

PROKUREURSEKSAMEN

DEEL 1 HOFPROSEDURES

6 FEBRUARIE 2018

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 drup.

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

6 FEBRUARY 2018

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 Mnr en Mev Michaels, wat u soos volg meedeel:

- Hulle 24-jarige seun David, 'n rekenmeester, het sy broer Oliver, 14, vervoer na 'n sokker wedstryd toe 'n bestuurder van 'n aankomende voertuig uitgeswaai het tot in die baan waarin David gery het as gevolg waarvan 'n kop-aan-kop botsing plaas gevind het.
- Gevolglik is beide David en Oliver beseer. David het ernstige hoofbeserings opgedoen en is in 'n koma. Oliver se ruggraat is gebreek en hy is nou 'n parapleeg.
- Die meeste van die mediese uitgawes sover aangegaan is gedek deur die mediese fonds. Mnr Michaels het egter persoonlik betaal vir sekere items wat nie deur die mediese fonds gedek is nie.

Beantwoord die volgende vrae met verwysing na die bostaande feitlike inligting:

- 1.1 Kan die skade gely as gevolg van die beserings deur Oliver opgedoen, verhaal word van die POF? Motiveer u antwoord. (2)
- 1.2 Kan die skade gely as gevolg van die beserings deur David opgedoen, verhaal word van die POF, inaggenome dat hy die bestuurder was? Motiveer u antwoord. (2)
- 1.3 Veronderstel dat David se skade verhaal kan word van die POF, wie kan sy eis indien? Verduidelik volledig. (2)
- 1.4 Wie kan 'n eis namens Oliver indien? Verduidelik volledig. (2)
- 1.5 Kan die reeds gelede mediese uitgawes wat betaal is deur die mediese fonds verhaal word van die POF? Verduidelik volledig. (3)

QUESTION 1 [15]

You are consulted by Mr and Mrs Michaels, who advise you as follows:

- Their 24 year old son David, an accountant, was driving his younger brother Oliver, 14, to a soccer match when the driver of an oncoming vehicle swerved into David's path of travel causing a head-on collision.
- As a result, both David and Oliver were injured. David sustained severe head injuries and is in a coma. Oliver's spine was crushed and he is now a paraplegic.
- Most of the medical expenses incurred thus far have been covered by medical aid. However, Mr Michaels has personally paid for certain items not covered by medical aid.

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

- 1.1 Can the damages incurred as a result of the injuries sustained by Oliver be recovered from the RAF? Motivate your answer. (2)
- 1.2 Can the damages incurred as a result of the injuries sustained by David be recovered from the RAF, bearing in mind that he was driving? Motivate your answer. (2)
- 1.3 Assuming that David's damages can be recovered from the RAF, who may lodge his claim? Explain fully. (2)
- 1.4 Who may lodge a claim on Oliver's behalf? Explain fully. (2)
- 1.5 Can the past medical expenses paid by the medical aid scheme be recovered from the RAF? Explain fully. (3)

1.6 Kan die reeds gelede mediese uitgawes wat betaal is deur Mnr Michaels verhaal word van die POF? (2)

1.6 Can the past medical expenses paid by Mr Michaels be recovered from the RAF? (2)

1.7 Aanvaar dat die botsing veroorsaak was as gevolg van die nalatigheid van beide David en die ander bestuurder en dat beide bestuurders eweveel nalatig was. Verduidelik hoe dit die eise van David en Oliver onderskeidelik sal beïnvloed. (2)

1.7 Assume that the collision was caused due to negligence on the part of both David and the other driver and it is determined that each driver was equally to blame. Explain how this would affect David's and Oliver's claims respectively. (2)

VRAAG 2 [8]

QUESTION 2 [8]

