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.
VRAAG 1
Op 8 Oktober 2010 is Piet Strydom 'n passasier in 'n voertuig bestuur deur sy vriend, Jan du Plessis. Toe dit reeds donker was is hulle oppad tussen Kathu en Kuruman in die Noord-Kaap. Piet Strydom is besig om 'n sms op sy selffoon te stuur en toe hy opkyk merk hy 'n koedoe ('n wilde bok) op wat ongeveer 50 meter voor hulle in die pad staan. Op hierdie stadium het Jan du Plessis nog nie die koedoe opgemerk nie en Piet Strydom skree vir Jan om te pasop. Jan swaaò na links uit, maar vermy nogtans nie 'n botsing met die koedoe nie. As gevolg van die botsing word Piet ernstig beseer as gevolg waarvan hy 'n parapleeg is.

Antwoord die volgende vragen:

a) Het Piet Strydom 'n eis teen die Padongelukkefonds? Indien wel, is sy eis beperk? (2)

b) Het Piet enige eis teen Jan du Plessis, en indien wel, waarvoor? (1)

c) Is jy van oordeel dat Jan du Plessis nalatig was in die bestuur van sy voertuig? Motiveer volledig. (3)

VRAAG 2
U tree op namens die eiser en het u namens u klient dagvaarding uitgereik en beteken op die Padongelukke Fonds vir die volgende skade:

1. Reeds gelede hospitaal uitgawes R5 000,00
2. Reeds gelede verlies van inkomste R7 000,00
3. Beraamde toekomstige mediese uitgawes R20 000,00
4. Algemene skade R50 000,00

QUESTION 1
On 8 October 2010 Piet Strydom was a passenger in a motor vehicle driven by his friend, Jan du Plessis. It was already dark and they were en route between Kathu and Kuruman in the Northern Cape. Piet Strydom is busy sending an sms on his cellphone when he looks up and sees a kudu (a wild buck) standing in the road about 50 metres in front of them. At this stage Jan du Plessis has still not noticed the kudu and Piet Strydom shouts out to him to be careful. Jan swerves the vehicle to the left but nevertheless cannot avoid colliding with the kudu. As a result of the collision Piet sustained serious injuries as a result of which he is rendered a paraplegic.

Answer the following questions:

a) Does Piet Strydom have a claim against the Road Accident Fund? If so, is his claim limited? (2)

b) Has Piet any claim against Jan du Plessis? If so, for what? (1)

c) Are you of the opinion that Jan du Plessis was negligent? Motivate fully. (3)

QUESTION 2
You are acting for the Plaintiff on whose behalf you have issued and served summons upon the Road Accident Fund for the following damages:

1. Past hospital expenses R5 000,00
2. Past loss of earnings R7 000,00
3. Estimated future medical expenses R20 000,00
4. General damages R50 000,00
Prior to the close of pleadings you receive an offer of settlement from the Road Accident Fund in the sum of R40 000,00, in full and final settlement. Upon calling for your client’s instructions you are informed by your client’s wife that he has passed away due to natural causes.

The Plaintiff’s widow now consults you and enquires:

2.1 Can you, the attorney accept the offer from the Road Accident Fund as you are in possession of a Power of Attorney from the Plaintiff? Motivate your answer. (2)

2.2 Which of the above heads of damages are you entitled to claim subsequent to the death of the Plaintiff? How would your answer differ if the Plaintiff had died after the close of pleadings. Motivate your answers fully. (5)

You are instructed that on the 17th of October 2010 a collision occurred between a privately owned vehicle with registration NR 52369 and a taxi with registration NP 16973.

Motor vehicle NR 52369 was driven by Jay Naidoo. Both Mr Naidoo and his wife Shireen, who was seated in the front passenger seat, sustained severe injuries as neither was wearing a seatbelt at the time of the collision.

Ms Patience Radebe was the driver of the taxi with registration NP 16973. The taxi was licensed to carry 12 passengers but there were 18 passengers on board at the time of the collision. The driver as well as the passenger seated in the front passenger seat, Themba Sibisi, sustained severe injuries. The remaining passengers were treated for minor injuries only.
Dit blyk dat Jay Naidoo vir die botsing verantwoordelik was.

**U word gekonsulteer deur Shireen Naidoo met die volgende instruksies:**

3.1 Shireen verneem of sy geregtig is om van die Padongelukke Fonds te eis. Motiveer u antwoord volledig. (2)

3.2 Wat is die effek van die feit dat Shireen nie 'n veiligheids gordel aangehad het nie op haar eis? (2)

**U word gekonsulteer deur Patience Radebe en Themba Sibisi, met die volgende instruksies:**

Die huurmotor was nie in besit van 'n geldige padvervoer verkeerspermit nie.

As gevolg van die botsing het Themba baie ernstige brein beseerings opgedoen wat 60% totaal liggaamlike ongeskiktheid daarstel en die volgende skade gely:

| Reeds gelede provinsiale hospitaal uitgawes | R 10 000,00 |
| Geskatte toekomstige mediese uitgawes | R 20 000,00 |
| Reeds gelede verlies van inkomste | R 12 000,00 |
| Toekomstige verlies van inkomste | R214 000,00 |
| Algemene skade | R480 000,00 |

3.3 Welke van die skade hoofde is Themba geregtig om te eis? (1)

3.4 Welke effek het die feit dat die huurmotor nie 'n geldige padvervoer verkeerspermit gehad het nie op enige van hierdie eise. Motiveer u antwoord. (1)

It would appear that Jay Naidoo was solely to blame for the collision.

**You are consulted by Shireen Naidoo who instructs you as follows:**

3.1 Shireen enquires whether she is entitled to claim from the Road Accident Fund. Motivate your answer fully. (2)

3.2 What effect will Shireen's failure to wear her seatbelt have on her claim? (2)

**You are also consulted by Patience Radebe and Themba Sibisi, who instructs you as follows:**

The taxi was not in possession of a valid road carrier's permit.

As a result of his injuries, Themba sustained very severe brain injuries constituting a 60% whole person impairment and has suffered the following damages:

| Past Provincial hospital expenses | R 10 000,00 |
| Estimated future medical expenses | R 20 000,00 |
| Past loss of earnings | R 12 000,00 |
| Future loss of earnings | R214 000,00 |
| General damages | R480 000,00 |

3.3 Which of these heads of damages is Themba entitled to claim? (1)

3.4 What effect does the lack of a valid permit have on any of these claims? Motivate your answer. (1)
<table>
<thead>
<tr>
<th>DEEL 1</th>
<th>PART 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOPROSEDURES</td>
<td>COURT PROCEEDURES</td>
</tr>
<tr>
<td>[100]</td>
<td>[100]</td>
</tr>
</tbody>
</table>

3.5 The RAF seeks to apportion Themba’s claim on the basis that the taxi was “overloaded”. What advice will you give to your client? (2)

**QUESTION 4**

John Williams was cycling along Smit Street, Pretoria on his way to work when the rear door of a stationary vehicle parked at the side of the road was opened by a passenger. John collided with this door, was thrown off his bicycle and sustained injuries.

4.1 Does John have a claim for damages in respect of these injuries in terms of the Act? Motivate your answer. (3)

4.2 Does he in these circumstances have a claim under the common law? (1)

**VRAAG 5**

Your client, Jim Jones, informs you that Peter Black owes him an amount of R500,000 emanating from the sale of a 2008 model Hino 15-258 truck that was sold and delivered to Black during July 2011. The purchase price was payable before or on the 31st of July 2011. Jones hand hands a cheque, dated 31 July 2011, drawn in his favour by Black on the Pretoria Central branch of Standard Bank. Jones informs you that he deposited the cheque into his cheque account held at the Cape Town branch of Nedbank but that it was subsequently dishonoured, marked “payment stopped”. He hands you the cheque and you notice that there appears a stamp of Standard Bank dated 2 August 2011 as well as a stamp of Nedbank dated 4 August 2011 on the back of the cheque. You are given instructions to collect the amount.

5.1 Which summons would be the most effective to use? (1)

<table>
<thead>
<tr>
<th>VRAAG 4</th>
<th>QUESTION 4</th>
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<tbody>
<tr>
<td>[4]</td>
<td>[4]</td>
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</tbody>
</table>

John Williams ry met sy fiets in Smitstraat, Pretoria werk toe, wanneer die agterdeur van ’n stilstaande motorvoertuig, geparkeer langs die pad, deur ’n passasier oopgemaak word. John bots met die deur, word van sy fiets afgegooi en ly beserings.

4.1 Het John ’n eis vir skadevergoeding kragtens die Wet as gevolg van hierdie beserings? Motiveer u antwoord. (3)

4.2 Het hy onder hierdie omstandighede ’n eis kragtens die gemenerg? (1)
<table>
<thead>
<tr>
<th>5.2</th>
<th>Which other summons or summonses could you have used? (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3</td>
<td>On which specific issues does the plaintiff bear the onus of proof at provisional sentence hearing? (2)</td>
</tr>
<tr>
<td>5.4</td>
<td>Discuss the onus of proof that the defendant must discharge at the provisional sentence hearing with reference to its nature and types of defences. (2)</td>
</tr>
<tr>
<td>5.5</td>
<td>Draft the plaintiff's cause of action that must be incorporated in the provisional sentence summons. Restrict yourself to those allegations which constitute the cause of action only. Do not cite the parties. (6)</td>
</tr>
</tbody>
</table>

**QUESTION 6**

Your client obtained judgment by default for R5,000,000 against Mr Thabo Khumalo, trading as Thabo's Furnishers. The subsequent writ of execution elicited a nulla bona return. You learn that Khumalo is disposing of assets, has failed to pay the salaries of his employees, has not renewed the lease for the premises from which Thabo's Furnishers trade and that he has bought a one-way flight ticket to Australia. You are instructed to launch an application on an urgent basis for the sequestration of Khulamo's estate.

Bearing the above facts in mind draft the notice of motion. You may omit the heading.

**QUESTION 7**

Mr Piet Breedt is in default under a short-term credit transaction to which the National Credit Act applies. You are instructed by your client, the credit provider, to enforce the agreement.
7.1 Watter voorlopige stap moet gedoen word alvorens dagvaarding uitgereik kan word?

7.2 Nadat die gekombineerde dagvaarding beteken is, teken Breedt verskyning tot verdediging aan. Wat sal u volgende proseduruele stap wees?

7.3 Watter tydsbeperking is van toepassing om die stap in 7.2 genoem te doen?

VRAAG 8

Om 14h00 op 'n Saterdagmiddag ontvang u 'n oproep van 'n familieled, van ene mnr Smith wat u versoek om mnr Smith by 'n nabyge geleë polisiestasie te gaan spreek waar hy in aanhouding is. By die polisiestasie konsulteer u met mnr Smith wat u meedeel dat hy teregt staan op vier aanklagnede van moord. Hy en 'n maat het die vorige dag alkohol tesame met kokaine gebruik. Daarna het hy en sy maat met hulle voertuie resies gejaag waartydens mnr Smith beheer oor sy voertuig verloor het, en met 'n groep skoolkinders gebots het. Vier kinders is in die botsing gedood. Mnr Smith wil die volgende van jou weet:

8.1 Kan 'n Staatsaanklaer in die omstandighede aan hom borg toestaan? Motiveer jou antwoord kortliks.

8.2 Verduidelik aan mnr Smith welke toets die hof sal toepas om te bepaal of aan hom borg verleen word of nie.

8.3 Verduidelik watter faktore 'n hof in ag moet neem om te beslis of borg aan 'n beskuldigde toegestaan word al dan nie.

