

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

14 FEBRUARIE 2017

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% 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 1 COURT PROCEDURES

14 FEBRUARY 2017

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 [15]

U word gekonsulteer deur June Mbatha wat u soos volg inlig:

- 1) Op 25 April 2016 was June 'n passasier in 'n motorvoertuig bestuur deur haar kêrel, Joseph Sibiya. Hulle 4 (vier) jaar oue dogter, Silindile Sibiya was 'n passasier op die agtersitplek van die voertuig.
- 2) Op reis op die Nasionale Pad (N2) naby Port Shepstone, het die bestuurder van 'n minibushuurtmotor beheeroorsy huurtmotor verloor en van agter gebots met die voertuig bestuur deur Joseph Sibiya. Nóg die bestuurder nóg die eienaar van die huurtmotor is geïdentifiseer.
- 3) June het rib frakture en ernstige gesig-laserasies opgedoen. Silindile het 'n ernstige hoofbesering opgedoen.
- 4) Joseph het ernstige hoofbeserings opgedoen en gevolglik in 'n koma verval. Hy is vervoer na die naaste intensiewesorgseenheid waar hy opgeneem is. Hy het ongelukkig tot sterwe gekom as gevolg van sy beserings op 12 Mei 2016.
- 5) Voor die ongeluk het die paartjie saamgewoon vir 5 (vyf) jaar. Joseph was in diens van die Departement van Ondewys as 'n skoonmaker. June het nie gewerk nie en het omgesien na die huishouding. Joseph het beide vir June en Silindile finansieel onderhou en sy dood het hulle sonder heenkome gelaat. Alhoewel June en Joseph nie getroud was nie, het hulle onderskeie families reeds bymekaar gekom en ooreengekom oor lobola. Joseph het inderwaarheid reeds helfte van die ooreengekome lobola aan June se familie betaal. Die paartjie het beoog om te trou sodra die lobola ten volle betaal was.

QUESTION 1 [15]

You are consulted by June Mbatha who advises you as follows:

- 1) On the 25th of April 2016, June was travelling in a motor vehicle driven by her boyfriend, Joseph Sibiya. Their 4 (four) year old daughter, Silindile Sibiya, was seated in the rear passenger seat.
- 2) Whilst travelling along the National Road (N2) in the vicinity of Port Shepstone, the driver of a minibus taxi, lost control of the taxi and collided into the rear of the vehicle driven by Joseph Sibiya. Neither the owner nor the driver of the taxi was identified.
- 3) June suffered fractured ribs and severe facial lacerations. Silindile sustained a severe head injury.
- 4) Joseph sustained serious head injuries which rendered him comatose. He was transported to the nearest ICU unit where he was admitted. Unfortunately, he passed away as a result of his injuries on the 12th of May 2016.
- 5) Prior to the collision, the couple had lived together for 5 (five) years. Joseph was employed by the Department of Education as a cleaner. June was unemployed and took care of the home. Joseph supported both June and Silindile financially and his death has left them destitute. Although June and Joseph were not married, their respective families had met and negotiated the lobola. Joseph had in fact already made payment of half the agreed lobola to June's family. The couple intended to marry once the lobola was paid in full.

6) June oorhandig 'n aantal rekeninge ten opsigte van Joseph se mediese uitgawes sowel as begrafnisuitgawes en deel u mee dat Joseph se mediese uitgawes betaal is deur sy mediese fonds maar dat sy die begrafniskostes betaal het.

U adviseer June dat daar sekere eise is wat sy kan instel teen die Padongelukfonds.

Beantwoord die volgende vrae met betrekking tot die feitlike inligting hierbo:

1.1 Het June *locus standi* om 'n eis in te dien by die Padongelukfonds met betrekking tot Silindile se beserings in die lig van die feit dat Silindile se van verskil van June se van. Motiveer u antwoord. (2)

1.2 Wie het *locus standi* om 'n eis in te dien by die Padongelukfonds met betrekking tot Joseph se begrafniskoste? Motiveer u antwoord. (2)

1.3 Teen watter datum moet elk van die volgende eise by die Padongelukfonds ingedien word:

1.3.1 June se eis vir haar persoonlike beserings. (1)

1.3.2 Die eis met betrekking tot Silindile se beserings. (1)

1.3.3 Die eis met betrekking tot die begrafniskoste. (1)

1.4 Kan 'n eis by die Padongelukfonds ingedien word met betrekking tot die mediese uitgawes aangegaan in verband met die behandeling van Joseph voor sy dood? Motiveer u antwoord. (2)

1.5 Is Silindile geregtig om vergoed te word vir die onderhoud wat sy verloor het voortspuitend uit die dood van Joseph. Motiveer u antwoord. (2)

6) June produces a number of vouchers in respect of Joseph's medical expenses as well as funeral expenses and advises that Joseph's medical expenses were paid by his medical aid but she has paid the funeral expenses.

