

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

16 AUGUST 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 if 50% or more is attained. If a candidate achieves a score from 40% and below 50% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1**[5]**

You act on behalf of Mr Do Little, a 51-year-old German national who was injured in a motor vehicle collision in South Africa on the 21st of March 2021. He sustained injuries in the collision which caused brain damage which rendered him permanently unemployable.

The *curatrix ad litem*, namely Mrs Advocate, claimed compensation from the Road Accident Fund. She claimed loss of future earnings (or earning capacity) of R2 000 000,00. Apart from running a successful magazine-subscription business in Germany, Mr Do Little lacked any professional or technical qualifications or experience. Moreover, his business was run on a massive fraudulent tax-evasion basis, with Mr Do Little over the years having under-declared his earnings and claimed fictitious expenses amounting to millions of euros.

Bearing in mind the above, is Mr Do Little's claim for the future loss of earnings disqualified? Explain your answer.

QUESTION 2**[4]**

You represent the Road Accident Fund ("RAF").

The plaintiff lodged a claim on the 4th of August 2020 in terms of Section 24(1) of the RAF Act. Summons was served on the RAF on the 21st of November 2020.

Draft the special plea necessary to raise the non-compliance with Section 24(6) of the RAF Act, as amended, which arises from the circumstances above. Omit headings and citation and draft only the necessary pleading.

QUESTION 3**[4]**

List the documents one would be required to submit to the RAF when lodging a claim?

QUESTION 4**[12]**

You institute a claim against the Road Accident Fund (RAF) on behalf of your client, Mrs Atlantic, whose husband died as a result of injuries sustained in a motor vehicle collision. She wishes to claim for loss of support for her minor child and herself as a result of the death of her husband who was the breadwinner.

Mrs Atlantic was not employed during the subsistence of the marriage. She took care of the minor child while her late husband worked as a pharmacist. Mrs Atlantic is 56 years old, and the child is 15 years old. Mrs Atlantic has no educational or tertiary qualifications and possesses no skills or experience which will help her secure employment.

Mrs Atlantic has no source of income and no financial means to rely on while you are pursuing the claim against the RAF. The local church, Charity for All, decides to assist Mrs Atlantic by giving her the sum of R25 000,00 out of generosity.

- 4.1 Do you take cognisance of this amount when quantifying the damages? Explain with specific reference to the collateral source rule, and give reasons for your answer. (3)
- 4.2 In point form set out the averments that have to be made in the particulars of claim to your client's summons relating to the claims for loss of support for your client and the minor child. (9)

QUESTION 5 **[6]**

Name three instances where a notice of bar may be served on a party who has failed to file his/her pleadings. In your answer refer to the pleading required as well as the time periods that should have elapsed before the notice of bar can be served.

QUESTION 6 **[3]**

You entered appearance to defend on behalf of a defendant who informs you that there is a document in possession of the plaintiff that you will require to enable you to draft the defendant's plea.

- 6.1 Which notice do you serve in order to enable you to draft your plea? (1)
- 6.2 What must be stated in the notice to enable you to obtain the said document. (2)

QUESTION 7 **[10]**

After the close of pleadings, you realise that the plea that you drafted contains an error. Paragraph 4 *inter alia* reads that "payment was made on 4 August 2021". The correct date is 4 October 2021. You advise your client that you will proceed with a notice to amend.

- 7.1 Name three instances when pleadings can be said to be closed. (3)
- 7.2 Draft only the contents of your notice of intention to amend. You may omit the heading and ending of the notice. (6)
- 7.3 Up to what stage in an action may a pleading be amended? (1)

QUESTION 8 **[6]**

You act on behalf of a plaintiff in a High Court matter. After the close of pleadings, you served and filed a request for further particulars to enable you to prepare for trial. The time to furnish the particulars have lapsed and despite a letter written to your opponent reminding him that you are awaiting the particulars and are being prejudiced in your preparation for trial nothing has been forthcoming. You decide to launch an interlocutory application.

