

**ADMISSION EXAMINATION / TOELATINGSEKSAMEN
COURT PROCEDURES / HOFPROSEDURES
PART 1 / DEEL 1**

18 AUGUST / AUGUSTUS 2015

ANSWERS / ANTWOORDE

**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	[15]
1.1 On or before 14 April 2015.	(1)
1.2 Within 3 years after Andile attains majority (turns 18 years old).	(1)
1.3 Yes – as he incurred these expenses in his personal capacity he is entitled to recover same.	(2)
1.4 No. A minor's claim must be lodged by the natural parent and guardian. Sam, in his capacity as stepfather of Andile, does not possess the necessary <i>locus standi</i> to act in a representative capacity on Andile's behalf. As both of Andile's natural parents are deceased, a <i>curator-ad-litem</i> will have to be appointed to act on Andile's behalf.	(3)
1.5 No. The Road Accident Fund Act has been amended to specifically exclude compensation for emotional shock suffered by a person who merely witnessed and observed, or was informed of, the death or injury of another person (a secondary victim).	(2)
1.6 Past Medical Expenses	(½)
Future Medical Expenses	(½)
Future loss of earnings	(½)
General damages	(½)
1.7 No. You are entitled to recover past medical expenses from the RAF whether or not these have been paid by a medical aid scheme as such payments are insurance payments and are considered collateral benefits that do not fall to be deducted by the RAF.	(2)

- 1.8 Yes. The psychological *sequelae* of a physical bodily injury suffered by a primary victim (person actually involved and physically injured) are deemed to be bodily injuries that are NOT excluded by the Act. (2)

QUESTION 2

[10]

- 2.1. - No.
- In terms of the Road Accident Fund Amendment Act 19 of 2005 [Section 17 (4) (c) (i)] a claim for loss of income is capped such that a claimant is only entitled to claim annual loss of an amount not exceeding the amount as published in the Government Gazette quarterly. (2)
- 2.2. None
In terms of the Road Accident Fund Amendment Act the common law claim against the wrongdoer has been expressly excluded. (2)
- 2.3 The RAF must object within 90 days from the date on which the RAF 4 was sent by registered post or hand delivered to the RAF (Regulation 3 (e)). (2)
- 2.4. No – In terms of the Regulations (Regulation 3 (f)) the dispute in respect of the RAF 4 must be adjudicated by an appeal tribunal constituted by the Registrar of the Health Professionals Council of South Africa. (2)
- 2.5 Your client is only entitled to costs once the matter is litigated (summons is issued) and where costs are ordered by the court. (2)

QUESTION 3

[11]

- 3.1
- Simple summons (½ mark) - it can only be used for liquidated demands (½ mark)
 - Combined summons (½ mark) - it can be used in all cases where action procedure is appropriate (½ mark).
 - Provisional sentence summons (½ mark) - it can only be used in cases where the claim is based on a liquid document (½ mark). (3)
- 3.2
- Appeals (½ mark)
 - Rule 43 applications (½ mark)
 - Interdicts (½ mark)
 - Consolidation of actions (½ mark)
 - Third party procedure (½ mark)
 - Joinder of parties (½ mark) (3)
- 3.3 It is an application brought without notice to anyone except the Registrar, either because no relief is sought against any person, or it is not necessary to give notice to the respondent. (1)
- 3.4
- If any of the parties joined issue without alleging any new matter and without adding any further pleadings (1 mark).
 - If the last day allowed for filing of a replication or subsequent pleading has lapsed and it has not been filed (1 mark).

- If the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar (1 mark).
- If the parties are unable to agree as to the close of pleadings and the court upon the application of either party declare them closed (1 mark). (4)

QUESTION 4 **[3]**

- 4.1 True (½)
- 4.2 True (½)
- 4.3 False (½)
- 4.4 False (½)
- 4.5 True (½)
- 4.6 True (½)

QUESTION 5 **[5]**

PLAINTIFF'S NOTICE OF INTENTION TO AMEND IN TERMS OF RULE 28
(1 mark)

PLEASE TAKE NOTICE that plaintiff intends to amend his particulars of claim in the following respects (1 mark) and that unless written notice of objection (1 mark) is received within ten (10) days from date of delivery (1 mark) hereof the amendment will be effected accordingly:

1. By deleting the date/month where it appears in paragraph (?) of the particulars of claim and substituting therefor the date/month "10 May 2013" / "May". (1 mark)

(Note to examiner: some candidates may prefer to delete the date as a whole whilst others may prefer to amend only the month. Either is correct and 1 mark can be allocated.)

QUESTION 6 **[6]**

- 6.1.
- Liquid document (1 mark)
 - Liquidated amount (1 mark)
 - Delivery of specified movables (1 mark)
 - Ejectment (1 mark) (4)
- 6.2.1 Notice of intention to defend. (1)
- 6.2.2 Notice to oppose. (1)

QUESTION 7 **[5]**

- (a) At any stage but before sentence is passed.

- (b) If the Court is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty.
- (c) If it appears to the Court that the accused does not admit an allegation in the charge.
- (d) That the accused has incorrectly admitted such an allegation.
- (e) That the accused has a valid defence to the charge.
- (f) If the court is of opinion for any reason that the accused's plea of guilty should not stand.

Any five will be marked correct.

