

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

10 FEBRUARY / FEBRUARIE 2015

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

[16]

- 1.1. Yes. Both Mr and Mrs Williams are entitled to compensation from the RAF for their personal injuries as these were caused by / arose out of the negligent driving of a motor vehicle and, in Mr William's case, the other driver was solely to blame for the relevant collision. (3)
- 1.2. Yes, there is a claim for compensation in respect of the son's injuries.
- A *foetus in utero* is regarded as a "person" for the purposes of S17(1)(a) and (b) of the Road Accident Fund Act. Our courts have held that insofar as the Act offered protection to the mother of the unborn child, such protection would extend to the child itself. [RAF v M obo M {2005} 3 A11 SA 340 (SCA); Mtati v RAF 2005(6) SA 215 (SCA)].
 - Either Mr or Mrs Williams may claim, in their representative capacity as parent and natural guardian, on behalf of their son, for his ante-natal injuries. (3)
- 1.3. Mr Williams (1/2)
- Past Hospital and Medical expenses (1/2)
 - Past Loss of earnings (1/2)
- Mrs Williams (1/2)
- Past Hospital and Medical expenses (1/2)
 - Future Hospital and Medical expenses (1/2)
- Mr or Mrs Williams obo son (1/2)
- Past Hospital and Medical Expenses (1/2)
 - Future Hospital and Medical expenses (1/2)
 - Future Loss of earnings (1/2)
- (5)
- 1.4. The RAF will only compensate for non-pecuniary loss (general damages) if the injury is a "serious injury" and the following criteria have been met, either:

A 30% or more whole person impairment in terms of the AMA (American Medical Association) Guidelines, or (½)

- a) a serious long-term impairment or loss of body function; (½)
- b) permanent serious disfigurement; (½)
- c) severe long-term mental or severe long-term behavioural disturbance or disorder; or (½)
- d) Loss of a foetus (½)

1.5.1 The relevant claims may be lodged with any of the branch offices of the Road Accident Fund. (½)

1.5.2 It is the court within whose geographical area of jurisdiction the cause of action arose (i.e. where the collision occurred) that would have the requisite jurisdiction in a particular matter. (*In casu*, The High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg). Alternatively, the court within whose geographical area of jurisdiction the Road Accident Fund has its principal place of business. (The RAF has designated its head office in Menlyn, Pretoria, as its principal place of business for this purpose). (2)

QUESTION 2

[4]

2.1 You can have the claimant examined by a medical practitioner (1) who has fully satisfied himself regarding the nature and treatment of the bodily injuries, in respect of which the claim is made and to then prepare a medical report (1). (2)

2.2 By registered post; or
Delivered by hand (2)

QUESTION 3

[5]

3.1.1 12 March 2016 in respect of Identified Motor Vehicles (3 years from date of collision).

3.1.2 12 March 2015 in respect of Unidentified Motor Vehicles or "hit and run" claims (2 years from date of Collision). (2)
[Either answer should be marked correct].

3.2. You would have the claimant examined by a medical practitioner with regard to the injuries suffered (1) who will complete an R.A.F form. 4 (2)

3.3. Within a period of 5 years from the date of collision (or 12 March 2018)
[Either answer is correct]. (1)

QUESTION 4

[10]

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GRAHAMSTOWN (1 mark)**

Case number

Comfy Homes CC

Plaintiff

And

DECLARATION (1 mark)

1.

The plaintiff is Comfy Homes CC, a Close Corporation duly registered in accordance with the laws of the Republic of South Africa, with registered address at 1 High Street, Grahamstown (½ mark).

2.

The defendant is Mr John Hart, an adult male of full legal capacity, whose full and further particulars are to the plaintiff unknown and residing at 100 Settlers Road, Grahamstown (½ mark).

3.

On or about 1 July 2014, the plaintiff, as represented by Mr Joe Soap in his capacity as sole member of the plaintiff and the defendant acting personally concluded a written contract of which a copy is attached hereto as "Annexure A" hereto. (½ mark).

4.

