

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

16 OKTOBER 2018

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 assebliefslegs 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 3 ATTORNEY'S PRACTICE

16 OCTOBER 2018

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 [11]

'n Kliënt verlang dat u 'n skuld invorder wat skynbaar verjaar het. Wat vra u hom om seker te wees dat dit wel verjaar het? Hoe verduidelik u: die gevolge van verjaring; of u verder kan optree; die risiko's van verdere optrede, die beste praktiese benadering en toepaslike wetgewing.

VRAAG 2 [4]

In 'n siviele verhoor oor 'n motorbotsing bevind die hof dat A, u kliënt se skade R90 000 was maar dat hy 40% nalatig was, en dat B se skade R100 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 3 [19]

By watter forum, tribunaal of kantoor sal u of u kliënt verligting soek in die volgende gevalle:

- 3.1 'n Eis om skadevergoeding van R14 000; (1)
- 3.2 'n Bevel dat 'n wetsbepaling wat R290 000 raak ongrondwetlik is; (2)
- 3.3 'n Eis om heraanstelling na onregmatige ontslag; (2)
- 3.4 Deregistrasie van 'n dormante maatskappy; (1)
- 3.5 Ondervraging van 'n insolvent wat bates verberg; (2)
- 3.6 Wysiging of afdwing van 'n onderhoudsbevel van 'n Hoë Hof; (2)
- 3.7 'n Buitensporige fooi wat 'n prokureur in 'n strafsak gehef het; (2)

QUESTION 1 [11]

A client requires you to collect a debt which on the face of the documents has prescribed. What questions will you ask the client to be sure that the claim has prescribed? How do you explain to client: the effects of prescription; whether you may proceed; the risk involved, the best practical approach and applicable legislation.

QUESTION 2 [4]

In a civil trial involving a motor collision the court finds that your client A suffered damage of R90 000 but was 40% negligent. The defendant was 60% negligent and his damage was R100 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 3 [19]

At which tribunal, forum or office would you or your client seek relief in respect of the following:

- 3.1 A claim for damages for R14 000; (1)
- 3.2 An order that a statutory provision affecting R290 000 is unconstitutional; (2)
- 3.3 A claim for reinstatement after unfair dismissal; (2)
- 3.4 Deregistration of a dormant company; (1)
- 3.5 The interrogation of an insolvent who hides assets; (2)
- 3.6 Amendment or enforcement of a High Court maintenance order; (2)
- 3.7 An excessive fee charged by an attorney in a criminal trial; (2)

- 3.8 Trustgeld wat skynbaar deur 'n prokureur gesteel is; (3)
- 3.9 Verlies van weë professionele nalatigheid van 'n kollega. (2)
- 3.10 Vererwing van gesinseiendom kragtens gewoontereg; (1)
- 3.11 Appél teen 'n bevel van 'n tradisionele leier. (1)

VRAAG 4 [10]

Die Maatskappywet maak dit moontlik vir 'n persoon om 'n skriftelike kontrak namens 'n entiteit wat nog kragtens die Wet ingelyf gaan word, te sluit. Wat is die formaliteite en effek van so 'n kontrak?

VRAAG 5 [22]

'n Privaat maatskappy, 'n BTW ondernemer, verkoop sy hoofbesigheid ('n restaurant in bedryf) aan 'n sake-trust, ook 'n BTW ondernemer.

Stel op gepaste klousules in die kontrak betreffende:

- (a) BTW (5)
- (b) Voorraadopname (5)
- (c) Beskerming van klandisiewaarde en hulp aan koper (beperking) (6)
- (d) Waarborgte deur verkoper. (6)

VRAAG 6 [9]

Persele wat 200 vierkante meter groot is word verhuur vir vyf jaar teen huurgeld van R10 per vierkante meter wat eskaleer teen 10% per jaar. Die huurder het die opsie om die huur te verleng vir 'n verdere vier jaar. Die huurgeld hou aan om te eskaleer teen 10% per jaar. Stel paslike klousules op wat betref:

- 3.8 Trust money apparently stolen by an attorney; (3)
- 3.9 Loss due to professional negligence of a colleague; (2)
- 3.10 Devolution of family property in terms of customary law; (1)
- 3.11 Appeal against an order by a traditional leader. (1)

QUESTION 4 [10]

The Companies Act enables a person to enter into a written agreement on behalf of an entity that is still to be incorporated in terms of the Act. What are the formalities and the effect of such an agreement?