You advise June that there are certain claims that can be made against the Road Accident Fund.

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

1.1 Does June have *locus standi* to lodge a claim with the Road Accident Fund in respect of the injuries sustained by Silindile in the light of the fact that Silindile's surname differs from June's. Motivate your answer. (2)

1.2 Who has *locus standi* to lodge a claim with Road Accident Fund in respect of Joseph's funeral expenses? Motivate your answer. (2)

1.3 By what date must each of the following claims be lodged with the Road Accident Fund:

1.3.1 June's personal claim for her own injuries. (1)

1.3.2 The claim in respect of Silindile's injuries. (1)

1.3.3 The claim in respect of funeral expenses. (1)

1.4 Can a claim be lodged with the Road Accident Fund in respect of the medical expenses incurred in respect of the treatment rendered to Joseph prior to his death? Motivate your answer fully. (2)

1.5 Is Silindile entitled to be compensated for the support she has lost arising from the death of Joseph? Motivate your answer. (2)

1.6 Is June geregtig om vergoed te word vir die onderhoud wat sy verloor het voortspruitend uit die dood van Joseph? Motiveer u antwoord. (2)

1.6 Is June entitled to be compensated for the support she has lost arising from Joseph's death? Motivate your answer. (2)

1.7 Aanvaar dat dit blyk dat Joseph onder die invloed van drank was en dat hy beheer oor sy motorvoertuig verloor het as gevolg waarvan dit omgeslaan het. Geen ander voertuig was betrokke nie. Welke effek sal dit hê ten opsigte van:

1.7 Assume that it is established that Joseph was intoxicated and lost control of his motor vehicle thereby causing it to overturn. No other motor vehicle was involved. What effect would this have:

1.7.1 Die persoonlike beserings eise van June en Silindile? (1)

1.7.1 On the personal injury claims of June and Silindile. (1)

1.7.2 Die eise vir verlies aan onderhoud van June en Silindile? (1)

1.7.2 On the loss of support claims of June and Silindile. (1)

VRAAG 2 [6]

QUESTION 2 [6]

2.1 U kliënt was 6 (ses) maande swanger toe sy omgery is deur 'n besope bestuurder van 'n gesteelde knortjor ("go-cart").

2.1 Your client was 6 (six) months pregnant when she was run over by an intoxicated driver of a stolen go-cart.

2.1.1 Sal sy 'n eis teen die Padongelukfonds hê vir die beserings wat sy opgedoen het in die ongeluk? Motiveer u antwoord. (2)

2.1.1 Will she have a claim against the RAF for the injuries which she sustained in the accident? Motivate your answer. (2)

2.1.2 Sal u antwoord verskil indien sy onder dieselfde omstandighede omgery was deur 'n jagende bus? Motiveer u antwoord. (2)

2.1.2 Will your answer differ if she was run over under the same circumstances by a speeding bus? Motivate your answer. (2)

2.1.3 Die enigste skade wat u kliënt ly is die verlies van haar fetus. Adviseer u kliënt rakende die moontlikheid van 'n eis teen die Padongelukfonds vir nie-materiële skade (algemene skade). (2)

2.1.3 The only damages suffered by your client was the loss of her foetus. Advise your client regarding the probability of instituting a claim against the RAF for non-pecuniary loss (general damages). (2)

VRAAG 3 [4]

QUESTION 3 [4]

U kliënt het ernstige beserings in 'n motorbotsing opgedoen. U het die RAF1 mediese verslag aan die hospitaal waar hy behandel was vir sy

Your client sustained serious injuries in a motor vehicle accident. You have forwarded the RAF1 medical report to the hospital where he was

beserings na die ongeluk, gestuur vir voltooiing deur die behandelende dokter. Die hospitaal lig u egter in dat die behandelende dokter wat u kliënt behandel het, intussen oorlede is. Die eis sal verjaar binne een maand. Wie anders kan die RAF1 mediese verslag voltooi onder die omstandighede?

VRAAG 4 [16]

U tree namens 'n eiser op in 'n Hoë Hof aksie waarin betaling van 'n gelijkwiderde bedrag gevorder word en wat geplaas is vir verhoor oorses weke. Na die sluit van pleitstukke het u 'n versoek om besonderhede om vir verhoor voor te berei afgelewer. Die verweerder se prokureurs het nog op die versoek gereageer, nog op 'n skrywe waarin u nakoming vereis het en hulle ingelig het van u voorneme om hierdie aansoek te bring en die tydperk het verstryk. U word benadeel in u voorbereiding vir verhoor. U adviseer u kliënt om 'n interlokutêre aansoek te loods.

