

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

22 AUGUSTUS 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% 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

22 AUGUST 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 [8]

U tree op namens Mevrouw X wat beseer is in 'n motorvoertuig ongeluk op 2 Maart 2015. U is van mening dat sy sal kwalifiseer vir nie-materiële skade (algemene skade). U kliënt se eis behels algemene skade, reeds gelede mediese en hospitaaluitgawes, toekomstige mediese uitgawes en reeds gelede verlies aan verdienste.

U dien 'n eis in vir haar skade, voortspruitend uit haar beserings opgedoen in die ongeluk by die POF op 5 April 2016. 'n Behoorlik voltooide RAF4 (Ernstige Assesseringsverslag) is saam met die eisdokumente ingedien.

Op 6 Mei 2016 ontvang u 'n brief van die Fonds waarin hulle die RAF4 (erns van u kliënt se beserings) verwerp. Die Fonds is van mening dat u kliënt nie geregtig sal wees op vergoeding vir nie-materiële skade nie. U is egter oortuig dat u kliënt inderdaad ernstige beserings opgedoen het.

1.1 Beskryf die stappe wat u moet doen om die verwerping deur die Fonds te betwis. Binne welke tydperk moet dit gedoen word, welke dokumente sal benodig word om die verwerping (van die ems van u kliënt se beserings) deur die Fonds te betwis en waar moet die dispuut met die Fonds ingedien word? (6)

1.2 As dit uiteindelik bevind word dat u kliënt se beserings nie van 'n ernstige aard is tot die mate dat sy kwalifiseer vir nie-materiële skade nie, mag sy steeds eis vir haar reeds gelede mediese en hospitaaluitgawes, toekomstige mediese uitgawes en reeds gelede verlies aan verdienste? Motiveer u antwoord. (2)

VRAAG 2 [4]

U word gekonsulteer deur Mev van der Merwe. Sy deel u mee dat sy op 1 Februarie 2016 die bestuurder van haar motorvoertuig was en dat haar twee (2) minderjarige kinders passassiers in haar voertuig was.

QUESTION 1 [8]

You act on behalf of Mrs X who was injured in a motor vehicle accident on 2 March 2015. You are of the view that she will qualify for non-pecuniary loss (general damages) and your client's claim consists of general damages, past medical and hospital expenses, future medical expenses and past loss of earnings.

You lodge the claim for her damages arising out of her injuries sustained in the accident with the RAF on 5 April 2016. A duly completed RAF4 (Serious Injury Assessment Report) was lodged with the claim documents.

On 6 May 2016 you receive a letter from the RAF in terms of which the RAF4 (seriousness of your client's injuries) is rejected, with the result that the RAF is of the view that your client will not be entitled to be compensated for non-pecuniary damages. You are convinced that your client indeed suffered serious injuries.

1.1 Describe what steps you must take to challenge the rejection of the RAF, within what time limit this must be done, what documents will be required to challenge the rejection by the RAF, and where must the challenge of the dispute with the RAF be lodged? (6)

1.2 Accept that it is eventually found that your client's injuries are not serious to the extent that she will qualify for non-pecuniary damages, will she still be able to claim for past medical expenses, future medical expenses and past loss of earnings? Motivate your answer. (2)

QUESTION 2 [4]

You are consulted by Mrs van der Merwe. She informs you that on 1 February 2016 she was the driver of her motor vehicle and that her two (2) minor children were passengers in her vehicle.

Op die betrokke dag het sy haar voertuig in 'n straat in Port Elizabeth teen 'n afdraende geparkeer. Sy het haar voertuig se enjin afgeskakel waarna sy uit die voertuig geklim het ten einde om die voertuig te loop om haar twee (2) minderjarige kinders van die agtersitplek te haal. Terwyl sy om haar voertuig loop, het die voertuig vanself teen die afdraende begin loop en uiteindelik met 'n aankomende bus gebots. Sy kon niks doen om haar bewegende voertuig te stop nie en het die ongeluk van die sypaadjie bekyk. Beide haar minderjarige kinders het ernstige beserings in die motorongeluk opgedoen. Sal dit moontlik wees om eise in te stel namens die 2 (twee) minderjarige kinders kragtens die Padongelukfonds Wet 56 van 1996 as gevolg van die liggaamlike beserings wat hulle opgedoen het in die ongeluk? Motiveer u antwoord.

