

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

09 FEBRUARIE 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

09 FEBRUARY 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]

Hoe gou nadat 'n eis ingedien is by die Padongeluksfonds, kandagvaardiging uitgereik word en onder welke omstandighede?

VRAAG 2 [6]

Wanneer sal 'n Eiser geregtig wees om vergoed te word vir algemene skade (nie-materiële skade)? Motiveer jou antwoord volledig.

VRAAG 3 [6]

Mnr. X was betrokke in 'n motorvoertuig ongeluk op 20 April 2014 as 'n passasier, terwyl hy aan diens was. Die voertuig waarin hy 'n passasier was, was bestuur deur 'n mede-werknemer. Sy eis teen die Padongeluksfonds is behoorlik ingedien en sy werkgewer het ook 'n eis ingedien teen die Vergoedingskommissaris in terme van die Wet op Vergoeding van Beroepsbeserings en Siektes 130 van 1993. Die Vergoedingskommissaris maak 'n finale toekenning in die totale bedrag van R224 000.00 welke toekenning soos volg saamgestel is:

- a) R11 000.00 ingevolge Art 47 vir tydelike totale ongeskiktheid.
- b) R63 000.00 ingevolge Art 49 vir permanente ongeskiktheid.
- c) R150 000.00 ten aansien van mediese, vervoer- en hospitaaluitgawes ingevolge Art 73 gelees met Artikels 72 en 76.

Die Padongeluksfonds aanvaaraanspreeklikheid teenoor die eiser en sy eis word soos volg gekwantifiseer:

- aa) Reeds gelede mediese en hospitaal uitgawes - R150 000.00
 - bb) Reeds gelede verlies van verdienste - R 70 000.00
 - cc) Toekomstige verlies van verdienste - R430 000.00
 - dd) Algemene skade (nie materiële skade) - R200 000.00
- TOTAAL: R850 000.00**

QUESTION 1 [3]

How soon after a claim has been lodged with the Road Accident Fund can summons be issued and/or under what circumstances?

QUESTION 2 [6]

When would a Plaintiff be entitled to compensation for general damages (non-pecuniary loss)? Motivate fully.

QUESTION 3 [6]

Mr X was involved in a motor vehicle collision as a passenger on the 20th of April 2014, whilst on duty. The vehicle in which he was a passenger was driven by a fellow employee. His claim against the Road Accident Fund was duly lodged and his employer also lodged a claim against the Compensation Commissioner in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. The Compensation Commissioner made a final award in the total amount of R224 000.00, which award is made up as follows:

- a) R11 000.00 in terms of Sec 47 for the temporary total disablement.
- b) R63 000.00 in terms of Sec 49 for permanent disablement.
- c) R150 000.00 in respect of medical, transport and hospital expenses in terms of Sec 73 read with Sections 72 and 76.

The Road Accident Fund accepts liability towards the plaintiff and his claim is quantified as follows.

- aa) Past medical and hospital expenses - R150 000.00
 - bb) Past loss of earnings - R 70 000.00
 - cc) Future loss of earnings - R430 000.00
 - dd) General damages (non-pecuniary loss) - R200 000.00
- TOTAL: R850 000.00**

3.1 Welke bedrag moet deur die Padongelukfonds aan die eiser betaal word? Motiveer jou antwoord. (2)

3.2 Aanvaar dat die voertuig waarin Mnr. X 'n passasier was, bestuur was deur sy werkgewer. Hoesaldit syeise beïnvloed? Motiveer volledig. (4)

VRAAG 4 [10]

U word geraadpleeg deur Mev. Patience Ngubane, 'n weduwee, wat u soos volg mededeel:

- Haar dogter, Margaret Shezi, het te sterwe gekom op 2 Januarie 2015 as gevolg van beserings opgedoen in 'n motorvoertuig botsing.
- Margaret word oorleef deur haar drie afhanklike kinders, naamlik Moses (18 jaar oud), Mandla (10 jaar oud) en Thulile (8 jaar oud), wat almal nog op skool is.
- Die kinders het by Mev. Ngubane gewoon in Durban sedert 1 Januarie 2010, nadat hulle vader oorlede is en hulle moeder na Gauteng verhuis het, waar sy werk gekry het as 'n huishulp.
- Terwyl sy nog gelewe het, het Margaret gereeld geld vir haar moeder gestuur om te betaal vir die kinders se opvoeding en onderhoud.
- Na Margaret se dood, het Mev. Ngubane suksesvol aansoek gedoen vir kinder-onderhoudstoelae, maar sy het intussen aansienlike persoonlike uitgawes aangegaan ten opsigte van die onderhoud van die kinders.

