Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidate 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. Die vrae mag in Afrikaans of Engels beantwoord word.

3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegeken word.


5. Skryfassebief slags in pen op die regterkantse bladsye.

6. Tensy daar 'n spesiale rede bestaan, word 'n kandidate nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidate minder as 40% behaal sal hy/sy nie kwalificeer vir 'n mondeling nie en sal hierdie deel dui.

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. The questions may be answered in English or Afrikaans.

3. Candidates must remember that marks are awarded for good draftsmanship.

4. Candidates must invent their own facts wherever necessary.

5. Please write only in pen on the right-hand pages.

6. 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

Na die sluiting van pleitstukke, maak die Padongelukke Fonds 'n skikkingaansbod (nie by wyse van maandelikse abfetings nie) in terme van reel 34 wat vir u klient aanvaarbaar is:

1.1 Hoe sal u die Fonds / verweerder in kennis stel dat die aanbod deur u klient aanvaar is? (1)

1.2 U ontvang die tjek in terme van hierdie skikking twee maande nadat die aanbod aanvaar is. Is u klient geregtyig op rente en, indien wel, vanaf welke datum en teen welke koers? (2)

1.3 Welke stappe kan u klient neem, indien die Fonds versoem/weier om die bedrag te betaal nadat die aanbod aanvaar is? (2)

VRAAG 2

U reis saam met u vriend na Durban om die Vodacom sokkerfinale te aanskou. Hy bestuur sy kar en u is 'n passasier in die voorste sitplek. U vriend verloor beheer oor die voertuig wat die snelweg verlaat, omrol en uiteindelik teen 'n paal bots. Geen ander voertuig is betrokke nie. U ly ernstige beseron en gevolg waarvan u gehospitaliseer is, ontvang mediese behandeling en kan vir 'n maand nie werk nie. U ly die volgende skade:

a) Hospitaaluitgawes R18 500,00
b) Mediese uitgawes R 4 000,00
c) Verlies van inkomste R 8 000,00
d) U bril en selfoon is vernietig, terwaaide van R 2 000,00
e) Algemene skade R15 000,00

2.1 Welke van bogenoemde skade, indien enige, mag u van die Padongelukke Fonds eis? (1)

QUESTION 1

After the close of pleadings, the Road Accident Fund makes a once off settlement offer (not by way of instalments) in terms of Rule 34 of the High Court Rules which is acceptable to your client.

1.1 How do you advise the Fund / defendant of your client’s acceptance of this offer? (1)

1.2 You only receive the cheque in terms of the settlement two months after the offer is accepted. Is your client entitled to interest, and if so, from when and at what rate? (2)

1.3 What can your client do if, after acceptance of the offer, the Fund fails/refuses to pay? (2)

QUESTION 2

You are traveling with your friend to watch the Vodacom Soccer final in Durban. He is driving his car and you are a front seat passenger. Your friend loses control of the vehicle which leaves the freeway, overturns and eventually collides with a pole. No other vehicle is involved. You sustain serious bodily injuries as a result of which you are hospitalised, receive medical treatment and are unable to work for one month. You suffer the following damages:

a) Hospital/expenses R18 500,00
b) Medical expenses R 4 000,00
c) Loss of income R 8 000,00
d) Your spectacles and cellphone are destroyed, valued in total at R 2 000,00
e) General damages R15 000.00

2.1 Which of the above damages, if any, may you claim from the Road Accident Fund? (1)
### QUESTION 3

**3.1** Name the persons against whom prescription does not run in terms of the Act.  

(1½)

**3.2** When does prescription start running in the following examples? Motivate your answers.

- **3.2.1** An adult person who is injured in a motor accident which occurs on the 1<sup>st</sup> October 2004 and as a result thereof is unconscious and remains in a coma until 26 December 2004;  
  
  1

- **3.2.2** The widow’s claim where the breadwinner is seriously injured on the 1<sup>st</sup> October 2004 and died on the 31<sup>st</sup> December 2004 as a result of such injuries;  
  
  1

- **3.2.3** The minor child of the breadwinner in the same circumstances as 3.2.2 above.  
  
  1½

### QUESTION 4

**4.1** In what manners may the Claim Form be delivered to the Fund?  

1

**4.2** On what date is the Claim Form deemed to have been delivered in regard to each manner of delivery that is possible under the Act?  

1
### QUESTION 5

You are consulted by a grandfather whose minor grandson was injured in a motor vehicle collision. Both his parents are deceased. You may assume that the insured driver was completely to blame for the accident. What advice will you give the grandfather and the minor child in respect of the minor's claim and how it must be prosecuted?

### QUESTION 6

You are consulted by a father, whose son was killed on 6 June 2005 in a motor vehicle collision due to the negligence of the driver of motor vehicle ND 1000. He produces statements of account which consist of the following items:

1. Cost of coffin: R2 000,00
2. Cost of Undertaker: R2 500,00
3. Gravestone: R5 000,00
4. Refreshment costs for mourners: R2 000,00

Advise your client as to which items and what amounts may be claimed from the Road Accident Fund. Give reasons for your answer.

### QUESTION 7

You are consulted by your client who advises that he was a pillion passenger on a motorcycle which was involved in a collision with another vehicle. Your client was injured and suffered damages as a result.

