Candidate 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 daarna.

1. Kandidate moet al die vrae beantwoord.

2. Kandidate moet daarop let dat punte vir goeie opstelwerk toegekend word.

3. Waar nodig, moet kandidate hulle eie feite versin.

4. Skryf asseblief sleps in pen op die regterkantse bladsye.

5. Tensi 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 h/sy nie kwalifiseer vir 'n mondeling nie en sal hierdie deel droop.

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

<table>
<thead>
<tr>
<th>Q1</th>
<th>You are consulted by Ms Avashai Singh who instructs you as follows:</th>
</tr>
</thead>
</table>

1.1 On the 14th September 2008, and in Plein Street, Nelspruit, a collision occurred between a motor vehicle with registration numbers KTK 575 MP driven by Joe Govender and motor vehicle PQP 600 MP driven by Sam Nyathi;

1.2 Motor vehicle PQP 600 MP was licensed to carry passengers as a taxi. The driver Sam Nyathi and one of his passengers, his wife Dorothy, were severely injured. He died three months later to the day as a result of his injuries.

1.3 Joe Govender was traveling North to South, and Sam Nyathi was traveling from South to North when a head-on collision occurred in the middle of the road;

1.4 It would appear that Joe Govender was to blame for the collision;

1.5 Joe Govender was driving a private metered taxi and was taking Ms Singh to a conference centre from the Hotel where she was staying.

<table>
<thead>
<tr>
<th>Q2</th>
<th>Your client Avashai Singh instructs you to proceed with an action for damages.</th>
</tr>
</thead>
</table>

2. Your client has suffered the following damage:

<table>
<thead>
<tr>
<th>3.1</th>
<th>Gelede provinsiale hospitaalkoste</th>
<th>R 6 500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2</td>
<td>Beraamde toekomstige mediese uitgawes</td>
<td>R 30 200.00</td>
</tr>
<tr>
<td>3.3</td>
<td>Gelede verlies van inkomste</td>
<td>R 8 000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.1</th>
<th>Past provincial hospital expenses</th>
<th>R 6 500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2</td>
<td>Estimated future medical expenses</td>
<td>R 30 200.00</td>
</tr>
<tr>
<td>3.3</td>
<td>Past loss of earnings</td>
<td>R 8 000.00</td>
</tr>
</tbody>
</table>
3.4 Toekomstige verlies van inkomste = R 16 000.00
3.5 Algemene skade = R 40 000.00

\[ \text{R 100 700.00} \]

(A) Sit uiteen die hoofde van skadevergoeding en die bedrae ten opsigte van elke wat u klënt mag eis. (3)

(B) Sou die posisie na aanleiding van u antwoord op (A) anders wees as die motorvoertuig waarin u klënt’n passassier was nie die nodige motorvervoer permit gehad nie? Verduidelik volledig. (2)

(C) Gestel Sam Nyathi was 100% nalatig:

1. Sou u klënt’n regsgeldige eis hé?; (1)
2. Sou Dorothy ’n eis hé? Indien wel, teen wie kan sy ’n eis instel en vir welke bedrag?; (2)
3. As Dorothy aan militêre diens was, sou u 1.2 anders beantwoord? Verduidelik volledig; (1)
4. As u klënt tydens die botsing nie ‘n veiligheids gordel gedra het nie, sou dit haar eis enigsin beeinvloed? Verduidelik volledig; (2)
5. Sou Dorothy se eis vir persoonlike besering teen die Padongelukkiefonds deur hulle huwelik geraak word? (1)

(D) Aanvaar dat twee minderjarige kinders (10 en 12 jaar oud het ten tye van die botsing) uit voormelde huwelik gebore is.

