

ATTORNEYS' EXAMINATION

PART 1 COURT PROCEDURES

19 FEBRUARY 2020

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**[9]**

You are consulted by Ms Emilia Adams who instructs you as follows:

- She had been in a long term monogamous relationship with a life partner, Peter Jansen for 10 years;
- From this relationship two minor children were born;
- Ms Adams instructs you that she and Mr Jansen lived together as man and wife and that throughout their relationship he had supported her and the children. He was the sole breadwinner for the family as she was, by agreement between them, unemployed.
- Two months ago Mr Jansen, whilst being conveyed as a passenger in a motor vehicle, was killed in a motor vehicle accident.

ANSWER THE FOLLOWING QUESTIONS WITH REFERENCE TO THE ABOVE FACTUAL INFORMATION

- 1.1 Can Ms Adams claim loss of support for herself in her personal capacity? Motivate your answer. (4)
- 1.2 Can Ms Adams claim for loss of support for the children and if so over what period? (3)
- 1.3 On the assumption that Mr Jansen was not wearing a seatbelt and was thus flung from the vehicle when it rolled, resulting in fatal injuries, explain, if at all, how this will affect your answers to 1.1 and 1.2 above? (2)

QUESTION 2**[9]**

You are consulted by Mr Jones who was knocked off his motorcycle by a motor vehicle which executed a right hand turn into his path of travel. Mr Jones had never obtained a license to ride a motorcycle. He instructs you to claim for personal injuries suffered in the accident and for the value of his motorcycle which was written off as a result of damage caused by the accident.

- 2.1 What damages, if any, can be claimed by Mr Jones from the Road Accident Fund? Motivate your answer. (4)
- 2.2 Against who, if anyone, can Mr Jones claim for damages, if any, not covered by the Road Accident Fund Act 56 of 1996, as amended? (3)
- 2.3 What effect, if any, will the fact that Mr Jones does not have a licence to ride a motorcycle have on any claims he might have? (2)

QUESTION 3**[3]**

You are required to distinguish between the degrees of negligence that need to be proven in respect of a passenger claim and a driver's claim.

QUESTION 4 **[4]**

List four non-deductible collateral benefits.

QUESTION 5 **[12]**

Set out the procedural steps in the Magistrate Court and High Court that you would take in an appeal to the High Court from a judgment of a Magistrate in a civil matter up to and including the notice of set down in the High Court.

QUESTION 6 **[13]**

You are consulted by Jennifer Jones, who trades as Easysell Estate Agents at Houghton Centre, Houghton, Johannesburg. She informs you that during January 2019, she received oral instructions from John Smith to market and sell Smith's fixed property situated at 12 Black Street, Houghton Estate, Johannesburg for an amount of R20 million.

They agreed that in the event of the mandate carried out successfully agents commission of 10% of the purchase price, plus VAT would become payable. Jones informs you that she introduced one Charles Green to the property. It has now come to her attention that Green bought the property from Smith in terms of a written agreement of sale to which she was not a party.

She sent a letter of demand to Smith, who in the meantime has retired and relocated to 12 West Street, Durban, KwaZulu-Natal. Smith informed your client that Green told him that he heard that the property was in the market through a colleague at work and that no estate agent was involved.

- 6.1 Would your client, the plaintiff, being married in community of property, need the consent of her husband to institute action? Briefly motivate your answer referring to the general rule and the exceptions to this general rule. (3)
- 6.2 Draft the particulars of claim. Include the heading indicating from which of the divisions of the High Court, do you intend to institute action from. (10)

QUESTION 7 **[4]**

- 7.1 Name the two disclosures, in terms of Section 60 (11B) of the Criminal Procedure Act, which an accused is compelled to make to the Court at a bail application. (2)
- 7.2 What are the possible consequences of an accused wilfully failing to make such disclosures? (2)

QUESTION 8 **[5]**

Your client, Mr Zuba, is charged with culpable homicide. The state avers that he was the driver of a motor vehicle which, on the 10th July 2018, was involved in a collision with a pedestrian, on Mount Road and Port Elizabeth. The state avers that Mr Zuba knocked down the person who at the time was crossing the road at a pedestrian crossing, causing his death. Whilst your client admits to you that he indeed drove the vehicle that collided with the pedestrian, on obtaining copies of the statements of state witnesses it is apparent that the state is not in a position to prove a case against client.

