

## PROKUREURSEKSAMEN

### DEEL 1 HOFPROSEDURES

6 MAART 2019

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

6 MARCH 2019

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 word geraadpleeg deur mev Patricia Khumalo wat u die volgende meedeel:

1. Haar eggenoot, Sibusiso Khumalo, is op slag dood in 'n motorbotsing.
2. Mnr Khumalo was 'n bouervir eie rekening voor sy afsterwe en was die gesin se enigste broodwinner.
3. As gevolg van mnr Khumalo se dood, is mev Khumalo en hulle drie (3) kinders haweloos.

Mev Khumalo soek u bystand om 'n eis vir verlies aan onderhoud teen die Padongelukfonds in te stel.

- 1.1 Welke dokumente moet u kliënt se eis vergesel ter staving van die bewering dat mnr Khumalo se dood die gevolg was van die ongeluk waarop die eis berus. (3)
- 1.2 Welke dokumente moet saam met die eis ingedien word om die regsverband te vestig en te bewys dat mev Khumalo en die drie (3) kinders regtens van mnr Khumalo afhanklik was vir onderhoud. (2)
- 1.3 Noem drie (3) dokumente wat u sou kon indien by die POF ter staving van mnr Khumalo se voordoodse inkomste. (3)

**VRAAG 2 [5]**

Aanvaar dat Mej X 'n ernstige besering assessering ondergaan het en dat die bevinding was dat haar beserings ernstig genoeg was om algemene skade te eis. Die Padongelukfonds verwerp die assesserings-verslag. Mej X is nie tevrede met die verwerping nie en verlang dat u die saak verder voer. Adviseer Mej X oor welke stappe sy kan doen en wie aanspreeklik sal wees vir die koste.

**QUESTION 1 [8]**

You are consulted by Mrs Patricia Khumalo, who advises you as follows:

1. Her husband, Sibusiso Khumalo was killed outright in a motor vehicle collision.
2. Mr Khumalo was a self-employed builder prior to his death and was the sole breadwinner of the family.
3. As a result of Mr Khumalo's death, Mrs Khumalo and their three (3) children are now destitute.

Mrs Khumalo requests your assistance in pursuing a loss of support claim against the Road Accident Fund.

- 1.1 What documentation should accompany your client's claim documents in support of the allegation that Mr Khumalo's death resulted from the accident on which the claim is based? (3)
- 1.2 What documentation must be lodged with the claim in order to satisfy the legal nexus and prove that Mrs Khumalo and the couple's three (3) children were legally dependent upon Mr Khumalo for support. (2)
- 1.3 List three (3) documents you could submit to the RAF in support of Mr Khumalo's pre-morbid income? (3)

**QUESTION 2 [5]**

Assume that Miss X went for a serious injury assessment and that according to the results of the assessment her injuries were considered serious enough to claim for general damages. The Road Accident Fund has however rejected the assessment report. Miss X is unhappy about the rejection and wants to take the matter further. Advise Miss X on what further steps she could take and who will be liable for the costs thereof.

**VRAAG 3** [6]

Na uitspraak oor die meriete van u kliënt se eis vind u uit dat u kliënt swaarkry en finansiële hulp benodig. U moet haar adviseer oor die moontlikheid om u kliënt by te staan rakende skadevergoeding vir:

- 3.1 Reeds gelede hospitaal- en mediese uitgawes;
- 3.2 Toekomstige hospitaal- en mediese uitgawes;
- 3.3 Reeds gelede verlies aan inkomste;
- 3.4 Toekomstige verlies aan inkomste;
- 3.5 Algemene skade.

**VRAAG 4** [6]

Noem drie omstandighede wat verjaring opskort asook die tydperk waarvoor die opskorting geld.

