

## PROKUREURSEKSAMEN

### DEEL 1 HOFPROSEDURES

16 AUGUSTUS 2016

09:00-12:15

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 3 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 1 COURT PROCEDURES

16 AUGUST 2016

09:00-12:15

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 3 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 [3]**

Het 'n eiser 'n eis teen die nalatige bestuurder en/of eienaar van 'n voertuig vir liggaamlike beserings, en indien wel, wanneer?

**VRAAG 2 [14]**

U tree op names Martha Mbhense en Amos Khumalo, werksaam as sekuriteitswagte wat beseer is as gevolg van 'n motorvoertuig botsing wat plaasgevind het op 27 Julie 2007.

Die omstandighede van die botsing was soos volg:

- Martha was 'n passasier in 'n voertuig wat bestuur is deur haar mede-werknemer, Amos Khumalo.
- Hulle het gery oppad na 'n huisbraaktoneel toe Amos beheer verloor oor die voertuig en teen 'n boom gebots het.
- Beide Martha en Amos is ernstig beseer. Martha het 'n pelvis fraktuur en 'n klavikel fraktuur opgedoen. Amos se regterbeen is vergruis en is geamputeer by die heupgewrig. As gevolg van hulle beserings kan beide van hulle nie meer werk sedert die ongeluk nie.
- Beide Martha en Amos het mediese en hospitaal uitgawes aangegaan en sal nog aangaan en ook verlies aan verdienste gely.

U kan aanvaar dat al die nodige geregtelike stappe gedoen is binne die voorgeskrewe tydperke en dat geen eis verjaar het nie. Beide Martha en Amos is tot op datum nog nie vergoed nie. Antwoord die volgende vrae met verwysing na bogenoemde feitelike inligting:

2.1 Het Martha Mbhense 'n eis teen die Padongelukfonds, en indien wel, is haar eis in enige opsig beperk? Motiveer u antwoord. (4)

**QUESTION 1 [3]**

Does a claimant have a claim for bodily injury against the negligent driver and or owner of a vehicle, and, if so, when?

**QUESTION 2 [14]**

You are acting for Martha Mbhense and Amos Khumalo, security guards who were injured as a result of a motor vehicle collision which occurred on 27<sup>th</sup> July 2007.

The circumstances of the collision were as follows:

- Martha was a passenger in a vehicle which was driven by her co-worker, Amos Khumalo.
- They were traveling to the scene of a house-breaking when Amos lost control of the vehicle and collided into a tree.
- Both Martha and Amos were seriously injured. Martha sustained a fractured pelvis and a fractured clavicle. Amos's right leg was crushed and was amputated at the hip joint. Due to their injuries, both have been unable to work subsequent to the collision.
- Both Martha and Amos have incurred, and will in future incur, hospital and medical expenses, as well as suffering a loss of earnings.

You may assume that all the appropriate legal steps were taken within the prescribed time limits, such that no claim has become prescribed. However, neither Martha nor Amos has been compensated to date. Answer the following questions with reference to the above factual information:

2.1 Does Martha Mbhense have a claim against the Road Accident Fund, and if so, is her claim limited in any way? Motivate your answer fully. (4)

- |     |  |     |  |
|-----|--|-----|--|
| 2.2 | Het Amos Khumalo 'n eis, en indien wel, teen wie? Motiveer u antwoord volledig. (3)  | 2.2 | Does Amos have a claim and, if so, against whom? Motivate your answer fully. (3)   |
| 2.3 | Identifiseer al die kategorieë van skade (skade hoofde) met betrekking tot Martha se eis teen die Padongelukfonds. (2½)  | 2.3 | Identify all the heads of damages in respect of Martha's claim against the Road Accident Fund. (2½)  |
| 2.4 | Aanvaar dat dit bevind word dat Martha 20% totaal liggaamlik ongeskik is (en dat sy nie voldoen aan enige van die kriteria van die "narrative" toets nie). Watter effek sal dit hê op die kategorieë van skade (skade hoofde) hierbo geïdentifiseer. (½) | 2.4 | Assume that Martha is assessed and it is established that she has sustained a 20% whole person impairment (and does not satisfy any of the criteria of the narrative test.) What effect will this have on the heads of damages identified above? (½) |
| 2.5 | Identifiseer enige ander eise wat Martha moontlik mag hê. Motiveer u antwoord. (1)   | 2.5 | Identify any other claims that Martha may have. Motivate your answer. (1)  |
| 2.6 | Indien Martha nie geregtig is om algemene skade van die Padongelukfonds te verhaal nie, sal sy dit van enige ander bron kan verhaal? Motiveer jou antwoord. (3)  | 2.6 | In the event that Martha is unable to recover general damages from the Road Accident Fund, is she able to recover same from any other source? Motivate your answer. (3)  |

**VRAAG 3 [8]**

Mnr A is 'n passasier in 'n voertuig bestuur deur Mnr. B. 'n Botsing vind plaas tussen die voertuig bestuur deur Mnr. B en 'n fietsryer, Mnr. C. Mnr. D was 'n passasier op Mnr. C se fiets. A en D het ernstige beserings opgedoen.

