

# ATTORNEYS' EXAMINATION

## PART 1 COURT PROCEDURES

17 MARCH 2021

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****[10]**

Mr Dlamini was driving his motor vehicle on Nandi Drive, when a truck with known registration details, skipped a red robot and collided into his motor vehicle. As a result hereof, Mr Dlamini sustained fatal injuries and died at the scene of the collision. During his lifetime Mr Dlamini was a self-employed businessman.

Mrs Dlamini instructs you to institute a claim for the purposes of claiming loss of support from the Road Accident Fund for herself and her 3 (three) minor children.

- 1.1 List five (5) questions you would ask Mrs Dlamini that would assist you in establishing the merits or liability of the matter. (5)
- 1.2 List five (5) questions that you would ask Mrs Dlamini which would assist you to establish the quantum of damages. (5)

**QUESTION 2****[6]**

- 2.1 What is the object of the Road Accident Fund? (2)
- 2.2 Who does the Road Accident Fund Act indemnify? (1)
- 2.3 Who is entitled to lodge a claim against the Road Accident Fund? (1)
- 2.4 Are foreigners entitled to lodge claims arising from bodily injuries or death arising from motor vehicle collisions on South African roads? (1)
- 2.5 From where does the Road Accident Fund receive its income? (1)

**QUESTION 3****[6]**

- 3.1 Explain the difference between General Damages & Special Damages. (3)
- 3.2 Provide six (6) examples of Special Damages. (3)

**QUESTION 4****[3]**

What options are available to the RAF upon receipt of the RAF Form 4?

**QUESTION 5****[13]**

You are consulted by Mr Sipho Madlingozi, a director of Madlingozi Enterprises (Pty) Ltd. He hands you a written agreement of sale in terms of which the Company had bought Erf 148 Pretoria Gardens, Registration Division JR Gauteng situated at 12 West Street, Pretoria Gardens from the White Family Trust duly represented by the trustees namely John White and Mary White.

In terms of the agreement entered into at Pretoria on the 15<sup>th</sup> August 2020 the Company had to provide bank guarantees for the full purchase price of 1 million four hundred thousand Rand, (R1 400 000.00) payable on date of transfer of the property.

You ascertain from the conveyancing attorney that the guarantees were received timeously and that the buyer had complied with all that was required.

The seller however, despite lawful demand, refuses to sign the transfer documents, claiming that they, only after entering into the agreement, realised that they could get a higher price.

Your client instructs you to issue summons claiming specific performance i.e. transfer of the property.

Using such additional facts as you deem necessary draft the particulars of claim that will be attached to the combined summons that you intend to issue from the Gauteng Division in Pretoria.

---

**QUESTION 6** **[6]**

Briefly explain any six (6) acts of insolvency.

---

**QUESTION 7** **[6]**

Your client is a protected whistleblower and has informed you that the Company she works for has valuable evidence/material/documentation in its possession, which is of great importance in the High Court matter you are handling on her behalf. You do not want to alert the Company (or any related party) to the fact that your client is aware that this evidence/material/documentation exists. You also have good reason to believe that, should it come to light that your client knows about this evidence / material / documentation, the Company may likely destroy the information.

7.1 What type of application would you bring to ensure the preservation of the evidence/material/documentation and what type of order would you seek from the court? (2)

7.2 Once you obtained the order sought how will it be carried out/enforced? (4)

---

**QUESTION 8** **[20]**

Your client Bandi Fundien is a town councillor of the Municipality of Nozuko. He attends a council meeting which becomes heated and degenerates into a brawl between members of the various political parties. In the heat of the incident, he grabs a jug of water and hits a fellow councillor on the head. The councillor sustains serious injuries, is hospitalised for two weeks incurring medical expenses and loses wages as a consequence of being absent from his employment.

Fundien is duly charged with assault to do grievous bodily harm. The state wishes to present as evidence a number of medical reports which are admitted by your client.

8.1 Fundien pleads not guilty to the charge. Draw his comprehensive Section 115 statement setting out any possible defence/s. Include the heading. (7)

8.2 Fundien decides to plead guilty. Draw the Section 112 statement. Omit the heading. (6)

8.3 The complainant wishes to recover the damages he suffered as a consequence of the assault.

8.3.1 What advice would you give him in order to pursue his claim for compensation and to what compensation may he be entitled? (3)

8.3.2 How would the court determine the amount to be awarded? (2)

8.3.3 What is the effect of any order made by the court in this regard and what remedy is available to the complainant should the accused fail to comply with the court order? (2)

**QUESTION 9 [5]**

Explain the differences and the consequences between the withdrawal of a charge and the stopping of prosecution?

**QUESTION 10 [4]**

Plaintiffs' attorney is preparing for trial in the Magistrate's Court in a collision claim.

10.1 What type of evidence should Plaintiff lead to prove the damage to his vehicle? (2)

10.2 On what points should the Plaintiff lead his witness to establish the damages to the vehicle? (1)

10.3 What procedural steps must Plaintiff first take to enable him to lead such evidence? (1)

**QUESTION 11 [5]**

In a Magistrate's court action, the Plaintiff failed to respond to a notice calling on him to discover.

11.1 What remedies does the Defendant's attorney have? (3)

11.2 The Plaintiff duly filed his discovery affidavit in a Magistrate's court action. The Defendant believes the Plaintiff has in his possession a letter which is relevant to the case. What are the options open to the Defendant? (2)

**QUESTION 12 [6]**

In an action in the Magistrate's Court, the magistrate finds that the Plaintiff's damage to his vehicle amounts to R60 000.00 and the damage to the Defendant's vehicle amounts to R50 000.00. The magistrate further finds that Plaintiff was 40% to blame for the collision and the Defendant was 60% to blame. Defendant made a without prejudice tender of R18 000.00 plus costs in terms of Rule 18 to settle Plaintiff's claim. Plaintiff did not accept the tender.

- 12.1 What amount would the magistrate award and to whom would he make such award? (4)
- 12.2 The magistrate was not aware of the tender when he gave judgment. What should the Defendant do? (2)

**QUESTION 13** **[5]**

---

You act for Mr Jones, who has a liquidated claim against a defaulting close corporation. Please assume the necessary facts and cause of action. Draft a notice of motion to apply for the liquidation of the close corporation.

**QUESTION 14** **[5]**

---

Please explain briefly in what circumstances a party would use the following pleading:

- 14.1 A rent interdict summons; (1)
- 14.2 A provisional sentence summons; (1)
- 14.3 An interpleader summons issued at the instance of a party who is not a sheriff; (1)
- 14.4 A simple summons; (1)
- 14.5 A declaration. (1)

LAW SOCIETY  
OF SOUTH AFRICA

---

- THE END -

---