

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

09 FEBRUARY / 09 FEBRUARIE 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]

After the expiry of a period of 120 days (1) from the date on which the claim was sent or delivered by hand to the RAF (1), unless the RAF repudiates in writing, before the expiry of the period stipulated above (1)

QUESTION 2

[6]

- A RAF 4 Serious Injury assessment form must have been filed with the Road Accident Fund, which form states that the injury has resulted in 30% or more whole person impairment as provided in the AMA guidelines (1).
- An injury which does not result in 30% or more impairment of the whole person, may only be assessed as serious if that injury:
 - resulted in a serious long term impairment or loss of a body function (1);
 - constitutes permanent serious disfigurement (1);
 - resulted in severe long term mental or severe long term behavioural disturbance or disorder (1); or
 - resulted in loss of a foetus (1)
- Provided that the injury does not fall within the list of exclusions published in the Government Gazette. (1)

QUESTION 3

[6]

- 3.1 The RAF should pay the amount of R626 000.00 (1) to Mr X since the total final award by the Compensation Commissioner should be deducted from the total of his damages as agreed with the RAF or as ordered by a court (1) (2)
- 3.2 His claim against the Road Accident Fund would fall away, i.e there is no claim against the RAF (1), for the following reasons:

- In terms of S35(1) of COIDA, an employee has no common law claim against a negligent employer (1).
- In terms of S19(a), the RAF is not liable if the owner or driver is not liable (1).
Mr X therefore only has a claim against the Compensation Commissioner if the vehicle was driven by his employer (1) (4)

QUESTION 4

[10]

- 4.1 Moses, Mandla and Thulile are entitled to recover loss of support arising (1) from the death of their mother from the Road Accident Fund as all three (including Moses who had attained majority) were dependant upon their mother at the time of her death (1). (2)
- 4.2 No (1), both are below the age of 18 and in terms of the Children's Act are "minors" who lack the required legal capacity (1). (2)
- 4.3 No (1). Mrs Ngubane is the grandmother of the children, a status that does not confer *locus standi* to act on behalf of a minor child (1). (2)
- 4.4 Moses has attained majority and may lodge a claim in his personal capacity (1). A curator-ad-litem must be appointed to act on behalf of Mandla and Thulile (1). (Alternatively, the grandmother, Mrs Ngubane, may be appointed guardian of the minor children.) (2)
- 4.5 The RAF is not entitled to deduct the amounts received as a child support grant (1). (Coughlan N.O vs Road Accident Fund [2015] ZACC 9, 2015 (4) SAI (CC) (20 April 2015). The clients should be advised to reject the offer and:
- authorize you to send counter-proposals to the RAF, requesting that the offer be increased to include the deducted amounts, or
 - proceed with summons against the Road Accident Fund. (1) (2)

QUESTION 5

[15]

1.

The Plaintiff is Richard Baloyi N.O., a major male advocate practising at High Court Chambers, 220 Madiba Street, Pretoria, Gauteng, acting in his capacity as curator *ad litem*, duly appointed as such in terms of a court order, attached hereto, marked Annexure "A", as curator *ad litem* for Ben Botha, an unemployed major male, residing at (address) Pretoria. (2)

2.

The First Defendant is the Minister of Police in his official capacity, who accepts service at the premises of the State Attorney's Office (1)

3.

The Second Defendant is Captain John Jones, a major male police officer, employed as such at the South African Police Services, with address (1)

4.

At all relevant times, the Second Defendant was acting within the course and scope of his employment with First Defendant. (2)

5.

The Plaintiff has complied with the provisions of section 3 of the Institution of Legal Proceedings against certain State Organs Act 40 of 2002, and the prescribed period has lapsed. (2)

6.

The cause of action arose within the jurisdiction of the above honourable court. (½)

7.

On 1 April 2015 and at the intersection of Black and Blue Streets, Pretoria, a collision occurred between a vehicle with registration number ABF 472 GP, driven by the Second Defendant and a vehicle with registration number XYZ 792 GP, the property of Botha. (2)

8.

The aforementioned collision was caused by the sole negligence (1) of the Second Defendant who was negligent in one or more of the following ways:

- 8.1 He failed to stop at a red traffic light. (½)
- 8.2 He failed to keep a proper look-out. (½)
- 8.3 He drove too fast in the prevailing circumstances. (½)
- 8.4 He failed to have due regard to the rights of other road users. (½)

Note to examiner: A maximum of two marks may be awarded for the grounds of negligence.

9.

As a result of the aforementioned, plaintiff suffered damages in the amount of R712 000, being the fair and reasonable pre-collision value of the vehicle of the Plaintiff, which vehicle was not economically repairable.

10.

Despite lawful demand, the First and Second Defendant neglected or refused to pay.

11.

Wherefore, Plaintiff prays for judgment against the First and Second Defendants, jointly and severally, (½) the one to pay, the other to be absolved (½) for:

- 1. Payment of the amount of R712 000 (½)
- 2. Interest at ... % per annum *ad tempera more* (½)
Note to examiner: Interest percentage will be at the prevailing rate
- 3. Costs of suit (½)

QUESTION 6

[10]

INTERPLEADER NOTICE

PLEASE TAKE NOTICE that Piet Makume (the applicant) has today paid (1) into court in terms of Rule 58 an amount of R500 000 (five hundred thousand rand) to which the first and second claimants are making adverse claims (1).