- 8.1 Draft only the notice of motion. You may omit the heading and ending. (5)

- 8.2 If you obtain the order and the opposition still fails to adhere to the court order which further step will you take? (1)

QUESTION 9 **[13]**

- 9.1 At which stage of the proceedings may the Accused request further particulars to a charge or any matter alleged in that charge and how should the request be made? (2)
- 9.2 If the State prosecutor fails or neglects to furnish the requested particulars what remedy is available to the Accused? (2)
- 9.3 What is the effect of the particulars entered on the record after being so furnished by the prosecutor? (1)
- 9.4 Your client has been summonsed to appear in the Magistrate's Court of Cape Town having been charged with culpable homicide, it being alleged that he caused the death of X in a motor vehicle collision. The charge sheet avers only that your client is guilty of culpable homicide:

"...in that on or about the 24th December 2021 and in the district of Cape Town, the accused, being the driver of a motor vehicle, wrongfully and unlawfully caused the death of X".

Your client advises you that on the date that it is alleged the offence occurred he was in Mauritius and accordingly bears no knowledge as to the incident.

Draw a request for further particulars, including the heading and ending. (8)

QUESTION 10 **[3]**

You receive an instruction from Joseph and Esau who have been charged with committing an armed robbery.

- 10.1 During the first consultation with both accused prior to trial Joseph avers that Esau drove the getaway car. Esau vehemently denies this accusation. What would you be obliged to do in the circumstances? (2)
- 10.2 Assume that you act on behalf of both accused and during the course of the trial Esau surprisingly states that Joseph was the driver of the getaway car which Joseph denies. What would you do under these circumstances? (1)

QUESTION 11 **[6]**

As attorney for the accused you brought an application for bail which was unsuccessful. The only reason provided by the magistrate in refusing bail was that he believed that there was a possibility that the accused would attempt to influence the complainant, and in so doing would jeopardise the State's case.

In the interim you have received a copy of the police docket and notice an affidavit by the investigating officer, that the complainant has since emigrated and cannot be traced. The date of trial is 6 months away.

Describe the steps that you would take to have your client released on bail. (A bail appeal is excluded).

QUESTION 12 **[3]**

Briefly explain how the police acquire knowledge that an offence has been committed.

QUESTION 13 **[12]**

Which summons is most suitable to be used in the Magistrate's Court in the following circumstances? Name or describe the summons and indicate which Magistrates' Court/s has/have jurisdiction:

- 13.1 The lessee is in arrears with R50 000,00 rental and your client wants assurance that the goods on the rental premises are available to be able to sell in execution once judgment is obtained. (2)
- 13.2 The person to be sued acknowledged an unconditional obligation to pay the debt of R375 000,00 in a promissory note or similar document. (2)
- 13.3 The person to be sued injured your client in an unwarranted attack. Your client is instituting a claim for R100 000,00 general damages and R20 000,00 medical costs. (2)
- 13.4 The Sheriff has attached goods in possession of the judgment debtor to the value of R300 000,00 but someone other than the judgment debtor claims that the goods belong to them. (2)
- 13.5 Mrs X wants to divorce Mr X, her husband of 15 years. (2)
- 13.6 A conveyancer asks you what to do. She has concluded a registration of transfer of immovable property in the Deeds Office and must pay out the commission to the estate agent. Two estate agent firms are however claiming that the full commission of R80 000,00 on the sale, is due to them. She is concerned that should she pay one, the other will sue for the same amount. (2)

QUESTION 14 **[2]**

Ntemba and Mvinda, both minors, are involved in a motor vehicle collision. Ntemba was driving the vehicle and she allowed Mvinda to sit on her lap and hold the steering wheel. Mvinda swerved into an oncoming vehicle and both vehicles were extensively damaged. The owner of the other motor vehicle wants to sue both Ntemba and Mvinda jointly and severally. How old must they be to have capacity to be sued? Discuss briefly.

Assume the necessary facts and **draft** the Particulars of Claim in an action for damages by the owner of a motor vehicle. The vehicle was damaged, and the damages caused by the defendant during a motor vehicle collision. At the time, the defendant was driving his own vehicle and drove into the plaintiff's vehicle after skipping a red traffic light. As a result of the collision, the vehicle of the plaintiff was damaged beyond repair. It was totally written off.

Supplement the abovementioned facts with your own further information, as may be required.



- THE END -