- 8.1 Are you entitled to advise your client to plead not guilty? (1)
- 8.2 In the event of your client deciding to plead not guilty what ethical principles are applicable? (1)
- 8.3 What procedure will you follow should the state during the course of the trial present evidence which proves that it was indeed your client who drove the vehicle that collided with the deceased? (3)

QUESTION 9 **[16]**

- 9.1 Your client, John Smith, is the driver of a motor vehicle on De Jongh Drive in Pretoria. He fails to bring the vehicle to a halt at a stop street and enters an intersection causing a collision with another vehicle which results in the death of the other driver. The collision occurred at approximately 3 a.m. and the traffic at that time of morning was very light. He pleads guilty and is convicted of culpable homicide and the Regional Magistrate sentences him to 12 years direct imprisonment. He is 40 years of age, is a first offender, is married and supports his wife and four school-going minor children. He is furthermore the sole proprietor of a small business employing five persons. He is also a deacon in his church and a member of an organisation that does charity work involving children.

Draw the Notice of Appeal against the sentence, on the basis that the trial court has already granted leave to appeal, and refer to the various alternative sentences which the Court could have imposed on the accused. (Include the heading and ending). (12)

- 9.2 What other document must accompany the notice of appeal? (1)
- 9.3 Within what period of time subsequent to the date of sentence must an application for leave to appeal be brought? (1)
- 9.4 What procedure would you follow if the period referred to in 9.3 above has expired and what documentation will be required? (2)

QUESTION 10 **[3]**

Your client XYZ Bank entered into a loan agreement with Mr Smith for R70 000. Mr Smith gave his *domicilium citandi et executandi* (service address) address as Vereeniging and consented to any dispute being heard in the Magistrate's Court of Vereeniging, he however resides in Johannesburg now. Mr Smith defaulted on payment. Where would summons be issued? Please also state a reason.

QUESTION 11 **[2]**

A motor vehicle collision occurred between Mr Xaba and Mr Alberts. At the time of the accident Mr Xaba was driving the vehicle in the scope of his employment. Mr Xaba was employed by ABC (PTY) Ltd. ABC (PTY) Ltd is the owner of the vehicle. According to your client's version Mr Alberts was the sole cause of the accident and your client ABC (PTY) Ltd wants you to issue a summons for his damages amounting to R20 000. Who would be the plaintiff?

QUESTION 12**[9]**

Your client XYZ (PTY) LTD entered into a loan agreement with Mr Smith for R70 000 and interest on the R70 000 from the 1st of July 2019. The agreement is a credit agreement in terms of the National Credit Act. Mr Smith defaulted on payment. Your client who is a registered credit provider has instructed you to proceed with summons. What would your first step be? Draft the necessary notice.

QUESTION 13**[4]**

Which summons would you use in the Magistrates' Court where your client:

- a. Wishes to sue for arrear rental and ensure that the assets, brought by the tenant onto the rental premises during the period of the lease agreement, will not be removed from the premises? (1)
- b. Wants to claim delictual damages from the defendant? (1)
- c. Holds an amount of cash to which three persons make adverse claims? (1)
- d. Is owed money in terms of a liquid document and your client would like payment of the amount due before the defendant debtor is allowed to defend the action? (1)

QUESTION 14**[7]**

The plaintiff, a private company, has sued your client out of a Regional Magistrates' Court which does not have jurisdiction over your client. Your client denies that the debt is due. You have delivered a notice of intention to defend. Draft the pleading necessary to reflect your client's response. You should include the heading of the pleading.

- THE END -
