

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

4 AUGUST / 4 AUGUSTUS 2009

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

[1]

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

QUESTION 2

[2]

No, he is not obliged to furnish an affidavit or even to attend the interrogation. The Fund can only call for this interrogation before action.

QUESTION 3

[2]

You can have the claimant examined by a medical practitioner 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.

QUESTION 4

[2]

Yes. Claims may only be lodged by the claimant, by his/her attorney or any person in the Public Service.

QUESTION 5

[2]

Prior to *Bezuidenhout vs Road Accident Fund* 2003 (6) SA 61 (SCA) the client had to prove an actual collision between the unidentified motor vehicle and himself. *Bezuidenhout's* case states that there does not have to be physical contact with an unidentified vehicle. The Regulation promulgated pursuant to the Road Accident Fund Act falls outside the object and purpose of the Act and is therefore *ultra vires*. Your client has a case

QUESTION 6**[1]**

15,5% per annum from 14 days after judgement has been given.

QUESTION 7**[7]**

The letter must contain the following:

- 7.1 The employer must be advised that you are acting on behalf of their employee in regard to his claim for damages arising from the injuries he sustained in the motor accident. Details of the time and place of the accident should be furnished (½)
- 7.2 The employer must be asked to furnish a certificate (½) confirming your client's employment with the company (1), advising of the length of his employment with them (½), the salary that your client earned over the 12 months preceding the accident (½), details of any "employment perks" he may have received, and his annual leave and sick leave entitlements (1½) and the period he was absent from work (½).
- 7.3 The employer must be specifically asked what payments your client received whilst he was away from work recovering from his injuries (½). The employer must be asked to **state** whether these payments arose out of his conditions of employment (basically whether he was entitled to sick leave pay) (½) or whether the payment of salary was *ex gratia* (1). Full details must be furnished by the employer.

QUESTION 8**[5]**

1. Age and sex of the claimant (½)
2. The nature and extent of the injuries (1)
3. Pain, suffering, shock and disfigurement suffered (1)
4. Loss of amenities of life (1)
5. Disability – both temporary and permanent suffered (½)
6. Awards made in comparable cases which must be adjusted for inflation to reflect present monetary values (1)

QUESTION 9**[3]**

Prescription will run from the date of the accident (1). Because he was struck by an unidentified vehicle the claim will prescribe 2 years from the date of the accident (see regulation 3) (1). You must therefore lodge your client's claim on or before 31st March 2010 (1).

QUESTION 10**[15]**

1. Plaintiff is Bargain Builders CC, a close corporation, duly registered in terms of the Close Corporations Act / statutes of the Republic of South Africa with registered address / principal place of business at (2)
2. First Defendant is John Black N.O., an adult male business man, residing at (address), Port Elizabeth in his capacity as trustee of the Black Family Trust. (2)
3. Second Defendant is Mary Black N.O., an adult female housewife residing at (address), Port Elizabeth in her capacity as trustee of the Black Family Trust. (2)
4. On(date) (1/2) at(place) (1/2) plaintiff duly represented by(1/2) and 1st and 2nd defendants entered into a written agreement (1/2) in terms of which plaintiff purchased from the 1st and 2nd defendants Erf 247 Central Port Elizabeth (1/2) for a purchase price of R120 000 payable against transfer (1/2).
5. A copy of the said agreement is annexed hereto marked Annexure "A". (1)
6. Plaintiff has duly provided a guarantee for the payment of the purchase price required in clause 12 of the Annexure "A" and has fulfilled all other obligations imposed on him in terms of the said agreement. (1)
7. Despite demand, 1st and 2nd defendant refuse to pass transfer to plaintiff by neglecting or refusing to sign the transfer documents. (1)

WHEREFORE plaintiff claims:

- a) An order directing 1st and 2nd defendants to take all the necessary steps to pass transfer of Erf 247, Central Port Elizabeth / sign all documents necessary to pass transfer of Erf 247, Central Port Elizabeth to the plaintiff. (1)
- b) An order that should defendants fail within 14 days of the court order to take the necessary steps, the sheriff of Port Elizabeth is authorised to take such steps on the defendants' behalf. (1)
- c) Costs. (1)
- d) Further and/or alternative relief. (1)

