

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

21 AUGUST 2019

09:00-12:15

Total: [100]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 3 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1**[20]**

1. You are consulted by Mr John Smith and Sipho Radebe during which consultation they inform you as follows:

- Both are 30 and 35 years old respectively and are employed by the Post Office;
- On the 12th of September 2017 John was the driver of his employer's motor vehicle which collided with another vehicle in Parys, Free State Province. Sipho was his passenger;
- The collision aforesaid occurred at an intersection;
- The verge of the road on both sides was overgrown and the stop signs that controlled the intersection in both directions were partially obscured;
- John was equally to blame for the accident together with the driver of the other vehicle travelling across the intersection. The identities of the driver of the other vehicle and the owner thereof are unknown;
- John and Sipho were on duty at the time.

2. John Smith suffered the following damages:

2.1	Past hospital and medical expenses	R 13 500.00
2.2	Loss of earnings	R 60 000.00
2.3	General damages	R150 000.00
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		R223 500.00

3. Sipho Radebe sustained the following injuries:

- 3.1 A fracture of the femur;
- 3.2 A fracture of the pelvis;
- 3.3 A concussive head injury.

4. His damages are assessed as follows:

4.1	Past hospital and medical expenses	R 230 000.00
4.2	Estimated future medical expenses	R 400 000.00
4.3	Past and future loss of earnings	R 500 000.00
4.4	General damages	R 600 000.00
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		R1 730 000.00

5. They both furnish you with letters from the Compensation Commissioner with awards of R13 500.00 in respect of John and R230 000.00 in respect of Sipho.

Answer the following questions with reference to the above facts:

- 1.1 Against which party/s can John Smith institute a claim? (1)
- 1.2 What amounts can he claim from each party? (2)
- 1.3 Can he claim any damages from his employer, the Post Office? (motivate your answer). (1)
- 1.4 Against which party/s can Siphon Radebe institute a claim? (1)
- 1.5 Calculate the amount of damages that John Smith will recover given the above set of facts. (2)
- 1.6 Calculate the amount of damages that Siphon Radebe will receive given the above set of facts. (2)
- 1.7 By when must you lodge the claim on behalf of John Smith to prevent it becoming prescribed in terms of the Act? (motivate your answer). (2)
- 1.8 By when must you lodge the claim by Siphon Radebe to prevent it becoming prescribed in terms of the Act? (motivate your answer). (2)
- 1.9 After investigating the merits, you discover that Siphon was not wearing a seatbelt:
 - 1.9.1 Will this factor affect any award of damages that Siphon receives and if so, in what respect? (motivate your answer). (2)
 - 1.9.2 Please show by way of calculation how Siphon's claim is affected. (2)
- 1.10 Assume that you act for the Road Accident Fund. Draft the Defendant's alternate plea and prayer wherein you plead contributory negligence on the part of John Smith. (3)

QUESTION 2

[5]

Upon consulting with your client it becomes evident that he will not satisfy the 30% threshold as to qualify for non-patrimonial damages under the whole person impairment test. Advise your client as to the claim for non-patrimonial loss.

QUESTION 3

[7]

- 3.1 What is an appeal? (2)
- 3.2 What is a review? (2)
- 3.3 What is the main distinction between an appeal and a review? (3)

QUESTION 4 **[10]**

- 4.1 Rule 18 of the Rules of the High Court relates to pleadings generally. With regard to matters in which the Plaintiff sues for damages for personal injuries, Rule 18(10) contains certain specific requirements that must be complied with in the Particulars of Claim. List these requirements. (8)
- 4.2 What procedural remedy other than the noting of an exception to the Particulars of Claim does the Defendant have should the Plaintiff fail to comply with the said requirements in terms of Rule 18(10)? (2)

QUESTION 5 **[8]**

- 5.1 Name the three different types of summons that is available. (3)
- 5.2 Give detail when each of such summonses can be used. (5)

QUESTION 6 **[8]**

Your client, Mr XY, has been under investigation by the police for a period of two (2) years. The police obtain a tip-off that certain evidentiary material that may afford evidence at the trial concerning the commission of the crime is to be found at his residence. The police immediately embark on a search of his premises. Discuss the two (2) alternative procedures under which such a search will be lawful.