1. Is your client entitled to a claim under the Act?
2. Are there any special provisions relating to such a claim?
VRAAG 8

U voer 'n onderhoud met Thabo Bapela waardydens hy u as volg meedeel:

1. Hy is 25 jaar oud en werkzaam by ABC maatskappy van Hoofweg 1 Walmer, Port Elizabeth as 'n verkoopsverteenwoordiger.

2. Op 1 Maart 2005 was hy die bestuurder van 'n 2004 Mercedes Benz motorvoertuig met registrasie nommer CKZ 100 EC op die hoofpad tussen Cradock en Middelburg, Oos-Kaap.

3. Om ongeveer 09:00 het 'n koei vanaf 'n wal aan die linker- kant van die pad reg voor hom op die teer oppervlak van die pad verskyn. Hy het 'n rem getrap en na regs geswaai maar 'n botsing was onvermydelik en die koei is gedood.

4. Die Mercedes Benz is baie erg beskadig en het omvattende herstelwerk benodig.

5. Die botsing het plaas gevind naby die 'ndraagpad na 'n plaas met die naam bord "John Mabi – Golden Acres".

6. Hy het die polisie sowel as die insleep diens op sy seifoon gebel. Die insleep diens het 'n rukkie later opgedraag en die voertuig na 'n paneelklopper in Cradock gesleept.

7. Terwyl hy daar by die toneel van die botsing was het 'n volwasse plaaswerker ene JP opgedraag op soek na die koei. JP het u kliënt meegedeel dat die koei wat aan meneer Mabi behoort gewoonweg vrylik op die plaasgrond wat langs die pad geleë is, gewei het. Ongelukkig was die hek in die heining wat die plaas skei van die pad die vorige aard nie behoorlik toegemaak nie. Daar was ook nie 'n slot vir die hek nie.

QUESTION 8

You have an interview with Thabo Bapela during which he informs you as follows:

1. He is 25 years old and employed by ABC Company, of 1 Main Road, Walmer, Port Elizabeth as a sales representative.

2. On 1 March 2005 he was the driver of a 2004 Mercedes Benz motor vehicle with registration number CKZ 100 EC on the Main Road between Cradock and Middelburg, Eastern Cape.

3. At approximately 09:00 a cow appeared on the tarmac surface of the road right in front of him from an embankment on the left hand side of the road. He applied brakes and swerved to the right, but a collision was inevitable and the cow was killed.

4. The Mercedes Benz was extensively damaged and required major repairs.

5. The collision occurred near a turnoff to a farm with the name board "John Mabi – Golden Acres".

6. He phoned the Police as well as the breakdown services on his cell phone. The breakdown services arrived a little while later and towed the vehicle to a panel beater in Cradock.

7. Whilst he was at the scene an adult farm worker JP arrived, looking for the cow. JP informed your client that the cow usually grazes freely on farmland which belongs to Mr Mabi and which is situated next to the road. Unfortunately the gate in the fence, which separates the farm from the road, was not closed properly the previous evening. There was also no padlock for the gate.
8. Your client inspected the fence and gate and he found that the fence was properly kept, but the gate was still open and there was indeed no padlock.

9. Client hands you a repair invoice detailing all the repairs to the Mercedes Benz totalling R120 000,00. He also had to rent a car from P E Car Hire for a period of 10 days whilst his vehicle was being repaired. The car hire costs amounted to a further R5 000,00. He shows you an invoice from the breakdown company indicating towing and storage charges of R3 000,00.

10. He did not wish to claim from his insurer in order not to lose his no-claim bonus and he did not want to pay the excess.

11. He has approached Mr Mabi to compensate him, but although admitting that the cow belonged to him Mr Mabi informed your client that he has referred the matter to his insurance company. There has been no communication from them whatsoever.

12. He requires you to institute the necessary action immediately to recover the damages suffered.

Prepare the particulars of claim for the purpose of summons in the High Court including the description of the parties and the prayer. Make up your own facts where necessary. In so far as you may be required to set out details of the damages suffered, you should merely refer to such annexures as you deem necessary to attach.
QUESTION 9

1. The action instituted by Thabo Bapeia against Mabi is defended and a date for the hearing has been allocated.

2. Client has since the first consultation furnished you with five coloured photographs depicting the scene of the accident and the damages to his vehicle as well as a scale plan and key prepared by a draftsman.

3. Quantum has not been settled due to the reluctance of defendant to agree on quantum.

Set out the necessary steps which you will have to take to enable your client to tender the necessary evidence in Court with regard to quantum and to have the photographs and other documents referred to above admitted as evidence.

QUESTION 10

If the motor vehicle referred to in question 8 was owned by Mr Alex Bapela, an accountant, who lent the vehicle to his minor son Thabo, how would your citation of the plaintiff read?

QUESTION 11

Name five instances under which the court may cancel an accused's bail.

QUESTION 12

Section 20 of the Criminal Procedure Act 51 of 1977 authorizes the State, through its officials, to seize certain articles which on reasonable grounds are believed to be concerned in the commission or suspected commission of an offence or may afford evidence of the commission...
plaging van 'n misdryf of wat bestem is om by die plaging van 'n misdryf gebruik te word. Ten einde die staat instaat te stel om op sodanige artikels beslag te lé, is dit noodsaaklik dat 'n visenteringslasbrief uitgereik deur 'n landdros of regter eers bekom word, anders sal sondige deursoeking en beslaglegging ongeldig wees. Noem voorbeeldde waar dit toelaatbaar is om beslagteë op artikels onder 'n visenteringslasbrief.

