

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

06 FEBRUARY / 06 FEBRUARIE 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)
The damages are in respect of bodily injuries and are caused by / arise out of the negligent driving of a motor vehicle.(1) *Section 17(1) The Road Accident Fund Act 56 of 1996.*
- 1.2 Yes.(1)
Although David was driving, the negligence of the other driver was the cause of the collision. (1)
- 1.3 David cannot act on his own behalf as he is in a coma. (1) A *curator-ad-litem* (1) will have to be appointed to lodge the claim on his behalf.
- 1.4 Oliver is a minor (1) and lacks legal capacity. Either Mr or Mrs Michaels may lodge a claim on his behalf as both parents are his legal guardians. (1)
- 1.5 Yes. (1)
The payment by the medical aid scheme is a collateral benefit (1) and as such, does not preclude recovery from the RAF. (1)
- 1.6 Yes.(1) Mr Michaels incurred these expenses and is entitled to recover them in his personal capacity.(1)
- 1.7 David's claim would be apportioned by 50%. (1)
Oliver's claim would not be affected. (1)

QUESTION 2

[8]

The letter must contain the following:

- 2.1 The employer must be advised that you are acting on behalf of their employee in regard to his claim for damages arising from the injuries he sustained in the motor collision. Details and time of the accident should be furnished. (½)

The employer must be asked to furnish a certificate (½) confirming your client's employment with the company (1) advising of the length of his employment with them (½), the salary that your client earned over twelve months preceding the accident (½), details of any "employment perks" he may have received, and his annual leave and sick leave entitlement (1½) and the period he was absent from work (½).

The employer must be specifically asked what payments your client received. Whilst he was away from work from his injuries recovering from his injuries (½). The employer must be asked to state whether these payments arose out of his condition of employment (basically whether he was entitled to sick leave pay) (½) or whether the payment was *ex gratia* (1). Full details must be furnished by the employer.

[7]

- 2.2 He can claim the full amount he received over and above his sick leave entitlement because this was paid to him *ex- gratia* by his employer. (1)

QUESTION 3

[2]

The minor child will not have a claim against the Road Accident Fund (1) as a ride-on lawnmower is not considered a motor vehicle. (1) One of the prerequisite elements in succeeding with a third party claim is that the injury and /or death has to be attributable to the negligent driving of a motor vehicle. A ride-on lawnmower is not a motor vehicle for the purpose of Road Accident Fund Act.

QUESTION 4

[13]

- 4.1 The Defendant is in default of entering an appearance to defend and the Plaintiff is entitled to apply for Default Judgment (the procedure is outlined in Rule 31). The Plaintiff must file with the Registrar of the Court a written application for Default Judgment in duplicate and this must be accompanied by a draft Order to be granted by the Registrar when granting judgment. (2)

- 4.2 No. The Defendant is in default (see also Rule 31(4)). (1)

- 4.3 The application addressed to the Registrar would be along these lines:

The Plaintiff hereby applies that:

- a) Summons having been properly served on the Defendant on (date);
- b) The time for entering appearance to defend having expired on (date);
- c) The Defendant not having entered an appearance to defend, judgment by default be given in favour of the Plaintiff against the Defendant as claimed in the Summons for:
 - (i) Payment of the sum of R
 - (ii) Interest thereon at the rate of 10.5% per annum *a tempora morae*;
 - (iii) Costs of suit;

Take notice that the Plaintiff's original Summons and Sheriff's original Return of Service is attached in support of this application. (6)

- 4.4 Yes. Oral evidence would then be required in order to prove the quantum of the Plaintiff's damages. Procedurally the matter would have to be set down for hearing on

the Unopposed Motion Roll. A Notice of Set Down would therefore, be required. The Plaintiff's witness(es) would have to give *viva voce* evidence. (2)

(Note: this procedure may differ in some division where damages affidavits are permitted).

- 4.5 Yes, the Rule (see Rule 31 (5)(a)) obliges the Plaintiff to give the Defendant not less than (5) days' notice of his/her intention to apply for Default Judgment when the Defendant is in default of delivery of a Plea after service of a Notice of Bar (in terms of Rule 26). (1)

QUESTION 5

[12]

- 5.1 A *Rule Nisi* is a form of relief granted in Motion Court proceedings, especially urgent applications brought *ex parte* where the Applicant requires interim relief without or with limited notice) but where the Respondent must be given an opportunity of opposing the granting of a final order. Interdicts are a common example. (3)

5.2

5.2.1 The First Respondent is X, an adult (male) businessman in his capacity as trustee of the XYZ Property Trust with principal place of business at (physical address);

5.2.2 The Second Respondent is Y, an adult (female) businesswoman in her capacity as trustee of the XYZ Property Trust with principal place of business at (physical address);

5.2.3 The Third Respondent is the Standard Bank of South Africa Limited, a bank duly registered in terms of the laws of the Republic of South Africa with principal place of business at M Branch (physical address); (4)

- 5.3 ... For an Order in the following terms:

5.3.1 That a Rule Nisi do issue calling upon the Respondents to show cause, if any, to this Honourable Court sitting at (seat of Court) on the (date) at (... am) or so soon thereafter as the matter may be heard, as to why:

a) Pending the determination of an action to be instituted by the Applicant as set out in paragraph 2.3.3 hereunder, The Second Respondent should not be interdicted and restrained from paying out any monies standing to the credit of account no. 1234567 in the name of the First Respondent.

b) The First Respondent should not be ordered to pay the costs of this application;

5.3.2 The said subparagraph 1(a) operate as an interim order pending the final determination of this application.

5.3.3 That any action which the Applicant intends bringing against the First Respondent for the recovery of the sum of R500 000.00 and any other relief be instituted within 15 (fifteen) days of the granting of this Order;

