

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

30 AUGUST / 30 AUGUSTUS 2006

ANSWERS/ANTWOORDE

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

[3]

- Marriage certificate;
- Identity document of claimant and the deceased;
- Death certificate;
- Salary advice / employment certificate of deceased and claimant;
- Post-mortem report;
- Inquest report;
- Final Liquidation and Distribution Account;
- Birth certificate or full unabridged birth certificate of the minor children;
- Section 19(f) Affidavit;
- School reports / proof of tertiary education.

[½ mark for each correct answer]

QUESTION 2

[5]

- 2.1 By allocating two parts each to the deceased and widow and one part to each dependant child. (2)
- 2.2 Life insurance and pension benefits are not taken into account. This is governed by the Assessment of Damages Act, No 9 of 1969. (2)
- 2.3 Deduct the respective amount from the amounts due to each dependant. (1)

QUESTION 3**[8]**

- a) My client could claim all the damages that he has suffered. There are no limitations. The collision was due entirely to the negligence of the driver of motor vehicle ND 1234. The fact that he was in a minibus taxi that did not have a valid permit, does not affect his claim at all. (3)
- b) If the minibus taxi was at fault my client could only claim special damages, namely, past medical and hospital expenses and loss of earnings. There is a further limitation that he could only claim R25 000,00 in respect of special damages. Insofar as the balance of the claim is concerned, he must proceed against the owner or the driver of the minibus taxi. (3)
- c) He cannot claim damages from the Road Accident Fund, as these are not considered bodily damages. He must proceed against the owner / driver of the taxi. (2)

QUESTION 4**[2]**

If part of the mechanism or the equipment or the accessories to a motor vehicle become detached while the vehicle is being driven and cause injury to a third party, the injury arises out of the driving of the motor vehicle within the meaning of the phrase and Section 17(1) of Act 56 of 1996.

QUESTION 5**[2]**

Yes. In terms of Section 22 of the Road Accident Fund Act of 1996 the Fund shall furnish the third party or his agent with a copy of the information and statements which the owner or driver furnished in terms of Section 22(1) together with all statements which were or are obtained from witnesses to the accident.

QUESTION 6**[5]**

- 6.1 In terms of Rule 34(A) of the uniform Rules of Court, the Plaintiff may apply for an order requiring the Defendant to make an interim payment in respect of his claim for past medical and hospital expenses and past loss of earnings. (2)
- 6.2 The allegations to be made in support of the application shall:-
- Contain the amount of damages claimed and the grounds for the application and all documentary proof or certified copies thereof on which the Plaintiff relies;
 - An averment that the Defendant has in writing admitted liability for the Plaintiff's damages;
 - That the Defendant has means at its disposal to enable it to make such a payment. (3)

QUESTION 7**[11]**

- 7.1 Simple Summons(½)
Combined Summons (½) (1)
- 7.2
- 7.2.1 First defendant is Koos van der Merwe, a major male businessman (note to examiner: an adult male businessman also allowed) of (address) in his capacity as trustee of the VDM Family Trust, Trust no.....
- 7.2.2 Second defendant is Anna van der Merwe an adult / a major female housewife of (address) in her capacity as trustee..... (4)
- 7.3 Plaintiff is the holder of a cheque (½) dated 12 February 2006 (½) for the sum of R120 000.00 (½) drawn by the defendant (½) in favour of the plaintiff on the Bloemfontein branch of Standard Bank of SA (½) which cheque was duly presented for payment (½) by plaintiff but was dishonoured by the said bank marked "Refer to drawer" (½) which notwithstanding demand defendant has failed to pay, plus interest at 15.5% per annum from 12 February 2006 to date of payment. (½)
- Notice of dishonour is dispensed with in terms of Section 48 of the Bills of Exchange Act. (½)
- Copies of the front and reverse sides of the said cheque are annexed hereto marked annexures A & B respectively. (½) (5)
- 7.4 Service on both Koos and Anna is required. Summons must be served on every defendant. (1)

QUESTION 8**[14]**

- 8.1 The short form (form 2) (1)
- 8.2 For an order in the following terms:
1. The plaintiff is hereby directed to respond the defendants notice to discover within 5 days of the service of this order on plaintiffs attorney.
 2. if the plaintiff fails to comply with the provisions of paragraph 1 above, the defendant is hereby given leave to apply to this court on these papers, duly supplemented in so far as may be necessary and on 10 days notice to the defendant's attorneys for an order dismissing plaintiffs claim with costs.
 3. Plaintiff to pay cost of application. (4)

Note to examiner : candidates need not include 2 above in their answer.

8.3

AFFIDAVIT

I, the undersigned,

FULL NAMES

Hereby make oath and say that:

1.

Unless otherwise stated or the context clearly indicates the contrary, the facts and allegations contained in this affidavit are within my own knowledge and are both true and correct.

2.

I am an attorney of this Honourable Court and practise as such as a partner of (firm name) the defendant's attorney of record in this matter

3.

The plaintiff has instituted action in this Honourable Court against the abovenamed defendant under case number which we defend.

4.

The pleadings were closed on (date) and the plaintiff thereafter placed the matter on the registrar's awaiting trial list/applied for a court date.

5.

The trial of this matter will be heard by this Honourable Court on (date)

6.

On (date), after the close of pleadings the defendant requested plaintiff to discover as will more fully appear from annexure A attached hereto to which the court is respectfully referred. Although the time period within in which the plaintiff was obliged to file his discovery affidavit has long since expired, and in spite of the letter requesting plaintiff to so discover as will more fully appear from annexure B attached hereto, the plaintiff has not yet done so.