VRAAG 13 [12]

U kliënt, Mnr A (beskuldigde No 2) is in diens as 'n plaaswerker by Mnr B (beskuldigde No 1) wat 'n wildplaas/reservaat besit in Limpopo. Op 'n sekere nag het 'n betreder onwettig wild gesteeel en is deur u kliënt, Mnr A, gearresteer. Hy het hom dienooreenkomsig oorhandig en aan sy werkgever, Mnr B, gerapporteer.

(a) Die betreder is aangerand op instruksies van die plaas eiernaar deurbeude u kliënt en die plaas eiernaar. Hy is later aan 'n boom v世家bind, waar hy vir 2 (t wee) uren gelaat is. Later die nag het Mnr B opgelet dat die betreder baie swak voorgekom het en moontlik nie sal oorleef indien hy na 'n hospitaalgeneem word nie. Die plaas eiernaar. Mnr B, het u kliënt geroep en hom aangese om die liggaam van die betreder in die leeu kamp te gooï. U kliënten sy werkgever word van die misdryf moord, aangekla. U kliënt pleit onskuldig op die aanklager. Stel sy verklaring op in terme van Artikel 115. Mediese getuigenis sal deur die Staat aangebied word om te bewys dat die oorledene nog lewendig was toe hy in die leeu kamp gegooï is. U kliënt se weergawe is dat die oorledene reeds dood was toe hy instruksies ontvang het om die liggaam in die leeu kamp te gooï (geen opskrifte word verlang nie).

(b) Watter ander bevoegde (indien enige) uitspraak kan volg indien die regter nie u kliënt op 'n aanklager van moord skuldig bevind nie?

QUESTION 13 [12]

Your client, Mr. A (accused No 2) is employed as a farm worker by Mr. B (accused No 1) who owns a wild animal farm/resort in Limpopo. On a certain night an intruder who had been poaching wild animals illegally is arrested by your client, Mr. A. He duly hands him over and reports to his employer, Mr. B.

(a) The intruder is assaulted on the instructions of the farm owner by both your client and the farm owner. He is later tied to a tree where he is left for two hours. Later at night Mr. B notices that the intruder is very weak and may not survive if he is taken to hospital. The farm owner, Mr. B, calls your client and tells him to throw the body of the intruder into the lions den. Your client and his employer are charged with the offence of murder. Your client pleads not guilty. Draw his statement in terms of Section 115. Medical evidence will prove that the deceased was still alive when thrown into the den. Your clients' version is that the deceased was already dead at the time he was instructed to throw the body into the lions den (no headings are required).

(b) What other (if any) competent verdicts may follow if the judge does not convict your client on the charge of murder?
QUESTION 14
Your client is convicted of stealing a cassette from a self service retail store in the city. He pleads guilty; set out briefly in your own words facts in mitigation of sentence (fabricate your own facts where necessary).

15.1 Who would you sue? Briefly motivate your answer.

15.2 If the summons was defended could you apply for summary judgment?

15.3 If the action were not defended and you applied for default judgment what documents would you file in Court?

15.4 Can you suggest a less costly legal procedure your client could follow other than a Magistrate’s Court action?

QUESTION 16
You are consulted by Joe Tenant who leased a shop from Rental CC in terms of a written agreement of lease. With Rental CC’s permission, he sublet the shop to an oral monthly lease agreement at a rental of R5000.00 per month. Joe tells you that his sub-tenant is in arrears with three months rent. He wants you to eject the sub-tenant and recover the arrear rental.
Sit kortliks die stappe uiteen wat u sal neem voor uitleiking van die dagvaardiging.

VRAAG 17

U klientoorhandig aan u 'n lasbrief virekseksie uitgereik in die landdroshof in terme waarvan die balju ses weke gelede beslag gelê het op sy motor. Hy sê dat voordat die lasbrief virekseksie op hom beteken is, hy geen kennis gedra het van enige aksie wat teen hom ingestel is nie. Hy deel u mee dat hy nooit enige geld aan die eiser geskuld het nie. Toe hy die lasbrief ontvang het, het hy na die eisers se prokureur gegaan en hulle so meegedeel. Die eiser se prokureur het hom vandag g Eskakel en meegedeel dat sy kliënt aandring om met die saak voort te gaan. U kliënt gee u opdrag om die eis te verdedig en alles nodig te doen ten einde die aksie te verdedig.

Sit kortliks die stappe uiteen wat u sal neem om gevolg te gee aan u kliënt se instruksies en meld kortliks die nodige beweringe wat in u kliënt se beëdigde verklaring gemaak moet word.

VRAAG 18

U word deur Goolam Ahmed gekonsulteer. Hy versoek u om 'n voorlopige vonnis dagvaarding te verdedig wat op hom gedien is en waarin TRICKY DICKS AUTOS BK hom dagvaar vir die bedrag van R50 000.00 synde die bedrag van 'n tjeuk wat Mnr. Ahmed erken hy uitgereik het, maar wat gedishonoreer is en deur die bank teruggestuur is gemerk "betaling gestaak". Hy deel u mee dat die tjeuk aangebied is as betaling van die koopprys vir 'n motorvooruitig wat aan hom verkoop is as 'n 1.6 liter Nissan. Hy deel u mee dat toe hy later by die huis kom, was dit aan hom uitgewys dat die motor nie die oorspronklike 1.6 liter enjin het nie maar dat dit vervang was met 'n 1.4 liter enjin van 'n ouer model.

QUESTION 17

Briefly indicate the steps that you will take before you issue the summons?