**VRAAG 5** [10]

- 5.1 Dui aan wanneer 'n kurator *ad litem* en 'n kurator *bonis* onderskeidelik vir 'n persoon benodig word. (2)
- 5.2 Reël 57 maak voorsiening vir 'n aansoek na die Hof vir 'n bevel wat 'n persoon geestesongesteld verklaar en dus onbevoeg om sy/haar sake te hanteer. Noem agt (8) van die noodsaaklike bewerings ter staving van so 'n aansoek. (8)

**VRAAG 6** [6]

- 6.1 Verduidelik wat 'n Ex Parte aansoek is. (1)

**QUESTION 3** [6]

After the adjudication of the merits of your client's claim it comes to your attention that she has fallen on hard times and in dire need of some financial assistance. You are required to advise as to the possibility of assisting your client pertaining to the following heads of damages:

- 3.1 Past hospital and medical expenses;
- 3.2 Future hospital and medical expenses;
- 3.3 Past loss of income;
- 3.4 Future loss of income;
- 3.5 General damages.

**QUESTION 4** [6]

You are required to list three suspensive conditions relating to prescription as well as the time frame until which each suspension runs.

**QUESTION 5** [10]

- 5.1 Indicate when a curator *ad litem* will be required for a person and when a curator *bonis* will be required for a person. (2)
- 5.2 Rule 57 provides for an application to be made to Court for an order declaring a person to be of unsound mind and therefore incapable of managing his/her own affairs. List eight (8) of the essential averments to be made in support of such an application. (8)

**QUESTION 6** [6]

- 6.1 Explain what an Ex Parte application is. (1)

6.2 Noem vyf (5) gevalle waar dit benut kan word. (5)

**VRAAG 7 [9]**

U het 'n enkelvoudige dagvaarding in die Hoë Hof uitgereik waarin u namens Eiser betalingeis van 'n bedrag van R500 000,00 van die Verweerder ten aansien van goedere verkoop en gelewer deur Eiser aan Verweerder op Verweerder se aandrang en versoek tesame met rente daarop teen die voorgeskrewe koers bereken vanaf die datum van betekening van die dagvaarding tot datum van betaling en koste van die geding. Die dagvaarding bevat 'n bewering dat die bedrag nou verskuldig en betaalbaar is maar dat Verweerder ondanks aanmaning versuim om te betaal.

7.1 Die Verweerder teken Verskyning om te Verdedig aan. U kliënt gee u opdrag om koste te bespaar en om 'n Deklarasie te liasseer.

7.2 Stel die Deklarasie op met gebruik van u eie feite soos nodig maar inaggenome die volgende inligting wat u kliënt oor die transaksie verskaf:

- a) Die koop is mondeling aangegaan te Bloemfontein in die Vrystaat.
- b) Die goedere was 'n Toyota Fortuner 4 x 4 voertuig.
- c) Die transaksie is aangegaan en lewering van die voertuig het plaasgevind op 30 Junie 2018.
- d) Eiser het Verweerder uitdruklik meege-deel dat die goedere voetstoots en sonder enige waarborge verkoop word.
- e) Hy en Verweerder was die enigste persone wat by die transaksie betrokke was.
- f) Betaling van die koopprys moes by wyse van elektroniese oordrag teen lewering geskied het maar Verweerder het nie sy verpligting nagekom nie.

6.2 List any five (5) circumstances where it can be utilised. (5)

**QUESTION 7 [9]**

You have issued an ordinary (simple) Summons out of the High Court on behalf of the Plaintiff in which the Plaintiff claims a payment of the sum of R500 000,00 from Defendant in respect of goods sold and delivered by the Plaintiff to the Defendant at the latter's special instance and request together with interest thereon at the prescribed (legal) rate calculated from date of service of Summons until date of payment and costs of suit. The said Summons contains an allegation that the amount claimed is now due and payable, but despite demand, the Defendant has failed to pay the same.

7.1 The Defendant enters an Appearance to Defend, and on taking instructions from your client he specifically instructs you to curtail costs, and to draft and file a Declaration.