Beantwoord die volgende vrae:

- 3.1 Dit word bevind dat C uitsluitlik nalatig was in die veroorsaking van die botsing. Sal A 'n eis hê teen die Padongelukfonds? Motiveer u antwoord. (4)
- 3.2 Indien dit bevind word dat B se nalatigheid 20% bygedra het tot die botsing, sal u antwoord in 3.1 verskil? Motiveer u antwoord. (2)

**QUESTION 3 [8]**

Mr A is a passenger in a vehicle driven by Mr B. A collision occurs between the vehicle driven by Mr B and a cyclist, Mr C. Mr D was a passenger on Mr C's bicycle. A and D sustained serious injuries in the accident.

Answer the following questions:

- 3.1 It is found that C was exclusively negligent in causing the collision. Will A have a claim against the Road Accident Fund? Explain your answer. (4)
- 3.2 If it is found that B's negligence contributed 20% to the collision, will your answer in 3.1 be different? Explain your answer. (2)

3.3 Aanvaar dat B se nalatigheid 20% bygedra het tot die botsing. Sal D dan 'n eis hê teen die Padongelukfonds? Motiveer u antwoord. (2)

3.3 On acceptance that B's negligence contributed 20% to the cause of the collision, will D have a claim against the Road Accident Fund? Explain your answer. (2)

**VRAAG 4 [9]**

**QUESTION 4 [9]**

Die Eiser in 'n aksie in die Hoë Hof waarin u die Verweerder verteenwoordig, beteken 'n kennisgewing van terugtrekking van die aksie sonder om koste te tender.

The plaintiff, in an action in the High Court, in which you represent the defendant, serves and files a notice of withdrawal of the action without tendering costs.

4.1 Wat is u kliënt se remedie onder die omstandighede? (1)

4.1 What remedy does your client have in the circumstances? (1)

4.2 Wanneer moet die bogenoemde stap gedoen word? (1)

4.2 When must the abovementioned step be taken? (1)

4.3 Stel die nodige kennisgewing van mosie op ten einde uitvoering te gee aan hierdie remedie sonder die kopstuk en sitasie van die partye. (7)

4.3 Draft the necessary notice of motion, excluding the heading and citation of parties, to give effect to this remedy. (7)

**VRAAG 5 [16]**

**QUESTION 5 [16]**

Op 'n Maandagoggend word u gekonsulteer deur Mev Mary Brand te Bloemfontein waar u praktiseer. U word verwittig:

On a Monday morning you are consulted by Mrs Mary Brand in Bloemfontein where you are practising. You are informed:

- Datsy buite gemeenskap van goed getroud is met Pieter Brand te Grahamstad in die Oos Kaap Provinsie op 12 Desember 1981.
- Sy is 'n huisvrou sonder inkomste.
- Die partye het in Pretoria gewoon waar mnr Brand permanent in diens is van die Departement van Justisie.
- Alle bates behoort aan mnr Brand.
- Mnr Brand is 'n lid van die Staatswerknemers Pensioenfonds.
- Me Brand het gedurende die naweek by 'n familielid in Bloemfontein ingetrek met die bedoeling om permanent in Bloemfontein te woon.

- That she married Pieter Brand out of community of property in Grahamstown, Eastern Cape Province on 12 December 1981.
- She is a housewife without income.
- The parties were residing in Pretoria where Mr Brand is permanently employed by the Department of Justice.
- All assets are owned by Mr Brand.
- Mr Brand is a member of the Governments Employees Pension Fund.
- Mrs Brand has moved to a family member in Bloemfontein over the weekend with the intention to stay in Bloemfontein permanently.