QUESTION 18

Your client hands you a warrant of execution issued out of the magistrate's court in terms whereof the sheriff attached his motor car six weeks ago. He says that before he was served with the warrant of execution he had no knowledge of any action being instituted against him. He tells you that he has never owed the plaintiff any money and that when he got the warrant of execution he went to the plaintiff's attorney to tell them this. The plaintiff's attorney telephoned him today to say that his client insists on proceeding with the matter. Your client tells you that he wishes to defend the claim and instructs you to do whatever is necessary to defend the action.

Briefly set out the steps you would take to implement your client's instruction and briefly indicate the essential allegations which must be made in your client's affidavit.

Goolam Ahmed consults you and asks you to defend a provisional sentence summons that wasservedonhim inwhichTRICKYDICKS AUTOS CC are suing him for the sum of R50 000.00 being the amount of a cheque which Mr. Ahmed acknowledges that he drew but which was dishonored by being returned by the bank marked "payment stopped". He tells you that the cheque was given as the purchase price of a car which was sold to him as being a 1.6 litre Nissan. He informed you that when he got home later it was pointed out to him that the car did not have its original 1.6 litre engine but this had been replaced with a 1.4 litre engine from an older model.
U verdedig die aksie en liasseer 'n beëdigde verklaring waarin u kliënt se verweer uiteengesit word. Sy verweer word ondersteun deur 'n beëdigde verklaring deur 'n deskundige tot die effek dat daar 'n baie wesentlike verskil is in die waarde van 'n 1.6 liter Nissan en die voertuig gelewer aan u kliënt.

Die bestuurder van die motorhandelaar antwoord deur 'n beëdigde verklaring te liasseer waarin hy sê dat dit 'n kontant transaksie was en dat beide hy en sy verkoopsman aan Mnr. Ahmed uitgewys het dat die motor se enjin vervang was en dat dit voetstoots verkoop was.

18.1 Watter bevel verwag u sal die landdros maak? Motiveer kortliks u antwoord.

(3)

18.2 Indien die bevel ten gunste van die eiser is, watter stappe moet u kliënt dan neem om die aksie te verdedig.

(3)

VRAAG 19

U kliënt, die verweerder in 'n Landdroshofaksie, het notas gemaak van sy telefoongesprek met die eiser. Behoort die notas blootgeê te word? Motiveer kortliks u antwoord.

VRAAG 20

Die eiser se prokureurs beteken 'n kennisgewing van terugtrekking van die eis voor die datum van die verhoor, maar sonder om enige melding van die koste in die kennisgewing te maak. Wat kan u, as verweerder se prokureur, doen?

You defend the action and you file an affidavit setting out your client’s defence and you support that with an affidavit made by an expert to the effect that there is a very substantial difference in value between the 1.6 litre Nissan and the one that was delivered to your client.

The manager of the car business responds by filing an affidavit in which he says that the sale was a cash sale and that he and his salesman both pointed out to My Ahmed that the car’s engine had been replaced and that the sale was voetstoots.

18.1 What order would you expect the Magistrate to make? Give brief reasons.

(3)

18.2 If the Order is in favour of plaintiff, what steps must your client then take should he wish to continue contesting the action?

(3)

QUESTION 19

Your client, the defendant in a Magistrate’s Court action, made notes of his telephone conversation with the plaintiff. Should the notes be discovered? Briefly motivate your answer.

QUESTION 20

Plaintiff’s attorneys, before the date of the trial, serve a notice of withdrawal of the action without mentioning costs. What can you, as defendant’s attorney do?
1. Kandidate moet al die vrae beantwoord.

2. Die vrae mag in Afrikaans of Engels beantwoord word.

3. Kandidate moet daarop let dat punte vir goeie opstelwerk toegelaat word.


5. Skryf asseblief slegs in pen op die regterkantse bladsye.

6. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel druip.
VRAAG 1  [58]

Sam (60 jaar oud) en Hilda (54 jaar oud) is buite gemeenskap van goed met mekaar getrou, met uitsluiting van die aanwasbedeling. Hulle het in 2002 'n gesamentlike testament verly waarkragsens hulle onderskeie boedels oor en weer aan mekaar bemaak. U word as die eksekuteur benoem. Die testament bepaal verder dat die eksekuteur by die dood van die eerstenerwende al laasgenoemde se bates te gelde moet maak en die opbrengs in kontant aan die langslewende moet uitbetaal.

Sam sterk op 1 Januarie 2006.

U word as eksekuteur aangestel en stel die volgende vas:

1. Die woonhuis waarin die egpaar gewoon het, is in albei van hulle se name as mede-eienaars geregistreer. Dit het 'n munisipale waardasie van R800 000,00. 'n Eiendomsagent bepaal die billike markwaarde op R1 400 000,00, maar u verkoop die huis vir R1 600 000,00. Agentekommissie bedra R100 000,00.

2. Bo en behalwe haar aandeel in die huis, besit Hilda bates ter waarde van R3 500 000,00.

3. Sam se bates bestaan uit:

3.1 'n BMW-motorkar wat vir R250 000,00 verkoop is.

3.2 JSE - genoteerde aandele wat vir R2 000 000,00 verkoop is en ten opsigte waarvan die effektemakelaar se rekening vir verkoopskommissie op die transaksie R38 000,00 bedra.

3.3 100% ledenbelang in Prime CC, wat 'n vakansiehuis besit. Die netto opbrengs van die verkoping van die ledenbelang was R700 000,00.