QUESTION 8

It is 2 p.m. on a Saturday afternoon. You receive a call from a family member of Mr Smith requesting you to consult with Mr Smith who is held in custody at a nearby Police Station. You proceed to the Police Station and commence consulting. Mr. Smith informs you that he is charged with four counts of murder. On the previous day, he and a friend, during the course of the morning consumed alcohol in conjunction with cocaine. Thereafter, he and his friend raced their vehicles and whilst doing so, Mr Smith lost control of his vehicle and collided with a group of school children. Four children were killed in the collision. Mr. Smith wants to know from you the following:

8.1 Can a prosecutor grant Mr. Smith bail in the circumstances. Briefly motivate your answer.

8.2 Explain to Mr. Smith, the test that the court will utilize in arriving at its decision whether or not to grant bail.

8.3 What are the various grounds that the court will consider in arriving at its decision whether or not to grant bail?
### Vraag 9

Verduidelik puntsgewys aan mnr Smith (sonder om uit te briel) die verloop van 'n strafregtelike verhoor vanaf die stadium dat 'n beskuldigde onskuldig op die aanklag teen hom pleit totdat die hof 'n uitspraak van skuldig of onskuldig lewer.

### Vraag 10

10.1 Kan 'n beskuldigde nadere besonderhede aanvra in 'n strafverhoor? (1)

10.1.1 Indien wel, hoe moet sodanige aansoek gebring word? (1)

10.1.2 Indien wel, tot op watter stadium van die verrigtinge kan sodanige versoek gerig word? (1)

10.2 As die Staat weier of versoek om die nadere besonderhede te verskaf, het 'n beskuldigde enige remedie om die nadere besonderhede te verkry? (1)

10.3 Watter effek, indien enige, het die verskaffing van die geleverde nadere besonderhede op die oorspronklike klagte wat deur die Staat teen die beskuldigde gebring is? (1)

### Vraag 11

Stel: 'n artikel 112 (2) verklaring waarin mnr Smith skuldig pleit op strafbare mansslag gegrond op die feite wat in die inleiding tot hierdie vraag voorkom. Behandel al die elemente van die oortreding ten einde die hof te cortuig van die beskuldigde se skuld.

(Laat die opskrif van die verklaring weg).

### Vraag 9

Explain to Mr. Smith, in point form (without elaborating) the sequence of a criminal trial from the time that an Accused pleads not guilty to a charge preferred against him, until the court hands down a verdict of guilty or not guilty.

### Vraag 10

10.1 Can an accused person request further particulars to a criminal charge? (1)

10.1.1 If so, how will such a request be made? (1)

10.1.2 If so, until what stage of the proceedings can the request be made? (1)

10.2 If the State fails or refuses to furnish such particulars, does the Accused have any recourse to obtain such further particulars? (1)

10.3 What is the effect, if any, of the particulars delivered by the State on the initial charge brought by the prosecutor? (1)

### Vraag 11

Draft a Section 112(2) statement on behalf of Mr Smith to plead guilty to culpable homicide arising from the given facts in the preamble above. In the statement, deal with all the elements of the offence to satisfy the court of the Accused’s guilt.

(Exclude the heading to the statement).
<table>
<thead>
<tr>
<th>VRAAG 12</th>
<th>[5]</th>
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<tbody>
<tr>
<td>U klient oorhandig aan u 4 kleur fotos van die skade aan sy motorvoertuig en 3 kleur fotos van die botsingtoneel. U wil hierdie fotos tydens die verhooi in die landdroshof gebruik. Stel die nodige kennisgewing aan jou opponent op en versek her dat u die fotos kan gebruik tydens die verhooi. Laat die opskrifte en slot van die kennisgewing weg.</td>
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<table>
<thead>
<tr>
<th>QUESTION 12</th>
<th>[5]</th>
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<tbody>
<tr>
<td>Your client hands you 4 colour photographs depicting the damage to his motor vehicle as well as 3 colour photographs depicting the scene of the accident. You want to use these photographs at the trial in the magistrates court. Draft the necessary notice to your opponent to ensure that you can use these photographs at the trial. Omit the headings and endings.</td>
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<table>
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<tr>
<th>VRAAG 13</th>
<th>[8]</th>
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<tbody>
<tr>
<td>Die eiser het aksie ingestel teen die verweerder vir betaling van die bedrag van R40 000,00 plus rente en koste. Op die dag van die verhooi kom die partye ooreen om die aangeleentheid te skik op die basis dat die verweerder R20 000,00 plus koste en rente teen 15,5% per jaar vanaf 1 Maart 2011, sal betaal by wyse van R4 000,00 per maand. Die eerste betaling moet geskied op 1 April 2012. Stel 'n skikkingsakte op wat al die nodige bepalings van die skikking bevat.</td>
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<table>
<thead>
<tr>
<th>QUESTION 13</th>
<th>[8]</th>
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<tbody>
<tr>
<td>The Plaintiff has instituted action against the Defendant for payment of the sum of R40 000,00 plus interest and costs. On the day of the Trial the parties agree to settle the matter on the basis that the Defendant will pay R20 000,00 plus interest at 15,5% per annum from 1st March 2011 plus costs at the rate of R4 000,00 per month, the first payment to be made on the 1st April 2012. Draft a Settlement Agreement which incorporates all the necessary terms of the settlement.</td>
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<tr>
<th>VRAAG 14</th>
<th>[5]</th>
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<tbody>
<tr>
<td>'n Kliënt gee aan u opdrag om die huurder van 'n sakeperseel te dagvaar vir twee maande se agterstallige huurten bedrae van R25 000,00. U reik dagvaarding uit. Nadat die verweerder verskynings aangeteken het, bese u dat die huur eintlik R25 000,00 per maand was.</td>
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<tr>
<th>QUESTION 14</th>
<th>[5]</th>
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<tbody>
<tr>
<td>Your client instructs you to sue a business tenant for two months’ arrear rent in the sum of R25 000,00. You issue summons and then discover that what your client meant was that the rent was R25 000,00 per month. You discover this after the defendant entered an appearance to defend.</td>
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<tr>
<th>14.1</th>
<th>What steps would you take to correct this mistake? (2)</th>
</tr>
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</table>

| 14.2 | Assume the defendant objects to your endeavouring to correct the mistake, what must he do? Do not draw the document that must be filed on behalf of the defendant, but indicate what the document should contain. (2) |
14.3 Assuming the defendant’s objection was unsuccessful, what must the plaintiff do thereafter to finalise the procedure?

(1)

QUESTION 15

Mary accepted a builder’s quotation of R140 000.00 to construct a swimming pool and change rooms. Before the builder started work he required a deposit of 50% of the quoted price. He commenced the contract but then asked for a further advance of R10 000.00. Mary also paid this amount. Then the builder quit the job. He failed to return so Mary cancelled the contract and obtained a quotation from another builder to complete the work. The other builder quoted R90 000. Mary instructs you to sue for damages.

15.1 What damages is she entitled to?

(3)

15.2 Can summons be issued in the District Magistrate Court?

(1)

QUESTION 16

You act for a shipping company which instructs you to sue Renown Exporters CC for services rendered in May 2010 for R70 000.00, and in June 2010 for R30 000.00 and in July 2010 for R50 000.00.

16.1 Can you properly issue one summons in the District Magistrate’s Court to recover the total debt? Explain briefly.

(1)

16.2 Can you issue summons in the High Court? Does your client run any risk if you do so? Explain briefly.

(1)
16.3 Renown Exports BK se sakeperseel en geregistreerde adres is in Johannesburg. Onder watter omstandighede sal die Durban Landdroshof jurisdiaksie hê in 'n aksie teen die BK.

(1)

16.3 Renown Exports CC have their place of business and registered office in Johannesburg. In what circumstances could the Durban Magistrate's Court have jurisdiction in an action against them?

(1)
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 [6]

a) Yes, he has a claim against the Road Accident Fund. His claim is unlimited, subject to the capping in respect of loss of earnings. (2)

b) No, any common law claim against Jan du Plessis is specifically excluded in the Act. (1)

c) Yes, he was. Mr Strydom was busy sending an sms. When he looked up he noticed the kudu. Mr du Plessis was not keeping a proper look-out. If he had been he should have observed the kudu earlier and be able to take avoiding action. Mr Strydom only has to prove the proverbial 1% negligence on the part of Mr du Plessis in order to succeed with his claim. (3)

QUESTION 2 [7]

2.1 No. The Power of Attorney falls away upon the death of the Plaintiff and you no longer have authority to act on his behalf. (2)

2.2 You are entitled to claim past hospital expenses and past loss of earnings only (1). The claim for future medical expenses falls away as the deceased will no longer be incurring these expenses (1). The claim for general damages falls away as the Plaintiff died prior to the close of pleadings (1). Only damages for pecuniary loss are recoverable if a Plaintiff dies prior to the close of pleadings (litis contestatio) (1). If the Plaintiff had died after the close of pleadings, one can recover general damages. (1) (5)

QUESTION 3 [8]

3.1 Shireen has a claim against the RAF for her personal injuries as the exclusion of liability that barred members of the same household from having a claim arising from the negligence of another member of the household has been removed (RAF Amendment Act). (2)
3.2 Shireen’s failure to wear her seatbelt may result in the Fund applying an apportionment to her claim arising from her personal injuries, on the basis of her contributory negligence.

3.3 He is entitled to each of the heads of damages in the full amount set out in the question.

3.4 It will have no effect as the limitation of liability in this respect has been removed in terms of the Act.

3.5 The RAF will not be entitled to apportion Thembisa’s claim as there is no causal nexus between the overloading of the taxi and the injuries he sustained. All that has to be proven is 1% negligence for his claims to succeed in full.

QUESTION 4

4.1 No, John does not have a claim in terms of the Act as his injuries do not arise from the negligent driving of a motor vehicle.

4.2 Yes.

QUESTION 5

5.1 Provisional Sentence Summons.

5.2 Both the simple summons (¼) + the combined summons (½)

5.3 The plaintiff bears the onus (on a balance of probabilities) in respect of the following issues:

- The authenticity of the defendant’s signature or that of the defendant’s agent
- The authority of the defendant’s agent
- The fulfilment of any relevant “simple condition”
- The entitlement of the plaintiff to the claim evidenced by the liquid document (i.e. establishing the link between plaintiff in the action and creditor ex facie the liquid document)

Any two of the above.

5.4 If the defence does not appear from the liquid document itself i.e. if it is an underlying defence. The defendant must satisfy the court that the probabilities of success in the principal case are against the plaintiff. Put differently, the defendant must show on a balance of probabilities that ultimate success in the principal case lies with the defendant.

5.5 ... the sum of R500 000 together with interest thereon at the rate of 15.5% per annum a tempore morae, to date of payment, on the following grounds:

- On 31 July 2011, the defendant drew a cheque for R500 000 on the Pretoria Central branch of Standard Bank of South Africa in favour of the plaintiff.
- The plaintiff is the legal holder for value of the cheque.
- On or about 4 August 2011, the cheque was duly presented for payment at the bank, where such cheque was payable, but was dishonoured by non-payment.
• Notice of dishonour is dispensed with (1) (by virtue of the provisions of Section 48(2)(c) of the Bills of Exchange Act 34 of 1964, in that the drawee bank is not bound as between itself and the drawer to pay the cheque as the drawer countermanded its payment).

Copies of the face and reverse sides of the said cheque are annexed hereto, marked "A" and "B" respectively. (1) (6)

QUESTION 6 [10]

"BE PLEASED TO TAKE NOTICE that application will be brought on behalf of the above named applicant on THURSDAY the 11th day of March 2011 at 10:00 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). (2)

2. That the estate of the Respondent be placed under a provisional order of sequestration in the hands of the Master of the above Honourable Court. (1)

3. That a rule nisi be issued calling upon Respondent and all persons interested to show cause on THURSDAY the 30th day of April 2011, as to why the estate of Respondent should not be placed under a final order of sequestration. (2)

4. That this order be served by the Sheriff of this Honourable Court on the Respondent personally and on all the registered trade unions (1) representing the employees of the respondent (being...), the employees of the Respondent, and the South African Revenue Services (1) as prescribed in the Insolvency Act.

5. That the costs of this application be costs in the sequestration. (1)

6. Such further and/or alternative relief as the above Honourable Court may deem fit in the premises.

Take note that the affidavit of ....... will be used in support of the application. (½)

Enrol the matter accordingly. (½)

QUESTION 7 [3]

7.1 Section 129 (1) notice of default. (1)

7.2 Application for summary judgment. (1)

7.3 Within 15 court days of the defendant entering appearance to defend.

QUESTION 8 [10]

8.1 No.

- Murder falls outside the ambit of Schedule 7 of the Criminal Procedure Act.
8.2 Whether it will be in the interests of Justice to release the Accused on bail.