U word gekonsulteer deur u kliënt wat skade gely het as gevolg van beserings opgedoen in 'n motor botsing. Die bestuurder van die voertuig waarin hy 'n passasier was, was verantwoordelik vir die ongeluk. U ondersoek van u kliënt se eis bring aan die lig dat alhoewel hy nie 'n eis vir nie-materiële skade, soos bepaal in terme van Art. 17 (1A) van die Padongelukfondswet, sal hê nie, hy wel 'n groot eis vir reeds gelede en toekomstige verlies aan verdienste sal hê. U instruksies is dat u kliënt sy volle salaris ontvang het terwyl hy afwesig was van sy werk. Sy werkgever het hom ten volle vergoed tydens sy afwesigheid van sy werk, alhoewel daar geen verpligting op die werkgever was om dit te doen in terme van u kliënt se dienskontrak nie.

You are consulted by your client who has suffered damages as a result of the injuries that he sustained in a motor collision. The driver of the motor vehicle in which he was a passenger was to blame for the accident. Your investigations into your client's claim reveal that although your client does not have a claim for non-pecuniary loss as contemplated in terms of Section 17(1A) of the Road Accident Fund Act, your client has a substantial claim for past and future loss of earnings. Your instructions are that your client has received his full salary whilst away from work. His employer paid him in full during his period of absence from work although the employer was not obliged to do so in terms of your client's contract of employment.

2.1 Stel 'n brief op aan u kliënt se werkgever waarin u al die inligting uiteensit wat u benodig om 'n eis vir verlies aan verdienste namens u kliënt te formuleer en te regverdig. (7)

2.1 Draft a letter to your client's employer setting out all the information that you require to formulate and subsequently substantiate a claim for loss of earnings on your client's behalf. (7)

2.2 Is u kliënt geregtig om reeds gelede verlies aan verdienste te verhaal? Verduidelik. (1)

2.2 Is your client entitled to recover in respect of past loss of earnings? Explain. (1)

VRAAG 3 [2]

QUESTION 3 [2]

Een Sondag middag, terwyl Mnr X besig was om sy gras te sny met sy mens gedrewe grassnyer (waarop 'n mens sit) besluit hy om die straat oor te steek om sy buurman se gras te sny. Terwyl hy die straat oorsteek hardloop die buurman se 4jarige kind in die straat en word

One Sunday afternoon Mr. X, whilst mowing his lawn with a man-driven (ride on) lawnmower, decides to cross the street with the mower so as to mow his neighbour's lawn. Whilst crossing the street, the neighbour's minor child, age 4 runs into the street causing him to be knocked

omgery deur Mnr X. Sal die minderjarige kind 'n eis hê teen die POF vir sy beserings? Motiveer u antwoord volledig.

down by Mr X. Will the minor child have a claim against the RAF for his injuries? You are required to motivate your answer.

VRAAG 4 [13]

QUESTION 4 [13]

U tree op namens die Eiser in 'n Hoë hof aksie. Die eis is vir die onbetaalde koopprys van sekere goedere wat u kliënt (die Eiser) voorheen aan die Verweerder verkoop en gelewer het. Die Verweerder ignoreer die dagvaarding nadat 'n afskrif daarvan op 10 Januarie vanjaar op hom beteken is. Hy doen hoegenaamd niks en *dies induciae* het verstryk. U kliënt gee u opdragte om Verstekvonnis te verkry.

You act for the Plaintiff in a High Court action. The claim is for the unpaid purchase price of certain goods which your client (the Plaintiff) had previously sold and delivered to the Defendant. After being served with a copy of the summons on 10 January this year the Defendant ignores it. He does nothing at all and the *dies induciae* have expired. Your client instructs you to obtain Default Judgement:

4.1 Verduidelik kortliks die prosedure wat u sou volg om vonnis te verkry. Dui duidelik aan wie die aansoek sal oorweeg. (2)

4.1 Briefly explain the procedure which you would follow to obtain judgment. Indicate clearly who would consider the application? (2)