The applicant hereby in terms of Rule 58(3) calls upon the first and second claimants to deliver particulars of their claims within a period of fifteen (15) days calculated from the date of service of these papers upon them (2).

Applicant furthermore hereby notifies the first and second claimants that he will apply to court for its decision as to his liability or the validity of the respective claims at a date to be fixed by the Registrar, not being less than fifteen (15) days from the date as specified as above for the delivery of claims (2).

TAKE FURTHER NOTICE that the applicant's attached affidavit will be used in support thereof (2).

Dated at Cape Town on this 20th day of June 2011.

Applicant's attorney

The application is addressed to the Registrar and to each of the two claimants

To the Registrar

And to the 1st Claimant (1)

And to the 2nd Claimant (1)

QUESTION 7

[19]

7.1 AFFIDAVIT FOR BAIL:

In the Magistrates Court for the district of Pretoria

Held at Pretoria

Case No.: 123/2016

In the matter between

The State

and

Skiet Weer

AFFIDAVIT in support of an application for bail.

I, the undersigned, SKIET WEER do hereby make oath and state as follows:

1.

I am an adult businessman and I reside at 1 Chancery Lane, Sandton, Gauteng.

2.

I have been resident at the aforesaid address for the past 20 years. I am the owner of the immovable property whereupon I reside.

3.

I am married to Mary Weer, a housewife and we have three (3) minor children all of whom are still in school.

4.

I am in possession of a South African passport bearing reference GP12345.

5.

I intend pleading not guilty to the charges against me.

6.

I undertake not to interfere and/or communicate with any State witness identified by the State nor with the investigation of the matter.

7.

I tender return of my travel document to the Investigating Officer in this matter and undertake not to present myself within a 1 kilometre radius of any point of departure out of the Republic of South Africa.

8.

I further undertake to report to the Investigating Officer between the hours of 8h00 to 16h00 on every Monday morning.

9.

I have no previous convictions.

10.

I am in overall charge of my business which employs 200 hundred people. In addition my wife is seriously ill suffering from a heart ailment and is dependent on me for her upkeep, maintenance and nursing. I furthermore take care of my three (3) minor children by, inter alia, taking them to school, extra curricular activities and back home.

11.

I am not in the best of health either as I suffer from a medical condition of the lung. I am dependent on a breathing apparatus which I have to attach to my nose and mouth while I sleep during the night. I am overseen by a private nurse at night.

12.

I respectfully submit that I have established exceptional circumstances entitling me to be released on bail.

DEPONENT

I HEREBY CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this Affidavit which was sworn to and signed before me at PRETORIA on this day of 2015, the regulations in Government Gazette Notice No R1258 dated 21st July 1972, amended by Government Notice No 1648 dated 19 August 1977, having been complied with.

COMMISSIONER OF OATHS

(7)

7.2 SECTION 112 PLEA

In the Regional Court of Pretoria
Held at Pretoria

Case No.: 123/2016

In the matter between:

The State

and

Skiet Weer

Accused

The plea of guilty of the accused made in terms of Section 112 of the Criminal Procedure Act.

I the undersigned, Skiet Weer, do hereby state as follows:

1.

I am an adult businessman and am the Accused herein.

2.

I have read and understand the charge against me.

3.

I admit that: -

- 3.1 On Thursday the 15th January 2015 I was in the company of my friend Donder when we attended a party at the Sandton City Restaurant, a public restaurant within the jurisdiction of this Honourable Court.
- 3.2 I had in my possession my licensed 9 mm firearm which was fully loaded with ammunition at the time;
- 3.3 I fired a single shot from my aforesaid firearm which struck the late Frakas thereby injuring and causing his death;
- 3.4 There were no intervening circumstances from the time I fired the shot until the late Frakas passed on;
- 3.5 I intended to kill Frakas when I fired the shot I and did kill him. I admit the contents of the medico legal report which admission can be noted in terms of Section 220.
- 3.6 At all material times I knew that firing the shot at Frakas at such close distance would kill him.

4.

I knew that it is wrongful and unlawful to fire the shot thereby killing Frakas

5.

I accordingly plead guilty to the charge of murder.

SIGNED AT PRETORIA ON THIS DAY OF 20__.

(7)

7.3 SECTION 115 PLEA

I, the undersigned, SKIET WEER, do hereby state as follows:

1.

I am an adult businessman and I reside at 1 Chancery Lane, Sandton, Gauteng.

2.

I have read and understand the charge against me.

3.

Donder and I have been childhood friends. Throughout his life Donder was physically weak and people abused him. I have been protecting him throughout our friendship from abuse by other persons. I consider him to be my "brother".

4.

The deceased Frakas was some 2 metres tall and heavily built. He appeared to be a body builder with huge bulging muscles. Donder on the other hand is some 1.4 metres tall and 50 kg in weight.

