

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

16 AUGUST / 16 AUGUSTUS 2016

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

[3]

A claimant does not have a claim against the negligent driver or owner of a motor vehicle except under the following circumstances (1):

- a) If the Fund or an Agent is unable to pay compensation (1).
- b) Where the claim is one for loss or damage resulting from emotional shock sustained by a person, other than a third party when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle (1)

(Note to examiner – The above means emotional shock sustained by person not themselves injured in the collision.)

QUESTION 2

[14]

- 2.1 Yes, Martha does have a third party claim (1).
- In terms of the Road Accident Fund Act 56 of 1996, the Act that was in operation at the time of the relevant collision, her claim was limited to R25 000.00 (1).
 - However, in terms of the Transitional Provisions Act, (as her claim was not finalized by settlement or court order prior to the passing of the TPA), it is no longer limited to R25 000.00 (1).
 - Although the claim is no longer limited to R25 000.00, the cap in respect of loss of earnings (applicable as at 1 August 2008) applies, as does the threshold for general damages (30% WPI, alternately, one of the grounds laid out in the narrative test must be established) (1)
(or The provisions of the Road Accident Fund Amendment Act would then become applicable in the circumstances) (4)
- 2.2 Amos does not have a third party claim; as the collision was caused by his own negligence (1).
- He does however have a claim against the Compensation Commissioner in terms of compensation for Occupational Injuries and Diseases Act, as he was injured in the course and scope of his employment (1).

- Claims in terms of COIDA are based on strict liability and as such his claim will succeed even though the collision was caused by his own negligence (1). (3)
- 2.3.1 Past Hospital and Medical Expenses (½)
- 2.3.2 Future Hospital and Medical Expenses (½)
- 2.3.3 Past Loss of earnings (½)
- 2.3.4 Future Loss of earnings (½)
- 2.3.5 General Damages (½) (2½)
- 2.4 The claim for general damages will fall away (½) (½)
- 2.5 Martha also has a claim (in terms of COIDA) against the Compensation Commissioner as she was injured in the course and scope of her employment (she was injured whilst on duty) (1) (1)
- 2.6 No (1), she is unable to recover general damages in terms of COIDA (1) (as this Act provides for the recovery of special damages only). Nor is she able to recover general damages from the wrongdoer as the right to do so is expressly excluded in terms of the Road Accident Fund Act and the TPA (1). (3)

QUESTION 3

[8]

- 3.1 A will not have a claim against the Road Accident Fund (1). A claim against the Road Accident Fund cannot be based on the negligence of a cyclist since it is not regarded as a motor vehicle (1). A motor vehicle is regarded as any vehicle designed or adapted for propulsion or haulage (1) on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle (1). (4)
- 3.2 Yes, A will have a claim against the Road Accident Fund (1). His claim will be based on the negligent driving of a motor vehicle by B (1). (2)
- 3.3 D will have a claim (1) against the Road Accident Fund, based on the negligent driving of B (1). (2)

QUESTION 4

[9]

- 4.1 Apply to court for an order that plaintiff pays the costs of the action (½) as well as costs of the application (½). (1)
- 4.2 Within a reasonable time from the date of receiving of the notice of withdrawal (no time limit is stipulated). (1)
- 4.3 "Take notice that application will be made on behalf of the abovenamed applicant on (date) and (time) or as soon thereafter as applicant's legal representative may be heard for an order in the following terms (2).
 - Plaintiff pays the costs of the withdrawn proceedings (1).
 - Plaintiff pays the costs of this application (1).
 Further take notice that the attached affidavit of (applicant) will be used in support of the application (1).
 Kindly enrol the matter accordingly (1).
 To Registrar of Court (½)
 And to Plaintiff's attorney (½) (7)

QUESTION 5**[16]**

5.1

- Free State High Court, Bloemfontein (1) (Section (2)(1)(b) of the Divorce Act, 1979), Plaintiff is ordinarily resident in the area of the jurisdiction of the court on the date of institution of action (1) and has been ordinarily resident in the Republic for a period of not less one year immediately prior to that date (1).
- North Gauteng High Court, Pretoria (1) (Section (2)(1)(a) of the Divorce Act, 79), the parties are domiciled in the area of jurisdiction (1).

