

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

14 FEBRUARY / 14 FEBRUARIE 2017

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) Yes, June has *locus standi* (1). She is Silindile's mother and natural guardian (1). (The fact that their surnames differ is of no legal consequence). (2)
- 1.2) June has *locus standi* to recover the funeral expenses (1) as she personally incurred these expenses (i.e paid for the funeral) (1). (2)
- 1.3.1) 24th April 2018. (1)
- 1.3.2) 24th April 2018. (1)
- 1.3.3) 11th May 2018. (1)
- 1.4) Yes, these medical expenses may be recovered from the RAF (1). The medical aid payment is a collateral benefit which cannot be deducted by the RAF (1). (2)
- 1.5) Yes, Silindile is entitled to loss of support arising from her father, Joseph's, death (1). He was legally obliged to, and did in fact support her prior to his death (1). (2)
- 1.6) Yes, June is entitled to loss of support arising from Joseph's death (1). The couple intended to marry and were already living together (1) in a life partnership that had many of the characteristics of marriage (1) (i.e cohabitation; joint upkeep of the common home). (Paixao vs Road Accident Fund) (2)
- 1.7.1) Their personal injury claims are unaffected by the fact that Joseph's negligence was the sole cause of the accident. (1)
- 1.7.2) June and Silindile are not entitled to recover their loss of support where the negligence of their breadwinner was the sole cause of the collision. (1)

QUESTION 2

[6]

- 2.1.1 Your client will not be able to claim against the RAF (1). The reason is that although a go-cart is propelled by means of fuel, it is not designed or adapted for propulsion on a road, and it therefore is not regarded as a "motor vehicle" in terms of the Act (1). (2)
- 2.1.2 Yes, the answer will differ and the client will have a claim against the RAF for damages arising out of the bodily injuries which she sustained in the accident (1) as a bus is designed or adapted for propulsion on a road by means of fuel, and is regarded as a "motor vehicle" (1). (2)
- 2.2 The client will have a claim against the RAF for non-pecuniary loss (in terms of regulation 3 (1) (b) (III)) since loss of a foetus is stipulated as one of the exceptions where a person will qualify for general damages (1) although his/her injuries do not result in 30% or more impairment of the whole person (1). (2)

QUESTION 3

[4]

It can be completed by the Superintendent (or his/her representative) of the hospital where the client was treated for such bodily injuries. Provided that, if the medical practitioner or Superintendent (or his/her representative) concerned fails to complete a medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself/herself regarding the nature and treatment of the bodily injuries in respect of which the claim is made.

QUESTION 4

[16]

- 4.1 An interlocutory application seeks interlocutory relief or intermediate relief. It does not concern itself with the merits of the case but with some procedural matters adjunct thereto. An interlocutory application is incidental to pending proceedings. (2)
- 4.2 The short form. (1)
- 4.3
- 1) An order to compel the furnishing of further particulars for preparation for trial, requested on ____ day of _____ 2016 (1) within 10 days (1) from date of service of this order.
 - 2) Leave to approach the Court on the same papers in the event of non-compliance with the order in 1.
- Note to marker: This is optional as the practice differs between divisions. No mark to be awarded or deducted.**
- 3) Costs of the application. (1) (3)

4.4 FOUNDING AFFIDAVIT

1

- 1.1. I am a major male attorney, residing at (address) / practising under the name and style of (firm name) at (address). (1)
- 1.2. The facts herein stated are within my personal knowledge unless it appears different from the context and are both true and correct. (1)
- 1.3. I am the Applicant's attorney in this matter.

2

The Applicant is a major male auditor, residing at (address). (½)

3

The Respondent is a major male businessman, residing at (address). (½)

4

In terms of the action the Applicant has taken against the Respondent, the matter is set down for trial on the _____ day of _____ 2015. (Notice of set down attached hereto, marked as "Annexure A"). (1)

5

On the _____ day of _____ 2015, I, as the attorney on record for the Applicant (½), requested further particulars for purposes of the trial from the Respondent in terms of Rule 21, these particulars are necessary to enable me to prepare for trial (½). The Respondent has not yet furnished the Applicant with the requested particulars and the Applicant is being prejudiced in his preparation for trial (½). Such request was made at least 20 court days before the trial date in this matter. (See (½) attached request for further particulars, marked as "Annexure B").

6.

I also sent a letter to respondent's attorney as per copy attached hereto marked annexure "C". In the letter I demanded delivery of the particulars within seven days. I also indicated our attention to bring this application should he fail to serve the said particulars. (½)

7.

Wherefore I pray for an order in terms of the Notice of Motion. (½)
(7)

- 4.5 That the Defendant's defence is struck (1) and judgment in favour of the Plaintiff be entered (1) with costs of the application (½) and costs of the action/suit (½). (3)

QUESTION 5

[5]

BE PLEASED TO TAKE NOTICE that the Appellant hereby notes an appeal (½) to the Honourable Court (½) against the whole of the judgment and order (½) handed down by the Honourable Mr XYZ (½) on 2016 (½). In the (cite Court a quo) under case number xxx.

Please take notice further that the Appellant notes an appeal with the leave (½) of the Court a quo, such leave having been granted on 2016 (½). A certified copy of the order granting leave to appeal is filed (½) herewith.

Grounds of Appeal.

Any two (½) each = (1).

Note to marker : use your discretion

QUESTION 6

[4]

In terms of section 22 of the Superior Courts Act, the grounds for review are the following:

- Absence of jurisdiction on the part of the court. (1)
- Presiding officer has interest in the case, is biased, malicious or the commission of an offence referred to in section 22 of the Superior Courts Act. (1)
- Gross irregularity in the proceedings. (1)
- The admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence. (1)

QUESTION 7

[8]

“Statement of Accused i.t.o Section 220 of the Criminal Procedure Act.