Beantwoord die volgende vrae met verwysing na bogenoemde feitlike inligting:

- 4.1 Identifiseer die eise, indien enige, wat Moses, Mandla en Thulile mag hê as gevolg van hulle moeder se dood. (2)
- 4.2 Is Mandla en Thulile geregtig om eise in hulle persoonlike hoedanighede in te dien wat u hierbo geïdentifiseer het (hou in gedagte dat beide ouers oorlede is). (2)

3.1 What amount should be paid out by the RAF to the claimant? Motivate your answer. (2)

3.2 Assume that the vehicle in which Mr X was travelling was driven by his employer. How would this affect his claims? Explain fully. (4)

QUESTION 4 [10]

You are consulted by Mrs Patience Ngubane, a widow, who advises you as follows:

- Her daughter, Margaret Shezi, passed away on the 2nd of January 2015 as a result of injuries sustained in a motor vehicle collision.
- Margaret is survived by her three dependant children, namely, Moses (aged 18), Mandla (aged 10) and Thulile (aged 8) all of whom are attending school.
- The children have been residing with Mrs Ngubane in Durban from the 1st of January 2010, when their father passed away and their mother moved to Gauteng, where she obtained employment as a domestic worker.
- Whilst she was alive, Margaret regularly sent money home to her mother to pay for the children's education and maintenance.
- Subsequent to Margaret's death, Mrs Ngubane has successfully applied for and is in receipt of child support grants, however, she has already incurred considerable personal expenses in supporting the children.

Answer the following questions with reference to the above factual information:

- 4.1 Identify the claims, if any, that Moses, Mandla and Thulile may have as a result of their mother's death. (2)
- 4.2 Are Mandla and Thulile able to lodge any claims you have identified above in their personal capacities, bearing in mind that both parents are deceased? (2)

4.3 Is Mev. Ngubane geregtig om eise in te stel namens enige van die kinders? Motiveer jou antwoord. (2)

4.4 Wie mag eise indien namens die drie kinders? (2)

4.5 Nadat die eise behoorlik ingedien en ondersoek is, begin u skikkings- onderhandelinge voer met die Padongelukfonds, en ontvang 'n skikkings-aanbod vir die bedrae wat u geëis het, behalwe dat die Padongelukfonds die bedrae wat ontvang is as kinder-onderhoudstoelae afgetrek het. Welke advies sal u vir u kliënte gee rakende die voorgestelde skikking? (2)

VRAAG 5

[15]

U ontvang instruksies van Advokaat Richard Baloyi van Pretoria, in sy hoedanigheid as kurator *ad litem* van Ben Botha, 'n werklose meerderjarige man van Pretoria om dagvaarding uit te reik teen die Minister van Polisie en teen Kaptein John Jones. Die feite van die saak is soos volg:

Op 1 April 2015 en te die kruising van Swart en Bloustrate, Pretoria het 'n botsing tussen 'n SAPS voertuig met registrasienommer ABF 472 GP, bestuur deur kaptein Jones, op amptelike diens en 'n Ferrari voertuig met registrasienommer XYZ 792 GP, die eiendom van mnr Botha, plaasgevind. Die botsing is veroorsaak deur die nalatigheid van Jones wat versuim het om by 'n rooi verkeerslig te stop. Die Ferrari, wat na die botsing uitgebrand het, het 'n voor-botsingswaarde van R712 000 gehad en is nie ekonomies herstelbaar nie, m.a.w dit is "afgeskryf".

Gebruik sodanige addisionele feite as wat u nodig ag en stel die besonderhede van vordering in ooreenstemming met u instruksies op. U mag die kopstuk weglaat.

