

**ADMISSION EXAMINATION
COURT PROCEDURES
PART 1**

17 MARCH 2021

MEMORANDUM

PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF READING.

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1 **[10]**

1.1

1. Date, time, place where the collision had occurred. (1)
2. Which police station has the collision been reported to and what is the accident report number? (1)
3. Whether she has a copy of the Police Collision Report. (1)
4. The registration details of the driver of the truck. (1)
5. Photographs of the place of collision and of the material damages to the respective motor vehicles. (1)
6. Insurance details and particulars of the vehicle driven by her spouse. (1)
7. Independent witness statements, if any. (1)
8. Whether a post mortem was undertaken or/inquest undertaken. (1)

Choose any 5 answers above, for 5 marks.

1.2

1. Request information on the business of the deceased spouse - financial statements, bank statements, vat returns, if VAT vendor. (1)
2. Enquire if Mrs Dlamini was employed, if so details to be obtained. (1)
3. Funeral expenses – who paid for them and a detailed itemised statement of account is needed. (1)
4. Request information on their marital regime. If married in community of property then the Final Liquidation & Distribution Account is needed for the actuarial calculation for loss of support. Her half share is deducted from her claim for loss of support. (1)
5. Request the details of the ages of her minor children. (1)

QUESTION 2 **[6]**

- 2.1 To compensate (1) persons for bodily injuries ($\frac{1}{2}$) or death ($\frac{1}{2}$) caused by or arising from the negligent driving of a motor vehicle.
- 2.2 Wrongdoers / Negligent Drivers / Owners of motor vehicles. (1)

- 2.3 All road users within South Africa are covered by the provisions of the RAF Act. (1)
- 2.4 Yes. (1)
- 2.5 Income is derived from a levy that is based on fuel sales known as the RAF Fuel Levy. The RAF Fuel Levy income is a charge levied on fuel throughout the country. The value of the RAF Fuel Levy per litre is determined by the National Treasury annually. (1)

QUESTION 3 **[6]**

- 3.1 General damages –
- also referred to as non-pecuniary loss (1/2)
- is not an out of pocket expense (1/2)
- awarded for pain, suffering, shock, disability, disfigurement, loss of amenities of life, loss of life expectancy (1)
- Special damages - represents actual financial / out of pocket loss (1)
- 3.2 Past Loss of support (1/2)
- Future Loss of Support (1/2)
- Past hospital and medical expenses (1/2)
- Future hospital and medical expenses (1/2)
- Past Loss of Earning Capacity (1/2)
- Future Loss of Earning Capacity (1/2)
- Funeral Expenses (1/2)

Any 6 of the above responses are correct.

QUESTION 4 **[3]**

In terms of Regulation 3(3) the RAF may:

- Accept the RAF Form 4; (1)
- Reject the RAF Form 4 and provide reasons; (1) or
- Reject the RAF Form 4 and refer the injured for a further assessment in terms of the Regulations (1).

QUESTION 5 **[13]**

Plaintiff's Particulars of Claim

1. Plaintiff is Madlingozi Enterprises (Pty) Ltd, a company with limited liability, duly registered in terms of the Companies Act/statutes of the Republic of South Africa with principal place of business/registered address at.... (1)
2. First Defendant is John White N.O. , an adult male businessman, residing at in his capacity as trustee of the White Family Trust (1).
3. Second Defendant is Mary White, an adult female housewife, residing at _____ in her capacity as trustee of the White Family Trust (1).

4. On the 15th of August 2020 (½) and at Pretoria (½) Plaintiff duly represented by Siphon Madlingozi (½) and First and Second Defendant's entered into a written agreement (½) in terms of which Plaintiff purchased from First and Second Defendant's Erf 148, Pretoria Gardens Registration Division JR Gauteng (½) for a purchase price of One million four hundred thousand Rand (R1 400 000.00) (½).
5. Copy of the said agreement is attached hereto marked annexure "A" (1).
6. Plaintiff has duly provided guarantee for payment of the full purchase price as required in terms of the agreement and has fulfilled all other obligations imposed in terms of the agreement (1).
7. Despite demand, First and Second Defendant refuse to pass transfer to Plaintiff by neglecting or refusing to sign the transfer documents (1).
8. The above honourable court has jurisdiction to hear the matter.... (1).