7.2 Draft such Declaration inventing your own facts where necessary, but taking into account the following information obtained from your client regarding the said transaction:

- a) The sale was concluded verbally at Bloemfontein in the Free State.
- b) The goods consisted of a Toyota Fortuner 4 x 4 motor vehicle.
- c) The conclusion of the transaction including delivery of the vehicle to the Defendant occurred on 30 June 2018.
- d) He specifically informed the Defendant that the goods are sold as is ("voetstoots") without any warranty whatsoever.
- e) He and the Defendant were the only persons involved in the transaction.
- f) Payment of the purchase price should have occurred by electronic transfer against delivery, but Defendant has not kept his side of the bargain.

7.3 Laat die formele kopstuk en die bedes weg maar stel die noodsaaklike bewerings in die pleitstuk op.

**VRAAG 8 [5]**

U kliënt deel u mee dat hy sonder regsverteenvoordiging skuldig gepleit het op 'n klag van aanranding en dat hy aldus skuldig bevind is. Hy vra u nou om hom by te staan by vonnisoplegging. Hy deel u mee dat hy die klaer met 'n mes gesteek het in omstandighede wat op selfverdediging neerkom. Die hofrekord toon dat toe die beskuldigde skuldig gepleit het, hy die feite nie geopper het nie. Bespreek die toepaslike reg en beskryf die prosedure wat u namens u kliënt by die volgende verskyning sal volg.

**VRAAG 9 [5]**

U doen aansoek om borg vir u kliënt. Die Landdros weier borg op grond daarvan dat die Staat 'n sterk saak het. Die Staat se saak berus op die getuie van drie getuies. Kort daarna vind u uit dat een getuie oorlede is, een is in 'n gestig vir geestesongeskiktes en die laaste een het die land verlaat. Welke stappe sal u namens u kliënt doen. Bespreek die redes vir u optrede.

**VRAAG 10 [12]**

10.1 U kliënt, John Smith, is die bestuurder van 'n voertuig in De Jonghweg, Pretoria. Hy versuim om by 'n stopteken stil te hou, gaan 'n kruising binne; veroorsaak 'n botsing met 'n ander voertuig wat reg van weg gehad het; en gevolglik sterf die ander bestuurder. Die botsing het ongeveer 3 v.m. plaasgevind en daar was baie min verkeer. Hy pleit skuldig, word skuldig bevind aan strafbare manslag; die Streekslanddros lê vonnis op van 12 jaar gevangenisstraf.

7.3 Omit the formal case heading, as well as the prayers. Only the necessary averments in the body of the pleading should be drafted.

**QUESTION 8 [5]**

Your client advises you that he, acting without the assistance of a legal practitioner, has pleaded guilty to a charge of assault and has been duly convicted. He now requests you to assist him with sentence. He advises that he stabbed the complainant in circumstances that amount to self-defence. On perusing the court record it appears that the accused however, at the previous hearing when he pleaded guilty, did not make mention of this fact to the court. Discuss the applicable law and describe the procedure you will follow on behalf of your client at the next hearing.

**QUESTION 9 [5]**

In a bail application which you have brought on behalf of your client the Magistrate refuses bail on a basis that the state has a strong case against your client. The State's case is based on the evidence of three witnesses. Shortly thereafter it comes to your attention that one of the witnesses has died, one has been committed to a mental institution and the remaining witness has left the country. What steps will you take on behalf of your client and discuss the reasons for your actions?

**QUESTION 10 [12]**

10.1 Your client, John Smith, is the driver of a motor vehicle on De Jongh Drive in Pretoria. He fails to bring the vehicle to a halt at a stop street and enters an intersection causing a collision with another vehicle, which had the right of way, resulting in the death of the other driver. The collision occurred at approximately 3 a.m. and the traffic at that time of morning was very light. He pleads guilty and is convicted of culpable homicide and the Regional Magistrate sentences him to 12 years direct imprisonment.

Hy is 40 jaar oud, 'n eerste oortreder, getroud, onderhou sy vrou en nie-skoolgaande kinders, die alleen-eienaar van 'n klein onderneming wat vyf mense in diens neem, 'n diaken in sy kerk en lid van 'n organisasie wat liefdadigheidswerk vir kinders doen. Stel die Kennisgewing van Appél open verwys nadie verskillende alternatiewe vonnisse wat die Hof kon opgelê het. Gee die kopstuk.