QUESTION 1  [58]

Sam (aged 60) and Hilda (aged 54) are married out of community of property to each other (accrual excluded). They executed a Joint Will in 2002 in terms of which they bequeathed their respective estates to each other and appointed you as the executor. They also directed that on the death of the first dying, the executor is to sell all the first dying’s assets and pay over cash to the survivor.

Sam died on 01 January 2006.

You are appointed as the executor and establish the following:

1. The home in which they resided is registered in both their names in equal shares. It has a municipal value of R800 000.00. An estate agent has valued the fair market value of the house at R1 400 000.00, but you sell the house for R1 600 000.00. The agent’s commission is R100 000.00.

2. In addition, Hilda owns assets to the value of R3 500 000.00.

3. Sam owns the following assets:

3.1 A BMW motor vehicle - sold for R250 000.00.

3.2 JSE quoted shares - sold for a total of R2 000 000.00. Stockbrokers’ Commission in the amount of R38 000.00 is payable to stockbrokers on this deal.

3.3 100% member’s interest in Prime CC, which owns a holiday cottage. This interest realises R700 000.00 nett.
<table>
<thead>
<tr>
<th>PAGE 2 BOEDELS</th>
<th>PART 2 ESTATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4 'n Liberty Life lewenspolis op sy eie lewe, betaalbaar aan Hilda as die genomineeerde begunstigde. Die uitkeerwaarde is R500 000,00.</td>
<td>3.4 A Liberty Life Insurance Policy on his own life, payable to Hilda as the nominated beneficiary. The maturity value is R500 000,00.</td>
</tr>
<tr>
<td>3.5 'n Sanlam lewenspolis op sy eie lewe en betaalbaar aan sy boedel met 'n uitkeerwaarde van R800 000,00.</td>
<td>3.5 A Sanlam Life Insurance Policy on his own life, payable to his estate, with a maturity value of R800 000,00.</td>
</tr>
<tr>
<td>3.6 'n Ou Mutual lewenspolis op Hilda se lewe, met 'n afkoopwaarde ter waarde van R300 000,00 en 'n uitkeerwaarde ter waarde van R1 000 000,00.</td>
<td>3.6 An Old Mutual Life Insurance Policy on Hilda's life, with a surrender value of R300 000,00 and a maturity value of R1 000 000,00.</td>
</tr>
<tr>
<td>3.7 800 gewone aandele in 'n private maatskappy, wat vir R150,00 per aandeel deur die maatskappy-ouditeur gewaardeer is. Hierdie aandele is aan een van die ander aandeelhouders verkoop vir R100,00 per aandeel. &quot;HP-Rekenmeesters&quot; het 'n fakulteit ten bedrae van R1 200,00 aan u as die eksekuteur gelever ten opsigtie van hulle foot vir die waardasie van die aandele.</td>
<td>3.7 800 ordinary shares in a private company, valued by the company accountant at R150,00 per share. These shares were sold to one of the other shareholders at R100,00 per share. HP Accountants issued you as the executor with their invoice in the amount of R1 200,00 for their fees in relation to the valuation of the shares.</td>
</tr>
<tr>
<td>4. Daar is 'n eerste verband oor die woonhuis ten gunste van Eerste Nasional Bank geregistreer en die uistaande balans wat aan die bank verskuldig is, beloop R400 000,00.</td>
<td>4. There is a mortgage bond registered over the residential property in favour of First National Bank, with an outstanding balance owing to the bank in the amount of R400 000,00.</td>
</tr>
<tr>
<td>5. Sam het die volgende laste:</td>
<td>5. Sam has the following liabilities:</td>
</tr>
<tr>
<td>5.1 Hy skuld R35 000,00 plus rente van R3 200,00 op datum van dood aan sy broer Edward kragtens 'n skriftelike skulderkenning gedateer en geteken te Pretoria op 15 Junie 2003.</td>
<td>5.1 He owes his brother, Edward, the sum of R35,000,00 in terms of an acknowledgement of debt dated 15 June 2003 and signed at Pretoria, together with interest in the sum of R3 200,00 as at date of death.</td>
</tr>
<tr>
<td>5.2 'n Bedrag van R4 000,00 is aan Autosound CC verskuldig vir 'n klankstelsel wat onlangs in die BMW-motor geïnstalleer is.</td>
<td>5.2 R4 000,00 is owing to Autosound CC for the sound system recently installed in his BMW motor vehicle.</td>
</tr>
<tr>
<td>5.3 Daar is nog 'n bedrag van R56 000,00 aan Wesbank verskuldig ten opsigtie van die finansiering van die BMW-motor.</td>
<td>5.3 R56 000,00 is still outstanding to Wesbank for the financing of his BMW motor vehicle.</td>
</tr>
</tbody>
</table>
5.4 Aanvaar dat die finale inkomstebelastingaanslag R 1 100 000,00 beloop het en in volle vereffening aan SAID betaal is.

Mnr. Syfers, Sam se rekenmeester, het R 2 000,00 gevra vir sy professionele dienste ten opsigte van die voltooiing en indiening van die finale belastingopgawes.

6. Sam se begrafinskoste het R 8 000,00 beloop.

GEVRA:

**STEL SLEGES DIE OPSKRIF, DIE LIKWIDASIE-REKENING EN DIE BOEDELBELASTING-ADDENDUM IN SAM SE BOEDEL OP.**

**MAAK VOORSIENING VIR EN BEREKEN AL DIE NODIGE ADMINISTRASIEKOSTE WAARVOOR VOORSIENING NIE REEDS IN DIE VRAAG GEMAAK WORD NIE.**

Let op die volgende:

a) U is vir BTW geregistreer.
b) Totale laste, insluitend administrasiekoste, beloop R 1 695 307,00.