3.4 Future loss of earnings = R 16 000.00
3.5 General damage = R 40 000.00

\[ \text{R 100 700.00} \]

(A) Set out the heads of damages and amounts in respect of same which your client is entitled to claim. (3)

(B) Having regard to your answer in A above would the position be different if the motor vehicle in which your client was a passenger did not hold the requisite motor carrier permit? Explain your answer fully. (2)

(C) Assuming that Sam Nyathi was 100% negligent:

1. Would your client have a valid claim in law?; (1)
2. Would Dorothy have a claim? If so, against whom can she institute a claim and for how much?; (2)
3. If Dorothy was engaged in military service would your answer to 1.2 differ? Explain fully; (1)
4. If your client was not wearing a seatbelt at the time of the collision would this affect her claim in any way? Explain fully; (2)
5. Would Dorothy’s claim for personal injuries against the Road Accident Fund be affected by virtue of their marriage? (1)

(D) Assume two minor children aged 10 and 12 at the time of the accident were born out of the marriage aforesaid.
<table>
<thead>
<tr>
<th>DEEL 1</th>
<th>PART 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOFPROSEDURES</td>
<td>COURT PROCEEDINGS</td>
</tr>
<tr>
<td>[100]</td>
<td>[100]</td>
</tr>
</tbody>
</table>

| 1. | What documents must be lodged with the claims of Dorothy and her children as a result of Sam’s death? (2) |
| 2. | What documents must be submitted with the claim form to prove the quantum of loss of support claimed? (2) |
| 3. | In calculating these claims of Dorothy and her children how will you apportion the deceased’s income? (2) |
| 4. | By when must Dorothy’s two claims be lodged with the Road Accident Fund to avoid their becoming prescribed? (2) |
| 5. | When will prescription start to run in respect of each of the children’s claims? (2) |
| 6. | What other claim will Dorothy have against the Road Accident Fund arising from Sam’s death? (1) |

(U) You lodge the claim on behalf of Ms Singh timeously but due to an oversight in your office you fail to issue a summons against the Road Accident Fund timeously. How long do you have to bring an application for condonation, and are there any prerequisites for it? (2)

VRAAG 2

Your client Robert Farmer, a major male cattle farmer in the district Cradock consults you in connection with a summons issued against him out of the High Court, Eastern Cape, Grahamstown in which the Plaintiff, the Minister of Police in his official capacity c/o The State Attorney, Port Elizabeth claims damages in respect of repair costs to a Police vehicle amounting to R120 000,00.

The following allegations inter alia appear from the particulars of claim:

Ukliënt, Robert Farmer, ‘n meerderjarige manlike beesboer in die Cradock distrik, konsuleer met u na aanleiding van ‘n dagvaarding teen hom uitgereik in die Hooggeregshof, Oos Kaap, Grahamstad waarin die Minister van Polisie in sy amptelike hoedanigheid p/a die Staatsprokureur, Grahamstad, skadevergoeding eis ten opsigte van herstelkoste van ‘n polisievoertuig in die bedrag van R120 000,00.

Die volgende beweries blyk onder andere uit die Besonderhede van Vordering:
1. At all material times plaintiff was the owner of a BMW motor vehicle with registration number SAP 100 B.

2.1 On or about 1 March 2009 at approximately 04:00 am and on the Main Road between Hofmeyr and Cradock, Eastern Cape, plaintiff's said vehicle driven by Superintendent AB collided with a herd of cattle driven by the defendant or his employees acting during the course and scope of their employment with defendant.

2.2 The said cattle were at the time of the said collision either owned by defendant or under his control.

3. The said collision was caused by the sole negligence of the defendant or his said employees acting during the course and scope of their employment with defendant as such in one or more of the following respects:

3.1 He failed to take any or adequate precautions to warn motorists using the said road of the presence of cattle on the road at the relevant time;

3.2 He failed to have due regard to vehicular traffic on the said roadway more specifically the plaintiff's vehicle;

3.3 The cattle were being driven on a public road at night in such a manner as to constitute an obstruction or danger to vehicular traffic, more specifically the plaintiff's vehicle.