(8)

He is 40 years of age, is a first offender, is married and supports his wife and four school-going minor children. He is furthermore the sole proprietor of a small business employing five persons. He is also a deacon in his church and a member of an organisation that does charity work involving children. Draw the Notice of Appeal against the sentence and refer to the various alternative sentences which the Court could have imposed on the accused. Include the heading.

(8)

10.2 Welke ander dokument moet die Kennis van Appél vergesel? (1)

10.2 What other document must accompany the notice of appeal? (1)

10.3 Binne welke tydperk vanaf vonnisoplegging moet die appéldokumente ingedien word, en by wie? (1)

10.3 Within what period of time subsequent to the date of sentence must the appeal documents be lodged and with whom? (1)

10.4 Welke prosedure sal u volg indien die tydperk in 10.3 al verstreke is en welke dokumente word benodig? (2)

10.4 What procedure would you follow if the period referred to in 10.3 above has expired and what documentation will be required? (2)

**VRAAG 11 [3]**

**QUESTION 11 [3]**

11.1 Noem twee omstandighede wat 'n beskuldigde ingevolge Artikel 60 (11B) van die Strafproseswet tydens 'n borgaansoek moet openbaar. (2)

11.1 Name the two disclosures, in terms of Section 60 (11B) of the Criminal Procedure Act, which an accused is compelled to make to the Court at a bail application. (2)

11.2 Wat is die moontlike gevolge as 'n beskuldigde willens en wetens versuim om dit te openbaar? (1)

11.2 What are the possible consequences of an accused wilfully failing to make such disclosures? (1)

**VRAAG 12 [10]**

**QUESTION 12 [10]**

Jabu Ndlovu het met Clean Pools BK verteenwoordig deur die enigste lid Angus Brown, 'n skriftelike kontrak gesluit vir die oprig van 'n swembad vir 'n kontrakprys van R80 000,00. Die prys moes betaal word:

Jabu Ndlovu entered into a written contract with Clean Pools CC who was represented by the sole member, Angus Brown, for the construction of the swimming pool at her home for a contract price of R80 000,00. The contract price was to be paid as follows:

(a) R40 000,00 teen ondertekening

(a) R40 000,00 on signature

- (b) R20 000,00 by aanvang van werk  
(c) R20 000,00 by voltooiing

By ondertekening en aanvang van die werk het Eiser R40 000,00 en R20 000,00 betaal. Voor voltooiing van die werk het Verweerder dit abandoneer en versuim om klaarte maak. Eiser het gevolglik die kontrak gekanselleer en toe Billy Naidoo (wat handel as Sparkling Pools) aangestel om die werk te voltooi. Hy het toegestem om dit te doen teen betaling van R45 000,00.

Stel die Besonderhede van Eis vir Jabu Ndlovu se eis om skadevergoeding op. (Laat opskrif/kopstuk weg).

**VRAAG 13 [5]**

Die waarde van die bates in 'n boedel is in geskil in 'n geding in die Landdroshof. U kliënt moet die waarde bewys en maak staat op 'n waardasie deur 'n geswore waardeerder, mnr Q. Welke stappe moet u doen voor die verhoor sodat sy getuienis geleik kan word? (u hoef nie dokumente op te stel nie).

**VRAAG 14 [5]**

Mev X en mnr Y is getroud buite gemeenskap van goedere. Mev X het 'n motor, die eiendom van mnr Y, bestuur. Op 13 Oktober 2017 het 'n botsing plaasgevind as gevolg van die uitsluitlike nalatigheid van mnr Z. Mnr Y is verseker by XYD Insured. U tree op vir die eiser.