4.3 Is Mrs Ngubane entitled to lodge claims on behalf of any of the children? Motivate your answer. (2)

4.4 Who may lodge claims on behalf of the three children? (2)

4.5 After the claims have been duly lodged and investigated, you enter into settlement negotiations with the Road Accident Fund and obtain an offer of settlement in the amounts you have claimed, save for the fact that the RAF has deducted the amounts received as child support grants. What advice would you give your clients regarding the proposed settlement? (2)

QUESTION 5

[15]

You are instructed by Advocate Richard Baloyi of Pretoria in his capacity as curator *ad litem* of Ben Botha, an unemployed major male residing at Pretoria, to issue summons against the Minister of Police and Captain John Jones. The facts of the matter are as follows:

On 1 April 2015 and at the intersection of Black and Blue Streets, Pretoria a collision took place between a SAPS vehicle with registration number ABF 472 GP, driven by Captain Jones on official duty and a Ferrari, registration number XYZ 792 GP, the property of Mr Botha. The collision was caused by the negligence of Jones who failed to stop at a red traffic light. The Ferrari, which caught fire and was gutted after the accident had a pre-collision value of R712 000 and is not economically repairable, i.e. "is a write off".

Using such additional facts as may be necessary, draft the Particulars of Claim in accordance with your instructions. You may omit the heading.

VRAAG 6 [10]

U tree op namens u kliënt, Piet Makume, wat teenstrydige aansprake van Paul Moroke en Jan Monakedi, onderskeidelik, in die gesig staar. Beide partye eis betaling van 'n bedrag van R500 000 ten opsigte van goedere verkoop en gelewer.

U kliënt erken dat hy die goedere ontvang het en dus die bedrag verskuldig is. Vanweë die feit dat al die onderhandelinge telefonies geskied het, weet hy nie aan wie hy moet betaal nie.

Na ondersoek van die aangeleentheid kom u tot die gevolgtrekking dat dit nie moontlik is om te bepaal aan wie betaling gemaak moet word nie.

Stel die kennisgewing op vir doeleindes van verkryging van die nodige regshulp wat u aanbeveel. Laat die kopstuk weg en moenie die eedsverklaring opstel nie.

VRAAG 7 [19]

Skiet en Donder is sedert kindsdae vriende en woon op 15 Januarie 2015 'n partytjie in Pretoria by. Donder raak betrokke in 'n argument met die uitsmyter, Frakas en word geslaan. Skiet glo Donder is in gevaar, haal 'n vuurwapen uit en vuur 'n skoot op Frakas wat hom noodlottig wond. Skiet word in hegtenis geneem en van moord aangekla in die Streekhof. U tree vir Skiet op.

7.1 Stel die beëdigde verklaring op om vir borg aansoek te doen. Gebruik enige feite wat u nodig ag. Sluit die kopstuk in. (7)

7.2 Skiet word geadviseer om skuldig te pleit op moord. Stel sy Art 112 verklaring op. Sluit die nodige erkennings en kopstuk in. (7)

7.3 As Skiet besluit om onskuldig te pleit stel die gepaste Art 115 verklaring op wat sy verweer uiteensit. Maak die erkennings wat u nodig ag. Laat die kopstuk weg. (5)

QUESTION 6 [10]

You act on behalf of your client Piet Makume, who is facing adverse claims from Paul Moroke and Jan Monakedi, respectively, who both claim payment of the amount of R500 000 in respect of goods sold and delivered.

Your client acknowledges that he received the goods and thus owes the amount but as all the negotiations took place telephonically he has no idea to whom payment should be made.

After investigating the matter you come to the conclusion that it is not possible to determine to whom payment should be made.

Draft the notice for purposes of obtaining the required relief in terms of your advice. Omit the heading and do not draft the affidavit.

QUESTION 7 [19]

Skiet and Donder, childhood friends, attend a party in a Pretoria restaurant on Thursday the 15th January, 2015. Donder becomes involved in an argument with the bouncer, Frakas, who punches him. Believing that Donder is in danger, Skiet draws his firearm and fires a shot at Frakas fatally wounding him. Skiet is arrested and charged with murder in the Regional Court. You act for Skiet.

7.1 Draw the affidavit to apply for Skiet's bail, assuming and incorporating any facts that you deem necessary. Include the heading. (7)

7.2 Skiet is advised that on the facts it is in his interests to plead guilty to murder. Draw his Section 112 plea. Include all necessary admissions and the heading. (7)

7.3 Assuming that Skiet decides to plead not guilty, draw his Section 115 statement outlining the basis of his defence and making such admissions as you deem necessary. Exclude the heading. (5)

VRAAG 8 [6]

Radovan Karadzic word in hegtenis geneem en word van moord aangekla terwyl hy ander uitstaande klagtes teen hom het. U doen aansoek om borg. Die landdros bevind dat dit nie in belang van geregtigheid is om borg toe te staan nie. U kliënt gee u opdrag om appél aan te teken teen die beslissing. Hy bring onder u aandag feite wat nie voorheen voor die hof was nie en wat hom begunstig en grootliks die gronde raak waarop die landdros sy weiering gegrond het.