4. As a result of the said collision plaintiff suffered damage in the sum of R 120 000,00 constituting the fair and reasonable costs to repair the plaintiff's said vehicle. Details of such repair costs are set out in annexure "A" hereto.
5. It was economical to repair the vehicle at those costs, the fair and reasonable pre-collision value thereof being R200 000,00 and the fair and reasonable post-collision value being R80 000,00.

6. In the premises defendant is liable to pay to plaintiff damages amounting to R120 000,00, but notwithstanding demand has failed or refused to do so.

WHEREFORE plaintiff prays for judgment against defendant for:

a) Payment of the sum of R120 000,00
b) Interest thereon at the prescribed rate of 15,5% per annum calculated from date of service of summons to date of payment
c) Costs of the action
d) Further and/or alternative relief

Your instructions are:

- That your client was at the relevant time personally in charge of the cattle assisted by a foreman and three herdsmen;
- He was driving a LDV on the said road about 50 metres ahead of the herd of cattle;
- It was dark and there were no street lights, but his headlights and hazard lights were switched on;
- The foreman wearing a brightly coloured luminous jacket was positioned about 20 metres at the rear of the herd armed with a flashlight to warn traffic approaching from the rear. The other herdsmen also wore luminous clothing and were armed with torches. They were positioned on the side and on the rear of the herd;
- He noticed a motor vehicle approaching from the opposite direction at a distance. From the noise, which the engine made, he gained the distinct impression that this vehicle was travelling at quite a high speed;
### DEEL A

2.1 Stel u klient se pleit en teeneis op met verwysing na die paragraewe 1 tot 6 in die besonderhede van vordering soos hierbo uiteengesit. U mag waar nodig eie feite byvoeg. U hoef nie met die beskrywing van die partye te handel nie aangesien daar geen disputu in hierdie verband of met locus standi van eiser of verweerder bestaan nie. (15)

### DEEL B

Na 'n inspeksie ter plaatse en na konsultasie met die voorman en ander getuies adviseer u u klient dat:

- Die hof moontlik verdeling van skuld teen u klient 60/40 ten gunste van die eiser kan gelas.

### PART A

2.1 Prepare your client's plea and counter claim with reference to the paragraphs contained in the particulars of claim as set out in paragraphs 1 to 6 above making up your own facts where necessary. You need not deal with the description of the parties, there being no dispute in this regard or in respect of the locus standi of either the plaintiff or the defendant. (15)

### PART B

After you have attended an inspection at the scene of the collision and consulted with the foreman and other witnesses you advise your client that:

- The court may possibly apportion fault against your client on a 60/40 basis in favour of Plaintiff.
You advise your client to make a formal offer of settlement without prejudice in order to place the plaintiff on risk as far as further costs of the action are concerned and in the same vein to limit your client's exposure to a possible costs order.

With reference to the provisions of Rule 34(1) of the Rules of the High Court prepare a notice of offer of settlement omitting the heading and the ending.

What requirement(s) in terms of Rule 34(1) must be met before you can deliver such notice?

What formal steps must the plaintiff take if he decides to accept the offer?

What is the plaintiff's remedy if the defendant does not perform timeously in terms thereof? Describe briefly the procedure in terms of the rules that the plaintiff's attorneys must follow in order to exercise the remedy.

At the hearing of the matter the court finds that the defendant is 50% at fault in relation to the damage suffered by the plaintiff and makes an order in terms whereof your client must pay to the plaintiff R60 000,00 plus interest *a tempora morae* and costs on the appropriate Magistrate's Court scale.

With regard to the counterclaim your client is awarded damages in the sum of R30 000,00 plus interest *a tempora morae* and costs.