8.3 Whether or not there is the likelihood that the Accused will endanger the safety of the public or any particular person or commit a schedule 1 offence.
- Whether or not there is the likelihood that the Accused will attempt to evade his/her trial.
- Whether or not there is the likelihood that the Accused will attempt to influence or intimidate witnesses or to conceal or destroy evidence.
- Whether or not there is the likelihood that the Accused will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system.
- Whether or not in the exceptional circumstances there is likelihood that the release of the Accused will disturb the public order or undermine the public peace or security.

QUESTION 9

- After pleading, a plea explanation must be made / right of silence exercised.
- The Accused will be required to confirm the plea explanation.
- The State case is presented, with the witness being led in examination - in - chief by the Prosecutor, being cross-examined by the Attorney of the Accused and being re-examined by the Prosecutor.
- State case closed.
- Application for discharge.
- The defence case is presented, with the Accused and witnesses being led in evidence - in - chief by the Attorney of the Accused, being cross - examined by the Prosecutor and being re - examined by the Attorney of the Accused.
- Closing arguments by the Prosecutor and the Attorney for the Accused.
- Judgment being delivered by the Presiding Officer.

QUESTION 10

10.1 Yes (1)
10.1.1 In writing. (1)
10.1.2 At any stage before evidence is led. (1)
10.2 The Accused can apply to the Court for an order to compel the delivery of such further particulars. (1)
10.3 The further particulars are taken to have amended the charge and the State is bound by the replies to the request for further particulars. (1)
STATEMENT IN TERMS OF SECTION 112(2) OF THE CRIMINAL PROCEDURE ACT 51/1977

I the undersigned, MR. SMITH declare as follows:

1. I plead guilty to one count of Culpable Homicide as a competent verdict on the four charges of Murder brought by the State against me.

1.2 I tender the plea of guilty freely and voluntarily, without being unduly influenced thereto.

2. I admit the following facts:

2.1 That I drove the motor vehicle which collided with the four deceased persons mentioned in the charge sheet;
2.2 That the four deceased persons were killed as a result of the motor vehicle colliding with them;
2.3 That the cause of death of each deceased is as set out in the post - mortem reports prepared by the pathologist;
2.4 That the deceased did not suffer any further injuries from the time of collision to the time that the post - mortem examinations were conducted;
2.5 The identity of the four deceased as set out in the charge sheet.

3. I admit that the collision was occasioned by my negligent driving of the motor vehicle, in that I failed to keep a proper lookout and/or failed to apply the brakes of my motor vehicle timeously.

4. I admit that I was driving the motor vehicle with registration number XXX GP/MP/WP/L on XXX street, being a public road in the district of XXX, XXX Province; on (DATE), at the time of the collision aforesaid.

5. I knew that the killing of a human being through my negligent conduct is punishable by law.

DATED AT (PLACE) ON THIS (DATE)

MR. SMITH (ACCUSED)

* S vs Mampa 1985(4) SA 633 (C)
NOTICE IN TERMS OF RULE 24 (10)

KINDLY TAKE NOTICE that the Plaintiff intends to use at the Trial of this matter, 4 colour photographs depicting the damage to Plaintiff's motor vehicle as well as 3 colour photographs depicting the scene of the accident, copies of which are annexed hereto. You are entitled to inspect the original photographs at the offices of the Plaintiff.

Kindly take notice that you are required to state within 5 days of receipt hereof whether you have any objection to the photographs being admitted as evidence without proof, failing which the said photographs will be received as evidence upon the mere production of them and without further proof thereof. (If candidate does not attach copies of photos, he is not to be penalised).

QUESTION 13

1. The Defendant will pay to the Plaintiff the sum of R20 000,00 plus interest at the rate of 15.5% per annum from the 1st March 2011 to date of payment plus costs on the party and party scale, to be taxed or agreed.

2. The Defendant will pay to the Plaintiff the said amount at the rate of R4 000,00 per month, the first payment to be effected on the 1st April 2011 and thereafter on the 1st day of each and every month.

3. The Defendant will pay collection commission of 10% on each payment subject to a maximum of R300,00 plus VAT.

4. Each payment will be appropriated first in reduction of collection commission then in reduction of costs then in reduction of interest and finally in reduction of the capital claim.

5. Should the Defendant fail to make any payment timeously, the full amount will become due and payable without further recourse to the Defendant.

6. The Defendant will effect all payments at the offices of the Plaintiff's attorneys, James and Company, 35 Smith Street, Durban.

7. The parties confirm that this Settlement Agreement be made an Order of the Court.

DATED at DURBAN on this day of 2006.

JAMES & COMPANY ATTORNEYS
Plaintiff's Attorneys
35 Smith Street
DURBAN
DATED at DURBAN on this day of 2006.

NAIDOO & COMPANY ATTORNEYS
Defendant's Attorneys
12 West Street
DURBAN

DATED at DURBAN on this day of 2006.

QUESTION 14

14.1 You would deliver a notice of intention to amend the summons by deleting the incorrect amount and substituting the correct amount. (2)

14.2 He must set out that he objects and the grounds of his objection. (2)

14.3 The plaintiff must within 10 days of the amendment being granted deliver amended pages. (1)

QUESTION 15

(It is not necessary to do more than quote the amount of damages)

Calculation
First quote R140 000
Less deposit R70 000
Balance R70 000
Less paid R10 000
Balance due R60 000

New quotes R90 000
Less balance R60 000

15.1 R30 000 (3)
15.2 Yes (claim is under R100 000) (1)
16.1 Because you would claim the amounts as separate debts and each amount does not exceed R100 000, it is in order. (1)

16.2 Yes but costs may be awarded on the Magistrate’s Court scale. (1)

16.3 Durban Court has jurisdiction if the whole cause of action arose in Durban, i.e. the order was received in Durban and had to be fulfilled in Durban. (1)

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.
VRAAG 1

U tree op namens Adam Jones, wie se minderjar seun van 7 jaar, Michael, op 9 Oktober 2010 deur 'n ongeidentifiseerde voertuig raakging is terwyl hy besig was om skool toe te loop. Die identiteit van nog die bestuurder nog die voertuig kon vasgestel word. Die minderjarige het ernstige beserings opgedoen. Die volgende skade is gely:

1. Reeds geadle mediese uitgawes R80 000.00
2. Reeds gelede hospitaal uitgawes R50 000.00
3. Algemene skade R250 000.00

Beantwoord die volgende vrae:

a) Teen welke datum moet die eis by die Padongelukke Fonds ingediend word? (1)

b) Teen watter datum moet dagvaarding betekening word op die Padongelukke Fonds? (1)

c) Wanneer kan dagvaarding uitgereik word na indiening van die eis by die Padongelukke Fonds? Motiveer u antwoord volledig. (2)

d) Wat is die vereiste kragtens die Padongelukke Fonds Wet ten einde te kwalifiseer vir algemene skade? (2)

e) Welke bykomende dokument moet by die Padongelukke Fonds ingediend word ten einde algemene skade te kan eis? (uitsluitend die RAF 1 en mediese verslag daartoe). (1)

f) Teen watter datum moet hierdie bykomende dokument by die Padongelukke Fonds ingediend word? (1)

QUESTION 1

You are acting for Adam Jones, whose minor son of 7 years, Michael was hit by an unidentified vehicle on 9 October 2010 whilst walking to school. The identity of neither the driver nor the vehicle could be established. The minor sustained serious injuries. The following damage was suffered:

1. Past medical expenses: R 80 000.00
2. Past hospital expenses: R 50 000.00
3. General damage: R250 000.00

Answer the following questions:

a) By what date must the claim be lodged with the Road Accident Fund? (1)

b) By what date must summons be served on the Road Accident Fund? (1)

c) When can summons be issued after lodgement of the claim with the Road Accident Fund? Motivate your answer fully. (2)

d) What is the requirement in terms of the Road Accident Fund Act to qualify for general damages? (2)

e) What additional document must be lodged with the Road Accident Fund in order to claim general damages (excluding the RAF 1 and medical report thereto)? (1)

f) By what date should this additional document be lodged with the RAF? (1)
VRAAG 2

U word gekonsulteer deur Cynthia Khumalo wat u die volgende meedeel:

Op 30 Maart 2010 is haar man, John Khumalo ernstig beseer in 'n motorvoertuig ongeluk. Hy was gehospitaliseer en het te sterwe gekom as gevolg van sy beserings op 1 Junie 2010.

Die nadodse ondersoek bevind dat die bestuurder van die ander betrokke voertuig, uitsluitlik te blameer was vir die botsing.

Mev Khumalo voorsien u ook van die volgende inligting:

1. Sy was met haar man getroud by wyse van 'n gebruiklike verbinding op 15 Desemper 1998.
2. Hulle seun, Jabulani, is gebore op 20 April 2000.
4. Tweeling dogters Rebecca en Margaret, is uit die huwelik gebore op 11 September 2004.
5. John Khumalo was 'n tandarts en sy jaarlikse inkomste was R500 000,00.
6. Sy het nie gewerk tydens die duur van die huwelik nie.
7. Die oorledene het 'n versekeringspolis op sy lewe gehad, waarin sy benoem is as enigste begunstigde, en sy het reeds die bedrag van R2 200 000,00 van die versekeraars ontvang.

YOU ARE CONSULTED BY CYNTHIA KHMALO WHO ADVISES YOU AS FOLLOWS:

On the 30th of March 2010, her husband, John Khumalo was severely injured in a motor vehicle collision. He was hospitalised and died as a result of his injuries on the 1st of June 2010.

At the inquest it was found that the driver of the other vehicle involved was solely to blame for the collision.

Mrs Khumalo also furnishes you with the following information:

1. She was married to her husband by customary union on the 15th of December 1998.
2. Their son Jabulani was born on 20th of April 2000.
3. She and her husband thereafter contracted a civil marriage, by antenuptial contract on 22nd February 2002.
4. Twin girls, Rebecca and Margaret, were born on 11th September 2004 of that marriage.
5. John Khumalo was a dentist and his annual income was R500 000,00.
6. She was not obliged to work during her marriage.
7. The deceased had an insurance policy on his life, in which she was nominated the sole beneficiary and she has already received the sum of R2 200 000,00 from the Insurance company concerned.
Mev Khumalo is 32 jaar oud. Haar man was 40 jaar oud tydens sy dood en sou afgetree het op ouderdom 65 jaar.

Mev Khumalo gee u ook verskeie fakte vir hospitaal-, mediese en begrafnisuitgawes wat aangegaan is en wat sy betaal het.

Die kinders verkeer in goeie gesondheid en vaar goed op skool. U kan aanvaar dat al die kinders vir 3 jaar sal studeer by 'n universiteit.

**Beantwoord die volgende vrae met verwysing na bogemelde feite:**

a) Identifiseer die beskikbare eise en meld die identiteit van die eiser(s) met betrekking tot elk van hierdie eise sowel as die hoedanigheid waarin die eis ingestel word. (3)

b) Vir welke tydperk sal die weduwee verlies aan onderhoud kan eis? (1)

c) Tot op welke ouderdom sal elke minderjarige kind verlies aan onderhoud kan eis? (1)

d) Hoe word Jabulani se eis geaffekteer deur die feit dat hy gebore was voor die voltrekking van sy ouers se huwelik? Motiveer u antwoord. (2)

e) Hoe sal die oorledene se inkomste verdeel word tussen die eisers by berekening van die eise? (2)

f) Welke effek sal die opbrengs van di versekeringspolisie hê op die berekening van die verlies aan onderhoud? Motiveer u antwoord. (2)

g) Is daar enige beperkings ten opsigte van die bedrae wat mev Khumalo kan eis met betrekking tot enige van die eise? Indien wel, wat is sodanige limiet? (2)

Mrs Khumalo is 32 years old. Her husband was 40 years old at the time of his death and would have retired at the age of 65 years.