VRAAG 3

[13]

U tree op vir die 70-jarige Mary Govender, wat ernstige beserings opgedoen het in 'n motorvoertuig ongeluk 8 Februarie 2013. U het haar eis by die POF behoorlik ingedien slegs vir algemene skade. Voor die betekening van dagvaarding het die Fonds 'n skikkingsaanbod gemaak. Die aanbod is deur u kliënt aanvaar. Ongelukkig laat die Fonds na om die ooreengekome bedrag te betaal, wat verskuldig was op 22 Februarie 2016. U word in kennis gestel deur Mary se seun dat sy Moeder te sterwe gekom het. Toe u die Fonds in kennis stel van u kliënt se afsterwe deel hulle u mee dat hulle nie gaan betaal nie aangesien u kliënt te sterwe gekom het voor die betekening van dagvaarding.

Beantwoord die volgende vrae gebaseer op bestaande feite hierbo:

- 3.1 Is die houding van die Fonds regtens korrek? Motiveer volledig. (4)
- 3.2 Mary se seun versoek dat u voortgaan om namens sy moeder op te tree aangesien u in besit is van haar Volmag. Is u by magte om dit te doen? (1)

On the day in question she had parked her vehicle in a street in Port Elizabeth at an incline. She had switched off her vehicle's engine after which she alighted from the vehicle to go around the vehicle to fetch her two (2) minor children from the back seat. While in the process of moving around her vehicle it started moving down the incline and eventually collided with an oncoming bus. She could do nothing to stop the moving vehicle and noticed the accident while standing on the pavement. Both minor children sustained serious injuries in the motor vehicle accident. Will it be possible to lodge claims on behalf of the two (2) minor children in terms of the Road Accident Fund Act 56 of 1996, arising out of the bodily injuries which they sustained in the Accident? Motivate your answer.

QUESTION 3

[13]

You act for 70 year old Mary Govender, who sustained severe injuries as a result of a motor vehicle collision which occurred on the 8th of February 2013. You duly lodge her claim with the RAF, for general damages only, and, prior to the service of summons, the RAF makes an offer of settlement. The offer is duly accepted by your client. Unfortunately, the RAF fails to make payment of the agreed amount, which was due on the 22nd of February 2016. You are then notified by Mary's son that his mother has passed away. When you inform the RAF of your client's death, they advise that they will not be making payment as your client passed away before the service of summons.

Answer the following questions based on the above factual information:

- 3.1 Is the position adopted by the RAF correct in law? Motivate your answer fully. (4)
- 3.2 Mary's son requests that you continue to act on his mother's behalf as you are in possession of her power of attorney. Are you able to do so? (1)

3.3 Teen welke datum moet dagvaarding beteken word op die Fonds ten einde verjaring te stuit? Motiveer u antwoord. (3)

3.4 Wie het *locus standi* om namens Mary te litigeer? (1)

3.5 Aanvaar dat Mary te sterwe gekom het voordat die aanbod van die Fonds aanvaar is. Welke effek, indien enige, sal dit hê op die regsgeldigheid van die houding van die Fonds? Motiveer u antwoord. (4)

3.3 By when must summons be served upon the RAF to interrupt prescription? Motivate your answer. (3)

3.4 Who has *locus standi* to litigate on Mary's behalf? (1)

3.5 Assume that Mary passed away before the offer from the RAF was accepted. What effect, if any, would this have on legality of the position adopted by the RAF? Motivate your answer fully. (4)

VRAAG 4 [15½]

U word geraadpleeg deur John Brown wat handel dryf as Magic Estate Agents ("MEA") te Newmanstraat 150, Johannesburg. Hy deel u mee dat hy gedurende Januarie vanjaar mondelinge opdrag van Jenifer Jones ontvang het om haar vaste eiendom geleë te Rivoniaweg 12, Johannesburg, Gauteng te verkoop vir 'n bedrag van ten minste R10 miljoen Rand. Hulle het ooreengekom, dat indien MEA hul mandaat suksesvol uitvoer, hulle geregtig sou wees op agentekommissie van 5% van die koopprys plus BTW. Brown deel u ook mee dat hulle verskeie advertensies op die internet en in koerante geplaas het om die eiendom te bemark as 'n skouhuis optwee agtereenvolgende Sondae en dat hulle verskeie potensiele kopers aan die eiendom voorgestel het.