7.

The trial is now less than 6 weeks away and I respectfully submit that discovery by plaintiff is necessary to enable the defendant to prepare for trial properly.

8.

In the premises, I humbly pray that this Honourable Court may grant the plaintiff an order in terms of the notice of motion, and/or such other relief as to this Honourable Court seems meet.

(6)

8.4 Rule 29 states:

Pleadings shall be considered closed:

- (a) If either party has joined issue without alleging any new matter, and without adding any further pleading.

- (b) If the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed
- (c) If the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar or
- (d) If the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed. (3)

Note to examiner: 1 mark each for any three of the above.

QUESTION 9 **[5]**

- (a) Any stage but before sentence is passed. (1)
- (b) If the Court is in doubt whether the accused is in law guilty of offence he has pleaded guilty. (1)
- (c) It appears to the Court that the accused does not admit an allegation in charge. (1)
- (d) That the accused has incorrectly admitted such allegation. (1)
- (e) That the accused has a valid defence to the charge. (1)
- (f) If the Court is of opinion for any reason that the accused's plea of guilty should not stand. (1)

Any five will be marked correct.

QUESTION 10 **[8]**

- 10.1 It is highly unlikely that your client will be convicted of assault with intent, as two blows were struck whilst he was enraged and this resulted in a serious injury, namely a fracture of the jaw. Even although a weapon was not used the State could quite easily argue that in the light of the foregoing intention to inflict grievous bodily harm is clear. I would however consult with the Public Prosecutor and attempt to persuade him to accept a plea of guilty to common assault arguing that a weapon was not used and the possibility exists that your client did not realize that such a serious injury could have followed. (4)

- 10.2 (a) I, the undersigned Mr. X, hereby pleads guilty to the offence of assault.
- (b) I plead guilty voluntary and without any influence.
- (c) I admit that on the 2nd October 2004 and at the premises of the University of Pretoria, I assaulted Mr. Y by hitting him two times with a clenched fist, thereby fracturing his jaw.
- (d) I admit that I had no consent and for any valid reason to have done so.
- (e) I know and understand that my action was wrong.

(4)

NOTE TO EXAMINER: It may happen that a candidate may draft a Section 112(2) statement for assault GBH instead of common assault- do not be too harsh on the candidate.

QUESTION 11

[3]

1. That the charge does not comply with the provisions of the Criminal Procedure Act relating to the essentials of a charge.
2. That the charge does not set out an essential element of the relevant offence.
3. That the charge does not disclose an offence.
4. That the charge does not contain sufficient particulars of any matter alleged in the charge.
5. That the accused is not correctly named or described in the charge.

Any three will be marked correct.

QUESTION 12**[8]**

As the legal representative I will object to the amendment if on my instructions the amendment is likely to prejudice my client in his defense.

Section 93 of the Criminal Procedure Act provides further protection to an accused who relies upon an alibi alleges that on the day or at the time when the crime was allegedly committed he was elsewhere and therefore could not have committed the offence. Thus it goes without saying that he may easily be prejudiced if he ties his alibi to the date or time alleged in the charge, but the State proves that the crime was committed on another day or at another time. If the Court is of the opinion that the accused may be prejudiced, if the State proves that another day or time than that stated in the time sheet such evidence should be rejected. In terms of Section 93 read in conjunction with Section 92 (2)(b) the accused in such a case will be treated as if he had not yet pleaded to the charge. Accordingly a new charge may be put to him. In any event, according to Section 86(1) and 86(2) a Court will not allow an amendment. Such an amendment will prejudice the accused and then only on such terms as the Court may deem fit.

QUESTION 13**[1]**

- a. If the Court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or
- b. Any other offence of which he may be convicted on the charge, it may return the verdict of not guilty.

QUESTION 14**[7]**

- 14.1 The plaintiff may sue for three separate claims in one summons as long as each claim is for less than R100 000,00. (2)
- 14.2 You may sue in the High Court but the court may award your client costs only on the magistrate's court scale of costs. (1)

14.3.1 If the cause of action arose wholly in Durban. (1)

14.3.2 The Durban Court has jurisdiction only if the whole cause of action arose in Durban. You would have to establish that the order was placed with your client in Durban and, if your client communicated acceptance, that he did so in Durban and that he performed the contract in Durban. (3)

QUESTION 15 [3]

You can issue a rent interdict summons [and preferably ask the sheriff to make an inventory of the defendant's goods] or apply for an attachment order on his goods [section 32].

QUESTION 16 [7]

- [1] Plaintiff's attorneys' address not within 8 kilometres of the Durban Court House.
- [2] Cannot sue in the name of the trust.
- [3] Defendant does not reside in the Court's jurisdiction and no allegation of whole cause of action.
- [4] R125 000.00 exceeds the jurisdiction of the court.
- [5] Claim apparently prescribed –over 3 years old
- [6] No cause of action in that no allegation goods were delivered.
- [7] Interest rate is excessive.

QUESTION 17 [8]

- 17.1 No defence – prescription on a dishonoured cheque is 6 years. (2)
- 17.2 He has the valid defence that the Magistrate's Court has no jurisdiction [Section 157 Labour Relations Act} (2)
- 17.3 He has the valid defence of res judicata in that there was no prior judgment, the action between the same parties and the same point was in issue. (2)
- 17.4 He has a valid defence in that he has no liability under a contract [which is probably voidable anyhow] entered into by his son, with or without his assistance as guardian. (2)

TOTAL: [100]