

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

15 MARCH 2023

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 are consulted by Mrs Sibiya who instructs you as follows:

On 16th July 2020, her grandson, Siya who was born on 14th April 2014, was a passenger in a motor vehicle. The driver of the motor vehicle lost control of the vehicle and collided with a light pole. As a result, Siya was thrown out of the vehicle and suffered serious injuries. Siya resides with his grandmother as his mother is deceased and the whereabouts of his father are unknown. You lodged a claim on Siya's behalf with the Road Accident Fund on the 1st of August 2022. The RAF offered to settle the merits of Siya's claim on the basis of a 70% / 30% apportionment in his favour i.e., the RAF want to deduct 30% from Siya's claim because he was negligent in that he was not wearing a seatbelt at the time of the collision.

Answer the following questions with reference to the above factual scenario:

- 1.1 **Can summons be served on the Road Accident Fund, bearing in mind that the claim has not been repudiated by the RAF? Motivate your answer. (2)**
- 1.2 **Does Mrs Sibiya (grandmother) have the necessary locus standi to act on Siya's behalf? Motivate your answer fully. (2)**
- 1.3 **Is the Road Accident Fund correct in applying an apportionment to Siya's claim? Motivate your answer. (3)**
- 1.4 **Assume Siya's mother and natural guardian, Phyllis Sibiya, was alive. Draft the citation of the parties for whom you are instituting the action against the RAF. (3)**

QUESTION 2

[5]

You are an Attorney representing the Road Accident Fund and in the process of drafting your client's plea in respect of a damages claim, arising from injuries sustained in a collision which occurred on 17th April 2020. The file of papers you received from your client contains the bundle of documents delivered to the RAF when the claim was lodged.

A perusal of the documents indicates that the claim documents fall short of compliance with the provisions of the Road Accident Fund Act No. 56 of 1996, in that an affidavit by the Plaintiff in which the particulars of the accident giving rise to the claim are fully set out, was not submitted.

Draft the pleading necessary to raise non-compliance with Section 19(f)(i) of the Road Accident Fund Act No. 56 of 1996. Omit headings and citations and draft only the necessary pleadings. (5)

QUESTION 3**[10]**

You represent Mr Anderson in his claim against the RAF. Mr Anderson instructed you to accept the RAF's offer of 80% / 20% in his favour in respect of the merits. In the summons, claims have been made in respect of special and general damages.

- 3.1 Explain the difference between general damages and special damages. (3)**
- 3.2 You submit a Serious Injury Assessment Report (RAF Form 4) to the RAF in support of Mr Anderson's claim for general damages. Within what timeframe must the RAF make a decision in respect of the RAF Form 4, and what options are available to the RAF in this regard? (5)**
- 3.3 The RAF accepts that Mr Anderson will require future medical treatment. Explain to Mr Anderson what the undertaking in terms of Section 17(4) of the Road Accident Fund Act No. 56 of 1996 will cover and the extent of such cover. (2)**

QUESTION 4**[14]**

The Particulars of Claim to the Combined Summons hereunder contain a number of mistakes or omissions.

Identify any seven of these. Briefly motivate your answers. (14)

You may assume that the Particulars of Claim were duly signed, and Annexure A was attached.

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

P. J. Baloyi**Plaintiff**

and

The Jones Family Trust**First Defendant**

and

Mary Smith**Second Defendant**

Particulars of Claim

1. The plaintiff is P.J. Baloyi, an adult male plumber, residing at 12 Winelands Village, 43 Carnegie Road, Constantia, Cape Town.
2. The first defendant is The Jones Family Trust, a trust which carries on business at 127 Sehume Road, Bloemfontein.
3. The second defendant is Mary Smith, an adult female employee of the first defendant who resides at 5 White Street, Hatfield, Pretoria.
4. On 2 February 2023 and at the intersection of Black and Blue Streets, Cape Town a collision took place between a Mercedes Benz motor vehicle with registration number CA 12389, driven by the plaintiff and motor vehicle ZYK 256 GP, driven by the second defendant.
5. The said collision was caused by the sole negligence of the second defendant.
6. As a result of the collision, the Mercedes Benz motor vehicle was damaged and the fair and reasonable costs of repair amounted to R512,000 inclusive of value added tax, as will more fully appear from a repair invoice attached hereto marked annexure A.
7. Despite lawful demand, the defendants failed or neglected to compensate the plaintiff.
8. Wherefore the plaintiff prays for judgment for:
 - 8.1 Payment of the amount of R512,000
 - 8.2 Mora interest at 15,5 % from the date of the collision to the date of payment.
 - 8.3 Costs on attorney and client scale
 - 8.4 Further and/or alternative relief.