The material terms of the said contract were the following:

- 4.1 The plaintiff would build a house of 150 square metres for the defendant at 100 Settlers Road, Grahamstown. (½ mark).
- 4.2 The cost of construction and material would be charged by plaintiff to defendant at rate of R8 000 per square metres. (½ mark).
- 4.3 The total price for the house would be R1.2 m. (½ mark).
- 4.4 The defendant would pay the price as follows:
 - 4.4.1 Three instalments of R400 000 each, the first to be paid when the construction reached roof height; (½ mark).
 - 4.4.2 The second instalment on completion of the house (½ mark) ; and
 - 4.4.3 The final payment of R400 000 within ten (10) days of the handover of the house to the defendant. (½ mark).

5.

The plaintiff performed in terms of the contract and completed the construction of the house on the 30th November 2014 when handover occurred. (½ mark).

6.

The defendant paid to plaintiff a total amount of R800 000 but failed to make the final payment of R400 000 in terms of the contract which amount is now due and payable to plaintiff. (½ mark).

7.

Despite demand, defendant has failed to comply with its obligation to pay the said amount to plaintiff. (½ mark).

WHEREFORE plaintiff claims judgment against defendant for:

- a) Payment for the sum R400 000 (½ mark)
- b) Interest thereon at the prescribed rate of 15,5% per annum, calculated from due date for payment thereof (10 December 2014) to date of payment (½ mark)

- c) Costs of suit (½ mark)
- d) Further and/or alternative relief (½ mark)

QUESTION 5 **[2]**

Deliver a notice of bar in terms of Rule 26 dealing with Failure to deliver Pleadings read with Rule 20 dealing with Declaration. (1 Mark)

Motivation: in terms of Rule 20 the plaintiff must deliver a declaration within 15 days of delivery of defendant's notice of intention to defend. In terms of Rule 26 if any party fails to deliver any pleading (other than a replication or subsequent pleading) within the time stated in the rules for such pleading, the other party may serve a notice to file such pleading within 5 days. (1 mark)

Note to examiner: the candidate should not be penalised for not stating the number of the rule referred to.

QUESTION 6 **[2]**

One month as provided for in section 24 of the Superior Courts Act as the defendant is not resident within the area of jurisdiction of the court and the period prescribed in Rule 19(1) therefor does not apply.

QUESTION 7 **[2]**

No. (1)
It is an interlocutory application and the order is not appealable. (1)

QUESTION 8 **[6]**

Note to examiner: Rule 37(6) provides for about 10 matters to be dealt with at the conference. Allow 1 mark, subject to a maximum of 6 marks for each correct answer:

- If a party feels that he is prejudiced because another party has not complied with the rules of court, the nature of such non-compliance and prejudice must be stated (1 mark);
- that every party claiming relief has requested his opponent to make a settlement proposal and that such opponent has acted thereto (1 mark);
- Whether any issue has been referred by the parties for mediation, arbitration or decision by a third party and on what basis it has been so referred (1 mark);
- Whether the case should be transferred to another court (1 mark);
- Which issues should be decided separately in terms of rule 33(4) (1 mark);
- The admissions made by each party (1 mark);
- Any dispute regarding the duty to begin or the onus of proof(1 mark);
- Any agreement regarding the production of proof by way of an affidavit in terms of rule 38(2) (1 mark);
- Which party will be responsible for the copying and other preparation of documents(1 mark);
- Which documents or copies of document will, without further proof, serve as evidence of what they purport to be, which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents(1 mark).

QUESTION 9 **[3]**

- The original document (usually a liquid document) on which the claim is founded (½ mark) ;

- a copy of the summons (½ mark);
- a copy of sheriff's return of service (½ mark);
- copy of notice of set down(½ mark);
- a copy of the defendant's opposing affidavit (if any) (½ mark)
- a copy of the plaintiff's replying affidavit (if any) (½ mark)
- memorandum of instructions to counsel(½ mark)

Note to examiner: Please allow ½ mark for each of the above documents mentioned by the candidate subject to a maximum of 3 marks.

QUESTION 10 **[1]**

If an accused conducts himself in a manner which makes the continuance of the proceedings in his presence impractical, the court may direct that he may be removed and the proceedings continue in his absence.

