

## PROKUREURSEKSAMEN

### DEEL 3 PROKUREURSPRAKTYK

7 FEBRUARIE 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% of 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

7 FEBRUARY 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.

NOTA: Die lengte van antwoorde en die mate van detail moet verband hou met punte toekenning. Irrelevante stellings word gepeenaliseer.

### FEITE STELLINGS

U word geraadpleeg deur mev Alleen vir wie u onlangs bygestaan het met die beredding van haar oorlede man se bedoel. Sy word vergesel van Mnr Operator 'n geskeide sakeman. Hulle beplan om binnekort in die huwelik te tree.

Mev A het twee kinders, onderskeidelik 18 en 12 jaar oud. Mnr O het ook twee kinders onderskeidelik 17 en 10. Mnr O betaal kragtens 'n bevel van die Hoë Hof, onderhoud aan sy voormalige vrou en die twee kinders.

Mev A het aansienlike bates maar is onervare met sake en beleggings. Mnr O is 'n ervare sakeman en het 'n goeie inkomste maar min bates na sy egskeiding.

Hulle het u raad nodig oor 'n aantal kwessies. Met inagneming van die gegewe feite, hoe sou u hulle adviseer en/of die volgende situasies hanteer?

### VRAAG 1 [11]

Hulle verlang u advies oor:

- 1.1 Die moontlike huweliksbedelings (ignoreer gebruikelike en godsdienstige verbindings) en welke formaliteite vereis word vir elk daarvan; (3)
- 1.2 Welke bedeling u vir hulle aanbeveel en hoekom; (2)
- 1.3 Of hulle later die bedeling kan verander as hulle keuse onbevredigend blyk. Indien wel, hoe? Indien nie, hoekom nie? (6)

NOTE: The length of answers and the amount of detail are determined by the marks allocated. Marks will be deducted for irrelevant material.

### STATEMENT OF FACTS

You are consulted by Mrs Alone whom you recently assisted with the administration of the estate of her late husband. She is accompanied by Mr Operator a divorced businessman. They intend getting married soon.

Mrs Alone has two children aged 18 and 12 respectively. Mr Operator also has two children aged 17 and 10 respectively. Mr O is paying maintenance to his former wife and the two children in terms of a High Court order.

Mrs Alone has substantial assets but has little experience of business and investment. Mr O is experienced in business and earns a good income but has few assets left after his divorce.

They seek your advice on a range of issues. Keeping in mind the above facts, how would you advise them and/or deal with the following situations?

### QUESTION 1 [11]

They wish to be advised on:

- 1.1 The possible marital property regimes (not customary or religious) and the formalities required to achieve each regime; (3)
- 1.2 Which you recommend for them and why; (2)
- 1.3 Whether they can later change the marital regime if they find their choice unsatisfactory. If so, how; if not, why not? (6)

**VRAAG 2 [4]**

Mnr O deel u mee dat sy voormalige eggenote gedurig kla dat die toegekende onderhoud te min is. Hy hoop dat die hoë koste van 'n Hoë Hof-aansoek haar sal weerhou van optrede. Lig hom in oor die regte van sy eksvrou, die kinders en van homself.

**VRAAG 3 [19]**

Die partye beplan 'n uitgebreide wittebroodsreis in die buiteland. Mnr O will intussen 'n privaatmaatskappy laat registreer om 'n woonhuis vir hulle aan te koop. Hulle moet albei aandeelhouders en direkteure wees.

3.1 Stel 'n gepaste volmag op in u guns om alle vereiste dokumente op te stel, te onderteken en in te dien sodra 'n gepaste naam gereserveer is ten einde die maatskappy te registreer. (8)

3.2 Gee raad oor of en hoe 'n ooreenkoms vir die aankoop van die woonhuis intussen gesluit kan word voor die registrasie van die maatskappy. Hoe word so 'n transaksie na registrasie tot finaliteit gebring? (11)

**VRAAG 4 [11]**

Mev Aisonseker oor hulle geldelike vooruitsigte en soek raad oor die oprigting van 'n trust om sommige van haar bates te hou ten einde haar kinders te onderhou soos nodig, en of sy dan nog steeds 'n testament benodig.

4.1 Wie sou die partye tot so 'n trust wees? (3)

4.2 Wat is die kenmerke van 'n diskresionêre trust? (2)

**QUESTION 2 [4]**

Mr O informs you that his ex-spouse is constantly complaining that the maintenance awarded is inadequate. He is hoping that the high cost of a High Court application for an amendment of the divorce order will deter her from acting. Advise him of the rights of the ex-wife, children and himself.

**QUESTION 3 [19]**

The parties are planning an extended honeymoon overseas. Mr O wants a private profit company registered to acquire a residence for them to occupy when they return. They will both be shareholders and directors.