QUESTION 8

[10]

- 8.1 Assault with the intent to do grievous bodily harm. (1)
- 8.2 Common assault or just assault. (1)
- 8.3 Approach the Public Prosecutor in an attempt to persuade him/her to accept a plea of guilty to the alternative charge of common assault. Motivate your request by pointing out:
 - 8.3.1 Your client was extremely provoked.
 - 8.3.2 The complainant's conduct was despicable and embarrassed your client.
 - 8.3.3 Your client did not use a weapon or object.
 - 8.3.4 Your client did not realise the possibility of inflicting such a serious injury on the complainant. (3)
- 8.4

STATEMENT IN TERMS OF SECTION 112(2)

1. I, the undersigned, Yaya Eto, plead guilty to the charge (or offence) of assault (or the candidate can state plead guilty to the charges against me).
2. I am of sober mind and plead guilty voluntarily and without duress or undue influence.
3. I admit that on the 11 July 2014 and in the cafeteria on the premises of the University of Western Cape, Bellville, I assaulted Conrad Coetzee by hitting him twice in his face, with a clenched fist thereby fracturing his jaw.
4. I aver that I was severely provoked by the complainant immediately prior to hitting him, by his stating that I was unlawfully in SA without authorisation, was an illegal immigrant and that I was depriving South Africans of the opportunity to study. This was stated loudly, repeatedly in the cafeteria before many fellow-students. Despite the foregoing I admit I had no lawful reason to strike him.
5. I know and understand that my action was wrongful and unlawful and that I can be punished. I accordingly plead guilty to assaulting the complainant as set out in the charge sheet. (5)

QUESTION 9

[4]

9.1

1. That the charge does not comply with the provisions of the Criminal Procedure Act relating to the essentials of a charge.
 2. That the charge does not set out an essential element of the relevant offence.
 3. That the charge does not disclose an offence.
 4. That the charge does not contain sufficient particulars of any matter alleged in the charge.
 5. That the accused is not correctly named or described in the charge.
- Any three will be accepted. (3)

9.2 Before pleading to the charge.

(1)

QUESTION 10

[6]

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA
HELD AT PRETORIA

CASE NO: 1234/2014

In the matter between:

THE STATE

And

XOLANI MSUTU

STATEMENT IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT

I, Xolani Msutu, do hereby declare that:

1. I am the accused in this matter and understand the nature of the charge against me.
2. I admit that on the 3rd of March 2014 I was the driver of motor vehicle XYZ157NC in Proes Street, Pretoria.
3. I admit whilst driving the said vehicle a collision occurred between the said vehicle and the deceased ABC, a child, who was injured and died as a consequence of injuries he sustained in the collision.
4. I deny that the said collision was occasioned by any negligence on my part as same resulted from a mechanical failure in the braking system of the motor vehicle.
5. I admit the contents of the post-mortem medico legal report of Dr Jacobs relating to the identity of the deceased the injuries which she sustained as well as the cause of death. I furthermore admit that the deceased did not suffer any further injuries from the time of the collision until such time as the post – mortem was carried out.
6. I further admit the contents of the following documents:

Plan and photo album of the scene compiled by Victor Mpofu;

7. These admissions can be noted in terms of Section 220 of the criminal procedure act.

DATED AT PRETORIA ON THE 14TH DAY OF JULY 2014.

XOLANI MSUTU

QUESTION 11

[7]

1. Defendant is Maria Mlaba, secretary, living at 18 West Street Durban.
2. Defendant duly signed the said loan agreement in Durban on 30th July 2013.
3. The cause of action did not arise wholly in the Johannesburg region in that the loan agreement was signed in Durban and thus in terms of Section 28 of the Magistrate's Court Act 32 of 1944, the Johannesburg court does not have jurisdiction.
4. Defendant avers she paid the debt on or about 28 December 2013.

Wherefore defendant prays that the action be dismissed with costs.

QUESTION 12

[4]

I, the undersigned, JOHN SMITH do hereby make oath and say:

1.

I am the Financial Director of the Plaintiff company and am duly authorised to depose to this Affidavit, the facts contained herein within my own personal knowledge and belief.

2.

I have had access to the Plaintiff's records and documents in this matter and verify and confirm Plaintiff's cause of action and the amount as claimed in the summons.

3.

A copy of the Notice of Intention to Defend is annexed hereto marked "A".

4.

In my opinion I verily believe that the defendant does not have a bona fide defence to the action and that the Appearance has been entered solely for the purpose of delay.

DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was sworn to and signed before me at _____ on this _____ day of _____ 2014 the regulations contained in Government Notice No. 1258 dated the 21 July 1972 as amended by Government Notice No. R773 of 1982, having been compiled with.

COMMISSIONER OF OATHS

QUESTION 13 **[4]**

- 13.1 Any time up to judgment (candidates may add in the following: including judgment on appeal). (1)
- 13.2 Give security for the claim and costs. (2)
- 13.3 No (but see Rule 23(4)). (1)

QUESTION 14 **[6]**

- 14.1 Apply for security for costs. (1)
- 14.2 File a special plea pleading prescription. (1)
- 14.3 Send a notice to the Plaintiff advising that the Summons is vague and embarrassing and affording him an opportunity to remedy the defect. Should he fail to do so then an exception should be filed. (2)
- 14.4 Send the plaintiff a Notice in Terms of Rule 18(1) which is an offer of settlement on a without prejudice basis offering him R 35 000,00 plus costs to date. (2)

QUESTION 15 **[4]**

Client should be advised to proceed by way of provisional sentence.

The court has to decide on the papers before it whether on a balance of probabilities the defendant would win the case. If not provisional sentence would be entered.

On the other hand if Summons is issued followed on an Appearance to Defend then an Application for Summary Judgment would be filed, the onus is far easier for the Defendant as he merely has to show that he has a bona fide defence to the action. (The answer may differ if the candidate refers to the Twee Jonge Gezellen (Pty) Ltd. versus Land and Agricultural Development Bank of South Africa 2011).

TOTAL: [100]