

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

6 MARCH / MAART 2019

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 Section 24(2)(b) provides that where a person is killed outright in a motor vehicle accident, the completion of the medical report shall not be a requirement. (1) In such a case, the claim form shall be accompanied by documentary proof such as a copy of the relevant post-mortem report / inquest record (1) or a copy of the case docket (1) in the case of a prosecution of the person, copy of the death certificate [any 3 of the above]. (3)
- 1.2 Marriage certificate of Mr. and Mrs. Khumalo. (1) Unabridged birth certificates of the three (3) children. (1) (2)
- 1.3 Any 3 of the following:
Mr Khumalo's tax returns.
Bank Statements
Income and expenditure statements
Invoice and Receipt books. (3)

QUESTION 2 **[5]**

If the claimant intends disputing the rejection of the serious injury assessment report then the claimant must within 90 days (1) of being informed of such rejection of the assessment notify the Registrar of the Health Professions Council of South Africa (1) that the rejection is disputed by lodging a dispute resolution form, a RAF 5 (1). The Road Accident Fund will bear the reasonable costs of the dispute resolution, (1) however the claimant will have to bear his or her own cost when represented by an attorney and/or advocate. (1)

QUESTION 3 **[6]**

As the merits of my client's claim has been adjudicated (1) I would apply for an interim payment (1) in terms of Rule 34A of the Uniform Rules of Court (1) in respect of the following heads of damages:

- 3.1 Past hospital and medical expenses; (½)
- 3.2 Past loss of income. (½)

You cannot claim for future hospital and medical expenses or future loss of income and general damages as these have not been incurred. (2)

QUESTION 4 **[6]**

- 4.1 Minor. Suspended until the attainment of age 18. (2)
- 4.2 Persons detained as patients in terms of the Mental Health Care Act. Suspended for the duration of their detention as patients. (2)
- 4.3 Persons under curatorship. Suspended for the duration of curatorship. (2)

QUESTION 5 **[10]**

5.1

- 5.1.1 A curator *ad litem* is usually appointed to assist a person who is of unsound mind (½) or is a minor (½) to be assisted in legal proceedings.
- 5.1.2 A curator *bonis* is appointed for a person in respect of whom the court has made an order that the person is of unsound mind and as such incapable of managing his/her affairs. (2)

NOTE TO EXAMINER: Any eight essential averments must be listed with one mark each.

- 5.2 The grounds upon which the applicant claims *locus standi*. (½)
 The grounds upon which the Court is alleged to have jurisdiction. (1)
 The patients age and sex. (½)
 Full particulars of his means (1)
 Information as to his general state of physical health (1)
 The relationship (if any) between the patient and the applicant (1)
 The facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his affairs (1)
 The name, occupation and address of the respective persons suggested for appointment by the Court as curator *ad litem* and subsequently as curator *bonis*. (1)
 An affidavit by at least one person to whom the patient is well known and containing such facts as are within deponent's own knowledge concerning the patient's mental condition. (1)
 Affidavits by at least two medical practitioners, one of whom shall be an alienist who have conducted recent examinations of the patient. (1)

QUESTION 6 **[6]**

- 6.1 An Ex Parte application is an application that does not directly affect the rights of others (½). Usually the short form is used. (½). (1)

6.2

- Where an order is sought that does not affect another person and the applicant is the only interested party to the proceedings. (1)
- Where notice of the application to the other party will frustrate the requested relief. (1)
- Where a *nulla bona* return is relied upon in the case of an application for sequestration and no notice of the application is given to the respondent. (1)
- Where preliminary relief is essential and there is no time to give notice and where the Respondent will be given notice once the urgent relief is granted before any final relief is granted. (1)
- In certain very specific circumstances where it is not possible to give notice to the other side and /or for a preliminary step in proceedings, for example leave to sue by way of edictal citation. (1)

QUESTION 7

[9]

Plaintiff's Declaration.