(5)

5.2 Free State High Court, Bloemfontein (1). Most convenient court and less expensive as to costs (1). (2)

5.3 Prayers

Wherefore Plaintiff claims against the First Defendant (½)

- A Decree of Divorce (½)
- Payment of maintenance to the amount of R5 000 per month (½)
- That 50% of the assets of the Defendant, or such part of the assets as the court may deem fit be transferred to the Plaintiff (1)
- That 50% of the pension interest of the First Defendant as member of the Government Employee Pension Fund (1) as at date of the court order (1) shall vest in the Plaintiff when the pension benefit accrues, alternatively on date of divorce (1)
- Cost of suit (½)
- Further and/or alternative relief

Wherefore Plaintiff claims against the Second Defendant (½)

- That an endorsement be made in the records of the Second Defendant (½) that 50% or such portion as the court may direct (½) of the pension interest of the First Defendant is payable to the Plaintiff and that the administrator of the Second Defendant furnish proof of such endorsement to the Registrar in writing within one month of receipt of such notification (½).

(7)

5.4 Prayers

- That 50% of the accrual in the First Defendant's estate (1) as from date of marriage to date of this order, be transferred to the Plaintiff (1).

(2)

QUESTION 6**[15]**

6.1 Conspiracy to commit murder.
Murder
Kidnapping
Possession of an unlicensed firearm.
Possession of ammunition

(2)

6.2 An accused who is in custody in respect of an offence is entitled to be released at any stage preceding his conviction in respect of such offence if the court is satisfied that the interests of justice so permit, but subject to exceptional circumstances by nature of this offence. (1)

6.3 The attorney can suggest that all passports of the accused be surrendered and that he be ordered to report at a police station at regular intervals. (2)

6.4 In terms of Section 204, whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor –

(a) the court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness; (i) that he is obliged to give evidence at the proceedings in question; (ii) that questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor; (iii) that he will be obliged to answer any questions put to him, whether by the prosecution, the accused or the court, notwithstanding that the answer may incriminate him with regard to the offence as specified or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified ; (iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from prosecution with regard to the offence as specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to an offence so specified.

Such witness shall thereupon give evidence and answer any question put to him during the trial, notwithstanding that the reply thereto may incriminate him with regard to the offence as specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified. If the witness in the opinion of the court answers frankly and honestly all questions put to him such witness shall be discharged from prosecution for the offence as specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence as specified. The court shall cause such discharge to be entered on the record of the proceedings in question.

(5)

6.5 The attorney can hold a watching brief and at the end of the trial argue that the witness is entitled to be discharged from prosecution. (1)

6.6.1 The Court erred in accepting the evidence of the Section 204 witness (B) as being frank, honest and reliable in all material respects.

The Court erred in rejecting the evidence of the accused as not being reasonably possibly true.

The Court failed to apply the proper test to determine the guilt of the accused.

(The examiner can take any reasonable answers into consideration) (2)

6.6.2 The Court erred in not finding that there were exceptional circumstances enabling the Court not to impose the maximum sentence.

The Court failed to take the personal circumstances of the accused into consideration.

The sentence imposed induces a sense of shock.

(The examiner can take any reasonable answers into consideration) (2)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PORT ELIZABETH HELD AT
PORT ELIZABETH

CASE NO: 123/2015

In the matter between:

JOHN SMITH

And

THE STATE

STATEMENT IN TERMS OF SECTION 115

I, JOHN SMITH, do hereby declare that:

1. I am the Accused in this matter and I understand the nature of the charge against me.
2. I plead not guilty to the said charge.
3. I admit that on the 3rd March 2015 I drew a cheque on my bank in the sum of R25 000,00 and duly handed same to the Complainant, SA Plumbing Suppliers, in respect of payment of monies which I owed the Complainant for goods that were purchased by me.
4. I admit that the said cheque was presented for payment by the Complainant and was referred to drawer as there were insufficient funds in my banking account.
5. At the time of drawing the cheque there were insufficient funds in my bank account to meet same but I had a reasonable expectation that large payment would be received on the 21st of February from a debtor and that when the said cheque of R25 000,00 was presented by SA Plumbing Suppliers there would be sufficient funds in my banking account to meet same. Unfortunately Sanctuary Developers was liquidated on the 20th February and payment was accordingly not received.
6. I accordingly deny that at the time of handing the cheque to SA Plumbing Suppliers I had the intention of defrauding the said Complainant and accordingly plead not guilty to the charge.