QUESTION 11**[5]**

- 11.1 A party may only request such further particulars as are strictly necessary to enable him to prepare for trial. Such request may be delivered after close of pleadings not less than 20 days before the trial. (2)

11.2 Pleadings are considered closed –

- a) if either party has joined issue without alleging any new matter, and without adding any further pleading. (1)
- b) if the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed; (1)
- c) if the parties agree in writing that they are closed and such an agreement is filed with the Registrar; OR (1)
- 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. (1)

QUESTION 12

[5]

NOTICE IN TERMS OF RULE 36(10)(a)

Please take Notice that Plaintiff intends (1) to tender in evidence at the trial (1) of this matter 5 (five) photographs depicting the damages to this motor vehicle (1) / bodily injuries suffered / the scene of the collision* and hereby offers inspection (1) thereof to defendant who is required to admit (1) the same within 10 (ten) days after receipt of this notice. #

* Note to examiner: the description of the photographs could vary from case to case.

* Note to examiner: candidates adding that "if the other party fails to respond the photos shall be received in evidence upon its mere production" or "if he does not admit them the photos may be proved at the hearing" should not be penalised.

QUESTION 13

[12]

- 13.1
- Murder
 - Culpable Homicide
 - Assault with intent to do grievous bodily harm
- (3)

13.2

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

CASE NO: 1247/2003

In the matter between:

X

THE STATE

STATEMENT IN TERMS OF SECTION 115 OF ACT 51 OF 1977

I the undersigned

X

hereby declare as follows:

1.
I am the accused in this matter and the facts hereinafter set out are true and correct.

2.
I plead not guilty to the charge of murder.

3.
I admit that the deceased in this matter is one J. RANDAL and that he died on the 21st February 2003 as a result of injuries indicated in the post-mortem report.

4.
I deny that the injuries that caused the death of the deceased were caused by my co-accused and/or myself.

5.
I admit that on the day in question the deceased started a fight with my co-accused and we were obliged to ward off the attack by hitting the deceased with fists in self defence.

DATED at PRETORIA on this the 30th day of November 2004

Signed Accused

(5)

13.3

- The deceased was the aggressor.
- The accused acted in self defence.
- The accused used their fists and it thus cannot be argued that they had an intention to kill.
- The deceased was drunk and could have fallen and hit his head against a rock after he parted company with the accused.
- He may also have bumped his head against a door frame when entering the house whilst being assisted by his girlfriend taking into consideration their state of sobriety.
- The fatal trauma to the head could have caused by an incident other than the fist fight.

- The girlfriend is a single witness, was drunk, and could have a motive (cautionary rule to apply).
- The lighting was poor
(this list is not exhaustive)

(4)

QUESTION 14

[6]

I the undersigned

John Smith

do hereby declare in terms of Section 112 of Act 51 of 1977 as follows:

1. I am the accused in this matter and I plead guilty to the alternative charge.
2. I confirm that my declaration to plead guilty was made freely and voluntarily and without any undue influence having been exerted on me.
3. I admit that on the 3rd JUNE 2008 I was the driver of motor vehicle namely PAJERO with registration number HCC 191 GP.
4. I drove the said motor vehicle along Mocke Street in Soweto which is a public road.
5. I admit that at the time of my driving the motor vehicle the content of alcohol in my blood was 0.11% which is above the legal limit.
6. I admit that a blood sample was drawn from my body within two hours of my driving the vehicle and that it was correctly analyzed.
7. I confirm that at all relevant times hereto I was aware of the fact that it is an offence to drive a motor vehicle whilst the alcohol content of one's blood exceeds 0.05%.

DATED at Johannesburg on this theday of July 2008.

ACCUSED

QUESTION 15

[5]

Vide Section 60(4) of CPA

The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

- (a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence, or
- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence, or

- (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence, or
- (d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system,
- (e) where in exceptional circumstance there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security, or

QUESTION 16

[2]

Rape. Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with the definition of "sexual penetration" in Section 1 creates the offence of rape in the circumstance set forth in the question.

