

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

22 AUGUST / 22 AUGUSTUS 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** **[8]**

- 1.1 A RAF5 form (notification of dispute) must be completed. The grounds upon which the rejection is disputed must be set out in the form and must include such submissions, medical reports and opinions as the disputant wishes to rely upon. The Registrar of the Health Professions Council of South Africa must be notified (by way of the RAF5 and annexures thereto) within 90 days of being informed of the rejection. (6)
- 1.2 Yes, she will be able to claim these damages if they can be proven. The Road Accident Fund Act only qualifies non-pecuniary damages. (2)

**QUESTION 2** **[4]**

Yes, claims can be lodged against the RAF under the circumstances for the two minor children. Section 20(1) provides that under such circumstances it shall be deemed that the vehicle was driven by the person in control of the vehicle (Mrs van der Merwe). Furthermore, Section 20(2) provides that a person who has placed or left a motor vehicle at any place shall be deemed driving that vehicle while it moves from the place as a result of gravity, or while it is stationary at that place or at a place to which it moves from the first mentioned place as a result of gravity.

**QUESTION 3** **[13]**

- 3.1 No. (1)
- The legal effect of the offer and acceptance was to create a binding contract between Mary Govender and the RAF (1). Her death does not release the RAF from its obligation to pay the agreed amount (1). The fact that summons has not been served has no bearing on their obligation to pay (1). (3)
- 3.2 No. Mary's Power of Attorney in your favour lapsed upon her death. (1)
- 3.3 21 February 2019. (1)

As we have a contract (offer of acceptance) the Prescription Act applies and summons must be served within 3 (three) years of the date the debt was due (22 February 2016). (2)

3.4 The duly appointed executor or representative of Mary's estate. (1)

3.5 The RAF would be justified in refusing to pay. As Mary's claim was for general damages (non-pecuniary loss) only, and she passed away before the offer was accepted, and before the close of pleadings, the claim falls away as a result of her death. (4)

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#### QUESTION 4

[15½]

4.1

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#### PARTICULARS OF CLAIM

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1.

The plaintiff is John Brown, an adult/major male estate agent, trading/carrying on business as Magic Estate Agents at 150 Newman Street, Johannesburg, Gauteng. (1)

2.

The defendant is Jenifer Jones, an adult/major female pensioner, residing at 10 Beach Road, Durban, KwaZulu-Natal. (1)

3.

The above honourable court has jurisdiction to hear the matter since the cause of action arose / the defendant resides within its area of jurisdiction. (1)

**Note to examiner: the answer depends on the division of the court the plaintiff has chosen to issue summons.**

4.

Plaintiff is an estate agent who, at all relevant times, was the holder of a valid fidelity fund certificate issued to him in terms of section 26(a) of Act 112 of 1976 and who had fidelity insurance in terms of section 26(b) of Act 112 of 1976. (1)

**Note to examiner: candidates who do not set out details of the section number and description of the Act, should not be penalised.**

5.

On (date) (½) at (Johannesburg) (½) defendant, acting personally, orally (½) gave plaintiff, acting personally, a mandate (½) to find a purchaser for defendant's fixed property, situated at 12 Rivonia Road, Johannesburg, Gauteng (½) at a selling price of at least R10 million Rand (½). (3)

6.

Plaintiff orally accepted the said mandate. (½)

7.

On (date) plaintiff introduced Sam Sibiyá to defendant and to the said property. (1)

8.

As a direct result of this introduction Sam Sibiyá purchased the said property from the defendant at a purchase price of R10 million Rand. (A copy of the deed of sale is annexed – note: this is optional). (1)

9.

Plaintiff was the effective cause of the sale and in the premises plaintiff duly performed his obligations in terms of the mandate given to him. (1)

10.

It was an express term of the mandate that should plaintiff duly perform thereunder, he would be paid a commission equal to 5% of the purchase price plus VAT there-on. (1)

11.

In the premises, defendant is liable to pay to plaintiff commission in the sum of R500 000 plus VAT thereon at 14%, together with interest at the prescribed/legal rate per annum a *tempora morae*. (½)

12.

