

# ATTORNEYS' EXAMINATION

## PART 1 COURT PROCEDURES

19 OCTOBER 2021

09:00-12:15

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 3 hours 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.
5. 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.

**QUESTION 1****[10]**

You represent Mrs Ndlovu, a 28-year-old woman, who sustained injuries when she was involved in a motor vehicle collision on Anton Lembede Street, Durban. The collision occurred on 7 November 2018. At the time of the collision your client was a fare-paying passenger in a minibus taxi (with known registration). Your client informs you that the driver of the minibus taxi was driving at an excessive speed at the time of the collision. No other motor vehicles were involved in the collision. On admission to hospital your client was treated for:

- A traumatic brain injury with a presenting Glasgow Coma Score of 9/15;
- Extensive lacerations on the forehead and lower lip;
- Fractured right tibia and fibula.

1.1 What is the last date for lodgement of the claim? (½)

1.2 What is the last date for service of the summons? (½)

1.3 List the documents you will submit to the RAF when you lodge Mrs Ndlovu's claim? (4)

1.4 Given the injuries sustained by your client, name five (5) specialist medical experts you would instruct? (5)

**QUESTION 2****[6]**

2.1 Section 1 of the RAF Amendment Act, describes the "owner" of a vehicle. List the categories of persons described as "legal owners". (4)

2.2 Describe a "Driver" as stipulated in terms of Section 1 of the RAF Amendment Act. (2)

**QUESTION 3****[5]**

Apart from the definition of a motor vehicle name five (5) practical factual questions that you would ask to objectively determine whether a vehicle is indeed a motor vehicle.

**QUESTION 4****[4]**

What must the Plaintiff do in the event where the Fund refuses to settle the merits formally and refuses to make any interim payment(s)?

**QUESTION 5****[7]**

The Plaintiff, in an action in the High Court, in which you represent the Defendant, serves and files a notice of withdrawal of the action before the matter is formally set down for trial, without tendering costs.

5.1 What remedy does your client have in the circumstances? (1)

- 5.2 When must the step/s to achieve this remedy be taken? (1)
- 5.3 Draft only the contents of the necessary notice of motion, to give effect to this remedy i.e. you need not draft the heading or the particulars of the addressees. (5)

**QUESTION 6** **[8]**

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- 6.1 List the documents to be in Counsel's brief in the case of opposed claim for provisional sentence. (3)
- 6.2 In which instances can a party to proceedings apply for a default judgment? (2)
- 6.3 In terms of the amended Uniform Rule of Court 32 pertaining to summary judgement, when may a Plaintiff/Applicant apply for summary judgment? (1)
- 6.4 What must the Plaintiff demonstrate in the founding affidavit supporting summary judgement? (2)

**QUESTION 7** **[10]**

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Your client Mr Piet Botha, a major male, hands you a summons issued from the Eastern Cape Local Division in Port Elizabeth on the 28th of February 2021 and served on him by the sheriff on the 14th of April 2021 at his place of residence, 7 West Street, Makanda (Grahamstown) situated in the Main Division of the Eastern Cape.

Perusing the summons, you note that the Plaintiff, Peter Brown's claim is based on an acknowledgement of debt signed by your client on the 1st of April 2018 in Pretoria, Gauteng in which he undertook to pay an amount of R900 000 on or before the last day of April 2018 into the Plaintiff's bank account in Pretoria.

After consulting with your client you come to the conclusion that he has a valid defence on the merits. You also advise him that you intend filing a special plea as well.

- 7.1 Explain to your client what a special plea means. (1)
- 7.2 List six (6) special pleas. (3)
- 7.3 Draft only the special plea that you have in mind in this case. Include the heading. (6)

**QUESTION 8** **[16]**

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Your client is an accountant as well as a businessman and a friend of an influential politician. The local Department of Education requires 2 million face masks urgently to use at schools to prevent the spread of a virus infecting pupils. The politician covertly advises the accountant, your client, to quickly float a company and tender for the contract, the cost of the masks being inflated well above the current market price. The contract is awarded to the said company with the influence of the politician. The accountant is charged with fraud involving the sum of R150 000 and convicted in the Regional Court having pleaded guilty. He is married with four (4) minor children and

has been struck off the roll of accountants. He has resigned from his church council and service club and the case has been well reported in the press. He has been able to repay the R150 000.00. He is a first offender and co-operated with police. He is sentenced to 20 years' direct imprisonment. You receive instructions to appeal against sentence.

- 8.1 Draw the Notice of Appeal, including heading and ending. (6)
- 8.2 Discuss the various sentences the court can impose dealing briefly with the suitability or otherwise of each sentence in the circumstances. (10)

### **QUESTION 9** **[9]**

Mr Zane Amuz is the driver of a sports car on a highway on a rainy night. He loses control over the vehicle which veers off the road and collides with a pedestrian standing on the side of the road. The pedestrian dies as a result of the injuries sustained in the collision. The public prosecutor declines to prosecute Mr Amuz.

- 9.1 The pedestrian's widow is convinced that the husband's death was caused unlawfully and wants to see justice done. Advise her as to a possible remedy and discuss the procedure to be followed in order to have the suspect prosecuted. (6)
- 9.2 What are the rights of the National Director of National Prosecuting Authority (NPA) after the commencement of the procedure referred to in 9.1 above? (3)

### **QUESTION 10** **[4]**

Mary entered into a contract with Bob Builder Close Corporation (BBCC) who undertook to build a swimming pool at the cost of R120 000. She paid a deposit of R60 000 and shortly after work commenced, she paid a further sum of R10 000. BBCC informs Mary that it entered into a large contract in Johannesburg and was unable to continue the work. Mary then obtained another quotation at a fair and reasonable price of R70 000 to complete the swimming pool. You were asked to sue for the damages Mary suffered. Explain what Mary can sue for and for how much?

### **QUESTION 11** **[6]**

Defendant signs a one-year lease of a factory at a rental of R50 000 per month payable in advance. Defendant failed to pay in terms of the lease, and Plaintiff consults you and instructs you to sue for two months' rent. You misunderstood the instructions and sued for only R50 000. You then realised your mistake and decided to amend the summons.

- 11.1 What procedure should you adopt? (2)
- 11.2 Defendant objects and wants to respond. Describe the steps he must take. (2)
- 11.3 When you have obtained the Court's permission to amend what must you do on behalf of the Plaintiff? (2)

**QUESTION 12** **[4]**

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A stranger witnessed a collision take place, and he took photographs of the scene. As the Plaintiff's attorney, you decided that you want to use the photographs at the trial.

- 12.1 What must you do before the photographs can be used? (2)
- 12.2 What steps can the Plaintiff take if the Defendant objects to the photographs being used? (2)

**QUESTION 13** **[7]**

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In the course of a building contract, an apprentice drove a truck into the Plaintiffs' garage causing considerable damage to the garage. You act for the garage owner. You sued the builder who entered a plea in which his only defence was that the apprentice did not have a driver's license. Draft the document, including the heading and the prayers that you would file.

**QUESTION 14** **[4]**

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State which of the following should be included in the Plaintiff's discovery affidavit schedule and which should not:

- 14.1 A statement obtained by an attorney in Zambia for the purpose of trial; (1)
- 14.2 Notes you made of a phone conversation with Defendant's attorney; (1)
- 14.3 In a collision claim, notes made by your client at the time of the collision; (1)
- 14.4 The terms of an offer of settlement made by Defendant's father. (1)

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- THE END -

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