**VRAAG 2**

A en B is die meerderjarige seuns en die enigste intestate erfgename van hulle oorlede weduweemoeder. Die moeder se boedel sien soos volg daar uit:

| 'n Plaas gewaardeer vir | R 900 000,00 |
| 'n Luukse motorgewaardeer vir | R 500 000,00 |
| Kontant | R 200 000,00 |
| R 1 600 000,00 |
| Laste | R 100 000,00 |
| Netto boedel | R 1 500 000,00 |

5.4 Accept that the final tax assessment has been issued and that an amount of R 1 100 000,00 was paid to SARS in full settlement thereof.

Mr Numbers, Sam's accountant, charged R 2 000,00 as his professional fee for the completion and lodging of the final tax returns.

6. Sam's funeral costs amounted to R 8 000,00.

REQUIRED:

**DRAFT ONLY THE HEADING, THE LIQUIDATION ACCOUNT AND ESTATE DUTY ADDENDUM IN SAM'S ESTATE. PROVIDE FOR AND CALCULATE ALL THE NECESSARY ADMINISTRATION COSTS THAT ARE NOT PROVIDED FOR IN THE QUESTION ALREADY.**

Please note the following:

a) You are a registered VAT vendor.
b) Total liabilities, including administration expenses, amount to R 1 695 307,00.

QUESTION 2

A and B are the major sons and only intestate heirs of their late widowed mother.

Their mother's estate comprises the following:

| Farm to the value of | R 900 000,00 |
| Luxury motorcar to the value of | R 500 000,00 |
| Cash | R 200 000,00 |
| R 1 600 000,00 |
| Liabilities | R 100 000,00 |
| Net estate | R 1 500 000,00 |
The Minister of Agriculture refuses permission to transfer the farm to A and B in equal shares.

A and B agree that A will take the farm, B the motor car, and that A will contribute cash in order to equalise the division of the estate.

Required:

Draw the redistribution agreement giving effect to the above. C is the executor.

QUESTION 3

E died intestate and was survived by his wife W to whom he was married in community of property. He was also survived by the following descendants:

a) His son A, who murdered him.
b) A’s son B.
c) His major daughter C who has renounced any inheritance from E’s estate.
d) C’s son D.
e) His major adopted daughter F.
f) F’s son G.

The joint estate amounted to R640 000,00.

Indicate how you would divide the estate in terms of the Intestate Succession Act, No 81 of 1987. Give reasons where necessary.

QUESTION 4

The testator in his will bequeaths R10 000,00 to his minor granddaughter. How does the executor give effect to this bequest?
VRAAG 5 [3]

A, 'n oujongkêrel, sterv en laat 'n boedel met 'n netto waarde van R1 miljoen na. Die Meester stel 'n eksekuteur aan wat nie kan vasstel of die oorledene enige bloedverwante het nie. Hoe moet die eksekuteur die boedel verdeel?

QUESTION 5 [3]

A, a bachelor, dies intestate leaving a net estate of R1 million. The Master appoints an executor who is unable to ascertain whether or not the deceased has any blood relations. How should the executor distribute the estate?
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 2 hours then follows.

1. Candidates must answer all the questions.

2. The questions may be answered in English or Afrikaans.

3. Candidates must remember that marks are awarded for good draftsmanship.

4. Candidates must invent their own facts wherever necessary.

5. Please write only in pen on the right-hand pages.

6. 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  [12]

'N Prokureur word gevra deur 'n persoon wat nie sy kliënt nie om 'n beëdigde verklaring wat die prokureur nie opgestel het nie, te beëdig.

Sit die prosedures wat die prokureur moet volg wanneer hy die eedsverklaring atesteer volledig uiteen.

Question 1  [12]

An attorney is requested by a person who is not his client to attest an affidavit which the attorney has not drawn.

Set out in detail what procedures should be followed by the attorney in attesting the affidavit.

Vraag 2  [15]

2.1 'n Opskortende voorwaarde het 'n ander uitwerking op 'n kontrak as 'n ontbindende voorwaarde. Verduidelik kortliks die verskil.

2.2 Partye wil 'n koopkontrak ten opsigt van onroerende eiendom sluit wat onderworpe sal wees aan die voorwaarde dat die koper 'n verband oor die eiendom vir 80% van die koopprys sal kry. Gebruik sodanige ander feite as wat u nodig mag ag en stel die kluwsule op wat u in die kontrak sal insluit om –

2.2.1 In die eerste instansie voltooing van die kontrak afhanklik te maak van die verklyging van die verband;

2.2.2 In die tweede instansie die kontrak te laat verval indien die verband geweier word.

Question 2  [15]

2.1 A suspensive condition has a different effect on a contract to a resolutive condition. Explain the difference briefly.

2.2 Parties wish to enter into a deed of sale of immovable property which is conditional upon the purchaser obtaining a bond for 80% of the purchase price. Using any additional facts which you consider necessary, draw the clauses which you would include in the agreement which –

2.2.1 In the one instance will make the operation of the agreement dependant on the bond being obtained;

2.2.2 In the other instance will terminate the agreement upon the bond being refused.

Vraag 3  [20]

3.1 Mag 'n prokureur konsulteer met sy/haar kliënt in 'n siviele saak terwyl daardie kliënt onder kruisverhoor is? Bespreek kortliks.

