

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

23 AUGUST 2023

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**[10]**

Explain the essential elements to succeed with a claim in terms of the current Road Accident Fund (RAF) legislation. (10)

QUESTION 2**[15]**

Mr and Mrs Bill Branson are involved in an accident. Mr Branson was driving at the time. A truck crashed into the rear of Mr Branson's vehicle whilst he was stationary at a stop street. The identity of the truck driver was established. The accident occurred on 2nd of September 2020. Mr Branson broke his spine in the accident and, as a result of the injuries he sustained in the accident he subsequently died on 15th of April 2021. The Bransons have one minor child, Paul, who turned 10 on 14th March 2021.

You are instructed to lodge a claim for Mr Branson as a result of the injuries sustained in the collision as follows and you also institute action after the 120-day period has expired. In the summons you claim the following damages:

General damages	R 250 000.00
Future Medical Expenses	R 150 000.00
Past Hospital Expenses	R 150 000.00
Past loss of earnings	R 200 000.00

Prior to the close of pleadings, you receive an offer of settlement from the Road Accident Fund in the sum of R400 000.00, in full and final settlement of the claim. Upon calling for your client's instructions you are informed by your client's wife that he has passed away due to the injuries as sustained in the accident.

Answer the following questions with reference to the above factual scenario:

- 2.1. Can you as Attorney accept the offer from the Road Accident Fund as you are in possession of a Power of Attorney in your favour? Motivate your answer. (3)**
- 2.2. Does Paul have a claim against the Road Accident Fund? Explain your answer. (2)**
- 2.3. When does prescription start running in respect of Paul's claim against the RAF? (3)**
- 2.4. Assume that Mr and Mrs Branson were married in terms of a customary union on the 15th of December 2009. However, Mr and Mrs Bill Branson thereafter contracted a civil marriage with antenuptial contract on 22nd February 2012. Will Paul still be able to claim from the Road Accident Fund? Explain your answer. (3)**

- 2.5. Will the RAF be correct if it applies an apportionment of damages to Paul's claim on the basis that some negligence was attributable to his father in the collision? Motivate your answer fully. (4)**

QUESTION 3

[21]

You are consulted by, John Jones, an adult male director of ABC Enterprises (Pty) Ltd. and instructed to issue summons against the Minister of Police and one Captain Philip Nel. The facts of the matter are as follows:

On 15 May 2023 and at the intersection of White and Red Streets, Pretoria, Gauteng a collision took place between a SAPS vehicle XYZ 456 GP, driven by Captain Nel on official duty and a Maserati motor vehicle with registration number ABC123 GP, the property of ABC Enterprises (Pty) Ltd. driven by Jones. The collision was caused by the negligence of Nel who failed to stop at a red traffic light. Your client's vehicle was found not to be economically repairable i.e., was "written off". Its pre-collision value was R900 000.00.

In terms of the Institution of Legal Proceedings against Certain Organs of State Act No. 40 of 2002 action may not be instituted against an organ of state unless prior notice was given to the state organ.

- 3.1 Within which time period from the date of the debt arising must the notice referred to above be given? (1)**
- 3.2 Are there, in terms of the above, any remedy if you are consulted after the expiry of the period referred to in 3.1? (1)**
- 3.3 What must the notice referred to set out? (2)**
- 3.4 How many days must lapse after the notice was served on the organ of state before process may be served on it? (1)**
- 3.5 Does the Act apply in respect of debts arising from contractual liability? (1)**
- 3.6 Using such additional facts as you deem necessary to comply with the Rules, draft the Particulars of Claim in accordance with your instructions. You may omit the heading and ending. (15)**

QUESTION 4

[4]

What interim relief may you seek in a divorce matter where your client is unemployed and have no source of income to maintain herself and the minor children born from the marriage and left in her care by her husband. She also is not in a position to pay her legal fees. (4)

QUESTION 5**[24]**

Frank James, a 53-year-old male, has been charged with murder and is in custody.

He provides you with the following information:

He is employed as a teacher at Gelvandale High School in Bloemfontein and resides at 1 Church Street, Bloemfontein. He is married and two children, both minors, have been born of the marriage. He is not involved in any other criminal matter and does not have a criminal record. He tells you that he has been arrested by the Bloemfontein police and is due to appear in the Bloemfontein Magistrate's Court.

- 5.1 He instructs you to approach the Court and apply for bail. You have decided to let him make a statement under oath in support of the said application. Draw the said statement from the information at your disposal and any further averments necessary to persuade the Court to grant bail. The State does not oppose the application. During your conversations with the Prosecutor, you are informed that the charge is a Schedule 5 offence. Include the heading and ending. (10)**
- 5.2 Frank is duly convicted of murder. Discuss the factors the Court will consider in sentencing him. (6)**
- 5.3 Frank instructs you to address the Court in mitigation of sentence. List the factors you will present to Court in mitigation of sentence. Please use the above facts, as well as any additional facts you will present to the Court. (8)**

QUESTION 6**[1]**

Frank James is convicted in the District Court. Can the case be transferred to the Regional Court for sentencing? (1)

QUESTION 7**[4]**

Plaintiffs' Attorney is preparing for trial in the Magistrate's Court in a motor vehicle collision claim.

- 7.1 What type of evidence should the Plaintiff lead to prove the damage to his vehicle? (2)**
- 7.2 What procedural steps must the Plaintiff first take to enable him to lead such evidence? (2)**

QUESTION 8**[5]**

Your client suffered injuries when she fell into a pothole. You act as her Attorney and establish that the City of Cape Town is responsible for maintaining the road where the pothole is located.

Draft the letter of demand on behalf of your client for the institution of legal proceedings. (5)

QUESTION 9**[3]**

You act for a client who was found guilty of common assault in the Magistrates' Court. The Magistrate sentenced your client effectively to 2 years imprisonment without the option of a fine. Your client instructs you to lodge an appeal against the sentence.

9.1 What are your next steps? (1)

9.2 List the documents to be filed with the Court in taking the next steps? (2)

QUESTION 10**[6]**

Your client, Mr A, concluded a commercial lease agreement with Mr B. Your client fell in arrears with the rental payments and Mr B managed to change the locks and lock the leased premises during your client's absence.

10.1 What are your next steps? (1)

10.2 Draft the notice to be filed with the Court in taking the next steps? Omit the affidavit accompanying the notice. (5)

QUESTION 11**[7]**

Your client provides you with a copy of a default judgment granted against him. He explains that no summons was served on him, and he now wants to defend the matter.

Draft the content of a notice in an application to rescind the judgment of a Magistrates' Court. Include the heading, content and ending of the notice to be filed. (7)

- THE END -