Mrs Khumalo also hands to you several vouchers in respect of hospital, medical and funeral expenses that were incurred and which she paid.

The children are in good health and are performing well at school. You may assume that the children will all study for 3 years at a university.

**Answer the following questions with reference to the above factual information:**

a) Identify the claims that are available and in each instance furnish the identity of the claimant(s) in respect of each of these claims as well as the capacity in which the claim is made. (3)

b) For what period will the widow be able to claim for loss of support? (1)

c) Until what age will each minor child be able to claim loss of support? (1)

d) How will Jabulani’s claim be affected by the fact that he was born prior to his parents’ marriage? Motivate your answer. (2)

e) In calculating the claims, how will the deceased’s income be apportioned amongst the claimants? (2)

f) What effect will the proceeds of the insurance policy have on the calculation of the loss of support? Motivate your answer. (2)

g) Are there any limits in respect of the amounts Mrs Khumalo can claim in respect of any of these claims? If so, what is such limit? (2)
QUESTION 3

You are consulted by Mrs X, a businesswoman who informs you as follows:

She had been overseas for some time and returned two days ago. Whilst reading an old newspaper at the hairdressing salon yesterday she saw a notice of sale and execution in terms whereof certain items of movable property, which she recognised as hers by the description thereof, had been attached by the Sheriff of the High Court at the instance of the judgment creditor and that the sale thereof was scheduled to take place in three days' time.

She has never had any dealings with the judgment creditor and denies any indebtedness to him whatsoever. She believes that the judgment creditor has confused her with someone else and or caused her movable property to be attached for someone else's debt.

Before departing overseas her said property was placed in storage at a local firm providing storage facilities and upon making enquiries since reading the notice of sale she established that her property had been removed by the Sheriff from its place of storage.

She has not received any summons in respect of the said debt, nor has she received any previous notice of either the judgment or the intended sale. She desperately wishes to avoid the sale taking place.

3.1 Which documents will you have to peruse before you will be in a position to assist your client? (2 ½)

3.2 After you have perused the necessary documents, you are able to bring an application to the High Court for the necessary relief.
3.2.1 Prepare the notice of motion only without the supporting affidavit, clearly indicating the relief sought and on whom the papers are to be served? (5 ½)

3.2.2 Briefly set out the material facts, which you believe, should be set out the supporting affidavit for the application to be successful. (6)

4.1 How many days would you grant each of the under mentioned defendants to enter appearance to defend in a High Court matter. Indicate clearly in your answers whether you refer to court days or calendar days. (2)

4.1.1 The Minister of Trade & Industry, in his official capacity? (2)

4.1.2 A defendant whose address falls outside the area of jurisdiction of the court from which the summons was issued? Such address is 80 kilometres from the Registrar's office. (2)

4.2 May a defendant still enter an appearance to defend after the dies to do so have expired? Briefly motivate. (2)

4.3 The summons was served on Monday the 19th of December 2011. From which day will the dies start running? (1)

4.4 If the defendant was a partnership, where can the summons be served? (2)

4.5 Would your answer be different if the defendant was a trust? (2)
VRAAG 5

U klient, mnr Alan Smith, word aangekla van moord deurdat hy ene mnr Ben Green met 'n mes gesteek het. Die verhoor vind plaas in die streekhofte Durban. Mnr Smith se opdrag is dat hy in selfverdediging opgetree het tydens die stekery en hy is bereid om al die ander tersaaklike getuigenis te erken tydens die verhoor.

Stel sy pleitverduideliking op insluitende die kopstuk sodat die beskuldigde se verweer uiteengesit word asook al die feite wat nie in dispuut geplaas word tydens die verhoor nie.

VRAAG 6

6.1 Sit uiteen die omstandighede, prosedures en tydskryp waarop die terugtrekking van 'n strafrigteleike klagte kan plaasvind. Wat is die gevolg van sodanige terugtrekking?

(2)

6.2 Sit uiteen die omstandighede, prosedures en tydskryp waarlik is 'n vervolging gestaak kan word. Wat is die gevolg van sodanige staking van vervolging?

(2)

VRAAG 7

Noem die vier metodes waarop die teenwoordigheid van 'n beskuldigde voor die hof bewerkstellig kan word.

VRAAG 8

U klient, mnr Jacob Mookeng, is skuldig bevind op twee aanklagte van bedrog deurdat hy twee gesteelde tjeks ter waarde van R78 000,00 en R120 000,00 aan 'n handelaar aangebied het as betaling vir goedere gekoop en gelever. Die handelaar het nie daarin geslaag om enige van sy verliese te verhaal nie. Die saak dien voor die streekhof.

QUESTION 5

Your client, Mr Alan Smith, is charged with murder in that he stabbed Mr Ben Green with a knife. The trial is taking place before the Durban Regional Court. Mr Smith instructs that he acted in self-defence at the time of the stabbing, and he is prepared to admit all the other relevant evidence in the trial.

Draw a plea statement, including the heading, in which the Accused's defence is outlined as well as the issues that will not be disputed during the trial.

QUESTION 6

6.1 Outline the circumstances, procedure and stage at which the withdrawal of a criminal charge can take place. Explain the legal implications of withdrawing a charge.

(2)

6.2 Outline the circumstances, procedure and stage at which the stopping of a prosecution can take place. Explain the legal implications of stopping a prosecution.

(2)

QUESTION 7

List the four procedures that are available in securing the attendance of the Accused before the court.

QUESTION 8

Your client, Mr Jacob Mookeng, has been convicted of two counts of fraud, in that he presented two stolen cheques of R78 000,00 and R120 000,00 to a merchant as payment for goods sold and delivered. The merchant has not been able to recover any of his losses. The matter is before the Regional Court.
8.1 Discuss the various factors that the Court will take into consideration in sentencing Mr Mookeng with reference to the decision of State v/s Zinn.

8.2 In the event that the Prosecutor applies to the Court for repayment by Mr Mookeng of amount lost by the merchant, is the Court empowered to make an order awarding compensation for the loss? Motivate your answer.

9.1 Define the following concepts:

9.1.1 Confession
9.1.2 Admission

9.2 State the admissibility requirements for each of the following:

1.1.1 Confession
1.1.2 Admission

10. List the different factors that the Court must consider in determining whether or not it is in the interest of justice for the Accused to be released on bail, as set out under the section 60(4) of the Criminal Procedure Act 51 of 1977.

11. Your client, Mr P van Staden, a well known businessman, consults you in connection with a loan he made to Goody 2-Shoes CC in the amount of R30 000,00 (Thirty Thousand Rand) on 25 October 2011. The loan was in terms of an oral agreement. The loan was to be paid in full by 31 January 2011. To date, he has not received payment from the CC.
Mr Van Staden further informs you that on the advice of a friend, on the same date as the money was loaned, the sole member of the CC signed a written Deed of Suretyship for all the obligations of the CC. He provides you with the original signed suretyship renouncing the benefits of excussion. Upon perusal thereof, you are satisfied that it contains all the usual terms applicable to suretyship. The surety has not paid anything.

Your client instructs you to sue both parties.

Draft full particulars of claim. Omit the headings.

**QUESTION 12**

Your client provides you with a summons in which he has been sued for R30 000,00 in the Magistrate’s Court as a result of a motor collision in which it is alleged that he has been negligent. His car was not damaged in the collision. Your client instructs you as to the circumstances of the collision which appear to indicate that there have been contributory negligence on the part of the Plaintiff and you are of the opinion that each party is equally to blame for the collision.

Advise your client what steps he should take in terms of the Rules of Court so as to try to curtail further costs but without admitting liability.

**QUESTION 13**

The Defendant, who is the wealthy owner of a pub and snooker club, intends to defend a provisional sentence summons for the sum of R30000 in respect of a dishonoured cheque which your client tells you he gave as the purchase price of a full size mahogany snooker table. Your client tells you he bought the table by way of a private sale after seeing an advertisement in a newspaper.
### VRAAG 14

**U tree op vir die eiser in die volgende Landros Hofaksies. Dui kortliks aan wat u volgende stap behoort te wees:**

| 14.1 Die eiser eis die herstelkoste van sy motorvoertuig wat beskadig was in 'n motorvoertuig botsing. Die verweerder het 'n maand gelede kennisgewing van verdediging afgelewer en niets verder gedoen nie. | 14.1 The plaintiff's claim is for the cost of repairing his motor car which was damaged as a result of a motor collision. The defendant entered an appearance to defend and a month has gone by without the defendant doing anything further. |

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### QUESTION 14

**You act for the plaintiff in the following actions in the magistrate's court. Very briefly indicate what your next step ought to be.**

| 13.1 What judgment would you expect the magistrate to hand down at the hearing? Very briefly explain why he would give such judgment. | 13.1 Indien die landros ten gunste van die eiser sou bevind en die verweerder steeds aanvoer dat die tafel van goeie Mahonie fineer gemaak is, watter stappe behoort die verweerder te doen om die aangeleentheid verder te voer? |
| 13.2 Assuming the magistrate found in favour of the plaintiff and the defendant still contends it is chipboard with a good mahogany veneer. What steps should the defendant take to pursue the matter? | 13.3 Assuming that the plaintiff does not do what he may be called on to do, what are the defendant's rights? |
| 13.4 If the defendant was a poor man with an apparently good defence, would your answer to 13.1 differ? | 13.4 On the following day while showing the table to a woodwork expert, the said expert indicated that the table was made of chipboard with a mahogany veneer. Your client says he then instructed his bank to stop payment of the cheque. You draw your client's affidavit to oppose the provisional sentence along the aforesaid lines. No expert affidavit is filed. The plaintiff responds by filing an affidavit in which he confirms the wood is pure Mahogany. |
| 14.2 | U kliënt eis die koopprys van goedere verkoop en gelewer. U kliënt het die bestelvorms en afleweringstekse ten opsigte van die goedere aan u oorhandig. Beide die notas en die vorms is deur die verweerder onderteken. Die verweerder het kennisgene van verdediging aangeteken. | 14.2 | Your client's claim is for the purchase price of goods sold and delivered in respect of which your client has provided you with orders and delivery notes both of which have been signed by the defendant. The defendant has entered an appearance to defend. |
| 14.3 | Die verweerder het versuim om verdediging aan te teken binne die tien dae wat die dagvaarding hom toelaat om dit te doen. | 14.3 | The defendant has failed to enter an appearance to defend despite the expiry of the ten day period allowed in the summons for him to do so. |
| 14.4 | U kliënt se eis is gegrond op 'n tjek wat vyf jaar gelede onteer/gedishonoreer is. Die verweerder het verjaring gepleit as sy enigste verweer. | 14.4 | Your client's claim is based on a cheque which was dishonoured five years ago. The defendant has pleaded prescription as his only defence. |
| 14.5 | U het 'n besoldigingsbeslagbevel verkry teen die skuldenaar se werkgewer ingevolge artikel 65J van die Wet op Landroshowe. U het die bevel laat beteken op die werkgewer, maar die werkgewer versuim om enige betalings te maak. Watter stap behoort u dan te doen? | 14.5 | You have obtained an emoluments attached order in terms of Section 65[J] of the Magistrate's Court Act against a judgement debtor's employer. You have the order served on the employer but he fails to make any payments. What action should you then take? |
| 14.6 | U het vonnis gekry vir u kliënt in die Landroshof teen 'n werklose skuldenaar wat geen bates het nie behalwe 'n groot belegging in die Noord-Wes Bank, Somerset-Wes. Hoe dwing u die bevel af? | 14.6 | You have obtained judgment for your client in the magistrate's court against a debtor who is unemployed and has no assets except a large investment in the North West Bank, Somerset West. How would you enforce the judgement? |

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**DIE EINDE**

**THE END**
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

a) 8 October 2012 (1)
b) 8 October 2015 (1)
c) 120 days after lodging of the claim with the RAF, unless the RAF has repudiated liability earlier, in which case summons can be issued. (2)
d) Michael's injury must have resulted in 30% or more impairment of his whole person as provided in the AMA Guides*. The injury shall then be assessed as serious.
   * Note to examiner: candidates may also refer to the criteria stipulated in regulation 3(1)(b)(iii)) (2)
e) RAF 4 (Serious injury assessment report) (1)
f) On or before 8 October 2012. (1)
g) The plaintiff is Adam Jones, an adult male, acting in his personal capacity as well as in his representative capacity as father and natural guardian of his minor son, Michael Jones. (4)

