

**ADMISSION EXAMINATION
COURT PROCEDURES
PART 1**

4 NOVEMBER 2020

MEMORANDUM

**PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE
A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF
READING.**

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[10]

In terms of section 1 of the Road Accident Fund Act, 1996 (the "RAF Act") a motor vehicle is defined as "any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle."

The definition identifies three requirements for a vehicle to be classified as a motor vehicle under the Act. The vehicle must be:

1. propelled by fuel, electricity, or gas; (1)
2. designed for propulsion; (1)
3. capable of being driven or operated on a road (1)

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. The requirements set out in the definition of the RAF Act have been met. The reach stacker was designed and equipped to be propelled around the port along roads and over parking and storage spaces. (4)

In **Road Accident Fund v Mbele** (where a pedestrian who was employed as a stevedore at a multipurpose terminal died as a result of injuries sustained when a reach stacker collided into him) the Supreme Court of Appeal the court considered this very issue and was satisfied that the reach stacker could be classified as a motor vehicle having regard to the definition in the RAF Act. The RAF's liability was thus extended to include reach stackers as defined as a "motor vehicle" in section 1 of the RAF Act (3)

QUESTION 2**[10]**

The Road Accident Fund provides compensation for:

- medical expenses **(1)** that result from a motor vehicle accident **(1)**
- funeral expenses **(1)** in the case of a death caused by an accident **(1)**
- general damages for pain and suffering **(1)**, provided you suffered a serious injury (as determined with reference to set criteria), have lost an unborn child or have sustained serious disfigurement, mental impairment or the loss of a bodily function **(1)**
- lost earnings **(1)**, if you were unable to work as a result of an accident **(1)**
- loss of support **(1)**, if a household's main income provider was killed in a road accident that resulted from someone else's negligence **(1)**.

QUESTION 3**[4]**

The Defendant is the Road Accident Fund **(1)**, a juristic person **(1)** created in terms of The Road Accident Fund Act, Act 56 of 1996 as amended **(1)**, (hereinafter referred to as "the Act"), with the legal capacity to institute and defend legal action, with its main place of business at 38 Ida Street, Menlo Park, Tshwane, Gauteng **(1)**.

QUESTION 4**[1]**

No (1)

(Fund v Mothupi [2000] 3 All SA 181 (SCA), 2000 (4) 38 (SCA))

QUESTION 5**[15]**

- 5.1 (i) That the surrender of the Applicant's estate is accepted (1).
(ii) That further or alternative relief is granted to the Applicant (1).
- 5.2 (i) The debtor's estate is, in fact, insolvent (1).
(ii) The debtor owns realisable property of sufficient value to defray all costs of the sequestration which will, in terms of the Act, be payable out of the free residue of his estate (1).
(iii) Sequestration will be to the advantage of creditors (1).
(iv) All formalities as required in the Insolvency Act have been complied with (1).
- 5.3 (i) I caused copies of the notices to be posted to every one of my creditors whose address I know or have been able to ascertain (1)
I annex, marked "A" proof of postage (1/2)
- (ii) I caused a copy of the notices to be posted to _____
which is the registered trade union that, to my knowledge, represents my employees (1) I annex, marked "B" proof of postage. (1/2)

- (iii) I caused a copy of the notices to be affixed to a notice board inside my business premises and to which my employees have access **OR** I caused a copy of the notices to be affixed to the front gate of my business premises **OR** I caused a copy of the notices to be affixed to the front door of the premises from which I conducted my business immediately prior to the bringing this Application (1).

I annex, marked “C” an Affidavit by _____ confirming that this notice was given in the manner described (1/2).

- (iv) I caused a copy of the notices to be posted to the South African Revenue Service (1) I annex, marked “D” proof of postage (1/2).
- (v) My statement of affairs (Annexure “A1” lay for inspection at the office of the Master in Bloemfontein (1) and the office of the magistrate of the district of Mangaung (1) for a period of fourteen (14) days as from _____ being the date mentioned in the notice of surrender. I annex certificates from the Master and Magistrate, marked “E” and “F” respectively (1).

QUESTION 6 **[4]**

- | | | |
|----|--|-----|
| 1. | Maintenance pendente lite. | (1) |
| 2. | a contribution towards the costs of a pending matrimonial action | (1) |
| 3. | interim care of any child | (1) |
| 4. | interim contact with any child | (1) |

QUESTION 7 **[6]**

Any six(6) of the following:

- The date, place and duration of the conference and the names of the parties present (1)
- The nature of prejudice and non-compliance if any (1)
- That every party claiming relief has requested such party’s opponent to make a settlement proposal and that such opponent has reacted thereto (1)
- Whether any issue has been referred by the parties for mediation, arbitration or decision by third party (1)
- Whether the case should be transferred to another court (1)
- Which issues should be decided separately (1)
- Admission made by each party (1)
- Any dispute regarding the onus of proof or duty to begin (1)
- Which documents will, without further evidence, serve as evidence of what they purport to be. (1)
- Which party shall be responsible for the copying and preparation of documents. (1)

QUESTION 8 **[2]**

You approach the prosecutor (1) and request him/her to accompany you to the Magistrate and to introduce you to him/her (1).