4.2 Moet daar kennis van die aansoek aan die Verweerder gegee word? Gee redes vir u antwoord. (1)

4.2 Must the Defendant be given notice of the application? Give reasons for your answer. (1)

4.3 Stel die relevante dokument op wat die aansoek bevat. Laat die kopstuk en slot uit en beperk u antwoord tot die relevante bewoording. U antwoord behoort duidelik aan te dui watter ander oorspronklike dokumente voor die persoon wat die aansoek gaan oorweeg, geplaas moet word. (6)

4.3 Draft the relevant document containing the application. Omit the heading and ending, restricting your answer to the relevant wording. Your answer should clearly indicate what other original documents you would need to place before the person considering the application. (6)

4.4 Sou u antwoord tot 4.1 hierbo enigsins verskil indien die Eiser se eis vir skadevergoeding is? Motiveer u antwoord kortliks en dui duidelik die fundamentele verskille, indien enige, in die prosedure aan. (2)

4.4 Would your answer to 4.1 above be any different if the Plaintiff's claim was for damages? Briefly motivate your answer, clearly indicating the fundamental differences, if any, in the procedure. (2)

4.5 Sou u antwoord tot 4.2 hierbo enigsins verskil indien die aksie verdedig was en u aansoek doen vir vonnis omdat die verweerder in verstek is met die aflewering van 'n pleit? Motiveer kortliks u antwoord. (2)

4.5 Would you answer to 4.2 above be any different if the action had been defended and you were applying for judgment in circumstances where the Defendant is in default of delivery of a plea? Briefly motivate your answer. (2)

VRAAG 5 [12]

U tree op namens ABC (Edms) Beperk. U kliënt het 'n eis van R500 000.00 teen die XYZ Eiendomstrust met mnr X en me Y as trustees. Die Trust het 'n bankrekening by Standard Bank SA Beperk. Volgens u kliënt het die Trust 'n aansienlike bedrag in hierdie rekening. U beskik oor die tersaaklike inligting van hierdie rekening. U opdragte is om 'n hofbevel te bekom wat die bank verhoed om enige geld uit hierdie rekening te betaal totdat die aksie wat u kliënt voornemens is om teen die Trust in te stel vir die betaling van die skuld, gefinaliseer is. U mag aanvaar dat die feite so 'n benadering regverdig en dat u kliënt 'n saak uitmaak vir die toepaslike regshulp.

- 5.1 Wat verstaan u onder 'n *Bevel Nisi* en wanneer is die gebruik daarvan mees effektief? (3)
- 5.2 Siteer die Respondent/e in hierdie aansoek. (4)
- 5.3 Stel die vorm van bevel op wat u aanvra vir insluiting in die Kennisgewing van Mosie. Laat die kopstuk, aanhef en slot weg. Begin u antwoord met die woorde "..... vir 'n Bevel in die volgende terme:" en beperk u antwoord tot die vorm van regshulp wat u wil hê die Hof moet aan u kliënt verleen. (5)

VRAAG 6 [5]

U kliënt se voertuig is in 'n motor botsing beskadig. Die herstelkoste beloop R94 000.00. Die bestuurder van die ander voertuig word van roekelose bestuur aangekla en word skuldig bevind. U kliënt raadpleeg u oor die moontlikheid om, in terme van die Strafproses Wet, vir die skade wat hy gely het, vergoed te word.

- 6.1 Adviseer u kliënt oor die prosedure wat gevolg moet word. (4)
- 6.2 Wat is die effek van 'n bevel, deur die voorsittende beampte, dat die veroor-

QUESTION 5 [12]

You act for ABC (Pty) Limited. Your client has a claim for R500 000.00 against the XYZ Property Trust with Mr X & Ms Y as Trustees. The Trust has a bank account with Standard Bank of SA Ltd. According to your client the Trust has a substantial sum in this account. You have the relevant details of this bank account. Your instructions are to get a Court Order preventing the bank from paying out any money from this account until the action your client intends instituting against the Trust for payment of the debt has been finalised. You may assume that the facts justify such an approach and that your client makes out a case for appropriate relief.

