

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

4 NOVEMBER 2020

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.

QUESTION 1

[10]

Mr Walker, a pedestrian, was fatally injured when a reach stacker collided into him. A reach stacker is a hoisting device for stacking, lifting and manoeuvring containers in the container yards of small terminals or medium-sized ports. It is designed for propulsion of containers over short distances. Reach stackers are equipped with booms capable of being extended and raised hydraulically. The vehicle has six wheels and is fitted with a rear-view mirror. The reach stacker in question was equipped with full road going lighting, including taillights, indicators, brake lights and reverse lights. Furthermore, it was fitted with windscreen wipers and washers, a hooter, and a handbrake.

Can a reach stacker be classified as a motor vehicle? Discuss with specific reference to the definition of a “motor vehicle” in terms of the Road Accident Fund Act 56 of 1996 which sets out the requirements for a vehicle to be classified as a motor vehicle and applicable case law.

QUESTION 2

[10]

Name the claims for compensation that can be instituted against the Road Accident Fund and under which circumstances precisely?

QUESTION 3

[4]

Draft the citation of the Road Accident Fund as the Defendant in a Combined Summons under the Particulars of Claim.

QUESTION 4

[1]

Can a Third Party claim legally be ceded prior to *litis contestatio*? *Litis Contestatio* meaning a civil proceeding in which controversial issues are established and submitted before a Magistrate for examination of fact and judgment.

QUESTION 5

[15]

Your client James Smith, a building contractor in Bloemfontein, Free State informs you that he is facing serious financial difficulties because of the recession in the building industry for the past two years as well as the effect of COVID-19 and the lockdown that followed.

He tells you that he is unable to pay his debts and that some of his creditors have now commenced with legal steps against him. In an effort to pay some of his creditors he sold a number of movable assets.

He has no option other than to close his business, retrench his employees and to take up a job in a construction company. He wishes to surrender his estate.

His remaining assets and liabilities are as follows:

Assets

1. Erf 104 Mangaung Township (subject to ABSA bond)	R2 500 000-00
2. Mercedes Benz (bought on credit agreement)	R 650 000-00
3. Investments and cash savings	R 25 000-00

Liabilities

1. Bond on Erf 104 Mangaung Township	R3 000 000-00
2. Bank overdraft	R1 000 000-00
3. Wesbank credit agreement	R 500 000-00
4. Receiver of Revenue	R 50 000-00
5. Credit card	R 20 000-00
6. Other Creditors	R 56 000-00

Answer the following questions based on the above facts:

- 5.1 Draft only the prayers i.e. the relief sought in the Notice of Motion in the Application for Voluntary Surrender of your client’s estate. (2)
- 5.2 What are the requirements the court may consider to enable the court to grant the order? (4)
- 5.3 Draft only the paragraphs of the Affidavit relating to the posting or affixing of the Notice of Surrender after publication in the Government Gazette and the filing of the debtor’s statement of affairs for inspection. (9)

QUESTION 6 **[4]**

The Uniform Rules of Court regulating the conduct of the proceedings of the several Provincial and Local Divisions of the High Court provide in terms of Rule 43, a spouse may seek relief from the Court in respect of one or more matters. List the matters / instances where Rule 43 is available for a spouse in a matrimonial matter?

QUESTION 7 **[6]**

List any six essential matters which must appear from the minutes of a pre-trial conference by virtue of the provisions of Rule 37(6).

QUESTION 8 **[2]**

You are an attorney and receive instructions from a client to appear on his behalf in the Criminal Court. You establish that you have never appeared before the Magistrate. What do the rules of the profession and ethics require from you before the court proceedings commence?

QUESTION 9 **[5]**

You have to appear on behalf of a client in the Criminal Court and obtain instructions that your client cannot attend the Criminal Court due to the fact that he is hospitalized. What must you do during the Court proceedings to protect the interest of your client? Your client is already on bail.

QUESTION 10 **[2]**

Using the facts of the previous question what would you do if you are not yet in possession of the doctor or hospital's letter?

QUESTION 11 **[5]**

Name the five (5) grounds that have to be considered by the Magistrate to determine whether it is in the interest of justice to grant bail to an accused or to refuse bail.

QUESTION 12 **[11]**

Thabo Seekoei is a 27-year old male and works as a salesman at Jolly Goods. He appointed you as his attorney and provided you with instructions. He was the driver of a BMW motor vehicle with registration letters and numbers HBH 483 FS. He was arrested for drunken driving on 10 April 2020 in Church Street, Bloemfontein whilst he was driving the motor vehicle. His blood was drawn, in accordance with the applicable legislation, stored, dispatched and analysed. The prosecutor made the docket contents available to you.

The prosecutor prepared the main charge of drunken driving with an alternative charge of the alcohol content in the blood exceeding the statutory limits. You discuss the facts with your client, and he provided you with instructions to plead guilty on the alternative charge.

The client's blood result shows that the client's alcohol concentration in his blood was more than the legal maximum of 0.05 gram per 100 ml. The results of your client's blood/alcohol concentration were 0.15 gram per 100 ml.

Draft your client's plea of guilty on the alternative charge. You must also include the heading of the document. Use the facts herein above.

QUESTION 13 **[7]**

Plaintiff was married to Defendant out of community of property. They have since been divorced and now live apart. Plaintiff lent Defendant his motor vehicle as she was getting her vehicle repaired. Defendant refuses to return the vehicle to Plaintiff. Prepare particulars of claim for Plaintiff's declaration excluding the heading and the description of the Parties.

QUESTION 14 **[10]**

14.1 Plaintiff and Defendant enter into a contract in which the Defendant chooses her *domicilium citandi et executandi* at 100 Broad Street, Durban. Plaintiff obtains judgment against Defendant but then discovers she has moved and he cannot find her. He however establishes that she still owns 100 Broad Street, Durban. What are Plaintiff's options for effecting service of a warrant of execution? (2)

- 14.2 Plaintiff gives you a cheque dated five years ago drawn by Defendant and which was dishonoured by non-payment. Can he sue on the cheque without any risk of a successful defence of prescription being raised? (2)
- 14.3 Defendant lent his vehicle to an employee to drive home. Defendant's employee crashed into a stationary vehicle owned by your client. Would your action against Defendant for the cost of repairs to your client's vehicle be successful? Elaborate briefly. (2)
- 14.4 Your client wishes to sue a Defendant in the regional court. His claim is for R430 000. With your client's agreement you abandon R30 000. The Magistrate finds you have proved a claim of R360 000. What amount will you get judgment for? (2)
- 14.5 Your client acknowledges he owes a sum of money to one of two people but does not know which one is entitled to payment. Both are threatening to sue him. What Magistrates court remedy is available to him? (2)

QUESTION 15**[8]**

- 15.1 The following are the particulars in Plaintiff's declaration in a Magistrate's court summons:

- [1] The Plaintiff is J. Jones of 1 Broadway Street, Durban
[2] The Defendant is Mathew Smith a minor of 6 Smith Street, Durban
[3] Defendant's car collided with plaintiff's car on 20th September 2020
[4] Plaintiff's car costs R50 000 to repair.

Wherefore Plaintiff prays judgment for R50 000 plus interest of 18% per annum from 20th September 2020 to date of payment and costs on the attorney and client scale."

List the errors in this declaration. (5)

- 15.2 In a civil trial in the Magistrate's court, your client must prove the value of certain household items. You intend calling a sworn appraiser as an expert to prove the value of the items. List five aspects of testimony you would present to the court by the evidence of the appraiser to establish the value of the items. (3)

- THE END -
