

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

15 OCTOBER / OKTOBER 2018

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. (1)
As the 120 day period (subsequent to the lodgement of the claim) has elapsed, summons may be served irrespective of whether there is an offer or repudiation. (1)
- 1.2 No. (1)
A grandparent does not have *locus standi* and a curator-ad-litem will have to be appointed to act on Wilfred's behalf. (1)
- 1.3. No (1)
Wilfred is 6 years old (1) and accordingly dolus and culpa incapax / legally incapable of negligence (1).
- 1.4. A power of attorney (1), signed by the duly appointed curator-ad-litem must be forwarded to the RAF. (1).
- 1.5 As it is a "hit and run" / unidentified claim (1), within 5 years of the date of the collision / on or before 14th of February 2023. (Either answer is acceptable.) (1)
- 1.6 Mrs Kunene should be advised that the deduction is not permissible, (1) as the child support grant is a collateral benefit. (1)
- 1.7 The funds due to a minor cannot be paid to her (1) and will have to be paid to the duly appointed curator bonis (1).

QUESTION 2 **[5]**

His damages due to the bodily injuries (1) which he sustained in the accident, namely: general damages, past medical and hospital expenses, future medical expenses and future loss of earnings can be recovered from the Road Accident Fund (1) due to the fact that it arose out of the negligent driving of a motor vehicle. (1) The damages which he suffered in

respect of his contact lenses, his cell phone and his vehicle may not be recovered from the Road Accident Fund and will have to be recovered from the driver of the vehicle (1) in which the client was a passenger at the time of the accident, personally, since these damages are not for bodily injuries. (1)

QUESTION 3 **[5]**

- 3.1 John's claim will be reduced by 50%. (1)
- 3.2 John's claim will be rejected / repudiated. (1)
- 3.3 None. (1) For John's claim to succeed in full (100%), 1% negligence (1) must be proven on the part of either driver. (1).

QUESTION 4 **[9]**

- 4.1 A notice shall be served notifying all other parties of his intention to amend (½) and shall furnish particulars of the amendment.(½).
- 4.2 A written objection to the proposed amendment must be delivered within ten (10) (½) days of delivery of the notice to amend and shall clearly and concisely state the grounds upon which the objection is founded.(½).
- 4.3 The amending party may, within ten (10) days of the expiration of the period available for the objection effect the amendment by filing the amended pages. (1)
- 4.4 The party affected by the amendment may within fifteen (15) days (1), or within such other period as the Court may determine (1) make any consequential adjustment to the pleadings filed by him (1) and may also except to the pleading (Rule 23) or may take steps to have any irregular proceeding set aside (Rule 30) (1).
- 4.5 A party giving notice of amendment shall, unless the Court otherwise directs (½) be liable for the costs thereby occasioned to any other party (½).
- 4.6 An amendment may be effected at any stage before judgment (1).

QUESTION 5 **[6]**

NOTE TO EXAMINER: A notice addressed to the registrar and the plaintiff and not an application is applicable. (1)

- KINDLY TAKE NOTICE that the defendant hereby demands security for costs from the plaintiff in the amount of R250 000,00 (Two Hundred and Fifty Thousand Rand) (1)
- TAKE NOTE FURTHER THAT the amount of R250 000,00 (Two Hundred and Fifty Thousand Rand) is a reasonable estimate of the costs which the defendant would incur (1) and for which the plaintiff would be liable should the above Honourable Court rule in favour of the defendant and award costs in favour of the defendant. (1)

- TAKE NOTE FURTHER THAT the defendant is entitled to request security for costs on the basis that, inter alia that plaintiff is a peregrinus (1) who owns no unmortgaged or indeed any immovable property in South Africa (1).

QUESTION 6

[10]

6.1

- 6.1.1 If the Plaintiff sues for damages, he/she shall set them out in such a manner as will enable the Defendant reasonably to assess the quantum thereof; (1)
- 6.1.2 A Plaintiff suing for damages for **personal injury** shall specify his date of birth, the nature and extent of the injuries, and the nature, effect and duration of the disability alleged to give rise to such damages; (2)
- 6.1.3 the Plaintiff shall as far as practicably possible state separately what amount, if any, he has claimed for –
- a) medical costs and hospital and other similar expenses, and how these costs and expenses are made up; (1)
 - b) Pain and suffering, stating whether temporary or permanent, and which injuries caused it; (1)
 - c) Disability in respect of –
 - (i) The earning of income (stating the earnings lost to date, and how the amount is made up, and the estimated future loss and the nature of the work the Plaintiff in future will be able to do); (1)
 - (ii) The enjoyment of amenities of life (giving particulars) and stating whether the disability concerned is temporary or permanent. (1)
 - d) Disfigurement, with a full description thereof and stating whether it is temporary or permanent. (1)

- 6.2 If a party fails to comply with any of the provisions of Rule 18, such pleading shall be deemed to be an **irregular step** and the opposite party shall be entitled to act in accordance with Rule 30, which deals with Irregular proceedings. (2)

QUESTION 7

[10]

- 7.1 The accused is **not** obliged to answer questions. Suspects and accused have a fundamental **right to remain silent** (Section 35(1)(a) and Section 35(3)(h) of the Constitution). (2)