Despite lawful demand, defendant fails or neglects to pay the amount claimed. (½)

4.2 In the High Court Gauteng Division, Johannesburg (½) or Gauteng Division Pretoria (½), or  
In the High Court Kwa-Zulu Natal, Division Pietermaritzburg (½) or Kwa-Zulu Natal Division, Durban (½) (2)

4.3 Not less than one month in the case of the courts of the Gauteng Divisions and not less than 10 days in the case of the courts in the Kwa-Zulu Natal Divisions. (1)

**QUESTION 5** **[6]**

5.1 6 months (1)

5.2 Application for condonation. (1)

5.3 The facts giving rise to the debt and such particulars of such debt as are within the knowledge of creditors (1), e.g. the cause of action and the amount claimed. (2)

5.4 30 days (1)

5.5 Yes (1)

**QUESTION 6****[3½]****Note to marker: any seven steps – maximum marks 3½.**

- 1) A writ of execution against immovable property must contain the full description of the nature and situation of the property including the address to enable the sheriff to trace. (½)
- 2) The sheriff shall make an attachment to be served in terms of the rules on the owner, registrar of deeds and occupier of the property if the occupier is not the owner. (½)
- 3) The attorney to advise the sheriff in writing whether he should proceed with the sale in execution. (½)
- 4) The sheriff ascertains and records bonds or other encumbrances registered against the property together with the name of the relevant persons and notifies the attorney accordingly. (½)
- 5) If the property is subject to the claim of any preferent creditor, the property may not be sold unless the attorney for the judgment creditor notifies such preferent creditor by registered post of the intended sale and obtain a reserve price or agree on the sale without a reserve price. (½)
- 6) If the property is rateable the attorney of the judgment creditor must also by registered post notify the local authority. (½)
- 7) The sheriff appoints a day and place for the sale of the property not less than one month after service of the notice of attachment. (½)
- 8) The attorney, in consultation with the sheriff, shall prepare a notice of sale and conditions of sale and hands same to the sheriff not less than 20 days prior to the sale. (½)
- 9) The notice of sale shall be published in the Government Gazette and a local newspaper. (½)
- 10) Not less than 10 days prior to the date of sale, the sheriff shall forward by registered post the notice of sale to all bondholders. (½)
- 11) The sheriff shall, not later than 10 days prior to the sale, affix the notice of sale on the notice-board of the Magistrate's Court. (½)

**QUESTION 7****[10]**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF CAPE TOWN,  
HELD AT CAPE TOWN

CASE NO:235/03

In the matter between

THE STATE

And

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**REQUEST FOR FURTHER PARTICULARS**

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**(1)**

The Accused hereby requests the State to furnish the following Further Particulars:

1. The specific date and time when the collision occurred. (1)
2. The precise location of the collision. (1)
3. The registration letters and number of the vehicle which the accused allegedly drove. (1)
4. The grounds of negligence on which the State shall rely. (1)
5. It is alleged that the deceased was injured in the collision and that such injuries caused his death? If so, full details of such injuries are required. (1)
6. When is it alleged that X died? (1)
7. Where is it alleged that X died? (1)

DATED AT CAPE TOWN on this first day of FEBRUARY 2017.

CANDIDATE AND ASSOCIATES INC.

\_\_\_\_\_  
 PER: CANDIDATE BOYES (1)  
 (Attorney for Applicant/accused)  
 227 Main Street  
 CAPE TOWN

TO: THE CLERK OF THE CIVIL COURT (1.5)  
 MAGISTRATE'S COURT  
 CAPE TOWN

AND TO: THE SENIOR PROSECUTOR (1.5)  
 MAGISTRATE'S COURT  
 CAPE TOWN

**QUESTION 8****[7]**

In terms of Section 217 the statement:

1. Must be shown to have been made freely and voluntarily.
2. The accused must have been at the time in his/her sober senses.
3. There must have been no undue influence exercised on him to induce him to make such statement.
4. The accused must have been informed of his constitutional right to remain silent.
5. The accused must have been informed of his constitutional right to require that his legal representative be present when the statement is taken
6. The statement must have been made before a Magistrate or Peace Officer.
7. The accused must have been informed that the statement will be used in evidence against him.