QUESTION 17

[8]

17.1 File a notice at least 15 days before the date of the hearings that you intend calling an expert.

File a further notice at least ten days before the hearing setting out a summary of the expert's opinions and his reasons for such opinion which should include qualifying him as an expert, that he has examined the plaintiff and what he has found. (5)

17.2 At least 10 days before hearing give notice of your intention to use the photographs and invite inspection thereof and state that if the defendant does not object they may be admitted without further proof. (3)

QUESTION 18

[5]

1. Plaintiff is James Brown, adult male, engineer who resides at 1 Smith Street, Johannesburg.
2. Defendant is Billy Jones CC, a swimming pool contractor, registered office 1 West Street, Johannesburg.
3. On or about 1st January 2009 an agreement was entered into between plaintiff and defendant, the material terms of which were:
 - (a) Defendant would construct etc.
 - (b) Plaintiff would pay R40 000,00 as follows etc.
4. Plaintiff paid to defendant the sum of R30 000,00.
5. Defendant partially completed the excavations and abandoned the contract.
6. As a result thereof the plaintiff duly cancelled the agreement.

7. Plaintiff engaged New Pool CC who completed the contract work at a cost of R25 000,00 which is a fair and reasonable price.
8. As a result the plaintiff has suffered damages in the sum of R15 000,00.
9. Despite demand on 1st June 2009 defendant has failed to pay the said amount.

QUESTION 19 **[3]**

Firstly I would enter an appearance to defend then I would file a notice in which I ask the plaintiff to provide security for costs.

QUESTION 20 **[4]**

He should tender the amount of R15 000,00 plus costs to date (being 50% of the claim). His offer would be without prejudice and he would tender the costs to date of this notice.

QUESTION 21 **[5]**

EXCEPTION

To the Clerk of the Court

and

XYZ Defendant's attorneys

Sirs,

Please take notice that the plaintiff excepts to the defendant's plea on the grounds that it does not disclose a defence.

Particulars

The fact that the driver did not have a licence does not excuse his negligence in colliding into the wall and thus is not a defence.

Prayer

That this exception be upheld with costs.

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

17 FEBRUARY / 17 FEBRUARIE 2009

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

[5]

- 1.1 Where the claim is subject to an apportionment in terms of the Apportionment of Damages Act, the apportionment has first to be applied to the full common law damages proved in the damages action and the award is reduced accordingly.

The amount reduced by the apportionment has to be further reduced by the final award made by the Compensation Commissioner. (2)

TOTAL	R380 000,00	
Less: 50% Apportionment	R190 000,00	(1)
Jb total	R190 000,00	
Less: WCC Award:		
Hospital expenses	R 60 000,00	(½)
Past loss of earnings	R 20 000,00	(½)
Future loss of earnings	R 80 000,00	(½)
	R160 000,00	
Amount due to client	R 30 000,00	(½)

QUESTION 2**[2]**

- 2.1 If the Fund does not, within a period of sixty (60) days from the date on which a claim was sent by registered post or delivered by hand, object to the validity thereof, the claim shall be deemed to be valid in law in all respects. There are no remedies available to the Fund in these circumstances (Section 24(5) of the Act). (1)
- 2.2 The Fund shall not be obliged to compensate any person if the claimant refuses or fails to submit to the Fund an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out (see Section 19(f)(i) of the Act). (1)

QUESTION 3**[2]**

Yes. If part of the mechanism or 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 in terms of Section 17(1) of the Road Accident Fund Act.

QUESTION 4**[11]**

1. Peter will be able to claim for special damages only, being the hospital expenses, the medical expenses and the loss of income. *Special damages only - ordinary package* (1)
2. Yes. Peter's claim is limited to R25 000,00 in respect of special damages only. *still a claim* (1)
3. No. Mr Jones cannot bring a claim on behalf of his daughter arising from his own negligence as little Mary is not only a member of the same house hold but he can only claim for bodily injuries sustained in the collision. (2)
4. Should it be proved that Peter was not wearing a seatbelt, an apportionment would be applied to the amount of damages that he has suffered, as he was contributorily negligent. (2)
5. Peter has a claim against Mr Jones in respect of:
- 5.1 Any amount of the special damages that exceeds the sum of R25 000,00; and (1)
- 5.2 The general damages in terms of the common law. *CL claim* (1)
6. In the event another vehicle was to blame for the accident, Peter will be entitled to claim both special and general damages against the Road Accident Fund. *unlimited claim* (3)

QUESTION 5

[5]

R25 000,00 in respect of passengers conveyed.