Met verwysing na bogemelde beantwoord die volgende vrae:

- 4.1 Wat is 'n interlokutêre aansoek? (2)
- 4.2 Sal u die lang vorm (Vorm 2) of kort vorm (Vorm 2A) kennisgewing van mosie gebruik? (1)
- 4.3 Welke regshulp sal u in die kennisgewing van mosie versoek? U hoef nie die kennisgewing van mosie op te stel nie, slegs die regshulp verlang. (3)
- 4.4 Stel die eedsverklaring ter ondersteuning van die aansoek op. (7)
- 4.5 Indien u met die aansoek slaag en u opponent versuim om aan die hofbevel te voldoen, welke regshulp sal u in 'n daaropvolgende aansoek versoek? (3)

treated after the accident for completion by the treating doctor. The hospital informs you that the doctor who treated your client has since passed away. The claim will prescribe in a month's time. Who else can complete RAF1 medical report under the circumstances?

QUESTION 4 [16]

You act on behalf of the plaintiff in a High Court action in which payment is claimed of a liquidated amount, and which is set down for trial in six weeks' time. After the close of pleadings you served and filed a request for particulars to enable you to prepare for trial. The defendant's attorneys did not respond to the request nor to a letter demanding compliance and notifying them of your intention to bring this application and the time period has expired. You are being prejudiced in your preparation for trial. You advise your client to launch an interlocutory application.

With reference to the above, answer the following questions:

- 4.1 What is an interlocutory application? (2)
- 4.2 Will you use the long form (Form 2) or short form (Form 2A) notice of motion? (1)
- 4.3 What relief would you request in the notice of motion? You need not draft the notice of motion merely the relief sought. (3)
- 4.4 Draft the affidavit in support of this application. (7)
- 4.5 If you succeed in your application and the defendant fails to comply with the court order obtained, what relief will you be seeking in your subsequent application? (3)

VRAAG 5 [5]

U tree op namens 'n eiser wie se skadevergoedingseis van die hand gewys is in die Hoë Hof. U ontvang instruksies om 'n appél voort te sit na die volbank. Verlof tot appél is reeds verleen deur die voorsittende Regter. Stel die Kennisgewing van Appél op deur van u eie toepaslike feite in soverre as wat u dit nodig mag ag, gebruik te maak. Laat die kopstuk weg.

VRAAG 6 [4]

Noem die gronde waarop verrigtinge van 'n lae hof op hersiening in die Hoë Hof geneem kan word.

VRAAG 7 [8]

U kliënt, Mnr Long Fingers, was as 'n kassier te Shisa Nyama in Sandton, Johannesburg, werksaam. Dit was u kliënt se plig, om geld van verskeie kliënte te kollekteer en dit in die kasregister te plaas. Dit word beweer dat, op 31 Desember 2015, aan die einde van sy skof, hy besluit het om R1 000 uit die kasregister te neem. Hy is deur die sekuriteitsbeampte deursoek, toe hy die perseel verlaat, nadat hy sy skof om 18h00 voltooi het, en geld is in sy sak gevind. Hy is deur die polisie gearresteer op bewering dat hy van sy werkgewer gesteel het. U kliënt gee u instruksies dat hy van voorneme is om onskuldig te pleit, maar bereid is om 'n verklaring in terme van Artikel 220 van die Strafproseswet af te lê. Hy erken alle feite, behalwe dat die fondse wat in sy besit gevind is, aan sy werkgewer behoort.

Stel die verklaring op om alle feite soos hierbo aangedui, te bevat.

VRAAG 8 [8]

8.1 Is u kliënt, vir die doeleindes van die borg aansoek geregtig om insae in die polisiedossier, te hê? (1)

QUESTION 5 [5]

You are acting on behalf of a plaintiff whose claim for damages was dismissed in the High Court. You have instructions to proceed to appeal to the full bench. Leave to appeal was granted by the presiding Judge. Draft the Notice of Appeal, using your own facts in as far as you may deem it necessary. Omit the heading to the notice.

QUESTION 6 [4]

Name the grounds on which proceedings of any inferior court may be brought under review in the High Court.