5.1 Watter afdeling of afdelings van die Hoë Hof sal jurisdiksie hê in die egskeidingsgeding? Meld die redes vir u antwoord. (5)

5.1 Which Division or Divisions of the High Court will have jurisdiction in the divorce proceedings? State the reasons for your answer. (5)

5.2 Wat sal u advies aan u kliënt wees met betrekking tot die hof waar die dagvaarding uitgereik behoort te word? (2)

5.2 What will your advice to the client be with regard to the court out of which the summons should be issued? (2)

5.3 Vir die doel van die dagvaarding, stel slegs die smeekbedes op wat vervat word in die Besonderhede van Vordering teen die Verweerder of verweerders wat u wil siteer. (7)

5.3 For purposes of the summons, draft only the prayers contained in the Particulars of Claim against the Defendant or Defendants whom you will cite. (7)

5.4 Tot watter mate sal die smeekbedes verskil in die geval waar die partye op 30 Januarie 2001 buite gemeenskap van goed met toepassing van die aanwasbedeling getroud is? In terme van die Huweliksvoorwaardekontrak het die partye ooreengekom dat elke party se bates op datum van huweliksluiting R nul beloop. Stel slegs die smeekbede/s op wat verskil van u antwoord in 5.3 hierbo. (2)

5.4 To what extent will the prayers be different in the event that the parties were married on 30 January 2001, out of community of property and with the accrual system applicable to their marriage? In terms of the Antenuptial Contract the parties agreed that the assets of each party at date of marriage amounted to R nil. Draft only those prayers that will differ from your answer to 5.3 above. (2)

**VRAAG 6**

**[15]**

**QUESTION 6**

**[15]**

'n Jong dame op pad na werk word deur 'n man voorgekeer. Kort daarna word haar lyk met 'n aantal skietwonde gevind. Haar eggenoot en twee ander mans word in hegtenis geneem. Die Staat beweer dat haar man (A) sy werknemer (B) oorreed het om C te werf om haar te dood. Die drie ontmoet om haar moord te beplan. A oorhandig 'n ongelisensieerde vuurwapen aan B. Hy oorhandig dit aan C om haar mee te vermoor. C het haar in 'n voertuig gedwing en vermoor. Die polisie het die vuurwapen en 5 patrone in C se besit gevind. Die eggenoot (A) doen aansoek om borgen by die verhoor blyk dit dat hy ook in besit is van 'n paspoort van 'n ander land.

One morning a young lady on her way to work is accosted by a male. Shortly thereafter her dead body is found with a number of gunshot wounds. Her husband and two others are arrested. The State alleges that her husband (A) persuaded his employee (B) to find (C) to kill her. The three met and planned the murder. The State alleges that A handed an unlicensed firearm to B who gave it to C to kill her. C forced her into the vehicle and murdered her. The police found the firearm and five rounds of ammunition in the possession of C. The husband of the deceased (A) applies for bail and at the hearing it is established that he possesses a passport of another country.

6.1 Noem 2 moontlike klagtes teen die drie beskuldigdes? (2)

6.1 List 2 possible charges that can be levelled against the three accused? (2)

6.2 Welke beginsel sal die Hof toepas om te beslis of borg toegestaan word? (1)

6.2 What is the principle that the court will apply in deciding whether bail should be granted? (1)

6.3 Hoe hanteer u die bestaan van meerdere reisdokumente? (2)

6.3 How would you deal with the existence of the multiple travel documents? (2)

6.4 Uslag daarin om die Staat te oorreed om B as getuie in die volgende verhoor te roep. Beskryf die proses by die verhoor en die moontlike gevolge vir B. (5)

6.4 You are successful in persuading the state to use B as a witness. Describe the procedure to be followed at the trial and the possible consequences to B. (5)

6.5 Wat kan u rol as B se prokureur by die verhoor wees? (1)

6.5 What could your role as B's attorney be at the trial? (1)

6.6 Die Hof maak staat op B se getuienis en vind A skuldig aan moord met voorbedagte rade en vonnis hom tot lewenslange tronkstraf. Stel twee moontlike gronde vir appél op teen:

6.6 The Court, relying on the evidence of B, convicts A of pre-meditated murder and sentences him to life imprisonment. Draw two possible grounds of appeal against:

