

ADVOCATES' EXAMINATION

PAPER 2

TRIAL COURT PROCEEDINGS AND ALTERNATIVE DISPUTE RESOLUTION
Regulations 7(9)(b) and 7(9)(i)

6 SEPTEMBER 2023

14:00 – 15:15

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 **[2]**

How does one make an arbitration award an Order of Court?

QUESTION 2 **[3]**

When an arbitration award is made an Order of Court, does that order render the arbitration proceedings and arbitration evidence public record? If yes, why? If no, why? Motivate your answer.

QUESTION 3 **[5]**

What is the main purpose of an exception? What must the excipient establish to satisfy the Court that the exception needs to be upheld? Motivate your answer.

QUESTION 4 **[3]**

Is a Plaintiff entitled to take exception against a Defendant's plea? If yes, why? If no, why? You must motivate your answer.

QUESTION 5 **[10]**

Your Attorney is new in practice. She wants to know if she must list all the emails, SMS messages, WhatsApp messages and letters that were communicated between the Plaintiff and the Defendant in the schedules to the discovery affidavit?

- Advise her carefully on the purpose of discovery, (4) and
- What she needs to discover, (3) and
- In which of the schedules of the discovery affidavit such matters need to be listed. (3)

QUESTION 6 **[10]**

In a trial, why are you generally not permitted to ask leading questions when you are leading your own witness in examination in chief? When are you permitted to ask leading questions in examination in chief?

QUESTION 7**[5]**

There are five key words (in every language) which you may use to introduce a question to your witness in examination in chief which will assist you not to use a leading question. What are those five key interrogative words?

QUESTION 8**[12]**

Your Attorney gives you a statement from his client concerning how the motor vehicle collision occurred. The client, Mr Martin Tshabalala, says:

- “I was driving in Orlando West, Soweto with seven eager tourists from France and Cameroon in Vilakazi Street from Nelson Mandela’s house, which is a museum today, in the direction of the Sakhumzi Restaurant.
- We were hungry. We wanted to stop and have lunch at Sakhumzi. It was nearly noon. Neither my passengers nor I had drunk any alcohol at all.
- As we approached the restaurant, a tour coach from Exciting Tours (Pty) Ltd, which was driving in the opposite direction past the house of Desmond Tutu towards the house of Nelson Mandela, turned into my lane and hit the right side of my vehicle.
- The damage was not too severe: but my embarrassment was great.
- The driver of the tour coach, Malcolm Munch, got out of his coach and ran to me and apologised profusely. He promised he would pay for the damages to my vehicle.
- All my foreign passengers were most impressed by his honesty and remorse. They commented on the coach driver’s integrity and uninhibited acknowledgement of his mistake as the driver who caused the collision.”
 - In Court, the Director of Exciting Tours, Mr Dewey Cheatham, gave evidence.
 - He said that the drivers of Exciting Tours never make mistakes when they drive their coaches.
 - He denied that his company’s coach had crossed from its lane on the left of the road into the path of your client’s vehicle driven by Martin Tshabalala.
 - He said your client was driving under the influence of alcohol.

You may assume your client’s version is probable and you must act in terms of your instructions.

Set out the questions you would use to cross-examine the Director of Exciting Tours.