

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

19 FEBRUARY / FEBRUARIE 2020

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

[9]

- 1.1 Ms Adams will be entitled to claim as a life partner even though she and Mr Jansen were not legally married. The facts show that the deceased had undertaken to support her, creating a legally binding and enforceable contract which is protected by Section 9 of the Constitution. The common law, insofar as is necessary, has been developed to protect Ms Adam's claim for loss of support. See **BRENDA JACOBS VS ROAD ACCIDENT FUND [ZAGPPHC 830: 2019 (2) SA 275 (GP)]** and cases referred to therein. (4)
- 1.2 The deceased as the biological parent of his minor children owed them a legal duty of support which he was fulfilling at the time of his death. The fact that he was not legally married to their mother is irrelevant to his duty of support. The period of support will depend on the circumstances of the family and whether, but for the accident, the children would have been supported beyond the age of 18 (attending tertiary training or work seeking).
- Ms Adams, as the sole natural guardian of the children, has *locus standi* to recover on their behalf. (3)
- 1.3 Ms Adams in her personal capacity and as mother and natural guardian of her minor children is an "**innocent**" Plaintiff and thus no apportionment based on any alleged negligence of Mr Jansen can be applied in respect of her claims. (2)

QUESTION 2

[9]

- 2.1 Mr Jones can only claim for personal injuries suffered by him from the Road Accident Fund, subject, however, to the limits imposed in the Act. His claim for general damages for pain and suffering is subject to a threshold imposed by the Road Accident Fund Amendment Act, 2005 as read with the 2008 Regulations. If Mr Jones' injuries are not classified as "**serious**" in terms of the criteria stipulated in the Regulations he will not be entitled to claim any compensation for general damages from the Road Accident Fund.

Similarly, Mr Jones' claim for loss of earnings / earning capacity is capped at an annual amount which is prescribed by Regulation and increased quarterly by inflation. The current cap is approximately R281 000.00 per annum; (4)

- 2.2 Mr Jones can claim compensation for the damage to his motorcycle and any other material damages arising from the accident from the negligent motorist who caused the collision.

Mr Jones cannot claim the balance of the damages for personal injuries not covered by the Road Accident Fund Act from the negligent motorist as the common law right to claim damages not covered by the Road Accident Fund Act was abolished by the Road Accident Fund Amendment Act, 2005. (3)

- 2.3 The fact that Mr Jones did not have a licence to ride a motorcycle is not, *per se*, a bar to any claims he might have either in terms of the Road Accident Fund Act or in terms of the common law. Liability arises in delict. (2)

QUESTION 3 **[3]**

For a passenger to succeed with a claim against the Road Accident Fund proverbial 1% negligence needs to be proven on the side of the insured driver whereas for a driver to avoid any apportionment of his claim 100% negligence needs to be proven on the side of the insured driver. In other words, an apportionment is not possible against a passenger but is possible against the driver of a vehicle depending on the degree of negligence of both drivers.

QUESTION 4 **[4]**

1. Benefits derived from insurance and assurance policies maintained by the third party or bread winner;
2. Insurance and pension benefits payable to dependant's;
3. All *ex gratia* payments of whatever nature;
4. Money obtained from a child grant.

QUESTION 5 **[12]**

Within fifteen (15) days (1 mark) of the judgment in the Magistrate's Court hand to the Registrar or Clerk of the Court a request that a judgment in writing must be delivered showing (1 mark)

- 5.1 The facts that the Magistrate has found to be proved (1 mark); and
- 5.2 His reasons for judgment (1 mark).
- 5.3 An appeal may be noted within twenty (20) days after the date of the judgment appealed against or within ten (10) days after the Registrar of the Clerk of the Court has supplied a copy of the judgment in writing to the party applying therefor which ever period shall be the longer (2 marks).
- 5.4 An appeal shall be noted by the delivery of a notice of appeal served and filed in the Magistrate's Court (1 mark).

- 5.5 Unless the Court otherwise order by giving security for the Respondent's costs of appeal to the amount of R1 000.00 (1 mark).
- 5.6 An appeal shall be prosecuted within sixty (60) days after the noting of such appeal by:
- 5.6.1 The appellant shall within forty (40) days of noting the appeal applied to the Registrar in writing and with notice to all parties for the assignment of a date for the hearing (1 mark).
Upon receipt of such an application the appeal shall be deemed to have been duly prosecuted.
- 5.6.2 Upon receipt of such an application the Registrar shall forthwith assign a date of hearing which date shall be at least forty (40) days after receipt of the said application (1 mark).
- 5.6.3 The applicant shall simultaneously with the lodging of the application for a date for the hearing of the appeal lodge with the Registrar two copies of the record (1 mark).
- 5.6.4 File a notice of set down in terms of the notice from the Registrar assigning a trial date (1 mark).