1. The Plaintiff is _____, an adult male Accountant residing at _____. (1)
2. The Defendant is _____, an adult businessman, residing at _____ Bloemfontein. (1)
3. On the ____ day of _____ 20__ and in Bloemfontein Plaintiff and Defendant, (½ mark) both acting personally, (½) concluded a verbal agreement (½) of sale in terms whereof:
 - 1.1 Plaintiff would sell his Toyota Fortuner 4x4 (hereinafter for the sake of convenience referred to as "the vehicle") to Defendant at a purchase price of R500 000.00. (2)
 - 1.2 The purchase price was payable by Defendant to Plaintiff against delivery of the vehicle (1) in cash and free of exchange or bank charges at Bloemfontein by electronic transfer (½) to Plaintiff's designated bank account number 1234567 at United Bank of Africa.
 - 1.3 The vehicle was sold as is ("voetstoots") without any warranty whatsoever. (½)
2. Plaintiff duly delivered the said vehicle to Defendant. (½)
3. Defendant has to date failed to pay the purchase price of R500 000.00 or any part thereof and persists in such failure notwithstanding due and proper demand by Plaintiff, which amount is now due and payable. (1)

QUESTION 8

[5]

In terms of Section 113 an accused who has pleaded guilty and who has been found guilty can bring an application before sentence is imposed to have the plea of guilty corrected to one of not guilty. The accused will have to put forward good reasons for having pleaded

guilty or for having incorrectly admitted any facts resulting in his conviction or convince the court that he has a valid defence to the charge.

The accused may have to give evidence under oath and explain the reasons for pleading guilty and failing to put forward his defense or admitting certain facts. The prosecutor and magistrate may cross-examine the accused and if the magistrate is satisfied that the accused's explanation is acceptable a plea of not guilty will be recorded.

QUESTION 9 **[5]**

A fresh bail application can be brought on behalf of client. This will invariably be brought before the Magistrate who refused bail in the first instant. You will aver that new facts have emerged since the last application. You will specifically present evidence to the Court on the fact that the State's case has been considerably weakened or there is no longer a possibility of a conviction due to the unavailability of the two state witnesses.

QUESTION 10 **[12]**

10.1

IN THE REGIONAL COURT FOR THE DISTRICT OF PORT ELIZABETH
HELD AT PORT ELIZABETH

CASE NO:

In the matter between:

MR

APPELLANT

and

THE STATE

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE THAT the Appellant notes an Appeal to the Eastern Cape Division of the High Court of South Africa against the sentence imposed upon him by the Regional Magistrate on the 3rd July 2018.

The grounds of Appeal are as follows:

1. The sentence imposed upon the appellant induces a sense of shock.
2. The learned Magistrate failed to take into consideration the personal circumstances of the Appellant and in particular that he is a first offender, is married and supports a wife

and four minor children, is the sole breadwinner of the family and is a solid citizen performing social work.

3. The Magistrate erred in not taking into consideration the circumstances under which the offence was committed and in particular that the accident happened early in the morning when the traffic was light and the degree of negligence was fairly slight. (To the examiner: any other suitable grounds are acceptable)
4. The Court erred in not considering the imposition of one of the following sentences:
 - 4.1 A fine which the Appellant was well capable of paying;
 - 4.2 A period of imprisonment wholly suspended subject to conditions;
 - 4.3 The imposition of a fine coupled with a period of suspension, both suspended in their entirety;
 - 4.4 The imposition of periodical imprisonment;
 - 4.5 The imposition of correctional supervision in terms of Section 276 (1) (h).

DATED AT PORT ELIZABETH ON THIS THE _____ DAY OF _____ 2018.