Brown deel u verder mee dat hy bewus is van die feit dat hulle nie 'n alleenmandaat gehad het nie en dat 'n aantal ander agentskappe ook gepoog het om die eiendom te verkoop. Dit het nou tot sy aandag gekom dat een van die persone, naamlik Sam Sibiywa wat hy aan die eiendome aan Jones voorgestel het, inderdaad die eiendom van Jones vir R10 miljoen kontant gekoop het in terme van 'n skriftelike koopkontrak waartoe MEA nie 'n party was nie. Hy het 'n aanmaningsbrief aan Jones gestuur wat intussen afgetree het en verhuis het na Beachweg 10,

QUESTION 4 [15 ½]

You are consulted by John Brown, trading as Magic Estate Agents ("MEA") at 150 Newman Street, Johannesburg. He informs you that during January this year, he received oral instructions from Jenifer Jones to market and sell her fixed property situated at 12 Rivonia Road, Johannesburg, Gauteng for an amount of at least R10 million Rand. They agreed that in the event of MEA carrying out their mandate successfully, they would be entitled to agent's commission of 5% of the purchase price, plus VAT. Brown also informs you that they have placed various advertisements on the internet and in newspapers, marketing the property on two successive Sundays as a show house and introduced various potential buyers to the property.

Brown further informs you that he was aware of the fact that they did not have a sole mandate and that a number of other agencies also tried to sell the property. It has now come to his attention that one of the persons he introduced to the property and Jones, namely one Sam Sibiywa, had in fact bought the property from Jones for R10 million Rand cash in terms of a written agreement of sale to which MEA was not a party. He has sent a letter of demand to Jones who has in the meantime retired and relocated to 10 Beach Road, Durban. Jones

Durban. Jones ontken aanpreeklikheid vir enige kommissie en sê dat sy direk met Sibiya gehandel het.

denied liability for any commission, stating that she dealt with Sibiya directly.

Hy gee u opdrag om dagvaarding teen Jenifer Jones uit te reik.

He instructs you to issue summons against Jenifer Jones.

4.1 Steldie besonderhede van vordering op. Siteer die partye maar laat die kopstuk en smeekbedes uit. (12½)

4.1 Draft the particulars of claim, citing the parties but leave out the heading and prayers. (12½)

4.2 Noem al die afdelings van die Hoë Hof waaruit dagvaarding teen Jones uitgereik kan word? (2)

4.2 Name all the divisions of the High Court from which summons may be issued? (2)

4.3 Watter tydperk moet toegelaat word vir aantekening van verskyning tot verdediging met inagneming van die hof waaruit dagvaarding uitgereik word? (1)

4.3 What period must be allowed for notice of intention to defend to be filed, bearing in mind the court out of which summons is being issued? (1)

VRAAG 5 [6]

QUESTION 5 [6]

Kragtens die Wet op die Instel van Regsgedinge teen Sekere Staatsorgane (Wet 40 van 2002), mag aksie nie teen 'n staatsorgaan ingestel word tensy voorafgaande kennis daarvan aan so 'n staatsorgaan gegee is nie.

In terms of the Institution of Legal Proceedings against certain Organs of State Act 40/2002, action may not be instituted against an organ of state unless prior notice was given to the state organ.

5.1 Binne welke tydperk van datum waarop die skuld ontstaan het, moet sodanige kennisgewing gegee word? (1)

5.1 Within which time period from the date of the debt arising must such notice be given? (1)

5.2 Is daar in bogemelde geval enige remedie as u gekonsulteer word na verstryking van periode genoem in 5.1? (1)

5.2 Are there, in terms of the above, any remedy if you are consulted after expiry of the period referred to in 5.1? (1)

5.3 Wat moet die kennisgewing genoem in 5.1 hierbo, bevat? (2)

5.3 What must the notice referred to in 5.1 above set out? (2)

5.4 Hoeveel dae moet verstryk na betekening van die kennisgewing aan die staatsorgaan voordat regsgeding ingestel mag word? (1)

5.4 How many days must lapse after the notice was served on the organ of state before process may be served on it? (1)

5.5 Is die Wet ook van toepassing ten opsigte van skuldevoortspuitend uit kontraktuele aanspreeklikheid? (1)

5.5 Does the Act apply in respect of debts arising from contractual liability? (1)

VRAAG 6 [3½]

U tree op namens die eiser in 'n geding waar u 'n eksekusie lasbrief teen onroerende eiendom uitgereik het nadat die eiendom uitwinbaar verklaar is deur die hof. Lys sewe verpligte stappe soos vereis deur reël 46 van die Eenvormige Reëls van die Hoë Hof ter voorbereiding vir die eksekusie verkoping.

VRAAG 7 [10]

U kliënt, Mnr Speedy, is gedagvaar om in die Landdroshof van Kaapstad, op 'n klagte van strafbare manslag te verskyn. Die klagstaat dui net aan dat hy skuldig is aan strafbare manslag deurdat op of ongeveer 8 Julie 2000 en in die distrik van Kaapstad, die aangeklaagde, as bestuurder van 'n motorvoertuig wederregtelik en nalatig die dood van 'n voetganger, Lookout Walker, veroorsaak het.