6.6.1 Skuldigbevinding (2)

6.6.1 Conviction (2)

6.6.2 Vonnis (2)

6.6.2 Sentence (2)

**VRAAG 7 [7]**

**QUESTION 7 [7]**

Op 1 Februarie 2015 te Port Elizabeth lewer John Smith, eienaar van Smith Plumbers, 'n tjek gedateer 3 Maart 2015 in die bedrag van R25 000.00 aan SA Plumbing Suppliers om te betaal vir goedere wat Smith van hulle gekoop het. Hy is bewus van die feit dat op daardie oomblik daar nie genoegsame fondse in sy bankrekening is om die tjek te honoreer nie. Mnr Smith verwag betaling van 'n aansienlike bedrag vir werk wat hy vir Sanctuary Developers gedoen het. Hy is betaling op 21 Februarie 2015 beloof. Ongelukkig word Sanctuary Developers op 20 Februarie 2015 voorlopig gelikwideer en die bedrag aan Smith verskuldig word nie betaal nie. Die tjek vir R25 000.00 word deur SA Plumbing Suppliers aangebied maar dit word verwys na trekker. Mnr Smith word van bedrog aangekla en raadpleeg u. U raai hom aan om onskuldig te pleit. Stel Mnr Smith se Art. 115 verklaring op en sit sy verweer volledig uiteen. Gee die kopstuk.

On the 1<sup>st</sup> of February 2015 and at Port Elizabeth John Smith, the owner of Smith Plumbers, hands a cheque in the sum of R25 000.00 dated the 3<sup>rd</sup> of March 2015 to S A Plumbing Suppliers to pay for goods purchased by Mr Smith from the said supplier. He is aware of the fact that there are insufficient funds in his banking account at that time to honour the cheque. Mr Smith is expecting a large payment for work that he has done from Sanctuary Developers and has been promised that payment will be effected on the 21<sup>st</sup> of February. Unfortunately Sanctuary Developers Pty Ltd are provisionally liquidated on the 20<sup>th</sup> of February and the monies due to John Smith are not paid. The cheque of R25 000,00 is presented by SA Plumbing Suppliers and is referred to drawer. Mr Smith is charged with fraud and requests your assistance. You advise him to plead not guilty. Draw Mr Smith's Section 115 statement setting out his defence in detail. Include the heading.

**VRAAG 8 [3]**

**QUESTION 8 [3]**

Gedurende die xenefobiese geweld van 2015 word u kliënt, 'n immigrant van Sudan, se winkel beroof. Hy word gedagvaar om te getuig teen 'n beskuldigde in wie se besit sy skootrekenaar gevind is. Welke prosedure sal u volg om die rekenaar terug te kry?

During the 2015 xenophobic violence your client, an immigrant from Sudan, had his shop looted. He is subsequently subpoenaed to testify against certain accused who were found in possession of his laptop. What is the procedure you would follow in court to obtain the return of the laptop?

**VRAAG 9 [8]**

Emmanuel Mchunu is voornemens om aanbouings aan sy woonhuis te maak wat geleë is te 20 Anton Lembede Straat, Durban. Hy het 'n mondelingse kontrak gesluit met Improve-A-Home (Edms) Bpk, met geregistreerde kantoor en hoofplek van besigheid te 20 East Street, Johannesburg, om die nodige werk te doen.

Die kontrak is gesluit in Durban en ingevolgedie ooreenkoms was die kontraksprys R320 000,00 wat betaalbaar was aan die kontrakteur in Durban. Die betaling moes as volg gemaak word:

- i) R100 000,00 betaalbaar teen ondertekening van die ooreenkoms;
- ii) R120 000,00 wanneer 50% van werk voltooi is; en
- iii) Die balans van R100 000,00 teen voltooiing van die kontrakswerk.

Emmanuel het die aanvanklike R100 000,00 betaal en R60 000,00 aan die kontrakteur voorgeskiet as 'n verdere betaling, selfs al was 50% van die werk nie voltooi nie.

Improve-A-Home (Edms) Bpk het die werk geabandoneer en die werk is nie voltooi nie.

Emmanuel het die kontrak gekanselleer en James Builders in diens geneem om die kontrakswerk te voltooi, wat hulle gedoen het vir die bedrag van R240 000,00.

Stel die nodige besonderhede van vordering op ten einde Emmanuel instaat te stel om die skade wat hy gely het te vorder in die Durban Distrikslanddroshof.

**VRAAG 10 [2]**

U klient het 'n aksie ingestel teen die Verweerder in die Distrikslanddroshof vir goedere verkoop en gelewer. Die dagvaarding was uitgereik en beteken in 2013 en hy het rente teen 15,5% per annum geëis. Die saak het op verhoor gegaan

**QUESTION 9 [8]**

Emmanuel Mchunu wishes to make some alterations to his residential home which is situated at 20 Anton Lembede Street, Durban. He entered into a verbal contract with Improve-A-Home (Pty) Ltd whose registered office and principal place of business is situated at 20 East Street, Johannesburg to do the necessary work.