- 1.1 for reward (1)
- 1.2 in the course and scope of their employment less any award by the Compensation Commissioner (1)
- 1.3 in the course of the lawful business of the owner/driver of that motor vehicle (1)
- 1.4 for the purposes of a lift club (1)
- 2. R25 000,00 for special damages only in respect of any ordinary passenger who does not fall into any of the above categories. (1)

QUESTION 6

[13]

**IN THE HIGH COURT OF SOUTH AFRICA
(----- DIVISION)**

Case No:.....

In the matter between:

Peter Brown	Applicant
and	
John Smith	1 st Respondent
and	
Beryl Smith	2 nd Respondent

NOTICE OF MOTION

Kindly take notice that application will be brought on behalf of the above-named applicant on at or as soon thereafter as counsel may be heard for an order in the following terms: (1)

- 1. Dispensing with the forms and service provided for in the rules of the above honourable court and entertaining this matter as one of urgency in terms of rule 6(12). (1)

2. That the estate of the first and second respondents be placed under provisional sequestration in the hands of the Master of the above honourable court. (2)
3. That a rule nisi be issued calling upon the respondents and all persons interested to show cause on the (date) (½) why the estate of the respondents should not be placed under final order of sequestration. (2)
4. That this order be served by
 - 4.1 the Sheriff of this honourable court on the respondents personally (½) / on all the registered trade unions representing the employees of the respondents (½) / and the South African Revenue Services (½) as prescribed in the Insolvency Act.
 - 4.2 by affixing copy of the order to a notice board accessible to the employees (½)
 - 4.3 by giving notice by registered post to all known creditors (½)
5. That the costs of this application be costs in the application. (1)
6. Further and or alternative relief.

Take further notice that the affidavit of the applicant attached hereto will be used in support of the application. (1)

Kindly enroll the matter accordingly. (1)

Dated at this day of 2008.

ABC Inc
Applicant's attorney
Address

To: The Registrar, High Court (½)

To: The Master, High Court (½)

QUESTION 7 **[4]**

- 7.1 Cape Provincial Division. (1)
- 7.2 Still Cape Provincial Division (1).
- 7.3 Apply to court by way of an ex parte application (1) for an order authorising service by way of edictal citation (1).

QUESTION 8 **[3]**

- 8.1 An urgent application for eviction. (2)
- 8.2 A combined summons. (1)

QUESTION 9 **[5]**

- 9.1.1 Ten court days. Day of service excluded, last day included. (1)
- 9.1.1 Twenty one calendar days, first day excluded, last day included but if last day falls on a Sunday or public holiday, such day is excluded and the following day included. (2)
- 9.2 Yes, provided default judgment has not been entered. (2)

QUESTION 10 **[4]**

- Each party against whom the evidence is to be adduced agrees to the submission thereof.
- During a bail application.
- When not presented to prove the truth of the communication.
- If the party tendering same intends calling as a witness the person who uttered the hearsay statement.
- If the court is of the opinion that such evidence should be admitted in the interests of justice.

QUESTION 11 **[5]**

- 11.1 There is no duty upon an attorney to advise the court as to the previous convictions of an accused if the state does not prove same. The practitioner may however not in his address on sentence refer to the previous convictions of the accused and state that the accused does not have previous convictions. Such an action shall amount to misleading the court. (3)
- 11.2 In terms of Section 60 (11B), an accused or his legal advisor is compelled to inform the court whether the accused has previously been convicted of any offence and whether there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges. (2)

QUESTION 12

[6]

As the offence is referred to in Schedule 6, the accused will have to adduce evidence which satisfies the court that exceptional circumstance exist which in the interests of justice permit his release. The onus is accordingly on the accused to prove the presence of exceptional circumstances. The accused will invariably lead evidence first. The accused will accordingly be obliged to give evidence under oath. He will have to deal with the grounds referred to in Section 60(4) and particularly those grounds on which the State relies in refusing bail. He may be obliged to deal with the merits of the matter. The accused may also call other witnesses in support of his application.

