

PROKUREURSEKSAMEN

DEEL 3 PROKUREURSPRAKTYK

7 MAART 2019

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% 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 MARCH 2019

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 antwoorde en die omvang van besonderhede berus op die aantal punte wat 'n vraag tel.
2. Antwoorde word beoordeel met inagneming van die gehalte van opstelwerk.
3. Kandidate word afgemerk vir antwoorde gelaai met irrelevante materiaal.

VRAAG 1 [10]

Stel die klousule(s) op in 'n kontrak vir die verkoop van 'n besigheid wat die hele ooreenkoms opskort totdat behoorlike reëlings getref is met die verhuurder van die perseel waarin die onderneming bedryf word om okkupasie van die perseel vir die onderneming te verseker. Klousule(s) moet voorsiening maak vir hetsy:

- 1.1 Sessie en delegasie van die regte en verpligtinge kragtens die bestaande huurkontrak van die huurder na die koper met instemming van die verhuurder; of (5)
- 1.2 Die aangaan van 'n nuwe huurkontrak tussen die koper en die verhuurder tesame met kansellering van die ou kontrak. (5)

VRAAG 2 [20]

Mnr A (wat eersdaags oorsee vertrek) wil 'n privaatmaatskappy (B) oprig met 'n spesifieke naam welke maatskappy dan transport moet neem van 'n sake-erf wat nou in sy eie naam geregistreer is. Hy nader u vir hulp.

- 2.1 Noem die dokumente wat hy moet onderteken om u in staat te stel om oprigting van die maatskappy by CIPC te bewerkstellig. (3)

NOTES:

1. The length of answers and the amount of detail 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 adequate 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 winsbejag wat kragtens die Maatskappyyewet gevorm en geregistreer kan word. (4)
- 2.3 U het mnr A verduidelik dat hy die koopkontrak van die erf nou kan onderteken a) as verkoper en b) namens 'n maatskappy (B) wat opgerig moet word as koper. Welke stappe moet na inlywing gedoen word om 'n geldige kontrak tot stand te bring? (3)
- 2.4 Gestel mnr A is bereid om te wag en versoek u om namens hom as verkoper te onderteken nadat die maatskappy B ingelyf is. Stel die dokument op wat u as mandaat sal benodig om die koopkontrak as verkoper te onderteken. (10)

VRAAG 3 [4]

In 'n siviele geding rakende 'n motor botsing beslis die Hof dat u kliënt skade gely het van R150 000 maar 40% nalatig was. Die verweerder B was 60% nalatig en sy skade beloop R160 000. Wat is die netto effek? U het met A ooreengekom dat u fooi 20% sal wees van wat hy ookal verhaal. Wat is u fooi? Wys alle berekeninge.

VRAAG 4 [28]

U word geraadpleeg deur mnr A wat 'n winsgewende maar hoë-risiko besigheid het en mev B sy verloofde en geskeide dame. Sy is welgesteld maar haar vorige eggenoot het haar bates en ondernemings bestuur. Mnr A en mev B wil in die huwelik tree en versoek u raad oor aspekte van hulle persoonlike en sakebelange. Mev B is onder andere besorg dat mnr A geldelike teëspoed kan optel. Dui aan hoe u die volgende kwessies hanteer:

- 4.1 Hulle wil weet welke huweliksbedelings vir hulle huwelik sou kon geld, hoe elke bedeling verkry word en wat u aanbeveel. Watter inligting gee u aan hulle? (10)

- 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 after incorporation 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 their 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 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 wil weet wat die uitwerking van insolvensie van mnr A op mev B se bates sal hê (na huwelik). Skryf 'n brief om haar ten volle in te lig oor die moontlike risiko en wat sy moet doen om haar belange te beskerm en haar regte in so 'n geval 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 fully 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 Om risiko's te vermy oorweeg mev B die oprigting van 'n *inter vivos* trust vir haar kinders. By wie word so 'n trust geregistreer, welke dokumente word benodig en watter verdere inligting moet aan die owerhede verskaf word om registrasie te verkry? (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 skoolvriend wat op troue staan vra u wat die regte van eggenotes is wat binne gemeenskap van goedere getroud is om te handel met die bates in die gemeenskaplike boedel.

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 Noem ten minste ses (6) uitsonderings. (6)

5.2 Name at least six (6) exceptions. (6)

VRAAG 6 [17]

QUESTION 6 [17]

U kliënt oorweeg om die eiendomme in 'n straatblok in 'n woongebied aan te koop. Hy wil dan die woonhuise sloop en kantore oprig wat hy wil verhuur. Alvorens u kliënt die eiendomme kan ontwikkel soos hy beplan sal hy die hersonering daarvan by die plaaslike owerheid moet verkry.

Your client is considering purchasing a block of properties in a residential area for the purpose of demolishing the houses thereon and developing the whole block by constructing offices thereon which he intends to lease. Before your client can develop the properties as he proposes, he will have to successfully apply to the local authority for the rezoning thereof.

6.1 Stel die klousules op wat u kliënt in al die koopaktes moet invoeg om hom te beskerm ingeval die aansoek om hersonering misluk en/of hy nie daarin slaag om al die eiendomme in die blok te koop nie. (12)

6.1 Draft the clauses which your client should insist be included in the deeds of sale to protect him if the application for the rezoning is not successful and/or if he is not successful in purchasing all the properties in the block. (12)

6.2 Gestel die hersonering slaag, die eiendomme is aan u kliënt oorgedra en die

6.2 The rezoning is completed, the properties are transferred into your client's name

ontwikkeling is voltooi. Sommige van die voornemende huurders is privaat maatskappye en u kliënt is besorg dat hulle nie die huur gaan betaal nie. Stel 'n bepaling in die huurkontrak op wat u kliënt in staat sal stel om onbetaalde huurgeld van die direkteure van sulke maatskappye te verhaal. (5)

and the development is completed. Certain of the prospective tenants of the offices are private companies and your client is worried that they may not pay the rent. Draw the clause in the lease agreement which will give your client the right to recover outstanding rentals from the directors of the companies. (5)

VRAAG 7 [11]

QUESTION 7 [11]

- 7.1 As u onseker is of 'n beoogde optredes toelaatbaar is, hoe gaan u te werk om die posisie vas te stel? (2)
- 7.2 Wat kan gebeur as u nie lidmaatskapsgeelde aan die Raad vir Regspraktyk betaal nie? (2)
- 7.3 Vir welke doel is die Getrouheidsfonds vir Prokureurs gestig? (tans die Legal Practice Fidelity Fund) (2)
- 7.4 Waarom sou u 'n kliënt aanraai om 'n testament te verly? (2)
- 7.5 Mag 'n praktisyn:
- 7.5.1 fooie met 'n kandidaat deel? (1)
- 7.5.2 die kandidaat 'n kommissie betaal op fooie wat die kandidaat verdien? (1)
- 7.5.3 fooie met 'n nie-trustrekening praktisyn (advokaat) deel? (1)

- 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 What will happen if you fail to pay your membership fees to the Legal Practice Council? (2)
- 7.3 What is the purpose for which the Attorneys Fidelity Fund was established? (currently the Legal Practice Fidelity Fund). (2)
- 7.4 Why would you advise our client that he should draw up a Will? (2)
- 7.5 May a practitioner:
- 7.5.1 share fees earned with his/her candidate attorney? (1)
- 7.5.2 pay the candidate attorney a commission based on the fees that the candidate attorney generates? (1)
- 7.5.3 share fees with Counsel. (1)

- DIE EINDE -

- THE END -