14.1 Wie is die eiser in die geding? (1)

14.2 Dit blyk dat mnr Z bestuur het in die loop van sy diens by ABS (Edms) Bpk. Wie sou die verweerder/s in die geding wees? Verstrek redes. (3)

- (b) R20 000,00 on commencement of the work  
(c) R20 000,00 on completion

The contract was signed, and work was commenced and as a result the Plaintiff paid an amount of R40 000,00 followed by an additional R20 000,00. Before completion of the contract the Defendant absconded and failed to complete the work. As a result, the Plaintiff cancelled the contract and employed Billy Naidoo trading as Sparkling Pools to complete the contract. He agreed to do so for payment of an amount of R45 000,00.

Draft the particulars of claim in respect of Jabu Ndlovu's claim for damages. (Omit headings).

**QUESTION 13 [5]**

The total value of assets in an estate are in dispute in a civil trial in the district Magistrates' Court. Your client must prove such value and relies on a valuation by a sworn appraiser, Mr Q. What steps ought you take before the trial so that his evidence can be led (you are not required to draft any documents).

**QUESTION 14 [5]**

Mrs X is the wife of Mr Y and they are married out of community of property. Mrs X was the driver of the vehicle owned by Mr Y. An accident occurred on 13 October 2017 due to the sole negligence of Mr Z. Mr Y is insured by XYD Insured. You are acting on behalf of the plaintiff.

14.1 Who would be the plaintiff to the action? (1)

14.2 While investigating the matter, it comes to light to Mr. Z was acting in the scope of his employment. He was employed by ABS Company. Who would the defendant(s) be in the action? Please provide reasons. (3)

14.3 In konsultasie met mnr Y besef u dat die voertuig nog onder 'n kredietooreenkoms by ASF Bank is. Wie sou die eiser wees? (1)

**VRAAG 15 [5]**

U kliënt is 'n winkelier. Hy vra u om vier Landdroshof dagvaardings te verdedig. Glo u dat u kliënt 'n geldige verweer het in die onderskeie gevalle? Verstrek kortliks redes.

15.1 Hy word gedagvaar op 'n onteerde tjek wat vier jaar gelede getrek is. Hy erken dat die bedrag verskuldig was. (1)

15.2 Hy word gedagvaar deur 'n winkel-assistent wat hy ontslaan het. Die assistent eis vergoeding vir onregmatige ontslag synde 'n onbillike arbeidspraktyk. (1)

15.3 Hy word gedagvaar deur 'n buurman wat onlangs artritis in sy enkel opgedoen het as gevolg van bytwonde deur u kliënt se hond, twee jaargelede. Die buurman het in 'n vorige geding vonnis teen u kliënt verkry vir skadevergoeding vir pyn en lyding as gevolg van die bytwonde en vir die koste van mediese behandeling. Die buurman beweer in sy dagvaarding dat die artritis so erg is dat hy gestremd geword het en hy eis as gevolg van sy gestremdheid. (2)

15.4 U kliënt word gedagvaar vir die koopprys van twee rekenaarspeletjies wat aan sy werklose, minderjarige seun verkoop is. (1)

14.3 After consulting with Mr. Y, you realise that the vehicle is still under a credit agreement with ASF Bank. Who would be the plaintiff to the action? (1)

**QUESTION 15 [5]**

Your client is a shopkeeper. He asks you to defend the following four Magistrate Court Summonses. In each case, state whether you believe whether your client has a valid defence and, very briefly, indicate your reasons for your view.

15.1 He is sued on a dishonoured cheque drawn four years ago. He admits he owes the amount. (1)

15.2 He is sued by a shop assistant that he had dismissed from his employment. The shop assistant claims compensation for wrongful dismissal as an unfair labour practice. (1)

15.3 He is sued by a neighbour who has recently developed arthritis in his ankle as a result of being bitten by your client's dog two years ago. The neighbour had, in a prior action, previously obtained judgment against your client for damages for pain and suffering caused by this dog bite and for the costs of medical treatment. The neighbour alleges in his summons that the arthritis is so severe that he has become disabled and he sues for damages as a consequence of his disability. (2)

15.4 Your client has been sued for the price of two computer games which were sold to his unemployed minor son. (1)

- DIE EINDE -

- THE END -