QUESTION 7 **[8]**

You are approached by a client who has been convicted and sentenced to a period of direct imprisonment in the magistrate's court in the past week. You are mandated to start the process of launching an appeal on his behalf. Set out all the procedural steps to be followed in discharging the mandate and possibly securing the liberty of the client pending the finalisation of the appeal.

QUESTION 8 **[4]**

A state witness testifies as to the events in which your client was involved. His testimony differs in material respects from the version which your client, the accused, has given you.

- 8.1 What is your duty during cross-examination in respect of the version of your client in so far as it differs from that of the witness? (2)
- 8.2 What is the risk to your client should you not carry out this duty? (1)
- 8.3 What are the implications should you not cross-examine the witness? (1)

QUESTION 9 **[2]**

Under what circumstances may criminal proceedings proceed in the absence of an accused?

QUESTION 10 **[3]**

The prosecutor wishes to hand in copies of certain bank statements, obtained by the police during their investigations, as evidence during the presentation of the State's case. What are the requirements for the admission of such statements in terms of the provisions of Section 236 of the Criminal Procedure Act?

QUESTION 11 **[10]**

You act on behalf of your client who instructs you to issue summons against Mr D, who resides in Pretoria. His claim is for damages resulting from a motor vehicle collision. The claim amounts to R150 000.00. The accident occurred on 3 February 2018 and your client's version is that Mr D was solely responsible for the accident. The place of the accident is on the corner of Jan Smuts Avenue and Conrad Avenue, Johannesburg. Your client also lives in Johannesburg and wishes to have the summons issued in Johannesburg. Your client was driving a 2013 Honda Ballade with registration number ERG 123 GP and the defendant was driving a 2010 Toyota RAV with registration number PTY 234 GP.

Draft the Particulars of Claim. Omit headings and endings.

QUESTION 12 **[5]**

- 12.1 May one sue for a divorce from the District Magistrates' Court in the region where the defendant lives? Motivate your answer. (1)
- 12.2 May one sue for a divorce in the Regional Magistrates' Court where the total value of the matrimonial estate exceeds R1 000 000.00? Motivate your answer. (1)
- 12.3 May an applicant with an unpaid admitted claim of R900 000.00, apply for liquidation of a Close Corporation in the District Magistrates' Court? Motivate your answer. (1)
- 12.4 Your client is sued out of the Regional Magistrates' Court for a balance due in terms of a loan in the amount of R300 000.00. The client informed you that she has overpaid resulting in a counter claim of R800 000.00. What should she do to validly enforce the counterclaim without having to repay the loan? Motivate your answer. (2)

QUESTION 13 **[4]**

Name the causes of action which will enable the Plaintiff to apply for summary judgment.

QUESTION 14 **[3]**

There are essential averments missing from the following two actions instituted in the District Magistrate's Court in the Particulars Claim. What are they:

14.1 The Plaintiff's claim is for payment of the sum of R140 000.00 being the agreed price of goods sold to the Defendant under a verbal contract of sale during or about January 2018. (1)

14.2 Plaintiff's claim against the Defendant is for payment of the sum of R40 000.00 in respect of a cheque drawn by the Defendant in favour of the Plaintiff, of which the Plaintiff is a legal holder, on First National Bank, Pinetown branch for an amount of R40 000.00. (2)

QUESTION 15 **[3]**

15.1 In a trial in the District Magistrate's Court arising out of a motor collision the only evidence is that of the two drivers who give completely differing versions of what occurred. The Magistrate is unable to decide which of the two witnesses he should believe. What order should the Magistrate make? (2)

15.2 After the above trial, an independent witness gets in touch with your client to say he witnessed the whole incident and his evidence confirms your client's version. What can the client do? (1)

- THE END -

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