Die Staat het u voorsien van alle dokumente in die Polisie dossier, insluitende die nadoodse ondersoek verslag.

Stel 'n versoek om verdere besonderhede tot die klag, op. U versoek moet die opskrif en einde bevat.

VRAAG 8 [7]

Wat is die vereiste vir die toelating van 'n skulderkenning as getuienis in kriminele verrigtinge in 'n hof?

VRAAG 9 [4]

Wat is die regsvereistes voor die Polisie aan 'n verdagte, in hul aanhouding, borg kan toestaan?

VRAAG 10 [4]

Gedurende 'n verdaging, bespreek die Aanklaer die Staatsgetuiese getuienis met laas genoemde,

QUESTION 6 [3½]

You are acting for the Plaintiff in the matter where you have issued a warrant of execution against immovable property after the property was declared executable by the court. List any seven compulsory steps in terms of the requirements of Rule 46 of the Uniform Rules of the High Court in preparation for the sale in execution.

QUESTION 7 [10]

Your client, Mr Speedy is summoned to appear before the Magistrate's Court of Cape Town, on a charge of culpable homicide. The charge sheet avers only that he is guilty of culpable homicide in that on or about the 8th of July 2000 and in the district of Cape Town, the accused being the driver of a motor vehicle wrongfully and negligently caused the death of a pedestrian, Lookout Walker.

The State provided you with a copy of all documents in the police docket as well as the post mortem report.

Draw a request for further particulars to the charge. Your request must include the heading and ending.

QUESTION 8 [7]

What are the requirements for admission into evidence of a confession in criminal proceedings before a court?

QUESTION 9 [4]

What are the legal requirements for the Police to be able to grant bail to a suspect in their custody?

QUESTION 10 [4]

During an adjournment, the prosecutor has a discussion with a state witness about his

wat nog steeds onder kruisondervraging deur u is.

10.1 Is dit 'n onreëlmatigheid? Motiveer u antwoord. (2)

10.2 Hoe kan voorgaande die verhoor beïnvloed? (2)

VRAAG 11 [6]

Mnr X skuld u kliënt R100 000,00 vir goedere verkoop en gelewer, wat Mnr X bestel het en u kliënt gelewer het aan Mnr X.

11.1 Versin die nodige feite en stel die aanmaningsbrief op. (4)

11.2 Stel die paragrawe op wat nodig sal wees indien (in plaas van vir goedere gekoop en gelewer) die aanmaning was vir gelde voorgeskiet aan Mnr X deur u kliënt ingevolge 'n ooreenkoms wat onderhewig is aan die Nasionale Krediet Wet. (2)

VRAAG 12 [5]

U is in diens van 'n plaaslike private firma van prokureurs. U kliënt is ontevrede met 'n finale mondelingse uitspraak in die plaaslike Landdroshof. U kliënt gee u instruksies om voort te gaan met 'n appél.

12.1 Moet u kliënt by die betrokke Landdros aansoek om verlof tot appél doen? (1)

12.2 Watter bedrag moet u kliënt as sekuriteit gee? (1)

12.3 Mag u kliënt eers die Landdros vra vir geskrewe redes? (1)

12.4 Watter dokumente behoort die versoek om 'n appél verhoordatum na die Griffier te vergesel? (2)

evidence, whilst he is still under cross examination by you.

10.1 Does this represent an irregularity? Motivate your answer. (2)

10.2 How could the foregoing affect the trial? (2)

QUESTION 11 [6]

Mr X owes your client R100 000,00 for goods sold and delivered, which Mr X had ordered and your client had delivered to Mr X.

11.1 Please assume such facts as are necessary and draft the appropriate letter of demand. (4)

11.2 Draft the additional paragraph(s) that would be required if (instead of for goods sold and delivered) the demand was for money advanced to Mr X by your client in terms of a credit agreement subject to the National Credit Act. (2)

QUESTION 12 [5]

You are employed by a private local firm of attorneys. Your client is dissatisfied with a final judgment handed down orally in the local Magistrate's Court. The client instructs you to note an appeal against the judgment.