The state may call witnesses. The investigating officer is invariably called to give evidence. The defence will have an opportunity of cross-examining the said witnesses. Once all evidence is led the defence and the prosecutor will address the court on the merits of the matter. The defence attorney will be obliged to convince the court that exceptional circumstances exist which in the interests of justice permit his release.

The presiding officer will then make a finding relating to the question of bail.

QUESTION 13

[7]

13.1

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF GERMISTON
HELD AT GERMISTON**

Case No: 61/321/08

In the matter between:

X **APPLICANT**

and
THE STATE **RESPONDENT**

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that the Applicant intends to apply on a date to be arranged by the clerk of the court for leave to appeal to the Supreme Court of South Africa (Witwatersrand Local Division) against his conviction on the charge of culpable homicide and the sentence imposed by the Learned Magistrate, Mr B, in the District Court Germiston held at Germiston, on the 30th of June 2008, on the following grounds:

AD CONVICTION:

1. That the Learned Magistrate erred in rejecting the evidence of the Applicant that he had been placed in a sudden emergency situation when the left front tyre of his vehicle burst causing him to lose control over the said vehicle, as being reasonably possibly true.
2. That the Learned Magistrate erred in rejecting the evidence of the District Surgeon that the death of the deceased could have been caused by pneumonia contracted whilst the deceased was in hospital as not being reasonably possibly true.

AD SENTENCE:

1. The sentence imposed upon 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 first offender, is in fixed employment and supports his aged mother;
3. The Magistrate erred in not taking into consideration the degree of negligence as being fairly slight and tempering the sentence accordingly.
4. The Magistrate erred in finding that imprisonment was the only suitable sentence and furthermore erred in not considering the imposition of a sentence which would have the effect of keeping the Applicant out of jail.

DATED AT GERMISTON ON THIS THE 2nd DAY OF JULY 2008.

APPLICANT'S ATTORNEYS

TO: THE CLERK OF THE COURT
PRETORIA

AND TO: THE DIRECTOR OF PUBLIC PROSECUTIONS
c/o
THE SENIOR PUBLIC PROSECUTOR
GERMISTON

(6)

13.2 Fourteen days.

(1)

QUESTION 14

[3]

It is clear that there is a conflict of interest between all the accused in that accused number 1 implicates his co-accused. To defend each accused you will be obliged to cross examine and discredit the said accused, using information that you have obtained from the said accused and which is subject to attorney/client privilege. This can obviously not be done by an attorney acting on behalf of all the parties. You will be obliged to withdraw from acting for any of the said persons.

QUESTION 15

[10]

1. Plaintiff is an unassisted minor.
2. Plaintiff should have full name set out.
3. Court has no jurisdiction – defendants do not live in Johannesburg.
4. Must allege suretyship is in writing.
5. No allegation that plaintiff fulfilled his part in the contract.
6. Amount of R110 000 exceeds jurisdiction.
7. No allegation claim against both jointly and severally.
8. Interest rate wrong.
9. Date from which interest was calculated is wrong.
10. No basis for costs between attorney and client.

(NOTE: National Credit Act does not apply)

QUESTION 16

[8]

APPLICATION FOR RESCISSION OF DEFAULT JUDGMENT

Please take notice that application will be made to this Honourable Court on 1st of January 2009 at 09:00 a.m for an order in the following terms:

1. That the late filing of this application is hereby condoned;
2. That the default judgment granted by this honourable court on 1st November 2007 be and is hereby rescinded;

3. That the applicant be granted leave to defend this action;
4. That the respondent pay the costs of this application in the event of it being opposed.

Further take notice that the affidavit of Billy Naidoo annexed will be used in support of this application.

QUESTION 17

[5]

Please take notice that application will be made to this Honourable Court on 1st January 2009 at 09:00 for an order in the following terms:

1. That the respondent (plaintiff) furnish a response to the applicant's (defendant's) request for further particulars to his summons written 5 days of service of this order on him.
2. That the respondent be ordered to pay the costs of this application.

QUESTION 18

[2]

I would issue a section 65 A(1) notice addressed to the director to attend an enquiry into the company's financial position and to bring the company's books of account with him. Once I establish what is owing to the debtor company I would issue a garnishee order against the person that owes the money (or get the court to make such an order at the enquiry).