QUESTION 7 [8]

Your client, Mr Long Fingers, was employed as a cashier, at Shisa Nyama in Sandton, Johannesburg. It was your client's responsibility to collect monies from various customers, and place it in the till. It is alleged that on 31 December 2015, at the end of his shift, he decided to take R1 000 out of the till. He is searched by security on his way out after he completes his shift at 18h00 and money is found in his trouser pocket. He is arrested by the police on an allegation of theft from his employer. Your client instructs you that he intends to plead not guilty, to the charge of theft, but is prepared to make a statement i.t.o. Section 220 of the Criminal Procedure Act. He admits all the facts, except that he disputes that the money found in his possession belongs to the employer.

Draft the statement, containing the admissions as indicated above.

QUESTION 8 [8]

8.1 Is your client entitled, for the purpose of the bail application, to peruse the police docket? (1)

8.2 Welke inligting van die beskuldigde is u, as regsverteenwoordiger verplig om gedurende die borg aansoek, in terme van Artikel 60(11B)(a), onder die Hof se aandag te bring? (2)

8.2 What information are you, as legal representative of the accused compelled to furnish to the court during bail proceedings under the provisions of Section 60(11B)(a) of the Criminal Procedure Act? (2)

8.3 Die Landdros het gevind dat dit nie in belang van geregtigheid is, om borg aan u kliënt toe te staan nie. Lys die gronde wat die Hof in ag moes neem om te bepaal of dit in belang van geregtigheid is om u kliënt op borg vry te laat. (5)

8.3 The magistrate has found that it is not in the interest of justice to grant bail to your client. Please list the grounds that a court must consider, to determine whether it will be in the interest of justice to release your client on bail. (5)

VRAAG 9 [3]

QUESTION 9 [3]

Wat is die riglyne vir die opstel van 'n verklaring, in terme van Artikel 112(2), van die Strafproseswet?

What are the guideline for drafting a statement made i.t.o. Section 112(2) of the Criminal Procedure Act?

VRAAG 10 [2]

QUESTION 10 [2]

Nadat die Staat sy saak gesluit het, blyk dit dat daar min getuienis is wat jou kliënt met die misdaad verbind. Welke aansoek sal jy oorweeg om te loods, en welke gronde, moet die Hof in ag neem om te besluit of die aansoek toegestaan moet word?

After the State closed its case, it appears that there is little evidence that implicates your client in the commission of the crime. What application will you consider to bring and what would be the grounds that the Court must consider to decide whether to grant the application?

VRAAG 11 [4]

QUESTION 11 [4]

Op welke stadium van die kriminele vervolging, kan die Staat:

At what stage of criminal proceedings, can the State:

11.1 Klagtes teen 'n aangeklaagde persoon terugtrek, en wat sal die effek van sodanige terugtrekking wees? (2)

11.1 Withdraw charges against an accused person, and what will be the effect of such withdrawal? (2)

11.2 Die vervolging teen aangeklaagde persoon staak, en wat sal die effek van sodanige staking van vervolging wees? (2)

11.2 Stop a prosecution against an accused person, and what will be the effect of such a stopping of the prosecution? (2)

VRAAG 12 [8]

QUESTION 12 [8]

U kliënt het 'n bouooreenkoms gesluit met AB Builders BK wat deur Anton Barnard verteenwoordig was, om sekere veranderinge aan te bring by sy woning.

Your client enters into a building contract with AB Builders CC represented by Anton Barnard, to conduct certain alterations to his home.

Die kontrakprys is R560 000,00, wat as volg betaalbaar is:

- i) 50% by sluiting van kontrak;
- ii) R100 000,00 sodra die fondasie gegooi is;
- iii) die balans by voltooiing van die kontrak.

Die kontrak is geteken en u kliënt betaal 50% van die kontraksprys aan die kontrakteur. Die kontrakteur lê die fondasie en u kliënt betaal hom R100 000,00. Die boukontrakteur versuim om terug te keer na die bousterrein toe om die kontrak te voltooi. Gevolglik kanselleer u kliënt die kontrak op 'n geldige wyse. U kliënt neem 'n nuwe kontrakteur in diens om die kontrak te voltooi teen 'n kontrakprys van R240 000,00.

Stel die besonderhede van vordering op wat die bedes insluit. Laat hoofopskrifte uit.

VRAAG 13 [4]

Watter noodsaaklike bewerings ontbreek in die volgende Plaaslike of Streeks Landdroshof besonderhede van vordering?

13.1 Die Eiserse eis is die ooreengekome prys van R450 000,00 vir goedere verkoop aan die Verweerder gedurende Januarie 2015. (2)

13.2 Die Eiser se eis teen die Verweerder is vir R22 000,00 synde die kostes van die herstelwerk aan 'n motor voertuig, met registrasie nommer ND 12, wat bestuur was deur die Eiser en welke skade veroorsaak is deur die nalatige bestuur van die Verweerder. (2)

VRAAG 14 [4]

U is besig om voor te berei vir 'n verhoor in die Landdroshof in 'n saak waar u kliënt skadevergoeding eis vir beserings wat veroorsaak is toe die Verweerder se hond hom gebyt het terwyl hy gaan draf het.