3.1 Draft a suitable power of attorney in your favour to enable you to draw, sign and lodge all documents on their behalf for purposes of registration as soon as you have reserved an acceptable name. (8)

3.2 Advise whether and how an agreement for the purchase of the residence can be entered into before the registration of the company. How is such a transaction brought to finality after registration? (11)

**QUESTION 4 [11]**

Mrs A is a bit concerned about their financial future and seeks your advice on whether and how she can create a trust to acquire some of her assets in order to maintain her children as necessary; and whether she need then still bother about a will.

4.1 Who would be the parties to such a trust? (3)

4.2 Explain the effect of such a trust being a discretionary trust. (2)

4.3 Wat is die verskil tussen inkomste- en kapitaalbegunstigdes? (3)

4.3 Explain the difference between income beneficiaries and capital beneficiaries. (3)

4.4 Gee redes waarom dit raadsaam bly om tog 'n testament te verly. (3)

4.4 Explain why it would be advisable to execute a will in any event. (3)

**VRAAG 5 [6]**

**QUESTION 5 [6]**

Tydens die besprekings kom twee etiese kwessies na vore:

During the extended discussion two ethical questions arise:

5.1 Mev A verneem dat u groot bedrae moet leen om nuwe rekenaars en programme vir u praktyk aan te koop. Mnr O moedig haar aan om R251 000 aan u te leen. Hoe hanteer u die situasie? (3)

5.1 Mrs A discovers that you need to borrow a substantial amount to purchase new computers and software for your practice. Mr O convinces her to lend you R251 000. How do you handle the situation? (3)

5.2 Mnr O is ingenome met u dienste en verlang dat u 'n aantal van sy lopende sake by 'n kollega oorneem. Hoe gaan u te werk om die opdragte op 'n professionele wyse van die kollega oor te neem? (3)

5.2 Mr O is impressed with your performance and wishes you take over a number of current matters from a colleague. How do you go about taking over such matters in a professional manner? (3)

**VRAAG 6 [11]**

**QUESTION 6 [11]**

Mev A deel u mee dat haar seun volgende jaar regte aan 'n universiteit wil studeer ten einde 'n advokaat of prokureur te word. Verduidelik:

Mrs A informs you that her son intends going to university next year to study law so that he can become an attorney or advocate. Advise her on:

6.1 Wat die substantiewe vereistes kragtens Wet 53/1979 is vir toelating as prokureur. (7)

6.1 The substantive requirements for admission as an attorney under Act 53/1979; (7)

6.2 Hoe die posisie eersdaags (of dalk onlangs reeds) kragtens die Wet op Regspraktyk (Legal Practice Act) verander? (4)

6.2 How in principle the position will soon change (or has recently changed) under the Legal Practice Act. (4)

**VRAAG 7 [33]**

**QUESTION 7 [33]**

Mev A het 'n sakegebou geërf. Een deel word aan 'n drankwinkel verhuur. Die kontrak loop eersdaags uit en sy verlang dat u 'n nuwe kontrak opstel. Hoe sou u die volgende klousules bewoord?

Mrs A has inherited a business complex in which one shop is let to a liquor store. The lease expires soon and she wants you to draw a new lease. How would you phrase the clauses dealing with the following?

7.1 Moontlike kontrakbreuk deur huurder.  
(12)

7.1 Possible breach of contract by the tenant;  
(12)

7.2 Die huurder se *domicilium citandi et executandi* en kennisgewings (sluit in telefaks maar nie e-pos nie).  
(10)

7.2 The tenant's *domicilium citandi et executandi* and the giving of notices (including by telefax but not by email);  
(10)

7.3 'n Belet teen onderverhuring en soortgelyke handelinge deur huurder. (5)

7.3 A prohibition against sub-letting and similar actions by the tenant; (5)

7.4 'n Opsie om die huurperseel te koop (standaardklousules onnodig, verwys na 'n bylae).  
(6)

7.4 An option to purchase the leased premises (standard clauses not required; refer to an annexure).  
(6)

**VRAAG 8 [5]**

**QUESTION 8 [5]**

Mev A het 'n handelonderneming geërf maar sy vind dat sy dit nie langer wil bedryf nie. Sy wil dit aan 'n handelaar Mnr Z, verkoop as 'n lopende saak. Hulle is albei geregistreer vir BTW. Stel 'n klousule op wat vir albei maar eerstens vir haar, die beste bedeling sal verseker wat betref belasting op toegevoegde waarde (BTW).

Mrs A wishes to sell as a going concern to a trader Mr Z, a trading business she inherited as she does not want to continue conducting it. She and Mr Z are both registered VAT vendors. Draft the clause that will seek to ensure that both parties but primarily Mrs A, enjoy the most favourable position relating to value-added tax (VAT).

- DIE EINDE -

- THE END -