- 7.2 The only information which he is obliged to give to the investigating officer is his **name and address** – Section 41 of the CPA. (2)
- 7.3 He **cannot refuse** to be questioned but can **refuse to answer** the questions. (2)
- 7.4 His refusal to answer questions **cannot be held** against him at a later trial as his **right to remain silent** is enshrined in the Constitution and the accused need **not assist the State** in any manner whatsoever to prove his guilt. (2)
- 7.5 Under certain circumstances it is **indeed advisable** to make a statement, particularly when your client intends pleading not guilty and **has a feasible defence**. It could be in his interest to **place same on record** as soon as possible to exclude the subsequent argument of the Prosecutor of same being a recent fabrication. Having a statement on record could also **dissuade the prosecutor from proceeding with the prosecution** when he is obliged to weigh up the probabilities of a conviction. (2)

QUESTION 8

[5]

In terms of Section 217 and 219 A the statement:

- 8.1 Must be shown to have been made freely and voluntarily.
- 8.2 The accused must have been at the time in his sober senses.
- 8.3 There must have been no undue influence exercised on him to induce him to make such a statement.
- 8.4 The accused must have been informed of his constitutional right to remain silent.
- 8.5 The accused must have been informed of his constitutional right to require that his legal representative be present when the statement is taken.
- 8.6 The statement must have been made before a magistrate.
- 8.7 The accused must have been informed that the statement will be used in evidence against him.

QUESTION 9

[3]

- 9.1 The accused can apply for acquittal in terms of Section 174. (1)
(Note to examiners: Should the candidate discuss bringing an application in terms of Section 174 and motivates the answer give another mark)
- 9.2 The accused can close his case and lead no evidence. (1)
- 9.3 The accused can testify and lead evidence. (1)

QUESTION 10

[7]

In Regional Court for the Regional Division of Western Cape
Held at BELLVILLE

Case No: 132/2014

In the matter between:

James Activist

Applicant

And

The State

(1)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that the Applicant hereby gives notice of his intention to apply for leave to appeal to the CAPE TOWN High Court of South Africa against the sentence imposed upon him by the Regional Magistrate, Mr Goliath, sitting at the Regional Court number 4 on the 15th of June 2018. (2)

The grounds of appeal are as follows:

1. The sentence imposed on the Applicant induces a sense of shock;
2. The learned Magistrate failed to take into consideration the personal circumstances of the Applicant and in particular that he is a student and young man and a first offender;
3. The Magistrate erred in not considering the circumstances under which the offence was committed;
4. The Magistrate erred in not taking into consideration that the aims of the Fees Must Fall movement is noble;
5. The Magistrate erred in not considering that circumstances under which the offence was committed;
6. The Learned Magistrate erred in not taking into consideration the fact that the Applicant did not commit the offence for selfish reasons but for the greater good of all the students;
7. The Magistrate over-emphasized the seriousness of the offence and did not take into consideration the interests of the students in this matter;
8. The Magistrate erred in not finding that there were substantial and compelling circumstances making it possible not to impose a custodial sentence.
9. ETC, ETC (To the examiner: allow the students to use their imagination / discretion)

(3)

DATED AT Bellville ON THIS _____ DAY OF _____ 2018.

APPLICANTS ATTORNEYS

TO: The Clerk of the Court
Bellville

(1/2)

AND TO: THE PROSECUTOR
REGIONAL COURT
Bellville

(1/2)

QUESTION 11**[10]**

Please note maximum of 10 marks

1. The Johannesburg Magistrates Court does not have jurisdiction.
2. Peter Jones cannot institute action as he is an unassisted minor.
3. Either the registered office or the principal place of business of the First Defendant needs to be dealt with in this citation.
4. There needs to be an allegation that the Plaintiff is the owner of the motor vehicle.
5. There needs to be an allegation that at the time of the collision the Second Defendant was driving in the course and scope of his employment with the First Defendant.
6. Details of the Second Defendant's negligence are required.
7. A copy of the document in support of the claim for damages needs to be annexed or the detail and calculations of the damages should be alleged.
8. The prayer needs to reflect that judgment is to be joint and severable, the one paying the other to be absolved.
9. The District Magistrates Court does not have jurisdiction for an amount of R220 000.00.
10. Interest will not be 15% but at the current prescribed rate.
11. Interest is claimed either from the date of the expiry of the letter of demand or from the date of service of the summons.
12. Allegations in support of costs on the scale as between attorney and client are required.

QUESTION 12**[7]**

- 12.1 Financial enquiry into the affairs of the Close Corporation in terms of Section 65. (1)
- 12.2 Application for a Garnishee Order. (1)
- 12.3 Application for the liquidation of the Close Corporation. (1)
- 12.4 Application to place the Close Corporation under business rescue. (1)
- 12.5 Interpleader Summons. (1)
- 12.6 Application for Summary Judgment. (1)
- 12.7 Application for the Appointment of a Curator ad Litem. (1)

QUESTION 13

[4]

- 13.1 Send a Section 129 notice in terms of the National Credit Act. (1)
- 13.2 BBB (Pty) Ltd as the right, title in interest to the loan was ceded to them by ASF Bank. (1)
- 13.3 CCC Limited and Mr. X will both be cited as defendants as Mr. X is the debtor and CCC Limited signed as surety for the debt. (2)

QUESTION 14

[4]

Original Summons
Original Return of Service
Original and one copy of a Request for Default Judgment
Damages Affidavit

TOTAL: [100]



LAW SOCIETY
OF SOUTH AFRICA