

# ATTORNEYS' EXAMINATION

## PART 1 COURT PROCEDURES

15 MARCH 2022

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** **[2]**

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Define the term “convey” as defined under The Road Accident Fund Act 1996, No. 56 of 1996.

**QUESTION 2** **[4]**

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Who is an “employee” in terms of The Compensation for Occupational Injuries and Diseases Act (COIDA) 130 of 1993, Section 56(1)(b), (c), (d) and (e)?

**QUESTION 3** **[3]**

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The Road Accident Fund may make an advance payment to a third party, out of the amount to be awarded to such a third party in respect of ... Name them.

**QUESTION 4** **[2½]**

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- 4.1 The Road Accident Fund has \_\_\_ days from the date of lodgement to investigate the claim. (½)
- 4.2 A claim shall be deemed to be valid in law in all respects if the Road Accident Fund does not within \_\_\_ days from date on which a claim was sent by registered post or delivered by hand, objected to the validity thereof. (½)
- 4.3 No claim is enforceable by legal proceedings commenced by a summons served on the Fund before the expiry of a period of \_\_\_ days from the date on which the claim was lodged, and before all the requirements of the Fund as set out in Section 19(f) of the RAF Act have been complied with. (½)
- 4.4 The owner and the driver of a motor vehicle involved in an accident where personal injury or death has taken place to, if reasonably possible, must within \_\_\_ days after the accident furnish the Road Accident Fund on the prescribed form with details of the occurrence and also to furnish statements as requested irrespective of who is to blame. (½)
- 4.5 After the third party has lodged a claim in compliance with Section 24 and the Road Accident Fund, Form 4, report timeously, the RAF or agent must in terms of Section 3(3)(dA), within \_\_\_ days from the date on which the serious injury assessment report was sent by registered post or delivered by hand to the Fund or to the agent who in terms of Section 8 must handle the claim, accept or reject the serious injury assessment report or direct that the third party submit himself or herself to a further assessment. (½)

**QUESTION 5** **[7½]**

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Mr Shabangu drove his Mazda 323 Sedan down Straight Street when Mrs Malinga skipped a red robot at a high speed, while under the influence of alcohol, with her Porsche sport vehicle, and collided with Mr Shabangu’s vehicle. As a result of the accident Mr Shabangu lost the use of his legs finding himself permanently in a wheelchair thereby losing his job and taking into regard that he was the main breadwinner of his family consisting out of three (3) wives and nine (9) minor

children. He now lives of a monthly government grant. During this collision, Mr Shabangu was transporting three (3) of his minor children to school, Lindi, Joe and Thabiso. Lindi and Joe sustained minor injuries, but Thabiso died instantly on collision. One of his wives, Lora, was also in the vehicle and she sustained serious head trauma due to the collision.

- 5.1 What are the requirements that has to be met by Lora as a passenger to have an unlimited claim against the Road Accident Fund? (2)
- 5.2 Into who's shoes does the RAF step to determine liability, Mr Shabangu's or Mrs Malinga's? (2)
- 5.3 What form will Mr Shabangu have to submit to the RAF if possible, within 14 days from the collision? (1)
- 5.4 Is the RAF obliged to compensate Mr Shabangu regardless of the fact that Mrs Malinga was under the influence of alcohol? (½)
- 5.5 Is the RAF entitled, without taking cession of the right of action, to recover from Mrs Malinga. (½)
- 5.6 Does the Plaintiff (Mr Shabangu) have the right to recover taxed party and party costs from the RAF if an agreement cannot be reached without an order by the Court and without having to issue a summons. (½)
- 5.7 If Lora is alleging or claiming that she was conveyed who bears the onus of proof thereof. (1)

#### **QUESTION 6**

**[6]**

Sam takes his father's motor vehicle without permission to teach his seven (7) year old brother, Tom, how to drive. Whilst Tom was driving on a public road, he lost control and collided with a luxury vehicle, resulting in extensive damage to the said motor vehicle. The owner of the luxury vehicle sues Tom and Sam for the damage to his motor vehicle as first and second defendant, respectively, holding both jointly and severally liable.

Advise the parents of Sam and Tom on the rights of both their children bearing in mind The Apportionment of Damages Act 34 of 1956, as amended.

#### **QUESTION 7**

**[14]**

Your client Ansha Sayed informs you that in terms of a written agreement she bought and received certain goods from Contra Suppliers (Pty) Ltd and that the purchase price of R1,000,000 is due and payable. However, she has now received a letter and supporting documents from attorneys acting on behalf of Security Credit (Pty) Ltd informing her that it lays claim to payment of the amount on the grounds that the claim has been ceded to Security Credit (Pty) Ltd.

Upon making enquiries at Contra, you are informed that the cession of book debts served as security at one stage but that it no longer does and was duly cancelled. It is clear from correspondence that you receive from the parties' legal representatives

that there is a dispute between the parties. Your client is willing and able to pay but is uncertain to whom of these claimants the payment must be made.

- 7.1 What will you do to safeguard your client's interest? (1)
- 7.2 Draft your client's affidavit. You may use such additional facts as you deem necessary but you need not include the attestation clause of the Commissioner of Oaths. (13)

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**QUESTION 8** [7]

In terms of the Rules of both the High Court and the Magistrates' Court an exception may be raised on the ground that the particulars of claim are vague and embarrassing or fails to disclose a cause of action.

