien wel, waarom? (4)

VRAAG 5 [10]

- 5.1 Welke tipe maatskappye kan kragtens die Maatskappyyewet Nr 71 van 2008 opgerig word? (5)
- 5.2 Wat is die *essentialia* waarvoor partye moet ooreenkom om 'n geldige vennootskap tot stand te bring? (5)

QUESTION 3 [15]

- 3.1 Your client Mr A consults you. He recently purchased a second hand vehicle from a national car dealer. Four months after he had received the car, the gearbox broke. It was established that the defect existed at the date of purchase and that the vehicle was not in a good working order when he purchased it. With specific reference to legislation that is aimed at assisting the consumer, advise your client on his rights and remedies. (12)
- 3.2 Would your advice differ had the agreement between the dealer and your client included a voetstoots clause? (3)

QUESTION 4 [10]

- 4.1 A client insists that you issue summons on a claim that has clearly prescribed. How will you explain the situation to your client? (6)
- 4.2 Your partner has drawn an affidavit in an urgent High Court application. No other commissioner of oaths is available. May you administer the oath? Would the position be different if it were a conveyancing matter, and if so, why? (4)

QUESTION 5 [10]

- 5.1 What types of companies can be incorporated under the Companies Act No 71 of 2008? (5)
- 5.2 What are the *essentialia* on which parties must agree in order to create a valid partnership? (5)

VRAAG 6 [5]

U word geraadpleeg deur 'n dame wat buite gemeenskap van goedere getroud is. Haar eggenoot wat in besit van meeste van haar bates is, word gesekwestreer. Lig haar in oor die gevolge kragtens die Insolvensiewet en moontlike remedies.

VRAAG 7 [5]

Noem vyf kontrakte wat op skrif moet wees om geldig te wees.

VRAAG 8 [10]

Deur nalatigheid laat u 'n skadevergoedings-eis (nie persoonlike beserings nie) verjaar. U vennoot wat oorsee is, het versoek dat u aan haar moet verduidelik wat u gedoen het toe u van die probleem bewus geword het en wat die kliënt en u regte is as aanvaar word dat die verjaarde eis R200 000 werd was. Skryf 'n brief aan u vennoot waarin u haar navraag beantwoord en handel met u firma se posisie teenoor die kliënt en die firma se potensiele aanspreeklikheid.

VRAAG 9 [5]

Voor die aanvang van 'n strafsak waarin u vir die beskuldigde verskyn, vind u uit dat die landdros die klaer se moeder is. Hoe sal u die toepaslike etiese reëls toepas en wat sal u doen as u nie slaag nie?

- DIE EINDE -

QUESTION 6 [5]

You are consulted by a lady who is married out of community of property. Her husband who is in possession of most of her assets, is sequestrated. Advise her of the effects under the Insolvency Act and of possible remedies.

QUESTION 7 [5]

List five contracts that must be in writing to be valid.

QUESTION 8 [10]

You negligently permit a damages (not personal injuries) claim to prescribe. Your partner who is overseas requests you to explain to her (your partner) what you did on discovering the problem and what the client's and your own rights are if it is assumed that the claim was good for R200 000. Draft a letter to your partner responding to her enquiry dealing with your firm's position *vis a vis* the client and the firm's potential liability.

QUESTION 9 [5]

Before the start of a criminal trial in which you will represent the accused, you discover that the magistrate is the mother of the complainant. How would you apply the applicable rules of conduct and what will you do if you are unsuccessful?

- THE END -