- 5.1 What do you understand by a *Rule Nisi* and when is its use most effective? (3)
- 5.2 Cite the Respondent or Respondents in this application. (4)
- 5.3 Draw the form of order prayed for to include in the Notice of Motion. Omit the heading, preamble and ending of the Notice of Motion. Begin your answer with the words "..... for an Order in the following terms:" and restrict your answer to the form of relief that you want the Court to grant to your client. (5)

QUESTION 6 [5]

Your client's motor vehicle is damaged in a collision. The cost of repair amounts to R94 000, 00. The driver of the other vehicle is duly charged with reckless driving and convicted. Your client requests advice as to the possibility of his being compensated for the damages suffered in terms of the provisions of the Criminal Procedure Act.

- 6.1 Advise your client as to the procedure to be followed. (4)
- 6.2 What is the effect of an order by the presiding officer that the convicted person

deelde persoon u kliënt moet vergoed en hoe moet daar aan so 'n bevel uitvoering gegee word? (1)

VRAAG 7 [12]

U kliënt word aan diefstal van 'n bedrag van R2 miljoen skuldig bevind. Die misdaad was goed beplan en uitgevoer. Hy is 49 jaar oud, 'n parlementariër, 'n prominente politikus asook 'n suksesvolle sakeman. Hy is 'n wewenaar en onderhou twee minderjarige skoolgaande kinders. Bo-en-behalwe sy parlementêre werk is hy ook 'n trustee van 'n skool vir gestremde kinders en 'n diaken in sy kerk. Vanweë die aard van die misdaad en die verleentheid wat die skuldigbevinding veroorsaak, sal hy heelwaarskynlik as parlamentslid en trustee moet bedank. Die geld wat gesteel was is gebruik om 'n SUV voertuig, asook 'n huis te koop. Ongelukkig is hy nie instaat om die geld onmiddelik terug te betaal nie, maar kandi by wyse van maandelikse paaie mente terugbetaal. Hy het een vorige veroordeling vir dronk bestuur wat agt jaar gelede plaas gevind het. Hy is 'n boete opgelê. Die minimum vonnis vir so 'n skuldigbevinding is 15 jaar gevangenis-straf.

7.1 Wat moet u aan die hof bewys om te verhoed dat die minimum vonnis opgelê word? (2)

7.2 Bespreek die alternatiewe vonnisse wat die hof mag oplê en handel met die toepaslikheid of andersins van elke vonnis. Gebruik sub-opskrifte vir die alternatiewe vonnisse. (10)

VRAAG 8 [8]

U kliënt, A, word aangekla van roekelose bestuur en bestuur van 'n motorvoertuig, terwyl die alkoholinhoud in sy bloed die wettige limiet oorskry. Op die 10de Desember 2016, het hy sy voertuig met registrasie letters en nommers, CA12345, in Walestraat, Kaapstad, op 'n roekelose wyse bestuur en het met 'n ander

compensate your client and how can effect be given to the order? (1)

QUESTION 7 [12]

Your client, has been convicted of theft totalling an amount of R2 million. The offence was well planned and executed. He is 49 years of age, is a parliamentarian and prominent politician and a successful business man. He is a widower and supports two minor school going children. Besides his parliamentary work he is the trustee of a school for disabled children and a deacon in his church. Due to the nature of the offences and the embarrassment caused by the conviction he will most likely resign from parliament as well as from the trusteeship. The monies stolen were used to purchase an SUV motor vehicle and a dwelling. Unfortunately he is not able to repay the amount forthwith but will be able to do so by way of monthly instalments. He has one previous conviction for drunken driving which occurred eight years ago for which he was sentenced to a fine. The minimum sentence of 15 years imprisonment is applicable in this instance.

