

ADVOCATES' EXAMINATION

PAPER 2

*Trial Court Proceedings, and Alternative Dispute Resolution
Regulations 7(9)(b), 7(9)(d) and 7(9)(c)*

1 SEPTEMBER 2021

14:00-15:15

Total: [50]

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 1 hour 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, the left side (underside) must only be used for your own notes.
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.
6. Admission papers 1 to 4 have orals for candidates who achieves a score from 40% and below 50%.
7. The legal writing and drafting paper (paper 5) does not have any orals, candidates must achieve a minimum score of 50% to pass this paper.

Answer all questions.

The Uniform Rules of Court are identified by the word “rule”.

QUESTION 1 **[2]**

Who must sign a combined summons in terms of the Uniform Rules of Court?

QUESTION 2 **[5]**

In terms of rule 18, what must every pleading contain?

QUESTION 3 **[1]**

From 9 March 2020 rule 41A requires that all litigants serve together with the summons, combined summons or notice of motion a new type of notice. What is this notice?

QUESTION 4 **[4]**

4.1 What is the difference between mediation and litigation? (2)

4.2 What is the difference between mediation and arbitration? (2)

QUESTION 5 **[2]**

Are litigants whose cases began before rule 41A was promulgated allowed to use the rule to mediate their matters? If so, what are the requirements to do so?

QUESTION 6 **[4]**

When are pleadings considered closed in terms of rule 29?

QUESTION 7 **[4]**

What is the difference between the burden of proof and the duty to begin?

QUESTION 8 **[3]**

Summary judgment is granted against the defendant. You and your attorney reasonably believe that summary judgment should not have been granted. You believe that the defendant should have been given leave to defend the case. Explain how you would resolve the issue. Motivate your approach.

QUESTION 9 **[10]**

During a trial you realise that a document vital to the plaintiff’s case was not discovered by either the plaintiff or the defendant.

9.1 If you are acting for the plaintiff, what do you do? (5)

9.2 If you are acting for the defendant, what do you do? (5)

QUESTION 10**[10]**

The trial has started. You call the plaintiff.

- 10.1 The plaintiff is still under examination-in-chief when the court adjourns for the next day. Are you allowed to consult with the plaintiff later that afternoon, evening or early the next morning before the plaintiff goes back into the box? (2)
- 10.2 The plaintiff is under cross-examination when the court adjourns for the next day. Are you allowed to consult with the plaintiff later that afternoon, evening or early the next morning before the plaintiff goes back into the box? (4)
- 10.3 The plaintiff has just completed examination-in-chief. The court adjourns for the next day. Cross-examination has not yet begun. Are you allowed to consult with the plaintiff later that afternoon, evening or early the next morning before the plaintiff goes back into the box? (2)
- 10.4 The plaintiff is about to undergo cross-examination. During the lunch break you realise you have forgotten to canvass part of the plaintiff's evidence. What do you do now? (2)

QUESTION 11**[5]**

On 23 August 2013 the Constitution Seventeenth Amendment Act of 2012 amended section 167 of the Constitution, 1996. The amendment permits the Constitutional Court *inter alia* to decide 'any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court.'

On the same day, the Superior Courts Act 10 of 2013 came into effect. The Superior Courts Act deals with leave to appeal in section 17.

It is not necessary to cite the subsections in section 17 of the Superior Courts Act. Explain the steps an appellant takes to get to the Constitutional Court. Assume at each step the appellant is unsuccessful but is well-resourced, determined and persistent.

- THE END -