QUESTION 2

a) The claimant in each instance is Mrs Khumalo. She has claims in her personal capacity for the past hospital, medical and funeral expenses, as well as for her loss of support. She also has a claim in her representative capacity, as mother and natural guardian, for the loss of support of the 3 minor children. (3)
b) Until the deceased retired at age 65, a period of 25 years. (1)
c) Normally 18 years, but in this case until 21 years due to the fact that the children will attend university for 3 years. (1)
d) His claim will not be affected as he has a right of support irrespective of whether or not his parents are married to each other. (2)

e) The income will be apportioned as follows:
2 parts to each parent and 1 part to each child. (2)

f) The proceeds of the insurance policy will not be taken into account as, by virtue of the provisions of Section 1(1) of the Assessment of Damages Act no. 9 of 1969, such benefits are not deductible from damages recoverable due to the death of a breadwinner. (2)

g) Yes. In terms of the RAF amendment act the deceased's annual income will be subject to the prescribed limit for the purpose of calculating the dependant's loss of support. (2)

**QUESTION 3**

3.1 a) The legal notice in the newspaper to obtain the case number and verify the date of sale. (½)
b) The summons and sheriff's return of service (½), which should be filed at court. (½)
c) The warrant of execution and notice of attachment. (1) [2½]

3.2.1 On heading.
Please take notice that the applicant (judgment debtor) will make application to the above Honourable Court on .......... (date 2012) at .......... (time) for the following relief: (½)

a) That the usual time limits pertaining to applications of this nature be dispensed with and that short service hereof be condoned. (1)
b) That this application be heard on a basis of urgency. (1)
c) That the sale and execution scheduled for ............. (date) be stayed pending the outcome of this application. (¼)
d) That the judgment by default granted against the applicant in favour of respondent (judgment creditor) be rescinded and that the applicant be given leave to give notice of intention to defend, alternatively, in the event of the granting of this relief being opposed that the matter be postponed to a date to be determined by the Registrar and that applicant be granted leave to bring application for such relief on the same papers. (1½)
e) That the cost of this application be costs in the cause. (1) [5½]

3.2.2 a) Applicant's description and locus standi. (1)
b) The respondent's description as per the summons. (1)
c) The fact that applicant never had any dealings with the respondent and denies any liability for the claim in the summons and consequently the judgment debt (bona fide defence). (1)
d) Never received any prior demand, summons of the judgment or attachment. (1)
e) She is not in willful default and if summons has been properly served on her, she would have defended the action. She still holds that intention. (1)
f) Grounds for urgency. (1) [6]

**QUESTION 4**

4.1.1 20 court days. (2)

4.1.2 14 calendar days. (2)

4.2 Yes, provided default judgment has not been granted. (2)
4.3 16 January 2012.

4.4 On the partnership address alternatively on any partner.

4.5 Trustees, cite them as defendants and serve on every trustee.

QUESTION 5

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF KWAZULU-NATAL

HELD AT DURBAN

CASE NO. XXXXXX

In the matter between

THE STATE

versus

ALAN SMITH  Accused

STATEMENT IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

I, the undersigned,

ALAN SMITH

declare as follows:

1.

I am the Accused person in these proceedings and I plead NOT GUILTY to the murder charge brought against me by the State.

2.

I admit the following facts:

2.1 that on the (date) and the (place), I stabbed the deceased, Mr Mookeng, with a knife;

2.2 that the deceased died as a result of the stab wound;

2.3 that the deceased did not suffer any further injuries from the time of the stabbing until the post-mortem was conducted on the body;

2.4 that the cause of death is as recorded in the post-mortem report;

2.5 that the deceased is Mr Jacob Mookeng, the person referred to in the charge sheet.
3.

I contend that the stabbing was not unlawful in that I acted in private defence, in that, the deceased was trying to stab me and I dispossessed him of the knife, and in warding off the attack on my person, I stabbed him once in the chest.

4.

I consent that the admissions hereinabove may be recorded in terms of section 220 of the CPA S1/1977.

DATED AT XXXXXX (DATE) ON THIS XXXXXX (DATE).

MR A SMITH (ACCUSED)

QUESTION 6

6.1 - Where State is unable/decides not to proceed with prosecution;
- Prosecutor makes application to the Court;
- May only do so before pleading to the charge;
- Accused may be re-charged. (2)

6.2 - Where State wants to terminate a trial that is already commenced;
- DPP or authorized Prosecutor informs Court that prosecution being stopped in terms of Section 6B of the Criminal Procedure Act;
- At any time before judgment is delivered;
- Accused is acquitted. (2)

QUESTION 7:

- Arrest
- Summons
- Written Notice
- Indictment

QUESTION 8

8.1 The Court will take into account:
- The seriousness of the crime
- The personal circumstances of the offender
- The interests of the community (3)

8.2 The Criminal Procedure Act makes provision for compensation of victims. One of the ways is contained in Section 300. The order has the effect of a civil judgment. The amount of compensation that can be ordered is limited to R500 000,00 in the case of a Regional Court.

The Court may act in terms of Section 300 only when requested to do so by the injured party or the Prosecutor acting on the instructions of the injured person. (2)
QUESTION 9

9.1.1 A confession is defined as an unequivocal acknowledgement of guilt, the equivalent of a plea of guilty before a Court of law that means that all the elements of the offence have to be admitted and that possible defences should be excluded.

9.1.2 An admission is a statement against deponents' interests/acknowledgement of an adverse fact. (1)

9.2.1 CONFESSION
- Freely and voluntarily
- Sound and sober senses
- Without being unduly influenced

9.2.2 ADMISSION
- Voluntarily made (3)

QUESTION 10

- Whether or not there is the likelihood that the Accused will endanger the safety of the public or any particular person or commit a schedule 1 offence.
- Whether or not there is the likelihood that the Accused will attempt to evade his/her trial.
- Whether or not there is the likelihood that the Accused will attempt to influence or intimidate witnesses or to conceal or destroy evidence.
- Whether or not there is the likelihood that the Accused will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system.
- Whether or not in the exceptional circumstances there is likelihood that the release of the Accused will disturb the public order or undermine the public peace or security.

QUESTION 11

1. The plaintiff is Peter van Staden, an adult male businessman residing at 15 Short Street, Sea Point, Cape Town.

2. The First Defendant is Goody 2-Shoes CC, a Close Corporation with limited liability and duly incorporated in terms of the Close Corporation Laws of the Republic of South Africa with its registered office at 10 Adderley Heights, Adderley Street, Cape Town.

3. The Second Defendant is James Smith, an adult male residing at 101 Main Road, Three Anchor Bay, Cape Town, whose full and further particulars are to the Plaintiff unknown.

4. First Defendant is indebted to the Plaintiff in the sum of R30 000,00 (Thirty Thousand Rand) in respect of monies loaned and advanced by the Plaintiff to the First Defendant in terms of an oral agreement, at the latter's special instance and request on 25 October 2010 and in terms of an oral agreement. The said sum became due and payable on 31 January 2011.

5. On 25 October 2010, the Second Defendant executed a deed of Suretyship in which he bound himself as surety and co-principal debtor in respect of all the First Defendant's obligations to the Plaintiff. A copy of the Deed of Suretyship is annexed hereto marked Annexure A.
6. To date, neither the First nor the Second Defendant has paid the First Defendant's indebtedness to the Plaintiff.

WHEREFORE Plaintiff prays for judgment against both the First and Second Defendants jointly and severally, the one paying the other to be absolved, for:

1. Payment of the sum of R30 000,00;
2. Interest at 15,5% per annum from 1 February 2011; and
3. Costs of suit.

DATED at CAPE TOWN this 27th day of February 2011.

Plaintiff’s Attorneys

SMITH ATTORNEY
12 SMITH STREET
CAPE TOWN

QUESTION 12

The Defendant would make an offer to settle in terms of Rule 18 of the Rules of Court. The offer would be "without prejudice" and would be an offer to pay an amount of R15 000,00 plus the Plaintiff’s costs to date.

QUESTION 13

13.1 I would expect the magistrate to grant provisional sentence because the defendant has failed to show on a balance of probabilities his defence is likely to succeed.

13.2 Defendant must pay the Plaintiff the claim plus interest and costs against provision of satisfactory security by the plaintiff that the plaintiff will repay the amount to defendant if defendant succeeds at the trial.

13.3 Defendant can proceed to file his plea and the case will proceed without having to pay the claim.

13.4 The Magistrate would have a discretion to grant the Defendant leave to defend without paying the debt and costs (Twee Jonge Gezellen case 2011(3) SA CC).

(Candidate may also say that the court may refuse provisional sentence).

QUESTION 14

14.1 Plaintiff to file a notice to plead/bar.

14.2 Plaintiff to apply for summary judgment.

14.3 Request for default judgment.
14.4 (Prescription on cheques is 6 years). Plaintiff to file an exception that the plea does not disclose a defence. (1)

14.5 Issue a warrant of execution against the employer. (1)

14.6 Apply for a garnishee order. (2)

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.
**VRAAG 1**

Op 20 Oktober 2012 was u klient, terwyl sy aan diens was as 'n werknemer van 'n sekuriteitsmaatskappy, 'n passasier in 'n motorvoertuig bestuur deur 'n medewerker in die loop van sy diens en in die uitvoering van sy pligte as 'n werknemer van die sekuriteitsmaatskappy. Hulle het gereageer op 'n noodgeval, en as gevolg van baie hoë spoed, kon hulle voertuig nie om 'n draai in die pad kom nie, en het met 'n keerwal aan die kant van die pad gebots. As gevolg van die botsing het u klient beserings opgedoen en die volgende skade gely:

- Hospitaaluitgawes
- Reeds gelede verlies aan verdienste
- Algemene skade

1.1 Teen watter party/partye kan u klient eise instel?  

1.2 Watter bedrae kan van die onderskeie partye geëis word?  

1.3 Wat is die vereiste wat nagekom moet word vir u klient om suksesvol te wees met 'n eis vir algemene skade? Indien u klient nie sou voldoen aan hierdie vereiste nie, is daar enige uitsonderings wat u klient kan help om nógtrans te kwalificeer vir algemene skade?  

1.4 Aanvaar dat u klient nie aan die vereistes voldoen nie om van die party/partye te verhaal wat u genoem het in paragraaf 1.1 hierbo. Sal u klient in sodanige geval geregtig wees om van haar medewerker te verhaal? Motiveer u antwoord.  

1.5 Aanvaar dat die voertuig bestuur was deur u klient se werkgever. Hoe sal u antwoord in 1.1 verskil, indien enigsins?

**QUESTION 1**

On the 20th October 2012, your client, whilst on duty as an employee of a security company, was a passenger in a motor vehicle driven by a co-employee in the course of her employment and in the exercise of his duties as a servant of the security company. They were responding to an emergency and, as a result of excessive speed, the vehicle failed to negotiate a bend in the road, and collided into an embankment. As a result, your client has sustained injuries and suffered the following damage:

- Hospital Expenses
- Past Loss of earnings
- General Damages

1.1 Against which party/parties can your client institute claims?  

1.2 What amount can she claim from each party?  

1.3 What is the requirement that must be satisfied in order for your client to succeed with the claim for general damages? Should your client not satisfy this requirement, are there any exceptions that may assist your client to nevertheless qualify for general damages?  

1.4 Assume that your client does not meet the requirements to recover from the party/parties you have identified in paragraph 1.1 above. Would your client be entitled to recover from her co-employee? Motivate your answer.  

1.5 Assume that the vehicle was being driven by your client's employer. How would your answer to question 1.1 differ, if at all?
QUESTION 2

2.1 Describe the manner or manners in which you as an attorney acting for a claimant can deliver a claim to the Road Accident Fund?

2.2 From when does the period of 60 days commence to run in respect of each or any of the manners of delivery you have identified?