Wherefore Plaintiff claims:

- a) An order directing First and Second Defendants to take all the necessary steps/sign all transfer documents necessary to pass transfer of Erf 148 Pretoria Gardens Registration Division J R Gauteng to Plaintiff (1).
- b) An order, that should Defendants fail to within 14 days of this court order take the necessary steps, the sheriff Pretoria is authorised to take such steps on the Defendant's behalf (1).
- c) Costs of suit (1).
- d) Further or alternative relief.

QUESTION 6

[6]

Any six of the following, 1 mark per correct answer maximum total of 6 marks.

- (i) Absence from the Republic or dwelling
(If he leaves the Republic, or being out of the Republic, remains absent from the Republic, or departs from his dwelling or otherwise absents himself, with intent by doing so evade or delay payment of his debts). (1)
- (ii) Failure to satisfy judgment
(If a court has given judgment against him/her and he/she fails, upon the demand of the officer whose duty it is to execute the judgment, to satisfy it or to indicate to the officer disposable property sufficient to satisfy it, or it appears from the return made by the officer that he has not found sufficient disposable property to satisfy the judgment). (1)
- (iii) Disposition prejudicing creditors or preferring one creditor
(If he/she makes, or attempts to make, any disposition of any of his/her property which has, or would have, the effect of prejudicing his/her creditors or of preferring one creditor above another). (1)

- (iv) Removal of property with intent to prejudice or prefer
(If he/she gives notice in writing to any one of his/her creditors that he/she is unable to pay of his/her debts). (1)
- (v) Offer of arrangement
(If he/she makes, or offers to make, an arrangement with any of his/her creditors for releasing him/her wholly or in part from his debts). (1)
- (vi) Failure to apply for surrender
(If, after having published a notice of his/her estate which has not lapsed or been withdrawn, he/she fails to lodge at the Master's office a statement in duplicate of the debtor's affairs or fails to apply for the acceptance of the surrender of his/her estate on the date mentioned in the notice of surrender as the date on which the Application is to be made). (1)
- (vii) Notice of inability to pay
(If he/she gives notice in writing to any one of his/her creditors that he/she is unable to pay any of his/her debts). (1)
- (viii) Inability to pay debts after notice of transfer of business
(If, being a trader, he/she gives notice in the Gazette of his/her intention to transfer business and is thereafter unable to pay all his/her debts). (1)

QUESTION 7

[6]

- 7.1 Ex Parte application (1) seeking an Anton Pillar order (1) to preserve the evidence and/or material and/or documentation.
- 7.2 - The order would provide for service of the order by sheriff (1)
- who should be accompanied by an independent (not connected to applicant's attorneys) supervising attorney (1)
- both the independent supervising attorney and sheriff should make an inventory of all items removed by the sheriff in terms of the order to prevent any future disputes relating to removed items (1)
- sheriff may also be required to file a report describing the manner in which the order was complied with (1)

QUESTION 8

[20]

8.1

IN THE MAGISTRATES COURT FOR THE DISTRICT OF NOZUKO HELD AT NOZUKO

In the matter between:

THE STATE

and

BANDI FUNDIEN (1)

STATEMENT IN TERMS OF SECTION 115

I, BANDI FUNDIEN, do hereby declare as follows:

1. I am the Accused herein (1).
2. I hereby plead not guilty to the charge against me (1).
3. I admit that on the 10/07/2018 I was in the Council Chamber in Cape Town attending a meeting (1).
4. The atmosphere in the Chamber during the debate became extremely heated and councilors began assaulting each other (1).
5. During the altercation, the complainant grabbed me and hit me several times in my face with his fists (1).
6. In order to defend myself I picked up a jug of water which was standing on a table and struck him once on the head (1).
7. I accordingly plead not guilty and aver that I acted in self-defense (1).

DATED AT NOZUKO THIS 10TH OF SEPTEMBER 2020.

BANDI FUNDIEN (1)

(Any seven will be marked correct)

[7]

8.2

STATEMENT IN TERMS OF SECTION 112

I, BANDI FUNDIEN, do hereby declare that: (1)

1. I am the accused in this matter (1).
2. I understand the nature of the charge against me and make this statement freely and voluntarily (1).
3. I admit that on the 10/07/2013 I was a councilor of the Municipality of NOZUKO and attending a council meeting together with other councilors. An argument resulted which became heated (1).
4. During the course of the argument, I became angry and picked up a jug of water and struck councilor Mxolisi Xoba on the head with same (1).
5. The blow caused the bodily injuries described in the medico-legal report of Dr Malan, dated 11/07/2018 the contents whereof I admit (1).
6. I furthermore admit that when I struck Mr Xoba I had the intention of inflicting grievous bodily harm (1).
7. I accordingly plead guilty to the charge (1).

