

# ADVOCATES' EXAMINATION

## PAPER 5

LEGAL WRITING AND DRAFTING

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

OPEN-BOOK

13 SEPTEMBER 2023

09:00 – 14:15

***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 five 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 [100]

**QUESTION 1**

**[40]**

Frank Tshabalala from Tshabalala & Associates Incorporated instructs you on behalf of CTTB (Pty) Ltd. CTTB is a minibus taxi owning syndicate that operates in Cape Town. The name of the company comes from *Cape Town Taxi Business*, which name the Companies Tribunal refused to allow: hence the acronym was used instead.

- 1.1. Frank Tshabalala informs you that last Friday, despite the accords reached on Thursday, 10 August 2023 between SANTACO (the South African National Taxi Council) and the Cape Town Metropolitan Municipality, the Cape Town Metropolitan Police impounded five of the taxis owned by the CTTB.
- 1.2. The five taxis were impounded between 15h30 and 17h30. Each taxi had turned down Strand Street on the wrong side of the road past the Cape Sun (Tsogo Hotels) to avoid having to drive a dogs-leg to get to St George's Mall. The dog's leg would mean travelling an extra seven hundred metres to a point where the taxi could turn back to the required destination without violating the traffic laws.
- 1.3. The management of CTTB is incensed.
  - Their taxis have been using *that* wrong side of the road for years;
  - The company, represented through its Managing Director, Mr Hack Goodyear, says the Cape Town Metro Police have accepted all taxis from all associations performing the same manoeuvre for years;
  - Worse, Goodyear says last Friday the Metro Police impounded only their five CTTB taxis;
  - Goodyear says it is unfair and unjust that the Metro Police single out CTTB taxis while doing nothing about the taxis of their competitors;
  - Goodyear is furious:
    - He insists on launching an urgent application to have their impounded taxis released immediately;
    - Goodyear says the Cape Town press, that is, all the newspapers and all the journalists in Cape Town and, indeed, all journalists internationally are in cahoots with the Metro Police because the press published that every taxi making the manoeuvre last Friday afternoon was impounded irrespective of ownership or association membership;
    - Goodyear insists with passion, the press and the Police are all liars.

- 1.4. The CTTB is a very profitable client for your Attorney. He does not want to lose their business. He confides in you that he does not have confidence in Goodyear who seems to be lacking in judgment. Your Attorney confirms the accuracy of the press reports. He has other taxi associations as clients with the same problem.
- 1.5. Your Attorney is not persuaded CTTB has a viable cause of action against the Cape Town Metro or the Metro Police or both of them.
- 1.6. Frank Tshabalala is however reluctant to advise the volatile Goodyear that his company's case lacks merit. Frank has instructions to obtain an urgent opinion from Counsel.
- 1.7. Despite the emotional pressure on you, draft an **objective opinion** based on your understanding of the general principles of our law to advise your Attorney, *via* your opinion, what to tell his client.
- 1.8. Frequently you will face this scenario in practice. In particular, you will often face instructions with a serious lack of facts, especially with urgent matters. Yet you must produce.
  - Do **not** add your own facts to this question.
  - Stay within the facts above.
  - Do **not** speculate at all.
  - Apply yourself as a professional.
- 1.9. There is a sound way to answer this question. Employ all your knowledge of our law and your ability to answer the question ethically, sensibly and in accordance with our law. You are expected to make recommendations on how best to proceed to obtain release of the five taxis.
- 1.10. Your reasoning and argument in the opinion will be assessed. **There is no predetermined correct answer**. Take your time, consider your ideas and produce a coherent and reasoned legal opinion.

## **QUESTION 2**

**[30]**

Frank Tshabalala is back in your Chambers. He has taken a detailed statement from his client, Mary du Toit, born Shaw. She and her family live in Johannesburg.

- 2.1 Mary married Able du Toit in community of property at the Carlton Hotel, Johannesburg on 14 February 1993. Their marriage has lasted long. She loves her husband very much. They live at number 4 Hope Street, Auckland Park. They also own a flat at 4 Joshua Street, Cresta.

- 2.2 The couple have two children, a boy named Jason who was born on 27 October 1994 and a girl named Jamie who was born on 31 August 1995. Both the children are at the University of Johannesburg studying law and finance respectively.
- 2.3 During late August 2020, Able contracted COVID and was hospitalised in the Milpark Hospital. He was ill for months and spent six weeks in intensive care. However, eventually he got better and was discharged in June 2021. Able was very weak. Mary nursed him back to health for a year.
- 2.4 Able is a businessman who operates a successful Spar franchise in Auckland Park. While Able was ill, his son Jason ran the business with the assistance of Mary, his mother. Mary is a school teacher. She teaches English at the German School. The family is wealthy and, before the pandemic, travelled the world frequently.
- 2.5 After returning home from hospital Mary noticed changes in Able's behaviour. He became sullen and started to drink alcohol at home from August 2022. Eventually Mary confronted him about the alcohol. He said it was to relax him after a hard day's work. He had returned to work in June 2022.
- 2.6 Around June this year, Mary noticed that Able was no longer drinking at home. He was drinking with some of his friends after work. In July she confronted him again about his drinking. Able was in a rage about that. Mary had never seen such behaviour before. Able had always been gentle with her.
- 2.7 Then, to her horror, last month Able came home drunk and hit her very hard in the face. When she started to cry, he said he was sorry. But he did the same thing the following evening and twice more during the following week.
- 2.8 Mary moved out of the matrimonial home last week. She is living in the flat. She wants a divorce despite the fact that she still loves Able.
- 2.9 Draft the Particulars of Claim for your Attorney.

---

**QUESTION 3****[30]**

This morning Frank Tshabalala is back in your Chambers with Mary du Toit.

3.1 Frank instructs you again. The facts are:

- 3.1.1 Last Monday Mary's husband, Able arrived at the flat with two of his male friends. Their names are Dennis Menace and Bully Menace. They are brothers. They live in a flat on the corner of Doveton Road and Empire Road. The block of flats is called Nirvana. They are in flat number 33.

- 3.1.2 Mary knows the brothers well. They often used to visit her family before the pandemic at the matrimonial home referred to in question 2 above. They were friendly guests.
- 3.1.3 Able asked Mary if she would speak to the brothers alone. He himself wanted to stay outside the flat.
- 3.1.4 A bit nonplussed Mary agreed and invited the brothers into the flat. Dennis told her she was wrong to move out of the matrimonial home.
- 3.1.5 Then Bully started to threaten her with violence. Mary was shocked. She could only recall some of the things he said to her. Mary honestly does not believe Able knew what the brothers were going to say to her. But she is worried why he brought them to visit her in the first place. Some of what she remembers is the following:
- Bully said that they, meaning the brothers would be back on Saturday night;
  - If Mary were still at the flat on Saturday, they would burn it down;
  - But before they burn it down they would *deal with her*;
  - When she asked what Bully meant by *deal with her*, he said *you will see*;
  - Frankly, she does not want to see. She is terrified of Bully.
- 3.2 Draft the necessary Notice of Motion and Founding Affidavit based on the facts above. Your Attorney obviously insists of an urgent application.