**QUESTION 9****[4]**

1. Before the accused's first appearance in court;
2. The accused must be charged with an offence, other than 1, referred to in Part II and Part III of Schedule 2, to the Criminal Procedure Act;
3. Only a Police Official above the rank of non-commissioned officer can grant bail;
4. Consultation with the investigating officer;
5. Depositing a sum of money at the police station.

**QUESTION 10****[4]**

- 10.1 The conduct of the Prosecutor is indeed an irregularity as nobody is entitled to discuss evidence with a witness once he/she is under oath. At that point the witness belongs to the Court (2)
- 10.2 In the event of the witness confirming the discussion it could very well affect his credibility as a witness and the value that the court will attach to his evidence. It could in due course found a ground for appeal/review (2)

**QUESTION 11****[6]**

11.1

**LETTER OF DEMAND**

[Letter should be addressed to Mr X]

We act on behalf and on instructions of Ms Y.

It is our instruction that you are indebted to our client in the amount of R100 000,00.

for goods sold and delivered to you at your special interest and request.

In terms of the Magistrate's Court Act and rules, you are liable for the costs of this letter of demand amounting to .....

Accordingly, our client demands that you pay the capital and costs within 14 days (candidate may insert reasonable period) of this letter of demand, failing we will issue summons. (4)

- 11.2 The letter should at least contain a notice or paragraph proposing that the debtor refers the matter to an alternate dispute resolution agent, an ombud with jurisdiction or a debt counsellor.... (2)

**QUESTION 12****[5]**

- 12.1 No. (1)
- 12.2 R1 000,00. (1)
- 12.3 Yes. (1)
- 12.4 Copies of the record and Power of Attorney. (2)

Whereas the Plaintiff instituted action against the Defendant for payment of the sum of R240 000,00 plus interest and costs.

And whereas the parties have settled the matter.

Therefore it is agreed:

1.

The Defendant will pay to the Plaintiff the sum of R160 000,00 plus interest at the rate of 10,5% per annum calculated from the 1<sup>st</sup> of October 2016 to date of payment plus costs on the party and party scale to be taxed or agreed.

2.

The Defendant will pay the said sum in instalments of R20 000,00 per month, the first payment to be made on the 1<sup>st</sup> November 2016 and further payments monthly thereafter on the first day of every successive month.

3.

The Defendant will take collection commission of 10% on each payment subject to a maximum of R350,00 plus VAT.

4.

The Defendant will pay each amount into the trust account of the Plaintiff's attorneys, the banking details being as follows:

Account	xxxxxxxxxxxxxxxx
Account number	xxxxxxxxxxxxxxxx
Bank	xxxxxxxxxxxxxxxx
Branch code	xxxxxxxxxxxxxxxx

5.

In the event of the Defendant failing to make one payment on due date the full amount will become due and payable without further recourse to the Defendant.

6.

The parties consent to this agreement being made an order of the court.

DATED ..... this .....day ..... 2016.

As witnesses

1.

\_\_\_\_\_  
Plaintiff

2.

DATED ..... this ..... Day .....2016.

As witnesses

1.

\_\_\_\_\_  
Defendant

**QUESTION 14** \_\_\_\_\_ **[4]**

- 14.1 No. (1)
- 14.2 The defendant may not consent to a specific area jurisdiction in a loan agreement. Such consent is null and void. (The following answer is also acceptable: Such consent is prohibited in terms of section 45 of the Magistrates' Court Act.) (1)
- 14.3 The Pretoria Magistrate's Court. (1)
- 14.4 Because the Defendant resides in Pretoria. (In terms of S28 the Court will have jurisdiction in respect of the person.) (1)

**QUESTION 15** \_\_\_\_\_ **[3]**

- 15.1 The Plaintiff abandons the sum of R20 000,00. (2)
- 15.2 Judgment would be given for R390 000,00 (the reduction is applied firstly to the abandoned amount and thus an answer of R370 000,00 is incorrect). (1)

**TOTAL: [100]**

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OF SOUTH AFRICA