Answer the following questions with reference to the ground that it is vague and embarrassing as it states that "Defendant's conduct resulted in a breach of contract or that some or other unlawful act was perpetrated against the Plaintiff":

- 8.1 Within which period must the exception be raised? (1)
- 8.2 What procedural step is necessary where a party intends to raise the exception that the pleading is vague and embarrassing? (1)
- 8.3 Draft only the content of the necessary notice that will give effect to what you have in mind in 8.2 above. You may omit the heading and particulars of the attorneys. (5)

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**QUESTION 9** [4]

You act on behalf of the defendant in each of the following defended actions. What procedural step would you take in each of the following instances?

- 9.1 Your instructions are that in respect of the claim against your client there is another person, who is not a party to the proceedings who has indemnified your client. (1)
- 9.2 The plaintiff who sued by way of a simple summons fails to file his declaration and your client wants to have the matter finalised as soon as possible. (1)
- 9.3 You have raised a special plea pertaining to the lacking of jurisdiction in the Magistrate's Court. The magistrate dismissed the special plea. You are convinced he is wrong. (1)
- 9.4 Your opponent's particulars of claim do not comply with the requirements for the drafting of pleadings as set out in Rule 18. (1)

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**QUESTION 10** [7]

Your client, Mr Speedy, provides you with a charge sheet in terms whereof he is charged with exceeding the speed limit in that he travelled at a speed of 160 kilometres per hour in a 60 kilometre zone in his motor vehicle just outside Bloemfontein on the 5<sup>th</sup> of March 2021.

When he was stopped by traffic officials he was in the company of his wife and was en route to his aged mother's home to fetch and take her to the hospital as she had suffered a severe asthma attack and was in a critical condition. He advised the traffic official accordingly who told him that he had heard that story many times before and was going to issue the summons in any event.

Using the above information and any other factors that may be relevant draft representation to the relevant authority.

**QUESTION 11** **[7]**

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On receiving instructions to defend a client on a charge of fraud you come to the conclusion that the charge sheet does not comply with the requirements of the Criminal Procedure Act 51 of 1977, as amended.

- 11.1 State the possible grounds on which you will be entitled to object to the said charge. (5)
- 11.2 What procedure will you follow to have the objection dealt with by the court? (2)

**QUESTION 12** **[7]**

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You are instructed to prepare a plea and sentence agreement on behalf of your client.

- 12.1 What are the two basic requirements that have to exist before the agreement can be considered? (3)
- 12.2 Who must participate in the proceedings? (2)
- 12.3 In what format should the agreement be contained? (1)
- 12.4 What role does the court play in the negotiations? (1)

**QUESTION 13** **[4]**

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The police have, subject to constitutional prescripts, wide powers to conduct investigations into alleged offences. Name these powers.

**QUESTION 14** **[3]**

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Your client instructs you to sue M N Trust. The trust has two trustees, Mr M and Mrs N. Draft the paragraph(s) of the particulars of claim giving details of the defendant(s).

**QUESTION 15** **[3]**

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Your client is sued by Brown's Fisheries. She instructs you to defend the action. She asks you to find out who the person is that is suing her as she anticipates getting an

order in her favour for costs. Draft the document you would prepare designed to clear up this uncertainty. You may exclude the heading and ending.

**QUESTION 16** **[3]**

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You issued summons for the price owing for goods sold and delivered. The defendant entered an appearance to defend.

- (i) At what stage in the proceeding may you apply for summary judgment? (1)
- (ii) What documents would you prepare to make this application? (2)

**QUESTION 17** **[5]**

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A and B own and farm two adjoining farms. A fire broke out on A's farm and spread onto B's farm. Farm B had inadequate fire breaks as required by law. As a consequence of the fire B suffered a loss of R200 000. A admitted liability for the fire but pleaded the damages would have been less had there been adequate fire breaks. A then tendered, in terms of Rule 18, the sum of R90 000 and costs to date. B did not accept the tender. The case went to trial. The Magistrate agreed with A about the firebreaks and gave judgment for B in the sum of R80 000 and costs. A's attorney drew the attention of the court to the tender.

- (i) What effect would this have on the costs order? (3)
- (ii) For what capital amount should judgment have been given? (2)

**QUESTION 18** **[4]**

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At a trial in the Magistrate's court concerning a motor collision the drivers of the two motor vehicles were the only two witnesses. They gave completely different versions of what happened.

- i) What judgment is the court likely to give? (2)
- ii) An independent witness hears of this judgment. He confirms he was looking out of his window and he saw the whole incident. His recollection of the events fully supports the plaintiff's version and categorically refutes the defendant's version. What ought the plaintiff do to recover his damages? (2)

**QUESTION 19** **[7]**

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Bongani wants to erect a garage at his home. He entered into a written agreement with a builder, Additions and Alterations Company (Pty) Ltd (company registration number 123/99). The contract reflects the name of the builder as Additions and Alterations (Pty) Ltd. The contract provides for Bongani to pay a deposit of R30 000 on signature, a further R30 000 when the work was half done and the balance of the contract price of R60 000 when the job was completed.

The work commenced and Bongani paid R30 000 and at the request of the builder, a further amount of R20 000. At this time the contractor abandoned the work having

obtained an urgent lucrative contract elsewhere. Bongani cancelled the contract by letter. Bongani then engaged another builder who agreed to complete the contract for R110 000. Bongani instructs you to sue the original contractor for the amount of his loss.

Draft the particulars of claim excluding the heading but including the ending.

Use your own information where relevant.

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- THE END -

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