DATED AT PORT ELIZABETH ON THIS THE 10TH DAY OF JUNE 2015.

JOHN SMITH

QUESTION 8**[3]**

In terms of Section 34 of the CPA the judicial officer presiding in criminal proceedings shall at the conclusion of such proceedings make an order that any article being the subject of the criminal proceedings be returned to any other person entitled thereto, if such person may lawfully possess the article.

Therefore you should advise your client that he should approach the Public Prosecutor with the request that his laptop should be returned to him.

The Prosecutor should submit this request to the presiding officer at the conclusion of the matter.

Your client will be required to provide proof of ownership of the laptop. This proof can be provided during his evidence-in-chief as well as documentary proof.

You as the attorney may assist your client personally in Court in making the request for the return of the laptop.

QUESTION 9**[8]**

In the Magistrate's Court for the District of Durban
Held at Durban

PARTICULARS OF CLAIM

1.

The Plaintiff is Emmanuel Mchunu an adult male businessman, who resides at 20 Anton Lembede Street, Durban.

2.

The Defendant is Improve-A-Home (Pty) Ltd, a company with limited liability duly incorporated in terms of the Company Laws of the Republic of South Africa and whose registered office and principal place of business is situate at 20 East Street, Johannesburg.

3.

On or about the 20th September 2014 at Durban, the Plaintiff and the Defendant entered into a verbal agreement, the material terms of which were:

- a) The Defendant would undertake certain building renovations for the Plaintiff at his home in Durban;
- b) The contract price would be R320 000,00 payable as follows:
 - i) R100 000,00 on signature of the contract;
 - ii) R120 000,00 on 50% on completion of the work;
 - iii) R100 000,00 on completion.
- c) All payments were to be effected in Durban.

4.

The Plaintiff effected payment to the Defendant of the sum of R160 000,00 in respect of the contract price.

5.

The Defendant abandoned the contract and as a result the Plaintiff cancelled the contract. A copy of the Notice of Cancellation is annexed hereto marked "A". (alternatively, the plaintiff hereby cancels the contract).

6.

The Plaintiff employed James Builders to complete the contract at a contract price of R240 000,00.

7.

As a result the Plaintiff has suffered damages of R80 000,00.

8.

Despite written demand the Defendant has failed to pay the said amount. A copy of the demand is annexed hereto marked "B".

9.

The whole cause of action arose within the jurisdiction of the above Honourable court.

WHEREFORE the Plaintiff prays for judgment against the Defendant for:

1. Payment of the sum of R80 000,00.
2. Interest thereon at the rate of 9% per annum from the 16th December 2014 (date of the expiry of the letter of demand) to date of payment.
3. Cost of suit.

DATED AT DURBAN THIS DAY OF FEBRUARY 2016.

PLAINTIFF'S ATTORNEYS
AB ATTORNEYS
140 ANTON LEMBEDE STREET
DURBAN

QUESTION 10

[2]

15,5%. Despite the change in interest rate to 9% in August 2014 it is the time that the action was instituted which determines the rate of interest which can be charged.

QUESTION 11 _____ **[2]**

Section 65 enquiry followed by an emoluments attachment order.

QUESTION 12 _____ **[3]**

- i) Issue a third party notice and have the Sheriff serve it on the party concerned.
- ii) The Defendant must enter into an appearance to defend.
- iii) File a Plea.

QUESTION 13 _____ **[6]**

- i) The Plaintiff to deliver a notice to amend; (2)
- ii) Defendant to deliver a notice to object setting out his grounds for objection; (2)
- iii) The Plaintiff to serve and file the corrected pages. (2)

QUESTION 14 _____ **[4]**

Kindly take notice that the Plaintiff intends to use at the trial of this matter three colour photographs of the scene of the collision, copies of which are annexed hereto. You are entitled to inspect the original photographs at the offices of the Plaintiff's attorneys.

KINDLY TAKE NOTICE that you are entitled to state within five (5) days of receipt hereof whether you have any objection to the photographs being admitted as evidence without proof, failing which the said photographs will be received as evidence upon the mere production of them and without further proof thereof.

DATED AT JOHANNESBURG THIS 15TH DAY OF OCTOBER 2016.

PLAINTIFF'S ATTORNEYS
SMITH & CO
20 EAST STREET
JOHANNESBURG

(Note to examiner: the precise answer is not required. The candidates must have the gist of it)

TOTAL: [100]