Signed at Cape Town on this .. day of February 2023

.....

QUESTION 5**[11]**

Your client instructs you to sue her spouse for a divorce, payment of maintenance for herself, and forfeiture of the benefits arising from the community of property. He resides in Germany and has no intention of returning to South Africa.

Draft the Notice of Motion in your application to sue by way of edictal citation from the division of the High Court where you practice. Use your own facts in as far as it is necessary. (11)

QUESTION 6 **[3]**

What articles may be seized by the State in relation to an alleged criminal offence? **(3)**

QUESTION 7 **[3]**

Under what circumstances may a Police Officer search a person or container or premises without a search warrant for purposes of seizing an article mentioned in Question 6 above? **(3)**

QUESTION 8 **[4]**

Mention the 4 (four) methods of securing the attendance in Court of an accused, who is eighteen years of age or older, for purpose of his or her trial. **(4)**

QUESTION 9 **[5]**

You are consulted by an accused person whose criminal trial has been adjourned subsequent to an application made by the Prosecutor for the amendment of the charge on which the consultant (accused person) is on trial before the Court.

Discuss the considerations that the Court will take into account in determining whether or not the amendment requested by the Prosecutor should be granted. **(5)**

QUESTION 10 **[10]**

Draft a Section 112 statement for a client, Mr Son, who intends to plead guilty before the Regional Court sitting at Polokwane, Limpopo Province, to a charge of theft of a BMW 525 motor vehicle with registration number XX 99 YY LP worth R600 000.00 belonging to Mr Green. The motor vehicle was stolen from the parking area of the Savannah Mall on 4th January 2023.

(The citation of the appropriate Court in the heading of the statement must be part of the answer). **(10)**

QUESTION 11 **[10]**

Which procedure is most appropriate in terms of the Magistrates' Court Act No. 32 of 1944 and the Rules of the Court in the following instances? Be particular and also indicate, where applicable, whether it would be an action or application proceeding:

- 11.1 You have sent a letter of demand to the debtor in which the nature and amount of the claim by your client against the debtor are set out. The debtor is happy that judgment is given against him without a summons being issued. (2)
- 11.2 Your client has issued a summons for the balance due in terms of an agreed amount for goods sold and delivered. The debtor does not deliver a Notice of Intention to Defend within 10 (ten) days after receipt of the summons. (2)
- 11.3 Your client has issued a summons for the balance due in terms of an agreed amount for goods sold and delivered. The Defendant has defended the action and delivered its plea from which it appears that the Defendant has no defence and is merely delaying the inevitable. (2)
- 11.4 The lessee has failed to pay the rent due in terms of the lease agreement. The lessor would like to sue but at the same time ensure that the valuable furniture and appliances of the lessee, which are on the rental premises, are safeguarded so that they can be sold in execution, should judgment be granted in favour of the lessor. (2)
- 11.5 X has sued Y, but the summons and Particulars of Claim do not set out the cause of action. (2)

QUESTION 12**[5]**

Your client has instructed you to issue a summons against Mr B for damages resulting from a motor vehicle accident. Your client has advised you that Mr B was the sole cause of the accident. Mr B has entered an appearance to defend, but no further pleadings have been filed. Your client wants to move the matter forward.

What would you do as the Plaintiff's Attorney?

Draft the necessary document. (5)

QUESTION 13**[10]**

A is in possession of the motor vehicle belonging to B, and despite demand from B, A refuses to return the vehicle to B.

Assume the necessary facts and draft the Particulars of Claim to a summons in terms of which B claims delivery of the vehicle or payment of the value of the vehicle, such being R120 000.00 (One Hundred and Twenty Thousand Rand).

Only the Particulars of Claim must be drafted. (10)

- THE END -