QUESTION 3

Is your client, who was a pedestrian at that time, entitled to lodge a claim against the RAF in circumstances where she falls into a ditch whilst avoiding a collision with a vehicle whose driver had lost control, sustaining serious injuries thereby? Motivate your answer.

QUESTION 4

As an attorney representing Plaintiff in a lawsuit against the RAF to recover damages, how will you ensure that the original SAPS docket and hospital records are at Court on the date of trial?

QUESTION 5

When does interest start running against the RAF? At what rate will such interest be calculated? Explain your answers.

QUESTION 6

In terms of Rule 4 of the Uniform Rules of Court, service of a summons issued out of the High Court may be effected in one or other of the following ways. Answer true or false.

6.1 At the chosen domicilium of the defendant.
6.2 On any agent who is duly authorised thereto in writing to accept service on behalf of the defendant.  

6.3 At the residential address of the mayor of the municipality as defendant.  

6.4 At the residential address of a director of a defendant company which has its registered address elsewhere.  

6.5 In the case of a partnership which has no place of business, on a partner at his / her residential address.  

6.6 Personally on each of the trustees of an inter vivos trust at their respective business addresses.  

VRAAG 7  

7.1 In what instances can a plaintiff apply for summary judgment?  

7.2 Mr Phineas Ndlovu is the bestuurbode direkteur van Mzansi Builders (Pty) Ltd which has instituted an action against Bafana Construction CC for the amount of R350 000.00, plus interest, plus costs in respect of goods sold and delivered by plaintiff to the defendant at the defendant's special instance and request during August 2011. The defendant has entered an appearance to defend. Draft the notice of motion and the affidavit in support of the application for summary judgment.  

VRAAG 8  

7.3 To whom is the notice of motion addressed?  

QUESTION 8  

What are the different types of summonses in the High Court? Name one example of a cause of action for which each of the summonses can be used.
VRAAG 9 [3]
Identificeer ses gevalle waar die liassing van 'n spesiale pleit toepaslik sou wees.

VRAAG 10 [2]
Kragtens die Wet op die Instel van Gedinge teen Sekere Staatsorgane 40/2002 mag aksie nie teen 'n staatsorgaan ingestel word nie tensy vooraf kennis gegee is aan die staatsorgaan.

10.1 Binne welke tydperk van datum waarop die skuld ontstaan het moet sodanige kennis gegee word? (½)

10.2 Buiten die kwantum wat moet die kennisgewing in 10.1 genoem, nog uiteensit? (½)

10.3 Hoeveel dae moet verstryk nadat die kennisgewing op die staatsorgaan beteken is voordat dagvaarding uitgereik mag word? (½)

10.4 Is die Wet van toepassing op eise voortspruitend uit delik? (½)

VRAAG 11 [10]
U kliënt, James Bond, 'n 28 jarige man van Hoofstraat 12, Paarl word aangekla van bestuur van 'n motorvoertuig terwyl die alcohol vlak in sy bloed hoër as die toegelate wettlike perk was. Op 10 April 2012 het hy 'n Toyota voertuig, registrasie nommer CJ1234 in Jan van Riebeeckweg bestuur. Die betrokke dag het hy alkoholiese drankies met sy vriende geniet en was hy oortuig dat hy nytter genoeg was om sy voertuig te bestuur. By die kruising van Jan Van Riebeeckweg en Boschstraat, Paarl het 'n ander voertuig, sonder inagneming dat u kliënt reeds in die kruising was, ingedraai en die kant van u kliënt se voertuig gestamp. U kliënt is op die toneel gearresteer en 'n bloedmonster is van hom geneem. Dit het later gebleek dat die alcohol vlak in sy bloed 0.22g per 100ml was.

Stel 'n Artikel 112(2) verklaring op ingevolge die Strafproseswet.
### VRAAG 12

John Smith deel u mee (voor vonnis) dat hy skuldig bevind is aan die besit van dagga nadat hy ’n pleit van skuldig aangebied het. Hy was besig om te ryloop en is opgelaa in ’n voertuig wat deur ’n vriend bestuur is met twee ander passasiers. Toe die lede van die Suid Afrikaanse Polisiediens die voertuig gestop en ondersoek het, het hy in die agterste sitplek van die voertuig gesit. ’n Koever met dagga is onder sy sitplek gevind. Hy en al die ander insittendes is aangekla van die besit van dagga. Terwyl hy in die selle gewag het om hof toe geneem te word is hy deur die mede-beskuldigdes meegedeel dat aangesien die dagga onder sy sitplek gevind is, hy skuldig was op die aanklاغ. Hy is ook meegedeel dat indien hy nie vir die hof sê dat dit sy dagga is nie, sou sy vriende “hom kry”. Gevolglik het hy skuldig gepleit. Hy kan nie bekostig om ’n kriminële rekord te hê nie aangesien dit sy diësneming sal beïnvloed.

Watter raad sal u vir u klient gee? Beskryf die prosedure wat in die hof sal volg.

### VRAAG 13

Noem vyf moontlike strawwe wat ’n hof ’n beskuldigde kan oplei wat van ’n misdryf skuldig bevind is.

### VRAAG 14

U klient, Rasta, deel u mee dat, terwyl hy ’n bier by ’n plaaslike Tavern geniet het, het die klaer hom met ’n mes aangeval. Hy was in staat om die mes by die klaer af te neem. Die klaer het weggehardloop en hy het die klaer agternagesit en hom vyf keer in die rug met die mes gestek. Hy deel u mee dat hy van plan is om op ’n klagte van aanranding met die opset om ernstig te beseer skuldig te pleit.

Agt maande daarna, en net voor die aanvang van die verhoor, adviseer u klient u dat hy van plan is om onskuldig te pleit aangesien hy na die

### QUESTION 12

John Smith advises you (before sentence) that he has been found guilty of possession of dagga having tendered a plea of guilty to that effect. He was hitchhiking and given a lift in a vehicle driven by a friend with two passengers. He was seated in the rear passenger seat when the vehicle was stopped by members of the South African Police Service and searched. An envelope of dagga was found under the seat occupied by client. He and the other passengers were all charged with possession of dagga. Whilst in the cells awaiting to be taken to court he was told by the co-accused that as the dagga was found under his seat he was guilty of the offence. He was also told that unless he advised the Court that the dagga belonged to him his friends would "get him". He accordingly pleaded guilty. He cannot afford to have a criminal record as this will affect his employability.

What advice will you give your client? Describe the procedure that will follow in Court.

### QUESTION 13

Name five forms of sentence that a Court can impose upon an accused who has been convicted of an offence.

### QUESTION 14

Your client, Rasta, tells you that he was enjoying a beer in a local tavern when he was attacked with a knife by the complainant. He managed to dispossess the complainant of the knife and as the complainant ran away Rasta chased him and stabbed him five times in the back. He advises you that he intends pleading guilty to the charge of assault with intent to commit grievous bodily harm.

Eight months later and shortly before trial he tells you that he intends pleading not guilty as, subsequent to the offence, he has shaved his
voorval sy baard en lokke ("dreadlocks") afgeskeer het. Hy is van mening dat die staatsgetuies hom nie positief sal kan identifiseer as die persoon wat die klaar aangerand het nie. Hy versoek u om hom nog steeds te verteenwoordig.

Bespreek die opsies beskikbaar en u etiese plig as die beskuldigde se prokureur.

VRAAG 15

'n Kliënt raadpleeg u en oorhandig aan u 'n koopkontrak. U kliënt is die verkoper. Die volgende is 'n klousule in die kontrak:

"Die koper en die verkoper stem toe tot die jurisdieksie van die Landdroshof Port Elizabeth vir die besletting van enige geskil ten opsigte van die kontrak."

U kliënt deel u mee dat die ooreenkoms gedurende 2010 in Johannesburg gesluit is en dat die koper in Johannesburg woon en werk.

Gedurende Januarie 2013 versoek u kliënt u om die koper uit die Distrikslanddroshof van Port Elizabeth te dagvaar vir betaling van die verkoopprys ten bedrae van R400 000.00. Hierdie bedrag het pas opeisbaar geword.

Mag u kliënt voortgaan in die Port Elizabeth Distrikslanddroshof? Verskaf redes vir u antwoord.

VRAAG 16

(a) Jimmy Bellows is die Besturende Direkteur van Bellows (Edms) Beperk.

Op 10 Julie 2012 bestuur hy die maatskappy se motorvoertuig, 'n BMW registrasienummer ND 12 in Noordstraat, Durban.

Hy staan stil by 'n verkeerslig waar 'n voertuig, 'n Toyota bakkie registrasienummer ND 737, agter in die BMW vasry.

beard and dreadlocks and does not believe that the state witnesses will be able to positively identify him as being the person who assaulted the complainant. He now wishes to plead not guilty and requests that you continue acting for him.

Discuss shortly the options available and your ethical responsibility as the accused's attorney.

QUESTION 15

You are consulted by a client who hands you a contract of sale. Your client is the seller. The following clause appears in the contract:

"The buyer and the seller consent to the jurisdiction of the Magistrate's Court, Port Elizabeth for the determination of any dispute arising from the contract."

Your client informs you that the agreement was concluded in Johannesburg in 2010 and that the buyer resides and works in Johannesburg.

In January 2013 your client requests you to issue Summons against the buyer for the payment of the purchase price of R400 000.00 which has now become due and payable, in the Port Elizabeth District Magistrate's Court.

May your client proceed in the Port Elizabeth District Magistrate's Court and give reasons for your answer.

QUESTION 16

(a) Jimmy Bellows is the Managing Director of Bellows (Pty) Limited.

On the 10th July 2012 he is driving the company's motor vehicle, a BMW registration number ND 12 in North Street, Durban.

He is stationary at a traffic light where a motor vehicle ND 737, a Toyota bakkie, collides with the rear of his vehicle.
The said Toyota is owned by Classic Paper CC and at the time of the collision it is being driven by Billy Naidoo acting in the course and scope of his employment with Classic Paper CC.

As a result of the collision the BMW is damaged and the reasonable and necessary costs of repairing the vehicle is R25 000.00.

A letter of demand sent on 12th September 2012 to both Classic Paper CC and Billy Naidoo, giving them 10 days to pay, has met with no response.

Draft the necessary Particulars of Claim in which action is instituted against both Defendants. (Omit headings).

(b) Both Defendants enter an Appearance to Defend.

May the Plaintiff apply for Summary Judgment against the Defendants? Give reasons for your answer and indicate in which instances one may apply for summary judgment?

You Act for the Defendant. Advise your client what action he may take in the following circumstances in the Magistrate's Court:

(a) Action has been instituted against him in South Africa by a foreigner living in Japan who appears to have no assets in South Africa.

(b) A Provisional Sentence Summons has been served upon your client, who opposed the Summons. Despite his filing an Opposing Affidavit provisional sentence has been entered.
DEEL 1
HOFPROSEDURES [100]

U klient het fondse maar hy glo dat hy 'n goeie verweer het. Wat kan die verweerder doen sodat die saak op verhoor kan gaan? (2)

(c) U klient het skulde ten bedrae van R40 000,00 en kan sy krediteure nie betaal nie. Hy het egter 'n werk en sal maandelikse betalings kan maak. Adviseer u klient oor watter opsies tot sy beskikking is. (2)

VRAAG 18 [5]

U tree op vir Faizal Hassan.

U klient het 'n groot hoeveelheid papier by die eiser gekoop. Toe die papier afgelever is, het u klient opgemerk dat die papier nie soos versoek gelineer was nie. Hy het die eiser gekontak en hom meegedeel dat dit foutief is en dit terugbesorg. Geen antwoord is van die eiser ontvang nie.

Dan gaan u klient op 'n sakereis oorsee. Terwyl hy weg is word dagvaarding op sy vrou beteken vir die koste van die papier. Sy plaas dit in 'n laai en vertel hom nie daarvan wanneer hy van sy oorsese reis af terugkeer nie.

Die eiser doen aanvraag om Verstek Vonnis wanneer die tyd om verdediging aan te teken verstryk. Vonnis word toegestaan op 15 Augustus 2012.