The contract was entered into in Durban and in terms of the contract the contract price was R320 000,00 which was to be paid to the contractor in Durban. The payment was to be made as follows:

- i) R100 000,00 payable on signature of the agreement;
- ii) R120 000,00 on 50% completion of the work; and
- iii) The balance of R100 000,00 on completion of the contract.

Emmanuel paid the initial R100 000,00 and advanced R60 000,00 to the contractor as a further payment although the work was not 50% complete.

Improve-A-Home (Pty) Ltd abandoned the work and as a result the alterations were incomplete.

Emmanuel cancelled the contract and employed James Builders to complete the contract which they did at a cost of R240 000,00.

Draft the necessary particulars of claim to enable Emmanuel to recover the damages which he has suffered in the Durban District Magistrate's Court.

**QUESTION 10 [2]**

Your client has instituted action against the Defendant in the District Magistrate's Court for goods sold and delivered. The summons was issued and served in 2013 and he has claimed interest at 15,5 % per annum. The matter

en in Desember 2015 het die Landdros vonnis toegestaan ten gunste van die Eiser vir die volle eisbedrag. Op watter rentekoers is die eiser geregtig?

**VRAAG 11 [2]**

U tree op vir Jacob Ngcobo. Adviseer asseblief u kliënt oor watter stappe hy moet doen in die volgende omstandighede:

Hy het vonnis verkry in die Durban Landdroshof teen Jane Smith, wat woonagtig en werksaam is in Durban en 'n goeie salaris verdien. Jane besit geen beslagelbare eiendom nie. Watter prosedures moet u kliënt volg?

**VRAAG 12 [3]**

In 'n eis teen u kliënt as gevolg van 'n motorongeluk, erken u kliënt, die Verweerder, die ongeluk maar beweer dat iemand anders as die Eiser die oorsaak was. Watter stappe moet die Verweerder doen voor sluiting van pleitstukke?

**VRAAG 13 [6]**

U kliënt gee u opdrag om twee maande se huur te vorder in die totale bedrag van R50 000,00. U het dagvaarding uitgereik en toe agtergekom dat die huur R20 000,00 per maand was.

- i) Watter prosedure moet u volg om die fout reg te stel? (2)
- ii) Aanvaar dat die Verweerder 'n beswaar het teen u poging om die fout reg te stel. Watter prosedure moet die Verweerder volg? Moet nie die dokumente opstel nie. Noem slegs wat in die dokument moet verskyn. (2)
- iii) Aanvaar dat die Verweerder se beswaar onsuksesvol was. Wat is die volgende stap vir die Eiser om die prosedure te voltooi. (2)

proceeds to trial and in December 2015 the Magistrate grants judgment for the Plaintiff for the full amount which has been claimed. What interest rate would the Plaintiff be entitled to?

**QUESTION 11 [2]**

You act for Jacob Ngcobo. Please advise your client as to what steps he should take in the following circumstances:

He has obtained judgment in the Durban Magistrate's Court against Jane Smith, who resides and is employed in Durban and earns a good salary. Jane owns no attachable assets. What procedure should your client follow?

**QUESTION 12 [3]**

In a claim against your client arising from a collision, your client, the Defendant, admits the collision but alleges someone other than the Plaintiff was the cause. What steps must the Defendant take before the pleadings are closed?

**QUESTION 13 [6]**

Your client instructs you to collect two months' rent in the sum of R50 000,00. You issue summons and then find out the rental was R20 000,00 per month.

- i) What procedure should you follow to correct this mistake? (2)
- ii) Assume the Defendant objects to your attempt to correct the mistake. What procedure should the Defendant follow? Do not draw any documents in this regard. Simply outline what the document should contain. (2)
- iii) Assume the Defendant's objection was unsuccessful. What is the next step for the Plaintiff to take in order to finalise the procedure? (2)

**VRAAG 14**

**[4]**

U het opdrag ontvang van die Eiser in 'n motorongeluk aangeleentheid. Die saak is ter rolle geplaas vir verhoor en u kliënt het drie kleur foto's van die ongelukstoneelwatsy in die verhoor wil gebruik. Stel die nodige kennisgewing op om u kliënt instaat te stel om die foto's in die verhoor te gebruik (laat opskrifte weg).

**QUESTION 14**

**[4]**

You are instructed by the Plaintiff in a motor collision case. The matter has been set down for trial and your client has three colour photographs of the scene of the collision which she wishes to use at the trial. Draft the necessary notice to enable your client to utilise these photographs at the trial (omit headings).

- DIE EINDE -

- THE END -

LAW SOCIETY  
OF SOUTH AFRICA