5.

When Frakas struck Donder I immediately believed that Donder was in danger of further attack by Frakas and that his life was at risk.

6.

I immediately drew my firearm and discharged a single shot verily believing that that was the only way to prevent further attack on Donder and to protect his person and life, as he was unable to do so.

7.

I therefore acted in defence of Donder's person.

8.

I therefore deny that I acted unlawfully in the circumstances.

9.

I therefore plead not guilty to the charge of murder.

SIGNED AT GUATENG ON THIS DAY OF 20_____. (5)

QUESTION 8 [6]

8.1 I would advise my client that an appeal against the Magistrate's decision at this point in time should not be brought. A new application for bail should be brought disclosing all the new facts. In the event of the Magistrate thereafter refusing bail the appeal procedure can follow. (3)

8.2 Whether the accused has any previous convictions for any offence and/or whether there are any charges pending against him and/or whether he has been released on bail in any other matter. (2)

8.3 Yes. (1)

1.

The Plaintiff is Plumb-Link (Pty) Ltd, a company duly incorporated with limited liability in terms of the Company Laws of the Republic of South Africa and whose principle place of business is situate at 20 Loop Street, Cape Town.

2.

The First Defendant is The Drain Doctor CC, a Close Corporation with limited liability registered in terms of the Close Corporation Act and whose principle place of business is situate at 20 Canal Walk, Cape Town.

3.

The Second Defendant is Simon Jones, an adult male plumber, employed by The Drain Doctor CC and whose place of employment is situate at 20 Canal Walk, Cape Town.

4.

On or about the 20th June 2014 at Cape Town the Plaintiff, the 1st Defendant represented by the 2nd Defendant and the 2nd Defendant entered into a written agreement, the material terms of which were:

- a) The Plaintiff would sell to the 1st Defendant plumbing supplies on credit;
- b) The 1st Defendant would affect payment of any outstanding amount within one month of the receipt of a statement; and would be liable for interest on any outstanding balance at the rate of 18% per annum;
- c) The parties consented to the jurisdiction of the District Magistrate's Court;
- d) That a certificate signed by the Credit Manager of the Plaintiff will be *prima facie* proof of any amount due and payable in terms of the contract;
- e) Simon Jones bound himself surety and co-principal debtor with the 1st Defendant for the payment of all monies due and payable to the Plaintiff.

A copy of the contract is annexed hereto marked "A".

5.

The Plaintiff sold and delivered plumbing goods to the 1st Defendant to the value of R340 000,00.

6.

The Plaintiff provided the 1st Defendant with a statement reflecting the said amount was due and payable on the 1st December 2014. A copy of the statement is annexed hereto marked "B".

7.

The 1st Defendant has failed to pay the said amount.

8.

A certificate of the Credit Manager of the Plaintiff is annexed hereto marked "C".

9.

Despite demand in terms of the National Credit Act the 1st and 2nd Defendants have failed to pay the said amount. Copies of the notifications and proof of posting are annexed hereto marked "D" and "E".

WHEREFORE the Plaintiff prays for judgment against the 1st and 2nd Defendant jointly and severally, the one paying the other to be absolved:

- a) Payment of the sum of R340 000,00.
- b) Interest thereon at the rate of 18% per annum from the 1st December 2014 to date of payment;
- c) Costs of suit.

DATED AT CAPE TOWN THIS DAY OF 2016.

PLAINTIFF'S ATTORNEYS
AB ATTORNEYS
20 LOVEDAY STREET
CAPE TOWN

[Note to examiner: in certain jurisdictions one has to allege "The defendant did not refer the agreement to a debt counsellor, an alternative dispute resolution agent, consumer court or Ombud (do not penalise candidates who omit this)]

QUESTION 10 _____ **[3]**

- 10.1 Yes; (½)
- 10.2 No; (½)
- 10.3 Yes; (½)
- 10.4 No; (½)
- 10.5 No; (½)
- 10.6 No. (½)

QUESTION 11 _____ **[4]**

- 1. Date of written cession
- 2. Cedent's name
address and
description as at the time of cession

QUESTION 12 _____ **[2]**

- 12.1 Johannesburg Magistrate's Court. (1)
- 12.2.1 In terms of section 28(1)(a) the defendant carries on business in the jurisdiction of the Magistrate's Court of Johannesburg, (1) and
- 12.2.2 "place of business" is restricted to the place where its central management is or its registered address. The branch does not found jurisdiction. (1)

QUESTION 13 _____ **[1]**

Yes, the client will be entitled to mora interest from date of the judgment being granted to the Prescribed rate of Interest Act at 9%.

QUESTION 14 _____ **[2]**

Interpleader.

QUESTION 15 _____ **[1]**

Issue a warrant of execution against the employer for payment of the R600,00.

QUESTION 16 _____ **[2]**

Your client should serve a notice in terms of which you make a without prejudice payment in terms of rule 18(2) in the amount of R30 000,00 plus costs to date.

TOTAL: [100]



LAW SOCIETY
OF SOUTH AFRICA