3.2 Mag 'n prokureur 'n sekretaresse toelaat om met kliënte te konsulteer en opdragte te neem in sy afwesigheid? Bespreek kortliks.

Question 3  [20]

3.1 May an attorney consult with his/her own client in a civil case while that client is being cross-examined? Discuss briefly.

3.2 May an attorney allow a secretary to consult with clients and take instructions during his/her absence? Discuss briefly.
3.3 Mag 'n prokureur onder enige omstandighede inligting openbaar wat in vertroude deur sy/haar klönt meegedeel is? Bespreek kortliks.

3.4 Mag 'n prokureur 'n beskuldigde verdedig wat erken het dat hy die betrokke misdaad gepleeg het? Motiveer u antwoord.

3.5 U tree op vir 'n klönt in 'n MVO-eis en u laat per abuis toe dat die eis verjaar. Verduidelik kortliks welke advies u aan u klönt sal gee nadat dit onder u aandag gekom het.

3.6 U oorhandig 'n trustjek aan u klönt namens wie u 'n invordering hanteer het. Twee dae later versoeek die klönt u om die kruising op die tjek te kantselleer aangesien hy nie 'n bankrekening het nie en hy nie die tjek kan wissel nie. Bespreek.

Vraag 4

U het 'n ooreenkoms vir die verkoop van 'n besigheid opgestel namens u klönt. Die ooreenkoms is geteken deur beide partye en u mandaat is afgehandel. U moet nou 'n rekening aan u klönt lever. Gebruik u verbeelding en stel die rekening op wat u aan u klönt wil lever, waarin u al die werk wat u gedoen het, uiteensit.

Vraag 5

U konsulteer met 'n direkteur van ABC (Edms) Bpk (die werkgewer). Hy lig u in dat ABC (Edms) Bpk besigheid bedryf in 'n hoogsgespesialiseerde veld en dat dit op die punt staan om 'n hoogsgespesialiseerde persoon in diens te neem om een van die takke te bestuur (die werknemer).
He asks you to draw a clause to be incorporated into the employment contract that will ensure that the prospective employee does not disclose confidential information which he may acquire during the course of his employment to third parties. The clause should also deal with the situation in the event of the employee leaving employment.

Draw the appropriate clause.

**Question 6**

You are instructed by a client to prepare a contract which deals with the use of computer equipment. The contract contains a lot of technical detail which few people will have specialised knowledge of and only a person with such specialised knowledge will be able to interpret, understand and determine the parties' rights and obligations. Draft the clause in the agreement which in your opinion will provide for the resolution of disputes between the parties bearing in mind that a continued work relationship between them is essential.

**Question 7**

You are consulted by Mr X who tells you that he and his wife live in an expensive house which he owns in a quiet and exclusive suburb. He further tells you that the house next door has recently changed hands and that his new neighbour is conducting a nightclub on the property contrary to the municipal bylaws and the conditions of title relating to the property. He tells you that his problem is that the noise coming from the property until all hours of the morning is unbearable and that the coming and going of motor vehicles at all times is making life impossible for him and his wife.
Your client wishes you to bring a court application and take all the possible steps to stop his neighbour's activities. You advise him that these steps should be preceded by a letter setting out the steps your client intends taking. He accepts your advice and instructs you to send the letter.

Draft the appropriate letter.

A contract of sale of a hardware business as a going concern must include a clause relating to stock and stocktaking at the close of business on the day before the effective date.

Draft the appropriate clause dealing with the valuation of stock and non-saleable stock.
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 2 uur volg dan.

1. Die vrae mag in Afrikaans of Engels beantwoord word.

2. Kandidate mag sakrekenaars gebruik.

3. By beantwoording van vrae moet die betrokke inskrywings дuidelik geïdentificeer, omskryf en uiteengesit word.


5. Skryf asseblief siegs in pen op die regterkantse bladsye.

6. 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 kwalificeer vir 'n mondeling nie en sal hierdie deel druip.

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 2 hours then follows.

1. The questions may be answered in English or Afrikaans.

2. Candidates may use calculators.

3. In answering the questions you should ensure that the relevant entries are clearly identified, narrated detailed.

4. Separate business and trust cash books and clients' ledger accounts must be opened and are not to be combined. Journal entries must be properly identified and narrated.

5. Please write only in pen on the right-hand pages.

6. 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

U firma se besigheidskasboek toon 'n oortrokke saldo van R94 739 op 30 Junie 2005. Die bankstaatsaldo op dieselfde datum was R32 177 oortrokke. 'n Vergelyking van die bankstaat en die kasboek vir Junie 2005 toon dat:

a) rente op die oortrokke rekening van R1 428 is nie in die kasboek aangeteken nie.
b) bankkoste van R1 500 is nie in die kasboek aangeteken nie.
c) tjeks ter waarde van R8 900 is nog nie by die bank vir betaling aangebied nie.
d) 'n deposito van R14 000 is nie op die bankstaat getoon nie.
e) 'n tjek ter waarde van R12 360 wat op die trustbankrekening uitgereik was, verskyn op die bankstaat.
f) 'n onbetaalde tjek ter waarde van R4 050 van 'n klient is "VT" gemerk deur die bank en teruggestuur.
g) aftrekkers van assuransie en motorpaaie ter waarde van R1 000 en R2 000 respektiewelik is nie in die kasboek aangeteken nie.
h) 'n deposito van R90 000 gemaak in die trustbankrekening is foutiewelik op die bankstaatgetoon.