- 8.1 U kliënt vra of hy teen die landdros se bevinding kan appéleer. Welke adviessal u hom gee? Gee besonderhede. (3)
- 8.2 Welke inligting moet u regtens as beskuldigde se regsvertegenwoordiger onder die Hof se aandag bring tydens die borgeaansoek? (2)
- 8.3 Mag die Staat die getuienis wat tydens die borgeaansoek gelei is in die daaropvolgende verhoor van die beskuldigde gebruik? (1)

VRAAG 9 [10]

Plumb-Link (Edms) Bpk (hierna genoem "Plumb-Link"), die verskaffer van loodgieterstoerusting het 'n geskrewe ooreenkoms aangegaan met The Drain Doctor CC (hierna "The Drain Doctor"):

- a) Plumb-Link sal The Drain Doctor voorsien van loodgieterstoerusting op rekening;
- b) Betaling moes geskied binne een maand van die ontvangs van die rekening en rente teen 18% per annum is betaalbaar op die agterstallige bedrag;
- c) Die partye het toegestem tot die jurisdiksie van die Distrikslanddroshof;
- d) 'n Sertifikaat onderteken deur die krediet bestuurder van Plumb-Link sal dien as *prima facie* bewys van die bedrag betaalbaar;

QUESTION 8 [6]

Radovan Karadzic is arrested and charged for murder while he has other outstanding cases. You apply for his release on bail. The magistrate finds that it is not in the interests of justice to grant bail. Your client instructs you to appeal the decision and brings to your attention certain new facts previously not placed before the court but which appear to be favourable to him and to a large extent deal with the grounds upon which the magistrate based his refusal.

- 8.1 Your client inquires whether he can note an appeal against the magistrate's decision. Discuss in detail the advice you will give to client. (3)
- 8.2 What information are you, in law, as legal representative of the accused obliged to bring to the attention of the court during the bail application? (2)
- 8.3 Is the State entitled to use the evidence that was given during the bail application in the subsequent trial of the accused? (1)

QUESTION 9 [10]

Plumb-Link (Pty) Ltd (hereinafter referred to as "Plumb-Link"), the supplier of plumbing equipment entered into a written agreement with The Drain Doctor CC (hereinafter referred to as "The Drain Doctor") the material terms of which were:

- a) Plumb-Link would supply The Drain Doctor with plumbing goods on credit;
- b) Payment was to be effected within one month of the receipt of a statement and interest at the rate of 18% per annum is payable on the total arrear amount;
- c) The parties consented to the jurisdiction of the District Magistrate's Court;
- d) A certificate signed by the Credit Manager of Plumb-Link would be *prima facie* proof of the amount due and payable;

e) Simon Jones, die enigste lid van The Drain Doctor het homself verbind as borg en mede-hoofskuldenaar vir betaling van alle gelde betaalbaar deur The Drain Doctor aan Plumb-Link.

Plumb-Link het goedere verkoop en gelewer aan The Drain Doctor ter waarde van R340 000,00. 'n Afskrif van die rekening was gestuur aan hulle op 1 November 2014 en die betaling is steeds uitstaande.

Stel die nodige besonderhede van vordering op vir die vordering van die eis in die Distrikslanddroshof (laat alle opskrifte weg).

VRAAG 10 [3]

Het die Landdroshof jurisdiksie in die volgende aangeleenthede?

- 10.1 'n Aansoek vir die likwidasië van 'n Beslote Korporasie; (½)
- 10.2 'n Appèl teen die weiering van borg deur 'n landdros; (½)
- 10.3 Vervanging/substitusie van 'n eksekuteur in die plek van 'n bestorwe eiser; (½)
- 10.4 Aksie vir 'n ongeopponeerde egskeiding; (½)
- 10.5 Aansoek vir die sekwestrasie van die boedel van 'n individu; (½)
- 10.6 Heraanstelling van 'n onregmatig afgedankte werknemer weens onbillike arbeidspraktyk; (½)

VRAAG 11 [4]

U kliënt het skriftelik sessie geneem van 'n eis en stel 'n eis in teen die skuldenaar in die Landdroshof. Watter bewerings moet in die dagvaarding vervat word met betrekking tot die sessie (U moet nie die sessie opstel nie).

e) Simon Jones, the sole member of The Drain Doctor, bound himself as surety and co-principal debtor for the payment of all monies due and payable by The Drain Doctor to Plumb-Link.