Op 1 September 2011 daag die balju op by u klient se perseel met 'n Lasbrief vir Eksekusie.

U klient kontak onmiddellik die eiser in 'n poging om die aangeleenthed op te los maar is onsuksesvol na maande se onderhandelinge. U klient nader u om Aanvraag om Tersydestelling van die Vonnis op te stel. Aanvraag word gedoen op 15 Januarie 2012.

Stel die Kennisgewing op. (Los enige opskrifte of stawende verklaaring uit.)

PART 1
COURT PROCEDURES [100]

Your client has sufficient funds but still believes he has a good defence. What action can be taken by the Defendant so that the matter can proceed to Trial?

(c) Your client has debts of R40 000,00 and is not in a position to pay his creditors. He is however employed and will be in a position to make monthly payments. Advise your client what options are available to him. (2)

QUESTION 18 [5]

You act for Faizal Hassan.

Your client has purchased a large quantity of paper from the Plaintiff. However, when it was delivered he noticed that it was not lined as requested. He contacted the Plaintiff advising him that it is defective and returned it. No response is received from the Plaintiff.

Your client then goes on an overseas business trip. Whilst away a Summons is served upon his wife for the costs of the paper. She places the Summons in a drawer and when he returns from overseas does not draw it to his attention.

When the time-period for entering an appearance to Defend has expired the Plaintiff applies for Default Judgment which is granted on the 15th August 2012.

On the 1st September 2012 the Sheriff arrives at your client’s premises with a Warrant of Execution.

Your client immediately contacts the Plaintiff in an effort to try and resolve the matter but after months of negotiations this proved unsuccessful. Your client now approaches you requesting that an Application for the rescission of the Default Judgment be drawn. The Application is made on the 15th January 2013.

Draw the necessary Notice. (Omit any headings or supporting affidavit).
QUESTION 1 [15]

1.1 Compensation Commissioner
Road Accident Fund
(1)
(1)

1.2 (a) From the Compensation Commissioner, all the special damages
i.e. Hospital Expenses
Past Loss of earnings
(1)
(1)

(b) From the RAF, unlimited special and general damages (provided that she qualifies for general damages in terms of S 17(1A)) and subject to the RAF, being entitled to deduct the amount of the Compensation Commissioners award.
(2)

1.3 In order to recover general damages from the RAF, your client would have to establish a minimum 30% whole person impairment (WPI), alternatively, prove that she satisfied one of the grounds of the narrative test, namely:

- serious long-term impairment or loss of a bodily function;
- permanent serious disfigurement;
- severe long term mental or behavioural disturbance or disorder;
- loss of a foetus
(5)

1.4 No. Both in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA), and in terms of S21 of the Road Accident Fund Act, as amended, there is no common law claim against the wrongdoer.
(2)

1.5 Your client can still recover special damages in terms of COIDA but cannot recover from the RAF (even if she qualifies for general damages in terms of the Act) due to the exclusion of liability in terms of S19(a) and COIDA. (i.e. In terms of COIDA, an employee is precluded from suing her employer, and in terms of S19(a), the RAF if the driver is not liable).
(2)
QUESTION 2

2.1 By delivering the claim form by registered post or by hand to the principal branch or regional office of the RAF. (2)

2.2 In respect of delivery by registered post on the date of posting and in respect of hand delivery on the date of delivery. (2)

QUESTION 3

Yes. She is entitled to claim because her injuries are caused by or arise from the negligent driving of a motor vehicle.

QUESTION 4

Subpoena duces tecum served on the station commander and the medical superintendent of the hospital.

QUESTION 5

14 Days after an award is made. Mora interest at 15.5% p.a.

QUESTION 6

6.1 True. (½)

6.2 True. (½)

6.3 False. (½)

6.4 False. (¼)

6.5 True. (½)

6.6 True. (½)

QUESTION 7

7.1

7.1.1 Based on a liquid document. (1)

7.1.2 For a liquidated amount in money. (1)

7.1.3 For delivery of specified movable property. (1)

7.2.4 For ejectment / eviction (1)

7.2

"Please take notice that the plaintiff intends to make application on ............(date), at ................. am or soon thereafter as Counsel may be heard, for summary judgment in terms of the prayers set out in the plaintiff's summons for:

1. Payment of the sum of R350 000. (½)

2. Interest thereon at 15.5% per annum a temporae morae. (½)

3. Cost of suit (½)
And further take notice that the accompanying affidavit of Phineas Ndlovu, marked Annexure "A", will be used by the plaintiff in support of the application. Kindly place the matter on the roll for hearing accordingly."

An accompanying affidavit in terms of Rule 32(2) may look as follows:

*Affidavit:
I, the undersigned, Phineas Ndlovu do hereby make oath and say:
I am the managing director of the plaintiff in this case.
I have personal knowledge of the facts set out in the summons and particulars of claim.

I confirm the cause of action and the correctness of the amount as set out in the summons and particulars of claim.

In my opinion the defendant has no *bona fide* defence to the action and it has delivered notice of intention to defend solely for the purpose of delay."

7.3 Notice is given to the registrar and to the opponent.

**QUESTION 8**

1. Simple Summons (any one of the following) (1)
   - Claims for payment of a debt, eg. goods sold and delivered, professional services rendered etc.
   - Claims for transfer of fixed property
   - Evictions / ejectment
   - Delivery of specified movables
   - Cancellation of a contract

2. Combined Summons – mostly for claims for damages and divorce proceedings, etc. (1)

3. Provisional Sentence Summons – claims based on liquid documents. (1)

**QUESTION 9**

Any six of the following:

1. Lis pendens (½)
2. Res judicata (½)
3. Prescription (½)
4. Lack of jurisdiction (½)
5. Non joinder (½)
6. Arbitration (½)
7. Lack of locus standi (½)

**QUESTION 10**

10.1 Six months (½)
10.2 Cause of action (½)
10.3 30 days (½)
10.4 Yes (½)
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PAARL
HELD AT PAARL

THE STATE Case No : 1234/12

And

JAMES BOND ACCUSED

STATEMENT IN TERMS OF SECTION 112 (2) OF THE CRIMINAL PROCEDURE ACT 51
OF 1977

I, the undersigned,

James Bond

Being of sober mind, plead guilty to a driving a motor vehicle with a blood alcohol content
above the legal limit and declare without duress or undue influence:

1. I am 28 years old and currently reside at 12 Main Street, Paarl. On 10 April 2012 and
on Jan Van Riebeeck Way, Paarl, a public road within the jurisdiction of this Court, I
drove a vehicle, with registration number CJ 1234.

2. On the specific day I had consumed alcoholic drinks with my friends and I was
involved in an accident with another motor vehicle. At the time of driving I was
convinced that I was sober enough to drive.

3. At the intersection of Jan Van Riebeeck Drive and Bosch Street, another vehicle
suddenly and without regard to my vehicle having entered Jan Van Riebeeck Drive
from Bosch Street and having the right of way, entered the intersection and collided
with the side of my vehicle at a time when I could not avoid the collision, which was
solely due to the fault of the other driver.

4. I admit the following:
4.1 that the blood sample was drawn from my body within the prescribed time of two
hours;
4.2 that the blood sample was properly sealed and controlled;
4.3 that the analysis was accurately done;
4.4 that the certificate indicating the analysis of my blood sample is correct.
4.5 that my alcohol level in my blood was 0.22 gram per 100 ml;
4.6 that I know that my actions were a transgression of the law;
4.7 that the incident took place in the district of Paarl;

SIGNED AT PAARL ON THIS DAY OF 2013

.....................................................
JAMES BOND
QUESTION 12

In terms of Section 113 if the Court at any stage of the proceedings and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he/she or that the accused has a valid defence to the charge or if the Court is of the opinion for any other reason that the accused's Plea of guilty should not stand, the Court shall record a plea of not guilty and require the Prosecutor to proceeding with the prosecution.

At the next hearing the court will be advised that the accused pleaded guilty as a consequence of compulsion and ignorance and an application will be made for the conviction to be set aside. The accused will have to forward reasons for the application and will be obliged to give evidence under oath. The court will grant the application if it appears to be in the interest of justice. The onus of proof which rests on the accused only applies that he must give a reasonable explanation as to why he wants to amend the plea. If a reasonable possibility exists that his explanation could be true, his application ought to be granted.

QUESTION 13

Section 276 of the CPA sets out the punishments which a Court may impose namely:

Imprisonment (which can be wholly or partially suspended)

Periodical Imprisonment

Declaration as a habitual criminal

Committal to any institution established by law

A fine

Correctional supervision in terms of section 276(1)(h) and (i)

Caution and a reprimand

Postponement of Sentence

Diversions

Restorative Justice

QUESTION 14

A plea of not guilty will be tendered on behalf of client. The Section 115 statement, verbally or in writing, will be that the accused wishes to exercise his right to remain silent. An attorney will be entitled to question witnesses as to their observations in order to establish whether the observations are reliable and credible. The attorney will not be able to put it to the witness that the accused is not the person who assaulted the complainant. As soon as the accused is positively identified the attorney may cross examine the witness only on the reliability of the identification. Once the accused has been positively identified the attorney will be obliged to close his case and argue only on the reliability of the identification. The accused cannot be put into the witness box to testify that he is not the person who assaulted the complainant as this will amount to misleading the court.
QUESTION 15

The client may not proceed in the Port Elizabeth district Magistrate’s Court. The consent to a specific Magistrate’s Court is invalid.

QUESTION 16

(a)

PARTICULARS OF CLAIM

1.

The Plaintiff is Bellows (Pty) Limited, a company duly incorporated with limited liability in terms of the Company Laws of the Republic of South Africa, whose registered office/principal place of business is situate in 21 East Street, Durban.

2.

The First Defendant is Classic Stationery CC, a close corporation, duly registered in terms of the Close Corporations Act and whose principal place of business is situate at 21 Russell Street, Durban.

3.

The Second Defendant is Billy Naidoo, an adult male, whose full and further particulars are to the Plaintiff unknown and who is employed by the First Defendant and whose place of employment is situate at 21 Russell Street, Durban.

4.

On or about the 10th July 2012 a collision occurred in North Street Durban between motor vehicle ND12, a BMW which is owned by the Plaintiff and was driven at the time by Jimmy Bellows and motor vehicle ND 737, a Toyota bakkie which at the time of the collision was being driven by the Second Defendant.

5.

At the time of the collision the Second Defendant was acting in the course and scope of his employment with the First Defendant.

6.

The sole cause of the collision was due to the Second Defendant’s negligent driving in that:

(a) he drove at an excessive speed;
(b) he failed to keep a proper look out;
(c) he failed to stop at a robot-controlled intersection;
(d) he collided with the rear of the Plaintiff’s motor vehicle.

7.

As a result of the collision the Plaintiff’s motor vehicle was damaged and the reasonable and necessary costs of repairing the vehicle is R25 000,00. A copy of the quotation reflecting the said damage is annexed hereto marked “A”.
8.
Despite demand, the Defendants have failed to pay the said amount. A copy of the demands are annexed hereto marked "B" and "C".

WHEREFORE the Plaintiff prays for Judgment against the First and Second Defendants jointly and severally, the one paying the other to be absolved for:

1. Payment of the sum of R25 000.00;
2. Interest thereon at the rate of 15,5 % per annum from 23rd September 2012 to date of payment.
3. Costs of suit.

DATED at DURBAN on this day of 2012.

Plaintiff’s Attorneys

LEX ATTORNEYS
21 Broad Street
DURBAN

(b)
The Plaintiff may not apply for Summary Judgment against the Defendants. Summary Judgment is only available to the Plaintiff in respect of the following causes of action:

(a) A liquid document;
(b) Liquidated amount of money;
(c) Delivery of specified movable property;
(d) Eviction

As this claim is based on damages and is an illiquid claim, Summary Judgment is not available.

QUESTION 17

(a) The Defendant may consider that the prospects of recovering any costs order in his favour would be extremely remote and as a result would be entitled to request security for costs.