7.1 What will you have to prove to the court to avoid the minimum sentence being imposed? (2)

7.2 Address the alternative sentences which the court may impose dealing with the suitability or otherwise of each sentence. Use sub-headings for the alternative sentences. (10)

QUESTION 8 [8]

Your client, A, is charged with reckless driving and driving a motor vehicle whilst the alcohol content of his blood exceeded the legal limit. On the 10th of December 2016 he drove his motor vehicle with registration letters and number CA12345 in Wale Street, Cape Town, in a reckless manner and collided with another vehicle

voertuig gebots omdat hy 'n kruising binne gegaan het, en die rooi verkeerslig verontagsaam het. Die alkoholinhoud in sy bloed was ,07 gram per 100ml bloed. Nadat u kliënt met u gekonsulteer het blyk dit duidelik dat hy op beide klagtes skuldig moet pleit. Stel sy Artikel 112 (2) verklaring op en sluit die kopstuk in.

whilst entering an intersection ignoring a red robot. The alcohol content in his blood, was ,07 grams per 100ml of blood. After consulting with your client it becomes apparent that he will be obliged to plead guilty to both charges. Draw his Section 112 (2) statement, including the heading.

VRAAG 9 [13]

QUESTION 9 [13]

- 9.1 Die enigste getuienis in 'n landdroshof verhoor wat voortspruit uit 'n motorongeluk, is die van die twee bestuurders, wat uiteenlopende weergawes gee. Die landdros kan nie 'n besluit maak oor watter getuie om te glo nie. Wat moet die landdros beveel? (2)
- 9.2 Na bostaande bevel gemaak is in die landdroshof kom 'n onafhanklike ooggetuie na vore. Hy vertel die eiser dat hy die hele ongeluk waargeneem het en bevestig die weergawe van die eiser. Is daar enige stappe wat die eiser kan doen en indien wel, watter stappe? (2)
- 9.3 Mag 'n applikant vra vir blootlegging in 'n aansoek? (1)
- 9.4 U is besig met voorbereiding vir 'n verhoor in die landdroshof. U kliënt eis die betaling van herstelkoste aan u kliënt se voertuig, wat beskadig is in 'n ongeluk. Stel die dokument op wat uiteensit wat die getuie, ten opsigte van die skade, sal getuig. (4)
- 9.5 U word opdrag gegee om 'n dagvaarding op te stel vir die teruggawe van 'n motorvoertuig, wat verkoop is ingevolge 'n kredietooreenkoms. Die verweerder het versuim om die paaierente te betaal. Buiten voldoening aan die bepalings van die kredietooreenkoms, word 'n eerste stap vereis ingevolge die Nasionale Kredietwet. Wat moet u doen voordat u regsaksie kan instel? (2)

- 9.1 In a trial in the Magistrates' Court arising out of a motor collision, the only evidence regarding the merits is that of the two drivers, who gave quite different versions. The magistrate is unable to decide which of the two witnesses to believe. What should the magistrate order? (2)
- 9.2 After the judgment in the Magistrates' Court referred to above, an independent witness comes forward and introduces himself to the plaintiff and tells the plaintiff that he saw the whole collision and fully corroborates the plaintiff's version. Is there any action the plaintiff can take and if so, what? (2)
- 9.3 May an applicant call for discovery in an application? (1)
- 9.4 You are preparing for trial in an action in the Magistrate's Court. Your client claims the costs of repairing his vehicle which was damaged in a collision. Draft the document which describes what the witness will testify in respect of the damages. (4)
- 9.5 You are instructed to issue summons for the recovery of a motor car sold in terms of a credit agreement because the Defendant has failed to pay his instalments. Besides complying with the credit agreement you have to first do something required by the National Credit Act. What is it you have to do before you institute proceedings? (2)