QUESTION 6

[13]

6.1

- No, although the general rule is that a spouse married in community of property, cannot sue or defend legal proceedings without the written consent of the other spouse. (1)

Written permission is not necessary with regard to:

- Actions between spouses. (1/2)
- The spouse's separate property. (1/2)
- The recovery of damages due to the commission of a delict against the spouse. (1/2)
- Any matter relating to the trade, profession or business of the spouse. (1/2)

Notes: (Section 17 (1) of the Matrimonial Property Act) Dealt with in HCP Manual p31

6.2

IN THE HIGH COURT OF SOUTH AFRICA
_____ DIVISION

In the matter between:

_____ Plaintiff
_____ Defendant

PARTICULARS OF CLAIM

1.

The plaintiff is Jennifer Jones, an adult/major female estate agent, residing at (or under trading under the name and style of Easysell Properties from Houghton Centre, Houghton, Johannesburg, Gauteng.

2.

The defendant is John Smith, an adult / major male pensioner, residing at 15 West Street, Durban, KwaZulu-Natal / (at least name and address required plus whose full and further particulars are unknown to the plaintiff.)

3.

The above honourable court has jurisdiction to hear the matter...

4.

Plaintiff is an estate agent who, at all relevant times, was the holder of a valid fidelity fund certificate issued to him in terms of section 29(a) of Act 112 of 1976 and who had fidelity insurance in terms of section 26(b) of Act 112 of 1976.

5.

On (date) at (place) defendant orally gave plaintiff a mandate to find a purchaser for defendant's property, being (describe) at a selling price of at least (amount).

6.

Plaintiff accepted the mandate.

7.

On (date) plaintiff introduced (X) to defendant and to the said property.

8.

As a direct result of this introduction (X) purchased the aforesaid property at a purchase price of (amount). (A copy of the deed of sale is annexed).

9.

Plaintiff was the effective cause of the sale and in the premises plaintiff duly performed her obligations in terms of the mandate given to her.

10.

It was an express term of the mandate that should plaintiff duly perform thereunder, she would be paid a commission equal to (10%) of the purchase price plus vat thereon.

11.

Despite lawful demand, defendant fails or neglects to pay the amount claimed.

Wherefore plaintiff prays for an order in the following terms:

1. Payment of the amount of R2,000,000 plus vat at the rate of 15%
2. Interest at the rate of 10.25% per annum from date of mora to date of payment
3. Costs of suit

Also see the precedent and notes in Harms : Amler's Precedents of Pleadings Fifth edition p 182-184. Answer 3 [4]. (10)

QUESTION 7 **[4]**

- 7.1 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)
- 7.2 Wilful failure by an accused to comply with the disclosure requirement is an offence punishable by a fine or to imprisonment. 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. (2)

QUESTION 8 **[5]**

- 8.1 Yes. (1)
- 8.2 The attorney is an officer of the Court and may accordingly not mislead the Court in any way. (1)
- 8.3 The onus is upon the State to prove its case and accordingly:
The State is challenged to prove its case by way of a plea of not guilty.
No explanation of plea is to be given and the accused is to exercise his right to remain silent.
No misleading questions can be put to witnesses during cross examination which will give impression that the accused was not present, did not stab the deceased etc;
The accused will not be able to give evidence.
As soon as it appears that the State has proved its case against the accused he will be obliged either the change his plea to one of guilty to any offence which the State has been able to prove at that time or alternatively the accused will close his case and he will address he Court on the evidence before it at that point in time. (3)

QUESTION 9 **[16]**

9.1

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF GAUTENG
HELD AT PRETORIA

CASE NO.

In the matter between:

MR

APPELLANT

- 9.4 An application for condonation will have to be brought by way of a Notice of Motion and an accompanying 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 10 **[3]**

Out of the Magistrates Court of Johannesburg as a *domicilium citandi et executandi* (service address) address does not confer jurisdiction and one cannot consent to the jurisdiction of a specific Magistrate's Court. You need to follow his residential address.

QUESTION 11 **[2]**

ABC Pty Ltd will be the plaintiff as the owner of the vehicle who suffered the damages.