(Any six of the above will be marked correct)

[6]

8.3.1 Section 300 of CPA:

A court may award compensation where an offence has caused damage to or loss of property (1).

The injured person or prosecutor acting on instructions of the injured party (1) has to apply to the court to award the injured party compensation for such damage or loss (1).

The complainant may claim hospital and medical expenses, loss of wages and general damages (1).

(Any three will be marked correct)

[3]

8.3.2 In determining the amount of compensation, the court may refer to evidence and the proceedings at the trial (1) or hear further evidence either upon affidavit or orally (1).

[2]

8.3.3 The effect of the award is that of a civil judgment of that court (1) and the injured person as all the civil remedies at his / her disposal in order to recover the award (1).

[2]

QUESTION 9

[5]

WITHDRAWALS:

A charge may be withdrawn only before an accused pleads to a charge (1). After the withdrawal, the accused shall not be entitled to a verdict of acquittal in respect of that charge. (1)

STOPPING PROSECUTIONS:

It can be done any time after an accused has pleaded but before conviction (1). The court must then acquit the accused in respect of that charge (1).

DIFFERENCE BETWEEN THE TWO:

After a matter had been withdrawn, one can be prosecuted of the same charge again. That is not the position when prosecution had been stopped (1).

QUESTION 10

[4]

10.1 The Plaintiff should lead evidence by an expert as to the cost of repairs to the motor vehicle. (2)

10.2 The points to be dealt with are: the nature of his experience, that he has examined the motor vehicle, and what he estimates the cost of repairing the motor vehicle. (1)

10.3 The Plaintiffs' attorney must give 15 days' notice of his intention to lead the evidence of an expert and 10 days' notice to give a summary of his opinions. (1)

QUESTION 11**[5]**

- 11.1 Defendant may apply to Court for an order requiring Plaintiff to discover; (1)
Defendant may object to the Plaintiff using such document in the action; (1)
Defendant may apply for an adjournment of the trial. (1)
- 11.2 Defendant may give the Plaintiff notice that he requires the document to be made available for inspection (1) or that the Plaintiff declares that the document is not in his possession and state the whereabouts if known to him. (1)

QUESTION 12**[6]**

- 12.1 Defendant is liable to pay 60% of R60 000.00, which amounts to R 36 000.00 (1), and is entitled to recover 40% of R50 000.00, amounting to R 20 000.00 (1), i.e. Defendant is to pay R16 000.00 (1) to the Plaintiff. (1)
- 12.2 When the magistrate is giving judgment or within five (5) days thereafter the Defendant can draw the attention of the court to his tender (1) and can expect that the order for costs will be amended to provide for the Plaintiff to pay the Defendant's costs from the time of the tender. (1)

QUESTION 13**[5]**

Answer should contain an indication of the following:

- 13.1 Court heading indicating the seat (region or place) of the Court; ($\frac{1}{2}$)
13.2 Court heading should indicate that the Notice is done in a specific Court; ($\frac{1}{2}$)
13.3 That an order will be sought that costs be costs in the liquidation; ($\frac{1}{2}$)
13.4 That the affidavit of Mr C will be used in support of the application; ($\frac{1}{2}$)
13.5 A request that the matter be placed on the role accordingly; ($\frac{1}{2}$)
13.6 It should be dated and signed on behalf of the Applicant; ($\frac{1}{2}$)
13.7 It should be addressed to the Respondent; ($\frac{1}{2}$)
13.8 It should also be addressed to the Clerk of the Registrar of the relevant Regional Court; ($\frac{1}{2}$)
13.9 An address where the notice will be served on the employees and/or trade union of employees of the respondent CC; ($\frac{1}{2}$) and
13.10 An indication that the notice will be served on the South African Revenue Services. ($\frac{1}{2}$)

(Do not deduct marks if reference is made to service on creditors or the appointment of provisional or other liquidators).

QUESTION 14**[5]**

- 14.1 A rent claim in which you wish to seize Defendant's furniture. (1)
14.2 Liquid document. (1)
14.3 Plaintiff has an asset but does not know who is the rightful owner. (1)
14.4 Plaintiff has a liquidated claim against Defendant. (1)
14.5 Plaintiff has an unliquidated claim or is suing for a divorce. (1)

TOTAL: [100]