I the undersigned,

Long Fingers

Do hereby state as follows:

1. I am an adult male cashier and I am the accused herein.
2. I have read and understand the charge against me.
3. I make the undermentioned admissions of fact, freely and voluntarily, i.t.o. the provisions of Section 220 of the CPA (1)
4. At all material times to the charge:
 - 4.1 I was employed by Shisa Nyama as a cashier at its Sandton branch; (1)
 - 4.2 The Sandton branch is within the jurisdiction of this Honourable Court (1)
 - 4.3 I worked between 6h00 to 18h00 on 31st December 2015 (1)
 - 4.4 I collected monies from various customers during my shift and placed it in the till (1)
- 4.5 As I passed the security check point on my way out of the workplace, I was stopped by a security guard who searched my person and found R1 000 (one thousand rand) in bank notes in my trouser pocket. (1)
5. I consent that the facts contained in paragraph 4 above be recorded as formal admissions made by me and relieves the State of proving such facts. (1)

Thus made and signed by me, the accused at Sandton on this 1st day of April 2016.

Signed “Accused”

(1)

QUESTION 8**[8]**

- 8.1 No (1)
- 8.2 The accused or his legal representative is compelled to:
- 8.2.1 Inform the court whether the accused has previously been convicted of any offence; (1)
- 8.2.2 Whether there are any charges pending against him and whether he has been released on bail in respect of those charges. (1)
- 8.3 The ground that the magistrate had to consider in order to determine whether it will be in the interest of justice to release your client are;
- 8.3.1 Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a schedule 1 offence; (1)
- 8.3.2 Where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; (1)
- 8.3.3 Where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; (1)
- 8.3.4 Where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system. (1)
- 8.3.5 Where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security. (1)

QUESTION 9**[3]**

The statement must:

- 9.1 Be in writing; (1)
- 9.2 Admit all the elements of the offence; (1)
- 9.3 Satisfy the court that the accused is guilty of the offence charged. (1)

QUESTION 10**[2]**

- 10.1 An application for the discharge of the accused in terms of Section 174. (1)
- 10.2 If the Court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any other offence of which he may be convicted on the charge, it may return the verdict of not guilty. (1)

QUESTION 11**[4]**

- 11.1 Before the accused pleads to the charge. (1)
The accused may be charged with the same offence again. (1)

11.2 After the accused has pleaded to the charge but before judgement is delivered.

(1)

The accused must be acquitted of the charge.

(1)

QUESTION 12

[8]

1.

The plaintiff is Mr X, an adult male plumber who resided at 20 East Street, Johannesburg.

2.

The defendant is AB CC, a Close Corporation, registered in terms of the Close Corporations Act, with registered offices at 20 Jan Smuts Avenue, Johannesburg.

3.

On or about 10 November 2016, the plaintiff and the defendant, duly represented by Anton Barnard, entered into a written agreement in terms of which the defendant undertook to conduct some building alterations to the plaintiff's property.

4.

The material terms of the contract included the contract price which was R560 000,00 payable as follows:

- i) 50% upon signing of the contract;
- ii) R100 000,00 once the foundation has been laid;
- iii) the balance on completion of the contract.

A copy of the contract is annexed as annexure "A".

5.

The plaintiff paid the defendant the amounts as set out in paragraph 4 (i) and (ii) above.

6.

The defendant undertook some work and then absconded.

7.

As a result the plaintiff cancelled the contract. A copy of the cancellation is annexed as annexure "B".

8.

The Plaintiff entered into a contract with Complete-A-Home at a contract price of R240 000,00 to complete the contract, which price is fair and reasonable. A copy of the contract is annexed as annexure "C".

9.

As a result the Plaintiff has suffered damages in the amount of R60 000,00.

Despite demand, the Defendant has failed to pay the said amount. A copy of the demand is annexed as annexure "D".

Wherefore the Plaintiff prays for judgment for:

- 1) Payment of the sum of R60 000,00;
- 2) Interest at the rate of 10,5% from date of expiry of the letter of demand until date of final payment.
- 3) Costs of suit.

DATED Johannesburg on

PG ATTORNEYS
(ADDRESS)

QUESTION 13 _____ **[4]**

13.1 There is no allegation that;

- a) Defendant consented to the jurisdiction of the Regional Magistrate's court; and
- b) That the goods were delivered. (2)

13.2 No allegation that Plaintiff was the owner of the vehicle or that its value prior to the accident is greater than the claim for damages. (2)

QUESTION 14 _____ **[4]**

File a notice at least 15 days before the date of hearing that you intend calling an expert. File a further notice at least 10 days before the hearing setting out a summary of the expert's opinion and his reasons for such opinion which include qualifying him as an expert, that he has examined the Plaintiff and what he has found.

QUESTION 15 _____ **[2]**

An application to court for the Plaintiff to pay the costs of the action (together with the costs incurred in so applying.)

QUESTION 16 _____ **[3]**

The Defendant should call for security and the Plaintiff is then required to provide your client with security for the judgment amount. If security is given the Defendant must within two months of the Provisional Sentence Judgment being granted, pay to the Plaintiff the claim with costs. If the Plaintiff does not provide security, then the Defendant need not pay that amount to the Plaintiff and he can simply defend the principal case. The action is defended by giving notice of intention to do so and by the delivering a plea.

QUESTION 17

[4]

- 17.1 Absolution from the instance with the Plaintiff to pay the costs. (2)
- 17.2 Original summons
Original return of service
Original and one copy of the Request of a Default Judgment
Damages affidavit by an expert (2)

TOTAL: [100]



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