

ADVOCATES' EXAMINATION

PAPER 5
LEGAL WRITING AND DRAFTING
Regulations 7(9)(g)
Open-Book

13 APRIL 2022

09:00-14:15

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 5 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Please write only in pen on the right-hand pages, the left side (underside) must only be used for your own notes.
4. 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.
5. Admission papers 1 to 4 have orals for candidates who achieve a score from 40% and below 50%.
6. 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.

Legal writing and drafting
Regulation 7(9)(g)
Open-Book – five hours
Wednesday, 13 April 2022

Read all the text below and answer all the relevant questions
[TOTAL MARKS 100]

Question 1 – [30 marks]

1. Tyrone Dlamini from Dlamini Attorneys Incorporated instructs you on behalf of The Independent Mall.
 - 1.1. Dlamini informs you that on 1 August 2021 his client, The Independent Mall, represented by its managing director Nick Sharp, had concluded a written contract with a company called Safe Cleaners (Pty) Ltd, represented by its sole director Sophie Gijima.
 - 1.2. In terms of the contract, The Independent Mall appointed Safe Cleaners (Pty) Ltd as the only contractor to clean the interior of the mall. The Independent Mall is a small shopping centre in Umgeni Business Park, 5 Umgeni Road, Durban.
 - 1.3. The following are the material terms of the contract:
 - The contract would commence on 1 September 2021 and endure until 31 July 2022;
 - Safe Cleaners would clean all the public areas in the mall each day, including on Saturdays, Sundays and public holidays;
 - Safe Cleaners would ensure that when cleaning the tiled floors in the mall, it would demarcate areas where there were wet tiles during the cleaning process to prevent any person from falling on the wet tiles;
 - The contract stipulated the minimum requirements for demarcation of wet areas by Safe Cleaners. There had to be a clearly visible warning sign placed on the wet area;
 - The Independent Mall would pay Safe Cleaners R250,000.00 per month on the last business day of each month;
 - The staff of The Independent Mall would have the right to monitor the work done by Safe Cleaners and to consult with the supervisors employed by Safe Cleaners to ensure the quality of the work performed;
 - The staff of the Independent Mall are obliged to consult with a supervisor employed by Safe Cleaners in the event of any complaint directed at Safe Cleaners' services.
 - 1.4. On 25 December 2021 a customer of the Coffee Shop in The Independent Mall, Alison Goodluck, slipped and fell on wet tiles near the entrance to the Coffee Shop. Alas, Alison it is alleged, broke her hip.
 - 1.5. From the closed circuit television recording in the mall, it appears that one of the employees of Safe Cleaners had cleaned the tiles outside the entrance to the Coffee Shop. However, the employee had not demarcated the area nor put up any signs to caution customers of cleaning being in progress.

- 1.6. To avoid adverse publicity concerning The Independent Mall, Nick Sharp immediately offered Alison Goodluck to pay all her medical expenses and to give her a gratuity of R100,000.00 in full and final settlement of any claims Alison may have against The Independent Mall. Alison accepted the offer and remains a loyal customer of the Coffee Shop in the mall.
- 1.7. Nick Sharp did not discuss making such an offer with Safe Cleaners. Safe Cleaners were unaware of the offer.
- 1.8. It is alleged that Alison Goodluck's medical costs amounted to one hundred and six thousand rand. Alison presented the Independent Mall with a medical bill of R106,000.00.

Question 1.

You are instructed to draft particulars of claim on behalf of The Independent Mall against Safe Cleaners (Pty) Ltd for breach of the terms of the contract and to claim damages flowing from that breach.

30 MARKS FOR QUESTION 1

Rule 22 Plea

- (1) Where a defendant has delivered notice of intention to defend, he shall within twenty days after the service upon him of a declaration or within twenty days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.
- (2) The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.
- (3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.
- (4) If by reason of any claim in reconvention, the defendant claims that on the giving of judgment on such claim, the plaintiff's claim will be extinguished either in whole or in part, the defendant may in his plea refer to the fact of such claim in reconvention and request that judgment in respect of the claim or any portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention. Judgment on the claim shall, either in whole or in part, thereupon be so postponed unless the court, upon the application of any person interested, otherwise orders, but the court, if no other defence has been raised, may give judgment for such part of the claim as would not be extinguished, as if the defendant were in default of filing a plea in respect thereof, or may, on the application of either party, make such order as to it seems meet.
- (5) If the defendant fails to comply with any of the provisions of subrules (2) and (3), such plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

Question 2 – Plea for defendant – for the purposes of this exam you are entitled to take the following instruction in question 2. Normally you would not be entitled to take the instruction. There would be a conflict of interest.

Question 2 – [30 marks]

2. You are instructed by Alf Khathazeka of Nguni & Associates to draft a plea in defence of Safe Cleaners (Pty) Ltd.
 - 2.1. You, Khathazeka and Sophie Gijima, the sole director of Safe Cleaners (Pty) Ltd, consult and read the Particulars of Claim produced in terms of Question 1 above.
 - 2.2. Khathazeka is worried that The Independent Mall paid Alison Goodluck’s medical costs and a gratuity without consulting Sophie Gijima and without referring the matter to Safe Cleaners in the first place.
 - 2.3. Khathazeka instructs you that Alison Goodluck was back at The Independent Mall on 1 January 2022. From the closed circuit television recording in the mall, it appears that Alison was walking without crutches and attended at the Coffee Shop from noon until the late afternoon.
 - 2.4. The cleaner on duty on the day of the incident, Patricia Mkhize, stated that she had warned Alison that the floor was wet. But, Alison had ignored her. Patricia also noticed that Allison was wearing very high heels and she was not walking normally.
 - 2.5. Khathazeka is not convinced Alison Goodluck broke her hip. Patricia had noticed that after Alison fell she let off a series of expletives. When help arrived, Alison was able to stand and Patricia saw her limping away. Alison kept saying that she will sue the mall.

Question 2.

Draft a plea that complies with Rule 22 of the Uniform Rules of Court set out above. Do not make a defence other than the facts presented in Question 1 and Question 2.

30 MARKS FOR QUESTION 2

Question 3 – Opinion on the prospects of success for the Plaintiff – for the purposes of this exam you are entitled to take the following instruction in question 3.

Question 3 – [40 marks]

3. You are instructed by Tyrone Dlamini from Dlamini Attorneys Incorporated on behalf of The Independent Mall to provide an opinion on the Plaintiff’s prospects of success.
 - 3.1. Please base your opinion on the facts given in Questions 1 and 2 and your assessment of the legal issues involved.
 - 3.2. Focus your opinion on how you assess The Independent Mall’s prospects of success.

40 MARKS FOR QUESTION 3



- THE END -