Plumb-Link sold and delivered goods to The Drain Doctor to the value of R340 000,00. A copy of the statement was forwarded to them on the 1st November 2014 and the amount remains unpaid.

Draft the necessary particulars of claim for recovery in the District Magistrate's Court against all parties (omit headings).

QUESTION 10 [3]

Does the District Magistrate court have jurisdiction in the following matters?

- 10.1 An application for liquidation of a Close Corporation; (½)
- 10.2 An appeal against bail refusal by a Magistrate; (½)
- 10.3 Substitution of an executor in place of a deceased plaintiff; (½)
- 10.4 Action for unopposed divorce; (½)
- 10.5 Application to sequester an estate of an individual (½)
- 10.6 Reinstatement of a wrongfully dismissed employee for unfair labour practice. (½)

QUESTION 11 [4]

Your client has taken written cession of a claim and institutes action against the debtor in the Magistrate's Court. Which allegations should the summons at least contain regarding the cession? (Do not draft the cession).

VRAAG12 [2]

Die verweerder is 'n maatskappymetsy hoofplek van besigheid in Johannesburg Sentraal, maar het 'n takkantoor in Pretoria. Die maatskappy het goedere gekoop van die eiser in Pretoria, maar lewering het geskied in Johannesburg.

12.1 Uit watter Landdroshof moet die dagvaarding uitgereik word? (1)

12.2 Verskaf asseblief die rede vir u keuse in 12.1. (1)

VRAAG 13 [1]

Vonnis is toegestaan maar daar is geen bede vir rente ingesluit in die aansoek om vonnis nie. Is u kliënt geregtig op rente?

VRAAG 14 [2]

Die Verweerder se vrou beweer dat sy die eienaar is van die goedere waarop u beslag gelê het ingevolge 'n vonnis wat toegestaan is. U betwis haar eis. Wat is die naam van die prosedure wat u kan volg?

VRAAG 15 [1]

U kliënt het 'n besoldigingsbeslagleggingsbevel verkry ingevolge waarvan die verweerder se werkgewer R200,00 per maand van sy salaris moet aftrek. Die werkgewer het vir 3 maande versuim om die gelde af te trek, ten spyte daarvan dat die verweerder steeds vir die werkgewer werk. Wat is u volgende stap?

VRAAG 16 [2]

U kliënt is gedagvaar in die Distrikslanddroshof vir skade van R60 000,00 as gevolg van 'n motorongeluk. Sy instruksies is dat hy oortuig is dat die eiser, wat die ander motor bestuur het, vir 50% van die oorsaak van die botsing blameer moet word. Hy het R30 000,00 tot sy beskikking. Watter advies sou u vir hom gee om kostes te beperk?

QUESTION 12 [2]

The defendant is a Company with its principal place of business in Johannesburg Central, but has a branch office in Pretoria. It purchased goods from the Plaintiff in Pretoria, but delivery was made in Johannesburg;

12.1 Out of which Magistrate's Court must summons be issued? (1)

12.2 Please provide the reason for stating the Court in 12.1. (1)

QUESTION 13 [1]

Judgment was granted, but no prayer for interest was inserted on the application for judgment. Is your client entitled to any interest?

QUESTION 14 [2]

The Defendant's wife alleges that she is the owner of goods that you have attached pursuant to a judgment. You dispute her claim. What is the name of the procedure that you may take?

QUESTION 15 [1]

Your client obtained an emoluments attachment order in terms of which the Defendant's employer is required to deduct R200,00 per month from his salary. The employer has failed to deduct the said amount for three months despite the Defendant still being in his employ. What is your next step?

QUESTION 16 [2]

Your client is being sued in the District Magistrate's Court for damages of R60 000,00 in respect of a motor collision. His instructions are that he believes that the Plaintiff who was the driver of the other vehicle was 50% to blame for the collision. He has R30 000,00 available. What advice would you give him to curtail costs?

- DIE EINDE -

- THE END -