12.1 Does your client need to apply to the relevant Magistrate for leave to appeal? (1)

12.2 What amount of security should your client pay? (1)

12.3 May your client first ask the Magistrate for written reasons? (1)

12.4 Which documents should accompany the request for an appeal hearing date to the Registrar of the High Court? (2)

VRAAG 13 [7]

U kliënt, James Naidoo het 'n aksie in die Streeks Landdroshof ingestel teen Robert Inglis Edms (Bpk), 'n maatskappy met 'n omset van vyf miljoen Rand. Die eis is vir betaling van R240 000,00 plus rente en kostes. Die aksie is verdedig en word vir verhoor geplaas. Op die dag van die verhoor bereik die partye 'n ooreenkoms om die aangeleentheid te skik en stem hulle in om 'n skikkingsooreenkoms te teken.

In terme van die ooreenkoms moet die Verweerder die eis vereffen deur aan u kliënt R160 000,00 plus rente teen die voorgeskrewe rentekoers tesame met kostes te betaal in paaiemente van R20 000,00 per maand. Die eerste betaling moet op 1 November 2016 plaasvind en die verdere betalings moet plaasvind op die eerste dag van elke daaropvolgende maand.

Betalings moet in u trust rekening betaal word.

Stel die skikkingsooreenkoms op met al die nodige bepalinge. Laat opskrifte uit.

VRAAG 14 [4]

U kliënt, die Eiser, het geld voorgeskiet aan die Verweerder in Januarie 2015. Ingevolge die leningsooreenkoms (wat geteken is te Pretoria) het die Verweerder toegestem tot die jurisdiksie van die Landdroshof vir die distrik van die Kaap. Die Eiser bly in Johannesburg en die Verweerder se residensiële adres is in Pretoria. U het opdrag ontvang om 'n dagvaarding uit te reik. Die Artikel 129 (Nasionale Krediet Wet) brief is reeds gestuur.

14.1 Het die Kaap Distrik se Landdroshof jurisdiksie om die saak aan te hoor? (1)

14.2 Verskaf asseblief u rede vir u antwoord in 14.1. (1)

QUESTION 13 [7]

Your client, James Naidoo, has instituted an action in the Regional Magistrate's Court against Robert Inglis Pty (Ltd), a company with an annual turnover of five million Rand. The claim in the action is for payment of the sum of R240 000,00 plus interest and costs. The action is defended and in due course is set down for trial. On the day of the trial the parties reach an agreement to settle the matter and to sign a settlement agreement.

In terms of the agreement the defendant is to settle the claim by paying to your client R160 000,00 together with interest at the prescribed legal rate plus costs in instalments of R20 000,00 per month. The first payment is to be made on 1 November 2016 and further payments monthly thereafter on the first day of every successive month.

Payments are to be effected into your trust account.

Draft the settlement agreement which includes all the necessary terms. Omit headings.

QUESTION 14 [4]

Your client, the Plaintiff, advanced money to the Defendant in January 2015. In terms of the loan agreement (which was signed in Pretoria) the Defendant consented to the jurisdiction of the Magistrates' Court for the District of the Cape. The Plaintiff lives in Johannesburg and the Defendant resides in Pretoria. You have received instructions to issue a summons and the Section 129 (National Credit Act) letter has already been sent.

14.1 Does the Cape District Magistrates' Court have jurisdiction to entertain the matter? (1)

14.2 Please provide a reason for your answer in 14.1. (1)

14.3 Watter ander Landdroshof sal ook
jurisdiksie hê, indien enige? (1)

14.3 Which other Magistrates' Court has
jurisdiction, if any? (1)

14.4 Verskaf asseblief u rede vir u antwoord
in 14.3. (1)

14.4 Please provide a reason for your answer
in 14.3. (1)

VRAAG 15 [3]

QUESTION 15 [3]

15.1 U kliënt gee u instruksies om vir die
bedrag van R420 000,00 te dagvaar, vir
gelde wat hy sê hy aan die Verweerder
geleen het. Na bespreking met hom
besluit u om te dagvaar uit die
Streekslanddroshof. Watter bewering
moet u in die dagvaarding maak ten
einde die eis binne die jurisdiksie van die
Streekslanddroshof te bring? (2)

15.1 Your client instructs you to sue for
recovery of the amount of R420 000,00
he says he lent to the defendant. After
discussion with him you decided to sue in
the Regional Magistrates court. What
allegation must you make in your
summons to enable you to bring the
claim in the Regional Magistrate's court?
(2)

15.2 Indien die Landdros wat diesaakaanhoor
bevind dat die Verweerder wel
R420 000,00 geleen het, maar reeds
R30 000,00 van sy eis terugbetaal het,
wat is die bedrag waarvoor vonnis
toegestaan sal word. (1)

15.2 If the Magistrate who hears the matter
finds that the Defendant in fact borrowed
R420 000,00 but has repaid R30 000,00
of his loan, what amount would he give
judgment for? (1)

- DIE EINDE -

- THE END -