

ADVOCATES' EXAMINATION

PAPER 1

MOTION COURT PROCEEDINGS, AND INFORMATION AND COMMUNICATIONS TECHNOLOGY

Regulations 7(9)(b) and 7(9)(i)

6 SEPTEMBER 2023

09:00 – 10:15

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answer book during this period. This is a one hour exam.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are not awarded in accordance with the length of your answer but in accordance with the insight you demonstrate in your answer.
3. Please write only in pen on the right-hand pages, the left-hand pages must only be used for your own notes.
4. A pass for this paper is 50%. Candidates will be required to do an oral if a candidate achieves from 40% to 49%.
5. The legal writing and drafting paper (paper 5) does not have any orals.

Read all the text below and answer all the relevant questions.

Total marks [50]

QUESTION 1 **[4]**

What must an Applicant establish for a Court to grant an interim interdict?

QUESTION 2 **[4]**

How does a Court apply the test for the balance of convenience between the parties?

QUESTION 3 **[2]**

The Court has a general discretion to refuse a final interdict even when the Applicant has satisfied the test for a final interdict. Is that statement correct or incorrect?

QUESTION 4 **[5]**

Is it permissible to launch a *mandament van spolie* without notice to the spoliator? Motivate your answer.

QUESTION 5 **[1]**

Your Attorney is embarrassed. He made an error preparing his client's answering affidavit. He failed to draft a clause to deny the standard clause of the Applicant's affidavit where the Applicant stated:

"The facts contained herein are both true and correct."

You may assume that your Attorney drafted an affidavit for his client in which each fact alleged by the Applicant was diligently and correctly answered. What is your advice in the circumstances?

QUESTION 6 **[14]**

What would your advice be to your Attorney if the answering affidavit he prepared failed to deny the essential allegations in the Applicant's case? You may assume that the Applicant has not yet delivered any replying affidavit.

QUESTION 7**[10]**

Your Attorney is perplexed. His client is the lessor of a factory in an industrial area of Durban. The lessee is a manufacturer of solar panels. The lessee failed to pay its rental for the last month. The written lease stipulates that the lessor may cancel the lease forthwith without notice if the lessee fails to pay its monthly rental.

- Yesterday, the lessor cancelled the lease;
- Today the lessor received a letter from the lessee's Attorney;
 - The lessee's Attorney requires the application of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 ("PIE Act");
 - The lessee's Attorney states it is common cause that the security guard for the lessee lives on site;
 - According to the lessee's Attorney that fact renders the case subject to residential evictions, not commercial evictions.

What advice will you give your Attorney in these circumstances?

QUESTION 8**[5]**

You know the procedural law of South Africa well. For years you have learned that if you foresee a dispute of fact on material issues between litigants, you must use action proceedings, not motion proceedings.

However, there are cases in which you are obliged to use motion proceedings even though you anticipate irresolvable disputes of fact. List at least five such cases.

QUESTION 9**[5]**

Is it correct that in South African law people are able to conclude contracts by email without the use of an advanced electronic signature as defined in the Electronic Communications and Transactions Act No. 25 of 2002? Motivate your answer.