What procedural steps must you now take to protect your client's interests with regard to the settlement offer which you have made earlier and which was not accepted by the plaintiff?
**QUESTION 3**

Your client A and his friend B decide to break into a residence and steal a TV. Unbeknown to A, B is in possession of a handgun. They duly break into the house and whilst in the process of removing the TV are surprised by the occupant who is shot by B, resulting in his death. A and B flee the house without the TV and are arrested at A’s home the next day. They are duly charged with murder and housebreaking with the intent to steal and appear in the Regional Court. The State intends presenting as evidence the post-mortem report relating to the deceased and a photo album of the scene. Both A and B plead guilty to the housebreaking charge and not guilty to the murder charge.

a. Draw A’s Section 112 statement, including the heading. (7)

b. Draw A’s Section 115 statement relating to the charge of murder, setting out his defence. Omit the heading. (5)

c. Describe the procedure that will be followed immediately after you have submitted the Section 115 statement to the court and before the state proceeds to present evidence, including the procedures relating to the postmortem report and the photo album. (3)

d. On what doctrine in law will the state rely to prove A’s guilt in respect of the charge of murder, and what will the state have to prove in order to obtain a conviction? (3)

**QUESTION 4**

You receive instructions from a client who has been convicted of assault with intent to do grievous bodily harm and who is to be sentenced. He advises you that he suffered from depression and was on medication therefore at the time of the incident. Although he can recall assaulting the complainant he feels that he was provoked to
hy beheer verloor het en nie sy handelinge kon beheer nie. Toe hy skuldig gepleit het, het hy nie gedink die feite is relevant nie en het dit nie aan die hof genoem nie.

U opdrag is om aansoek te doen om die pleit te verander. Is dit moontlik en indien wel, welke prosedure word gevolg?

VRAAG 5

In 'n borgaansoek wat u namens 'n klient rig, wieer die landdros borg omdat die Staat 'n sterk saak teen u klient het. Die Staat se saak berus op die getuigenis van twee getuies. Kort daarna vind u uit dat een getuie oordele is en die ander Suid-Afrika permanent verlaat het.

Welke stappe sal u doen namens u klient en bespreek die redes daarvoor?

VRAAG 6

U word geraadpleeg deur Jeffrey Thembu wat u meedeel dat hy gedurende Mei 2009 sy motorvoertuig aan sy vriendin, Joyce Tshabalala, geleen het aangesien haar voertuig gesteel is. Sy het onderneem om sy motor aan die einde van Junie 2009 terug te bescorf. Hulle verhouding is egter teen die einde van June 2009 verbreek en ten spyte van verskeie versoek wat sy motor moet terugbescorf, het sy geweier om dit te doen en aangevoer dat hy haar geld skuld. Sy het hommee gededeal dat sy die voertuig sal behou tot tyd en wyl hy die bedrag wat sy beweer aan haar verskuldigd is, terugbetaal het.

6.1 Stel die besonderhede van eis in die Landdroshof op in 'n aksie om besit van u klient se voertuig terug te kry. (5)

6.2 Kan die klient by wyse van aansoek die verlangde regshulp verkry? Motiveer kortlikis u antwoord. (2)

such an extent on the day in question that he "lost it" and could not control his actions. He did not think that these facts were relevant when he pleaded guilty and did not mention same to the Magistrate.

Your instructions are to apply to change the plea. Is this possible and if so describe the procedure that follows.

QUESTION 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 two witnesses. Shortly thereafter it comes to your attention that one of the witnesses has died and the other has left South Africa never to return.

What steps will you take on behalf of your client and discuss the reasons for your actions?

QUESTION 6

You are consulted by Jeffrey Thembu who informs you that during May 2009 he lent his motor vehicle to his girlfriend, Joyce Tshabalala, as her vehicle had been stolen. She had undertaken to return his vehicle to him at the end of June 2009. Their relationship ended towards the end of June 2009 and despite repeated requests for her to return his vehicle to him, she has refused to do so, alleging that he owed her money, and that she would retain possession of the vehicle until he had repaid her the sum she alleged he owes her.