QUESTION 5 [22]

A private company, a VAT vendor, sells its main business (a restaurant in operation) to a business trust, also a VAT vendor.

Draft suitable clauses in the contract dealing with:

- (a) VAT (5)
- (b) Stock-taking (5)
- (c) Protection of goodwill and aid to purchaser (restraint) (6)
- (d) Warranties by seller. (6)

QUESTION 6 [9]

Premises measuring 200 square metres are being let for a period of five years at a rental of R10 per square metre escalating at 10% per year. The tenant has an option to renew for a further period of four years. Rental continues to escalate at 10% per annum. Draft clauses dealing with:

6.1 Die betaling van huurgeld en eskalasietydens die eerste vyf jaar; (5)

6.1 Payment of rental and escalations during the first period; (4)

6.2 Die opsie om te hernu vir 'n verdere vier jaar. (4)

6.2 The option to renew for a further period of four years. (4)

VRAAG 7 [11]

QUESTION 7 [11]

Omskryf of beskryf, kortliks en sonder gebruik van voorbeelde:

Define or describe, briefly and without use of examples:

7.1 Geskikengepas om 'n prokureur te wees; (1)

7.1 Fit and proper to be an attorney; (1)

7.2 'n Botsing van belange; (1)

7.2 A conflict of interest; (1)

7.3 Uitbuit/uitoorlê ("overreaching"); (1)

7.3 Overreaching as opposed to overcharging; (1)

7.4 Dokumente wat onderhewig is aan 'n prokureur se retensiereg t.o.v. gelde; (1)

7.4 The documents subject to an attorney's lien/hypothec for fees; (1)

7.5 Die doel waarvoor die Getrouheidsfonds in the lewe geroep is; (2)

7.5 The purpose for which the Attorneys Fidelity Fund was established; (2)

7.6 Professionele privilegie; (2)

7.6 Legal professional privilege; (2)

7.7 Omstandighede waaronder 'n prokureur 'n mandaat moet weier. (3)

7.7 The circumstances requiring an attorney to decline a mandate. (3)

VRAAG 8 [3]

QUESTION 8 [3]

Noem ses gevalle van minagting van die hof in facie curiae.

List six examples of contempt of court in facie curiae (in the face of the court).

VRAAG 9 [7]

QUESTION 9 [7]

Wat is die vereiste stappe as 'n deponent 'n beëdigde verklaring voor u as kommissaris van ede aflê?

How should a commissioner of oaths administer the oath to a deponent making an affidavit before him/her?

VRAAG 10 [4]

QUESTION 10 [4]

Is die volgende kredietooreenkomste kragtens Kredietwet?

Are the following credit agreements?

10.1 Skuldbewys; (½)

10.1 An acknowledgment of debt? (½)

10.2 Rentevordering op:

10.2 The charging of interest on:

10.2.1 laat betaling van 'n doktersrekening;
(½)

10.2.1 the late payment of a doctors account;
(½)

10.2.2 laat betaling van heffings aan 'n deeltitel-
skema;
(½)

10.2.2 the late payment of sectional body
corporate levies;
(½)

10.2.3 laat betaling van huur vir 'n woonstel.
(½)

10.2.3 the late payment of rental in terms of an
oral lease agreement of a residential
flat.
(½)

10.3 'n Huurkontrak van vaste eiendom.
(1)

10.3 A lease agreement on land.
(1)

10.4 'n Borgstelling vir die koopprys van
goedere gekoop -

10.4 A suretyship securing the purchase price
of goods bought -

10.4.1 vir kontant;
(½)

10.4.1 for cash;
(½)

10.4.2 op afbetaling.
(½)

10.4.2 in terms of an instalment agreement.
(½)

- DIE EINDE -

- THE END -

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