APPELLANT'S ATTORNEYS

TO: THE CLERK OF THE COURT
PORT ELIZABETH

AND TO: THE HONOURABLE MAGISTRATE
MR JACOBS
c/o CLERK OF THE COURT
PORT ELIZABETH

(8)

10.2 Power of Attorney. (1)

10.3 Within fourteen (14) days of date of conviction and to be lodged with the Clerk of the Court. (1)

10.4 An application for condonation will have to be brought and an Affidavit filed by the Appellant and possibly by any other person who can assist (possibly an attorney acting on behalf of the Appellant). (2)

QUESTION 11 **[3]**

11.1 In terms of Section 60 (11B) an accused is obliged to inform the Court whether:

He has previously been convicted of any offence; and
There are any charges pending against him or her and whether he or she has been released on bail in respect of these charges. (2)

11.2 Willful failure by an accused to comply with the disclosure requirement is an offence punishable by a fine (a maximum of R40 000,00) or to imprisonment not exceeding 2 years. Furthermore, a Court may withdraw bail if an accused has not correctly disclosed all his previous convictions or has failed to make a full disclosure. (1)

QUESTION 12**[10]**

1. The Plaintiff is Jabu Ndlovu, an adult female, teacher who lives at 24 Centurion Lane, Pretoria.
2. The Defendant is Clean Pools CC, a Close Corporation incorporated in terms of the Close Corporation Act and whose principal place of business is situated at 16 Marais Road, Pretoria.
3. On or about the 12th May 2018 at Pretoria the Plaintiff and the Defendant entered into a written agreement for the construction of a swimming pool at the Plaintiff's home. The material terms of which were: -
 - a) The Defendant would construct a swimming pool for the plaintiff at her place of residence.
 - b) The contract price was R80 000 to be paid as follows: -
 - i. R40 000.00 on signature
 - ii. R20 000.00 on commencement of the contract
 - iii. R20 000.00 on completion

A copy of the contract is annex hereto marked A.

4. The Plaintiff paid to the Defendant R40 000.00 on signature and R20 000.00 on commencement.
5. The Defendant absconded without completing the contract.
6. As a result, the Plaintiff cancelled the contract and a copy of the notice of cancellation is annexed hereto marked B.
7. The Plaintiff employed the services of Sparkling Pools to complete the contract at a contract price of R45 000.00 which amount is fair and reasonable. A copy of the contract is annexed hereto marked C.
8. As a result, the Plaintiff has suffered damages in the sum of R25 000.00, being R45 000.00 less the R20 000.00 unpaid in terms of the contract with the Defendant.
9. Despite written demand the Defendant has failed to pay the said amount. A copy of the demand is annexed hereto marked D.

Wherefore the Plaintiff prays for judgment against the Defendant for: -

1. Payment of the sum R25 000.00
2. Interest thereon at a rate of 10 % per annum from the date of the expiry of the letter of demand to date of payment. [The interest rate might change by the time the exam is written].
3. Costs of suit.

Dated at Pretoria this _____ day of _____ 2018.

Plaintiff Attorneys
Van Rooyen & Company
12 Schoeman Street
Pretoria

QUESTION 13 _____ **[5]**

- File Notice of intention to call an expert witness.
- File a notice providing a summary of the experts evidence which should contain the following:
 - (a) Evidence as to the expertise of the appraiser
 - (b) The fact that the appraiser has inspected the assets of the estate
 - (c) The expert opinion of the appraiser as to the total value of the assets
 - (d) How such total was calculated

QUESTION 14 _____ **[5]**

- 14.1 Mr Y, as the owner has locus standi. (1)
- 14.2 Mr Z, due to his negligence and ABS Company is vicariously liable as Mr Z was acting in the course and scope of his employment. (3)
- 14.3 Mr Y will remain the Plaintiff. (1)

QUESTION 15 _____ **[5]**

- 15.1 No defence; prescription on a dishonoured cheque is six years. (1)
- 15.2 He has a valid defence as the Magistrate's court has no jurisdiction to adjudicate the unfair labour practice (section 157 of the Labour Relations Act). (1)
- 15.3 He has a valid defence of res judicata in that there was a prior judgement in an action between the parties where the same point was in issue. [Reference to the Once and for All Rule is also correct.] (2)
- 15.4 He has a valid defence in that he has no liability under a contract (which is probably voidable anyway) entered into by his son, with or without his assistance as his guardian. (1)

- THE END -

TOTAL: [100]