QUESTION 11 **[3]**

Articles which may be seized are those which:

- a. If reasonable grounds exists to believe that the article are to be concerned in the commission or suspected commission of an offence; (1)
- b. Which may provide evidence of the commission of an offence; (1)
- c. Which are intended to be used or are on reasonable grounds believed to be intended to be used in the commission of an offence. (1)
(Section 20)

QUESTION 12 **[3]**

- a. If the arrestor, on reasonable grounds, believe that the force is immediately necessary for the purpose of protecting the arrestor.
- b. If the arrestor, on reasonable grounds, believe that the force is immediately necessary for the purpose of protecting any person lawfully assisting the arrestor.
- c. If the arrestor, on reasonable grounds, believe that the force is immediately necessary for the purpose of protecting any other person from imminent or future death or grievous bodily harm;
- d. That there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or
- e. That the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or strong likelihood that it will cause grievous bodily harm.
(Section 49)

(To the examiner: any three will suffice)

QUESTION 13 **[3]**

At the appearance the practitioner will present the medical certificate to the presiding officer and request the court to postpone the matter, issue a warrant of arrest but that same stand over until the following date. The court may however order that the warrant be issued and executed immediately.

QUESTION 14**[5]**

- a. The name of the crime; (1)
- b. The time when the offence was committed; (1)
- c. The place where it was committed; (1)
- d. The person against whom it was committed; (1)
- e. The property, if any, in respect of which the offence was committed, as may be reasonably sufficient to inform the accused of the nature of the charge. (1)

QUESTION 15**[10]**

- 15.1 The minimum sentences prescribed for offences in terms of the Criminal Law Amendment Act 105 of 1997. In this instance a sentence of 15 years must be imposed. (2)
- 15.2 Substantial and compelling circumstances will have to be brought to the attention of the court to persuade the court to impose a lesser sentence. (1)

15.3 In Regional Court for the Regional Division of Mthathe Held at Mthathe

Case No: 132/2014

In the matter between:

The Accused

Applicant

And

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that the Applicant hereby gives notice of his intention to apply for leave to appeal to the Mthathe Division of the High Court of South Africa against the sentence imposed upon him by the Regional Magistrate, Mr Zwanele, sitting at the Regional Court number 4 on the 15th of June 2014.

The grounds of appeal are as follows:

1. The sentence imposed on the Applicant induces a sense of shock;
2. The learned Magistrate failed to take into consideration the personal circumstances of the Applicant and in particular that he is a young man and a first offender;
3. The Magistrate erred in not considering the circumstances under which the offence was committed and in particular the probability that the Applicant was under the influence of liquor;
4. The Magistrate erred in not taking into consideration that the Applicant could have been under the influence of an older person;
5. The Magistrate erred in not considering that minimum force was used in the commission of the offence and an imitation firearm utilized;

SIRS,

BE PLEASED to take notice that Application be made to the above Honourable Court on the
day of 2015 at 08h30 or so soon thereafter as the matter may be heard
for an Order in the following terms:

1. That the Applicant/Defendant be granted condonation for the late filing of the Application;
2. That the Default Judgment entered on the 14th of October 2014 be and is hereby rescinded;
3. That the Applicant/Defendant is granted leave to defend the action;
4. That the Plaintiff/Respondent pay the costs of the Application in the event of it being opposed.

DATED at DURBAN this day of 2015.

Defendant's / Respondent's Attorneys
CD Attorneys
40 West Street
Durban

QUESTION 18 **[2]**

Notice of Judgment (section 65A(2) letter)
Notice to appear in court and show cause at the financial enquiry (section 65A(1) notice)

QUESTION 19 **[1]**

Garnishee Order

QUESTION 20 **[1]**

Emolument Attachment Order

QUESTION 21 **[2]**

Offer to settle on the basis that the claim is withdrawn and each party pays own costs
Or
Deliver a notice to abandon the judgment (rule 51 (11) (a))

QUESTION 22 **[2]**

- 22.1 The Registrar (1)
- 22.2 The decision of the Registrar is final (1)

QUESTION 23**[5]**

- 23.1 Mervyn Naidoo, a bookkeeper, the father and natural guardian of Vinesh Naidoo, a student who resides at 10 Smith Street Durban ("Plaintiff"). (2)
- 23.2 Only the Professor (1)
- 23.3 No. The claim is not for a liquidated amount. (2)

TOTAL: [100]