The contract price is R560 000,00 payable as follows:

- i) 50% upon signing of contract;
- ii) R100 000,00 once the foundation has been laid;
- iii) The balance on completion of the contract.

The contract is signed and your client pays the contractor 50% of the contract price. The contractor lays the foundation and your client pays him R100 000,00. The building contractor then fails to return to the site to complete the contract. As a result, your client validly cancels the contract. Your client then employs a new contractor to complete the work and he does so at a contract price of R240 000,00, which is fair and reasonable.

Draft the particulars of claim including the prayer. Omit headings.

QUESTION 13 [4]

What essential averments are missing from the following District or Regional Magistrates' court particulars of claim?

13.1 The Plaintiff's claim is for R450 000,00 being the agreed price of goods sold to the Defendant during January 2015. (2)

13.2 The Plaintiff's claim is against the Defendant for R22 000,00 being the cost of repair of a motor vehicle, registration number ND 12 driven by the Plaintiff and which damages were caused by the Defendant's negligent driving. (2)

QUESTION 14 [4]

You are preparing for trial in a case in the Magistrates' court in which your client claims damages for the injuries he suffered as a consequence of being bitten by the Defendant's dog, whilst your client was jogging down the street.

Watter kennisgewings sal u aflewer ten einde u in staat te stel om getuienis van 'n mediese spesialis te lei? Noem asseblief die tydperke waarbinne die kennisgewings afgelewer moet word. Verduidelik wat ingesluit moet word in die kennisgewing sonder om die kennisgewing op te stel.

VRAAG 15 [2]

Die Eiser trek die aksie teen u kliënt terug sonder om kostes te tender. Watter regsremedie is beskikbaar vir die Eiser?

VRAAG 16 [3]

U kliënt is die Verweerder in 'n voorlopige vonnis dagvaarding uitgereik deur die Eiser. U kliënt lewer 'n kennisgewing van opponering en 'n opponerende eedsverklaring af. Die Eiser lewer 'n repliserende eedsverklaring af. Die Landdros staan die voorlopige vonnis toe met koste. U kliënt glo steeds dat hy 'n goeie verweer in die aksie het. Adviseer u kliënt oor watter stappe hy moet doen om voort te gaan met sy verweer.

VRAAG 17 [4]

17.1 In 'n verhoor in die Distriks Landdroshof (waar die Eiser aksie ingestel het vir skadevergoeding ten opsigte van skade aan sy motor) is die enigste getuies die bestuurders van die twee motors. Hulle gee totaal verskillende weergawes van hoe die ongeluk gebeur het. Die landdros kan nie besluit watter weergawe om te glo nie. Watter uitspraak behoort die landdros te gee? (2)

17.2 U het aksie ingestel in die Distrik Landdroshof vir vergoeding ten opsigte van skade aan u kliënt se voertuig in 'n motorongeluk. Die Verweerder het versuim om 'n kennisgewing van verdediging af te lewer. Watter dokumente moet u liaseer ten einde verstekvonnis te verkry? (2)

What notices would you have to deliver so that you could lead evidence from a medical specialist about the injuries? Please set out the time periods within which such notices should be delivered and explain what they should contain without drafting any such notices.

QUESTION 15 [2]

The Plaintiff withdraws an action against your client without tendering costs. What legal remedy is available to your client?

QUESTION 16 [3]

Your client is the Defendant in which the Plaintiff has issued a Provisional Sentence summons. Your client delivers a notice of intention to oppose and an opposing affidavit. The Plaintiff delivers a replying affidavit. The Magistrate grants the Plaintiff Provisional Sentence with interest and costs. Your client still believes he has a good defence to the action. Advise him what steps to take to enable him to continue with his defence of the action.

QUESTION 17 [4]

17.1 In a trial in the District Magistrates' court (in an action where the Plaintiff instituted an action for the damages to his motor vehicle) the only parties to give evidence were the drivers of the two vehicles. They gave completely different versions as to how the collision occurred. The magistrate could not decide which of the two versions he could believe. What judgment should the magistrate give? (2)

17.2 You have instituted an action in the District Magistrates' Court for damages your client sustained to his vehicle in a motor collision. The defendant has failed to enter an appearance to defend. What documents must you file to enable you to obtain default judgment? (2)