QUESTION 12 **[9]**

NOTICE IN TERMS OF SECTION 129 OF THE NATIONAL CREDIT ACT 34 OF 2005

NAME OF DEBTOR:	Mr Smith
IDENTITY NO:	XXXXXXXXXX
TOTAL ARREAR AMOUNT:	R R70 000
INTEREST RATE:	10.25% p.a. from 1 July 2019

We act on behalf of XYZ PTY LTD, a company duly registered in accordance with the laws of the Republic of South Africa, with registration number XXXXXXXX.

XYZ PTY LTD is a registered credit provider under registration number NCRCP10.

In terms of **Section 129** read together with **Section 130 of the National Credit Act No. 34 of 2005**, we advise that you have not met your obligations to our client in respect of the above account and you are in default of your payment obligations, for at least **20(twenty)** business days. Your account is in arrears as indicated above.

In terms of Section 126B of the above Act the debt incurred in respect of your above-mentioned account has not yet been extinguished by prescription under the Prescription Act 68 of 1969.

We request you to immediately settle the total outstanding amount to bring the arrears up to date. The amount payable may include permitted default charges and our reasonable costs to enforce the agreement up to the date of your payment. Further interest will also be charged at the rate as mentioned above on the total balance outstanding until date of final payment. Should you require the total balance due as at the day of settlement or should there be any reason why you are not making payments, kindly contact our offices on **(011) 450 1234**.

You may approach a debt counsellor in order to develop a plan that is acceptable to both you and our client to bring the payments under the agreement up to date.

Should there be a dispute pertaining to the agreement or the outstanding amount, you may approach:

- An alternative dispute resolution agent
- A consumer court
- An Ombud with jurisdiction

to resolve any dispute.

Unfortunately should you not respond to this notice within 10 business days of this notice being delivered to you, or sent to you by registered mail, *alternatively* respond to this notice by rejecting our proposals, we may approach a court and proceed with legal action to enforce the agreement in terms of Section 130 of the National Credit Act 34 of 2005.

Note to examiner: reference to made to

- Debtor
- Amount due and payable
- Interest rate
- Confirmation that amount in arrears for at least 20 business days
- S126 B that claim has not prescribed
- Options including alternative dispute resolution agent, Consumer Court, Ombud
- That legal action will be instituted after 10 business days if none of the options are elected

QUESTION 13 **[4]**

- a. Summons in which is included a rent interdict (Rent Interdict Summons). (1)
- b. Combined Summons. (1)
- c. Interpleader Summons. (1)
- d. Provisional Sentence Summons. (1)

QUESTION 14 **[7]**

***Note examiner: award any 7 of the following**

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF [insert region]
HELD AT [insert seat of court]

CASE NO: 123/2020

In the matter between:

X (PTY) LTD

PLAINTIFF

and

Y

DEFENDANT

[2 marks for heading]

DEFENDANT'S SPECIAL PLEA

The Defendant refers to Plaintiff's Summons, as amplified by the Particulars of Claim, and pleads thereto as follows:

[1 mark for an indication that the document is a plea]

1. The Defendant denies that this honourable court has jurisdiction to hear Plaintiff's claim as:

[1 mark for the denial of jurisdiction]

- a. The agreement which forms the basis of the Plaintiff's claim was not concluded in the jurisdiction of the above honourable court and therefore the whole cause of action did not arise in the jurisdiction of the above honourable court; and
- b. The Defendant's registered address or place of business is not in the jurisdiction of the above honourable court and never has been, the registered address and place of business is in Prince Alfred Hamlet.

[1 mark for the above grounds in amplification of the denial of jurisdiction]

WHEREFORE the Defendant prays for an order that the Plaintiff's claim be dismissed with costs.

[1 mark for the prayer that the claim be dismissed and 1 mark for "with costs"]

[And 1 mark if the candidate pleads on the merits in some or other way denying liability:]

DEFENDANT'S PLEA

KINDLY TAKE NOTE that the Defendant pleads to Plaintiff's Particulars of Claim as follows:

1. AD PARAGRAPH 1 OF THE PARTICULARS OF CLAIM

The Defendant admits that the content of this paragraph only in as much as it is averred that the Plaintiff is ... (Pty) Ltd. The Defendant has no knowledge as to the rest of the content of this paragraph, denies same and puts the Plaintiff to the proof thereof... Denies any liability.

WHEREFORE the Defendant prays for the claim to be dismissed with costs.

Signed at [insert place] on [insert date]

...
ATTORNEYS FOR THE DEFENDANT
[insert address]

TO: THE REGISTRAR OF THE REGIONAL COURT
[insert court]

AND TO: ...
ATTORNEYS FOR PLAINTIFF
[insert address]

TOTAL: [100]