U word gevra om:

1.1 'n aanvulende kasboek vir Junie 2005 op te stel, en
1.2 die bankrekonsiliasiestaat op 30 Junie 2005 op te stel

QUESTION 1

Your firm's business cash book reflects an overdraft balance at 30 June 2005 of R94 739. The bank statement balance at the same date was R32 177 overdrawn. A comparison of the bank statement and the cash book for June 2005 reveals that:

a) overdraft interest of R1 428 has not been recorded in the cash book.
b) bank charges of R1 500 have not been recorded in the cash book.
c) cheques issued totalling R8 900 have not yet been presented for payment.
d) a deposit of R14 000 is not reflected on the bank statement.
e) a cheque for R12 360 drawn on the trust banking account appears on the bank statement.
f) an unpaid cheque of R4 050 from a client has been returned by the bank marked "RD".
g) insurance and motor lease stop orders of R1 000 and R2 000 respectively have not been entered in the cash book.
h) a deposit of R90 000 made to the trust banking account has been incorrectly reflected on the bank statement.

You are required to:

1.1 prepare a supplementary cash book for June 2005; and
1.2 prepare the bank reconciliation statement at 30 June 2005.
VRAAG 2 [60]

U klient Sipho Zulu het die volgende transaksies met u in September 2005 aangegaan:


b) Op 7 September 2005, verkoop Zulu sy huis aan Black vir R750 000 en hy gee u opdrag om die transport te registreer. Die koper is verantwoordelik vir die transportkoste. Op dieselfde dag ontvang u R150 000 van die koper synde die deposito op rekening van die koopprys. Die balans van die koopprys is gewaarborg deur ‘n bank. U ontvang skriftelike magtiging van Black om die deposito namens hom te belê tot registrasie van transport.

c) Op 8 September 2005 betaal u hereregte van R50 000 aan die Ontvanger van Inkomste.

d) Op 10 September 2005 betaal Black ‘n bedrag van R50 000 aan u terug, tessema met ‘n addisionele bedrag van R11 400 ten opsigt van u transportkoste in kontant.

e) Op 11 September 2005 konsulteer Zulu met u oor sy egskeiding. Hy gee u magtiging om die geld wat verhaal is van die skuldenaarte gebruik as gedeeltelike deposito op rekening van u fooie, en hy gee u ‘n tjek van R5 000 as addisionele deposito.

f) Op 15 September 2005 gee u opdrag aan die advokaat en u ontvang die besonderhede van vordering in die egskeiding tessema met die advokaat se rekening van R570. U betaal die rekening, wat BTW teen 14% insluit.

QUESTION 2 [60]

Your client Sipho Zulu had the following transactions with you during September 2005:

a) Zulu instructed you to collect an amount of R50 000 from a debtor. You write a letter of demand on 1 September 2005, debiting a fee of R50 and on 6 September 2005 you receive payment of R10 000 in cash. You debit R300 collection commission.

b) On 7 September 2005 Zulu sells his house for R750 000 to Black and instructs you to pass the transfer, the purchaser being responsible for all costs of transfer. On the same day you received R150 000 from the purchaser being the deposit on account of the purchase price. The balance of the purchase price is guaranteed by a bank. You obtain written authority from Black to invest the deposit on his behalf until registration of transfer.

c) On 8 September 2005 you pay transfer duty of R50 000 to the Receiver of Revenue.

d) On 10 September 2005 Black repays you the sum of R50 000 together with a further R11 400 on account of your fees of transfer, in cash.

e) On 11 September 2005 Zulu sees you about a divorce. He agrees to leave the money collected from the debtor as part deposit on account of your fees and gives you a further cheque of R5 000 as additional deposit.

f) You brief counsel and on 15 September 2005 you receive particulars of claim in the divorce matter together with counsel’s account for R570, which includes VAT at 14%, and you pay the account.
g) On 16 September 2005 the bank returns the cheque for R5 000.

h) On 27 September 2005 the transfer to Black is registered. You receive R600 000 on presenting the bank guarantee for payment and you debit a fee of R10 000 plus VAT for the transfer. You withdraw the trust investment and receive R5 000 interest thereon.

i) On 29 September 2005 Zulu tells you that he has become reconciled with his wife. You debit a fee for R2 000 and close your file.

j) On 30 September 2005 you account to both Zulu and Black.

You are required to:

Record all the above transactions as they would appear in your books of account. Funds must be transferred from your trust to your business account only once namely at the end of the month. Make provision where applicable for VAT at the appropriate rates. It is not necessary to prepare accounting statements.

**QUESTION 3**

3.1 Which accounts, if any, may legitimately reflect a debit balance in your trust ledger? (2)

3.2 May two attorneys agree:

3.2.1 not to grant any allowance on fees?
3.2.2 on an allowance of 40% on fees? (2)

3.3 May an attorney withhold the banking of trust money to pay cash to a trust creditor? (2)
3.4 How does an attorney determine the amount transferable from his trust to business account? (3)

3.5 How do you pay bail in cash when you are holding trust funds for a specific client? (3)

3.6 What is:

3.6.1 Input VAT? (2)

3.6.2 Output VAT? (2)

3.7 You erroneously paid a trust creditor R1 000 instead of R100. How do you rectify the error? (4)

3.8 Can an attorney operate without a trust account? (2)