5.3.4 Alternative relief. (5)

QUESTION 6

[5]

- 6.1 In terms of Section 300 where a person is convicted by a Court (1 mark) of an offence which has caused damage to or loss of property belonging to some other person (in this case the Complainant, your client) (1 mark), the Court may upon the application of the injured person or the prosecutor acting on the instructions of the injured person, forthwith award the injured compensation for such damage or loss. For the purposes of

determining the amount of the compensation or the liability of the convicted person therefor, the court may refer to the evidence and the proceedings at the trial or hear further evidence either upon affidavit or orally. (1 mark) You shall accordingly advise your client to advise the court personally (that is at the time of his giving evidence) or request the prosecutor to make such application on his behalf. The court will require documentary proof of damages in the form of expert evidence (1 mark), as in the case of a civil action. (4)

- 6.2 An award made under the Section shall have the effect of a civil judgement and the relevant steps to recover same are as in a civil action, i.e a warrant of execution can be issued or Sec 65 proceedings instituted. (1)

QUESTION 7

[12]

- 7.1 The court will have to be convinced that there are substantial and compelling circumstances to impose a sentence less than the compulsory sentence. (2)
- 7.2 Section 276 stipulates the relevant sentences which may be imposed namely
- 7.2.1 Imprisonment
 - 7.2.2 Periodical imprisonment
 - 7.2.3 A fine
 - 7.2.4 Correctional supervision (Section 276 (i))
 - 7.2.5 Correctional supervision, that is imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner (Section 276 (h))

IMPRISONMENT

Not a suitable sentence as the accused will be removed from society and family – the effect of the accused being criminalised in prison. Bring to the attention the general rule that the first offenders are if at all possible kept out of prison. The effect on his children should be mentioned. A period of imprisonment, wholly suspended and coupled with a fine can be suggested. (2)

PERIODICAL IMPRISONMENT

If the court finds it necessary and unavoidable to imprison the Accused this can be considered. – The accused will be able to continue his income-generating activities during the week and will be imprisoned over week-ends. (The benefits of this kind of sentence can be dealt with shortly by the candidate and considered by the examiner.) (2)

FINE

A substantial fine can be considered, with a request that a portion thereof be suspended with a possible further request that the accused be permitted to pay same by way of monthly instalments. (2)

IMPRISONMENT IN TERMS OF SECTION 276 (i)

House arrest coupled with civic programmes. (2)

IMPRISONMENT IN TERMS OF SECTION 276 (h)

This form of imprisonment should be considered if it is apparent that the court will impose imprisonment. (2)

Note to examiner: The candidate may use any facts in argument, - (2 marks each)

(10)

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

CASE NO: 336/2016

In the matter between:

MR X

and

THE STATE

STATEMENT IN TERMS OF SECTION 112 (2)

I, Mr X, do hereby admit that I am the accused in this matter and understand the nature of the charges against me.

I intend pleading guilty to both charges.

- Charge 1.** I admit that on the 10th of December 2016 and on Whale Road, Cape Town, I drove my motor vehicle with registration letters and number CA12345.
2. I admit that at the said time of driving I entered an intersection against a red robot, colliding with another vehicle. I admit that I drove the said vehicle in a reckless manner in that I failed to stop the vehicle in accordance with a red robot which was against me at the time and entered the intersection at the time when it was unsafe to do so, thus causing the collision.

Charge 2.

I admit that:

- 2.1 At the time of the driving of my vehicle the alcohol contents of my blood, expressed in grams per 100ml of blood, exceeded ,05g being in fact ,07g.
- 2.2 I admit that at all reasonable times I was aware of the fact that one may not drive the motor vehicle while the alcohol contents of one's blood exceeds ,05gram per 100ml blood.
- 2.3 I admit that the blood sample was taken from my body within two hours of the collision, correctly and accurately analysed by the relative laboratory and found to be, 07gram per 100ml blood.

I accordingly plead guilty to both charges as set out above.

DATED AT CAPE TOWN ON THIS DAY OF 2017.

MR X (8)

QUESTION 9**[13]**

- 9.1 Absolution from the instance with plaintiff to pay the costs. (2)
- 9.2 Start a new action (2)
- 9.3 Yes (1)
- 9.4 I, Mechanic Fixer, do hereby state
1. I have been a motor mechanic for 10 years and are familiar with the cost of repairs for motor vehicles.
 2. I have examined the motor vehicle ND 123 GP when it came to my shop for repairs.
 3. I determined the cost of repairs at R30 000,00 which are fair and reasonable and are made up as follows:
Parts – R15 000,00
Labour – R15 000,00

DATED at DURBAN on 20 JANUARY 2018.

MECHANIC FIXER

(4)

- 9.5 Give notice as contemplated by (section 129 and 130 of) the National Credit Act. (2)
- 9.6 File an Exception to the Defendant's Plea. (2)

QUESTION 10**[6]**

- 10.1 I would grant provisional sentence as the magistrate does not know from the documents whose evidence to accept. Accordingly the defendant has failed to show a defence which is more likely to succeed than the plaintiff's claim and as defendant admitted signing the cheque, provisional sentence must be granted. (3)
- 10.2 Within two months of provisional sentence being granted, the defendant must pay to the plaintiff the claim plus interest plus costs and give notice of intention to enter the principal case (and file a plea). (3)

QUESTION 11**[3]**

- 11.1 (Rule 24(10)). He must give notice at least 10 days before the hearing that he intends to do so. (1)
- 11.2 a) The plaintiff must notify the defendant within 5 days of receipt of such notice that he objects to the admission of these documents in evidence.
b) The defendant will need to call the photographer to lead evidence. (2)

QUESTION 12**[3]**

1. Warrant of execution
2. Notice of sale in execution
3. Conditions of sale