9.6 U reik dagvaarding uit namens Sifiso Cele, wat 'n eis indien teen die bestuurder van 'n vragmotor. Die vragmotor het teen u kliënt se muur gebots en het skade van R40 000,00 veroorsaak. Die prokureur wat die verweerder verteenwoordig het 'n kennisgewing van verdediging en 'n pleit afgelewer waarin hy aanspreeklikheid ontken omrede sy kliënt nie 'n swaarvoertuiglisensie besit nie. Wat is die volgende stap wat u kliënt kan neem in verband met die saak? (2)

VRAAG 10 [6]

U kliënt AB het betaling van 'n tjek gestop wat uitgereik was vir die prys van 'n motor, ten gunste van Durban Motors. AB sê dat die motor verkoop was as in 'n goeie werkende toestand, maar terwyl AB na sy plaas gery het, het die olie uitgeloop uit die oliebak en het die enjin uitgebrand. Hy erken dat hy die tjek geteken het, maar beweer dat die motor nie in 'n goeie werkende toestand was nie. Daar is 'n voorlopige vonnis dagvaarding op hom beteken. Die verweerder liasseer 'n eedsverklaring waarin hy verduidelik wat met die motor gebeur het. Die eiser beweer in sy antwoord dat die motor nagegaan was en in 'n goeie werkende toestand bevind is.

10.1 Indien u die landdros was, sou u die voorlopige vonnis toegestaan het? Gee redes vir u antwoord? (3)

10.2 Indien voorlopige vonnis toegestaan was en die verweerder oortuig is dat hy 'n goeie verweer het, wat moet die verweerder doen om toe te tree tot die hoofgeding? (3)

VRAAG 11 [3]

11.1 Die verweerder het foto's en planne in sy besit wat van toepassing is op die dispuut vervat in die pleitstukke. Hy wil die foto's en planne as bewyse gebruik in die verhoor. Beskryf die prosedure wat die verweerder se prokureurs moet volg om die bogenoemde moontlik te maak. (1)

9.6 You issue summons on behalf of Sifiso Cele who has a claim against the driver of a heavy duty vehicle. The vehicle crashed into the wall of your client's property causing R40 000,00 damage. The attorney representing the defendant entered an appearance to defend and delivered a plea in which he denied his client was liable because he was not licensed to drive a heavy duty vehicle. What is the next step your client can take in this regard? (2)

QUESTION 10 [6]

Your client AB stopped payment on a cheque he drew in favour of Durban Motors for the price of a motor car. AB says the car was sold as being in good running order but while AB drove it to his farm, oil drained out of the sump and the engine seized. He admits signing the cheque but avers that the vehicle was not in good running order. He has been served with provisional sentence summons. The defendant files an affidavit explaining what happened to the car. The plaintiff in his reply says the car was checked and found to be in good running order.

10.1 If you were the magistrate, what order would you make on the provisional sentence application and why? (3)

10.2 If provisional sentence is granted and the defendant still believes he has a good defence what should the defendant do to enter into the principal case? (3)

QUESTION 11 [3]

11.1 The defendant has in his possession photographs and plans relating to the dispute set out in the pleadings. He wishes to tender these photographs and plans in evidence at the trial. Describe the procedure which the defendant's attorney is required to follow in order to achieve this. (1)

11.2 Indien die eiser nie bereid is om die foto's en planne te erken nie, wat moet

- a) die eiser doen; en daarna
- b) wat moet die verweerder doen?
(2)

VRAAG 12 [3]

Watter drie (3) dokumente word vereis om op geldige wyse vaste eiendom beslag te lê en te verkoop nadat 'n hof beveel het dat sodanige kommersiële vaste eiendom in eksekusie verkoop mag word?

11.2 If the plaintiff is not prepared to admit the photographs and plans, what must

- a) the plaintiff do, and thereafter
- b) what must the defendant do?
(2)

QUESTION 12 [3]

Which three (3) documents need to be drafted to validly attach and sell land after a court has ordered that such commercial land may be sold in execution?

- DIE EINDE -

- THE END -

LAW SOCIETY
OF SOUTH AFRICA