QUESTION 9 **[5]**

- 9.1 Obtain a letter from the doctor/hospital where the client is being treated which can confirm it. (1)
- 9.2 Show the letter to the prosecutor. (1)
- 9.3 Request the Magistrate to receive the letter. (1)
- 9.4 Request the Court to issue a warrant but the execution to be held over until a future date. (1)
- 9.5 Postpone the case to a next date. (1)

QUESTION 10 **[2]**

- Convey to the Court that your instructions are that your client is in hospital. (1)
- Inform the Court that the doctor or hospital's letter will be available at the next Court appearance. (1)

QUESTION 11 **[5]**

- 11.1 The likelihood that the accused will try to evade his trial. (1)
- 11.2 The likelihood that the accused will try to influence and/or intimidate the potential state witnesses or conceal/destroy evidence. (1)
- 11.3 The likelihood that the accused will undermine or jeopardise the objectives of the proper functioning of the criminal justice system, including the bail system. (1)
- 11.4 The likelihood that the accused will endanger the safety of the public and/or any particular person or will commit a schedule 1 offence. (1)
- 11.5 The likelihood that in exceptional circumstances, the release of the accused will disturb the public order or undermine public peace or security. (1)

QUESTION 12 **[11]**

IN THE MAGISTRATES' COURT FOR THE DISTRICT OF BLOEMFONTEIN
HELD AT BLOEMFONTEIN ^(½)

Case number: 123/10 ^(½)

THE STATE (½)

VS

THABO SEEKOEI (½)

ACCUSED

STATEMENT IN TERMS OF SECTION 112(2) OF ACT 51 OF 1977, AS AMENDED

1. I admit that I am the above-mentioned accused. (1mark)
2. I admit making this statement voluntarily whilst at my sober senses without any unduly influence. (1mark)
3. I admit that the contents of the charge sheet are correct and wish to plead guilty on the alternative charge. (1mark)
4. The incident happened on the 10th April 2020 along a public road namely Church Street, Bloemfontein in the Court's jurisdiction. (1mark)
5. I admit that I was the driver of the BMW motor vehicle with registration letters and number HBH 483 FS. (1mark)
6. I admit that my blood was drawn, stored, dispatched and analysed in accordance with the statutory prescripts. (1mark)
7. I admit that the results of the blood alcohol test were 0.15 gram per 100 ml, which is more than the statutory maximum of 0.05 gram per 100 ml. (The laboratory report is attached as Annexure "A") (1mark)
8. I admit that I knew that I should not have driven but that I proceeded doing so. I was aware of what I was doing and that it was against the law. (1mark)

SIGNED at BLOEMFONTEIN this day of DECEMBER 2020. (½mark)

T SEEKOEI (½mark)

QUESTION 13

[7]

1. Plaintiff is the owner of a motor vehicle being a 2010 Toyota sedan registration number ND 123.
2. Defendant is in possession of the vehicle.
3. Alternatively, if defendant is not in possession of the vehicle, she disposed of it while was aware of Plaintiffs ownership of the vehicle.

4. The value of the vehicle is R200 000.00
5. Despite demand Defendant refuses to give possession of the vehicle to the Plaintiff. Wherefore Plaintiff prays judgment for
- (a) return to the Plaintiff of the vehicle alternatively
 - (b) payment of the sum of R200 000.00
 - (c) interest *a temporae morae*

QUESTION 14 **[10]**

- 14.1 Direct the Sheriff serve the warrant at defendants domicilium executandi i.e. at 100 Broad street. (2)
- 14.2 The prescription period for a dishonoured cheque is six years after presentation. Yes. (2)
- 14.3 There is no allegation that the employee was driving in the course and scope of his employment. No. (2)
- 14.4 The reduction in your claim comes off the amount abandoned. Judgment for R360 000. (2)
- 14.5 Interpleader. (2)

QUESTION 15 **[8]**

- 15.1 The errors are as follow:
- The plaintiff's full name, gender, occupation and his residential address or his place of business
 - An unassisted minor cannot be sued – no allegation that he was emancipated or assisted.
 - No allegation that Plaintiff owns the vehicle he was driving.
 - Repair costs not stated to be fair and reasonable and no indication of the pre-accident value of vehicle.
 - Interest rate wrong – interest calculated from incorrect date
 - Costs on ordinary scale – no reason to justify attorney-and-client scale (5)
- 15.2 The expert witness must testify on:
- (a) his occupation
 - (b) his expertise (experience)
 - (c) he inspected the items
 - (d) his opinion of the value (3)

TOTAL: [100]