6.1 Draft the particulars of claim in an action in the Magistrate’s Court to reclaim possession of your client’s vehicle. (5)

6.2 Can your client obtain the relief sought by way of an application? Motivate your answer briefly. (2)
VRAAG 7

(i) U verteenwoordig die Eiser in 'n landdroshofsaak. Na betekening van die dagvaarding doen u aansoek om Verstekvonnis. Die aansoek word van die hand gewys aangesien die Verweerder 'n Kennisgewing van Voorneme om te Verdedig gelaisseer het sonder om die kennisgewing op u te beteken. Teen die tyd dat u daarvan bewus word is dit te laat om aansoek te doen vir Summier Vonnis alhoewel dit u bedoeling was omdat u glo dat die saak afgehandel kon word by die aanhoor van die Summier Vonnis aansoek. Is daar enigiets wat u nou aan die saak kan doen en indien so, wat? (3)

(ii) Eiser woon in Pretoria. Hy het 'n eis van R70 000.00 teen 'n vennootskap wat besigheid doen in Durban. Een van die vennote woon in Durban en die ander een in Pretoria. In welke hof of howe moet aksie ingestel word of moet die saak in albei howe ingestel word? Gee kortlikse redes vir u antwoord. (3)

(iii) U klient wil aansoek doen vir die tersydestelling van 'n Testament van 'n oorledene. Hy beweer dat die Testament nie aan die vereiste formaliteite voldoen nie. Die oorledene was in Johannesburg woonagtig en die Testament is gelasisseer in die Kantoor van die Meester van die Hooggeregshof, Pretoria. Die Meester het 'n eksekutieursbrief uitgereik aan die eksekuteurs woonagtig in Pretoria. Kan die dagvaarding uitgereik word in die Landdroshof van Pretoria vir die tersydestelling van die Testament. Indien nie, in welke hof moet die aksie plaasvind? (2)

(iv) U klient wil aansoek doen vir die vrywillige likwidasie van 'n Besliste Korporasie waarvan hy die enigste lid is. Kan hy dit in die Landdroshof doen of moet hy dit in die Hooggeregshof doen? (2)

QUESTION 7

(i) You represent the Plaintiff in a Magistrate Court action. After service of a summons you apply for Default Judgment. Your request is refused because the Defendant has entered Appearance to Defend although he did not serve a copy of his notice on you. By the time you become aware of this you are out of time to apply for Summary Judgment but would have liked to have done so, because you believe the matter could have been finalized at the Summary Judgment hearing. Is there anything you can do? If so, what is it? (3)

(ii) Plaintiff resides in Pretoria. He has a claim for R70,000.00 against a partnership which carries on business in Durban. One of the two partners lives in Durban and the other in Pretoria. Out of which Court or Courts may the Plaintiff sue or must he sue out of both courts. Give brief reasons for your answers. (3)

(iii) Your client wants to apply for an order setting aside a Will of a deceased. He alleges that the proper formalities were not complied with. The deceased lived in Johannesburg and his Will was lodged with the Master of the High Court, Pretoria who has issued Letters of Executorship to executors who reside in Pretoria. Is it in order for you to issue summons out of the Magistrate's Court, Pretoria for an order to have the Will set aside? If not, in what forum should action be taken? (2)

(iv) Your client wants to wind up a Close Corporation in which he is the sole member. May he do so in the Magistrate's Court or must he apply to the High Court? (2)
QUESTION 8

8.1 The defendant has in his possession photographs and plans relating to a dispute on 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.

(2)

8.2 Under which circumstances will it be necessary to call the photographer and the draftsman to give evidence to prove the photographs and plans referred to in 8.1.

(2)

QUESTION 9

Your client brings you a summons containing the following cause of action:

Plaintiff’s claim is against the Defendant for R34,700.00 being the agreed price of goods sold and delivered by Plaintiff to Defendant during March 2009 at the Defendant’s instance and request.

When your client instructs you he says that he has never even heard of the Plaintiff let alone done any business with him. Draw the request for further particulars you would serve, restricting the questions to that information which your client is entitled to for the purpose of pleading.