(b) Should the Defendant wish to persist with his defence he shall within 2 months of the granting of the Provisional Sentence Judgment pay to the Plaintiff the amount of the Provisional Sentence plus costs. The Plaintiff shall then provide the Defendant with security for the amount which has been paid.

(The defendant may pay and defend or request security from the plaintiff and if the plaintiff fails to provide the security, defendant may defend).

(c) (i) He would be entitled to apply for an Administration Order;
(ii) He could apply to be placed under Debt Review.
APPLICATION FOR RESCISSION OF A DEFAULT JUDGMENT

TO
THE CLERK OF THE COURT
DURBAN

AND TO
SMITH ATTORNEYS
Plaintiff/Respondent’s Attorneys
12 EAST STREET
DURBAN

SIRS

BE PLEASED TO TAKE NOTICE that Application will be made to the above Honourable Court on the day of 2013, at 08h00 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 be and is hereby rescinded.

3. That the Applicant/Defendant be granted leave to defend the action.

4. That the Plaintiff/Respondent pay the costs of the Application in the event of it being opposed.

AND FURTHER TAKE NOTICE that the Affidavit of FAIZAL HASSAN annexed hereto will be used in support hereof.

DATED at DURBAN on this day of 2013.

Applicant/Defendant’s
Attorneys

JONES ATTORNEYS
12 UMGENI ROAD
DURBAN

TOTAL: [100]
Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 3 uur volg dan.

1. Kandidate moet al die vrae beantwoord.

2. Kandidate moet daarop let dat punte vir goeie opstelwerk toegekend word.

3. Waar nodig, moet kandidate hulle eie feite versin.

4. Skryfasseblief slegs in pen op die regterkantse bladsye.

5. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n mondeling in hierdie deel ingeroep as 50% en meer behaal is nie. Indien 'n kandidaat minder as 40% behaal sal hy/sy nie kwalificeer vir 'n mondeling nie en sal hierdie deel druip.

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.
VRAAG 1

1. Dan Peterson is the bestuurder van 'n motorvoertuig op 17 Julie 2012. Sy voertuig bots met 'n ander voertuig as gevolg van die uitsluitlike nalatigheid van die bestuurder van die ander voertuig. Dan Peterson doen ernstige breinskade op die botsing tot so 'n mate dat hy nie in staat is om na sy eie sake om te sien nie. Jy tree op namens Dan Peterson.

1.1 Beantwoord die volgende vrae na aanleiding van bogenoemde:

1.1.1 Sal Dan Peterson kwalificeer vir algemene skade? Motiveer. (2)

1.1.2 Watter dokumente moet jy by die Pad-ongelukkiefonds indien ten einde aan die vereistes van die Wet te voldoen? (5)

1.1.3 Het Dan Peterson locus standi om jou van instruksies te voorsien? Motiveer. (2)

1.1.4 Indien hy nie oor die nodige locus standi beskik nie welke stappe sal jy doen ten einde locus standi in hierdie saak te vestig? (2)

VRAAG 2

Uklënt, Martha Stewart, konsulteer u rakende 'n motorvoertuig botsing. Haarinstruksies is onder andere soos volg:

a) Op of omtrent 18 Mei 2012, om ongeveer 05h00 en op die hoofpad tussen Richmond en Pietermaritzburg, was sy 'n passasier in 'n BMW motorvoertuig wat bestuur was deur haar verloofde, Bernie Madoff.

b) Die voertuig bestuur deur haar verloofde het gebots met beeste wat oor die pad aangejaag is deur 'n boer en sy veewagter.

QUESTION 1

1. Dan Peterson was the driver of a motor vehicle on 17 July 2012. His vehicle collided with another vehicle due to the exclusive negligence of the driver of the other vehicle. Dan Peterson sustained serious brain damage in the collision to such an extent that he is not able to handle his own affairs. You are acting on behalf of Dan Peterson.

1.1 Answer the following questions in respect of the above:

1.1.1 Will Dan Peterson qualify for general damages? Motivate. (2)

1.1.2 Which documents must be lodged with the Road Accident Fund in order to comply with the requirements of the Act? (5)

1.1.3 Does Dan Peterson have locus standi to provide you with instructions? Motivate. (2)

1.1.4 In the event he does not have the necessary locus standi, describe which steps you will take to establish locus standi in his case? (2)

QUESTION 2

Your client, Martha Stewart, consults you regarding a motor vehicle collision. Her instructions are inter alia as follows:

a) On or about the 18th of May 2012, at approximately 5h00 and on the main road between Richmond and Pietermaritzburg, she was a passenger in a BMW motor vehicle driven by her fiancé, Bernie Madoff.

b) The vehicle driven by her fiancé collided with cattle that were being herded across the road by a farmer and his herdsman.
c) It was dark at the time and the farmer had failed to take any precautions to warn motorists of the presence of cattle on the road.

d) However, her fiancé had been travelling at an excessive speed and, if not, would have been able to take evasive action.

e) As a result of the collision, her fiancé was killed and she sustained serious injuries. In addition, she was two months pregnant and miscarried as a direct result of her injuries.

f) Your client and her fiancé had been cohabiting for two years and were in fact to have been married on the 14th of July 2012. Your client has never worked and was solely dependent upon her fiancé, a wealthy businessman, for support.

g) As a result of her personal injuries as well as the death of her fiancé she has sustained the following damage:

- Past Hospital Expenses
- Past Medical Expenses
- Future Hospital, Medical and related expenses
- Pain and suffering and loss of amenities of life
- Loss of support

2.1 Is your client entitled to claim from the Road Accident Fund? Motivate your answer. (2)

2.2 Assuming that your client is entitled to claim from the RAF:

2.2.1 Is her claim subject to any exclusion or limitation? (3)

2.2.2 Would she be able to recover general damages? (2)

Motivate your answers fully.
2.3 Is your client entitled to recover any portion of her claim from the farmer? Motivate your answer fully. (3)

QUESTION 3

3.1 What requirements must be met before a plaintiff can apply to Court for an interim payment in terms of rule 34A? (2)

3.2 Which of the following heads of damages may be claimed in such an application:

- future loss of earnings;
- past medical expenses;
- past loss of earnings;
- general damages? (2)

QUESTION 4

The particulars of claim to the combined summons hereunder contain a number of mistakes or omissions. Identify 10 of these and briefly motivate your answers.

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Amalgamated Breweries (Pty) Ltd
Plaintiff
Registration No 2000/14567/07

and

The Christopher Family Trust
1st Defendant
IT 456/2006

and

Mary Fourie
2nd Defendant
### BESONDERHEDE VAN VORDERING

1. Die eiser is Amalgamated Breweries (Edms) Bpk wat besigheid doen te Adam Tasweg 1, Epping, Kaapstad.

2. Die 1ste verweerder is The Christopher Family Trust, ‘n Trust wat besigheid doen te Moses Mabidalaan 10, Industrial Park, Durban.

3. Die 2de verweerder is Mary Fourie, ‘n werknemer van die 1ste verweerder wat woonagtitig is te Hoofstraat 5, Fairways, Bloemfontein.


5. Die genoemde botsing is veroorsaak deur die uitsluitlike nalatigheid van die 2de verweerder.

6. As gevolg van die genoemde botsing is die Ford trok beskadig en die redelike en billike herstelkoste beloop R500 000 (insluitende belasting op toegevoegde waarde).

7. Volledige besonderhede van die genoemde herstelkoste word uiteengesit in herstel faktuur 797, uitgereik deur XYZ Bodyworks en is hierby aangeheg as Aanhangsel P1.

8. Ondanks behoorlike aanmaning het verweerders versui, geweier of nagelaat om eiser vir sy skade te vergoed.

9. Derhalwe smeek eiser vir vonnis teen die verweerders vir –

### PARTICULARS OF CLAIM

1. The plaintiff is Amalgamated Breweries (Pty) Ltd which carries on business at 1 Adam Tas Road, Epping, Cape Town.

2. The 1st defendant is The Christopher Family Trust, a Trust which carries on business at 10 Moses Mabida Avenue, Industrial Park, Durban.

3. The 2nd defendant is Mary Fourie, an employee of the first defendant who resides at 5 Main Street, Fairways, Bloemfontein.

4. On 1 November 2012 and in or near De Waal Drive, Cape Town, a collision occurred between a Ford truck, registration number DCB532GP and a motor vehicle with registration number KCP123EC, driven by the 2nd defendant.

5. The said collision was caused by the sole negligence of 2nd defendant.

6. As a result of the said collision the Ford truck was damaged, the fair and reasonable repair costs thereof amounting to R500 000 (inclusive of value added tax).

7. Full details of the said repair costs are set out in repair invoice 797, issued by XYZ Bodyworks and annexed hereto as Annexure P1.

8. Despite due and proper demand, defendants have failed, refused or neglected to compensate plaintiff for the said damage.

9. Wherefore plaintiff prays for judgement against the defendants for –
DEEL 1
HOFFPROSEDURES
[100]

a) Payment of the sum of R500 000 as and
for damages
b) Interest thereon at 20,5% calculated from
date of the collision to date of payment
c) Costs of the action
d) Further and/or alternative relief.

Signed at Cape Town on this ............. day of
........................................... 20....

ADVOKAAT VIR DIE EISER

EISER SE PROKUREURS
KINGS INCORPORATED
JUSTICE PLAZA 1
KAAPSTAD
WESKAAP

Nota aan die kandidate: aanvaar dat
Aanhangsel P1 aangeheg is en dat die
besonderhede van vordering behoorlik
onderteken is.

VRAAG 5 [12]

U ontvang instruksies van u klient, Alice Jones,
on 'n dringende aansoek te loods vir die
sekwestrasie van die boedel van Darryl Black, 'n
fabriekseienaar, getrou binne gemeenskap van
good met Ann Black. Darryl Black het 'n aantal
werkers in sy diens wat almal aan Hakuna Matata
Vakbond behoort. Stel die kennisgewing van
mosie op om uitvoering aan u instruksies te gee.

VRAAG 6 [3]

Wat is die gebruiklike pleitstukke in 'n aksie vir
goedere verkoop en gelewer waar daar nie 'n
gekombineerde dagvaarding is nie, maar wel 'n
teeenis?
VRAAG 7

Mnr. M Mnguni moet op 24 Mei 2012 voor die Johannesburg se Streekhof, op 'n klagte van moord verskyn. Hy word daarvan beskuldig dat hy op 10 Februarie 2012 die dood van 'n kind, Peter Bold, veroorsaak het deurdat hy die genoemde kind met sy motorvoertuig, met registrasie nommer XYZ123GP, in Langstraat, Johannesburg gestamp het. Mnr Mnguni se instruksies is dat hy op 'n klagte van strafbaremanslag, skuldig gaan pleit. Die nadoordse ondersoek verslag bevestig dat die kind gesterf het van die bescermings oogdienste in die motorongeluk. Stel 'n Artikel 112 verklaring namens Mnr Mnguni op en sluit die kopskrif asook enige verdere relevante feite in wat u van oordeel is, benodig word.

VRAAG 8

Jacob Smit, u kliënt is in Kaapstad se Landdroshof op 'n klagte van diefstal skuldig bevind en is tot drie jaar direkte gevangenis straf, gevonnis. Hy is ongelukkig oor die skuldig bevinding asook die straf wat hy opgelê is.

8.1 Adviseer Mnr Smit watter prosedure in daardie hof gevolg moet word indien hy die skuldig bevinding asook die straf wil beveg. (1)

8.2 Hoe en wanneer moet die prosedure, soos hier bo in vraag 8.1 genoem, gevolg word? (2)

8.3 Indien die tydperk, deur die wet voor- geskryf, verval het voordat u die stappe, soos hierbo genoem kan doen, watter prosedure moet u dan volg? Bespreek kortliks. (2)

8.4 Watter toets sal die Hof toepas ten einde te bepaal of Mnr Smit toegelaat sal word om die uitspraak te beveg? (1)

QUESTION 7

M Mnguni is to appear before the Regional Court, Johannesburg, on the 24th May 2012 charged with murder. It is alleged that on the 10th of February 2012 he caused the death of a child, Peter Bold, by colliding into the child with his motor vehicle, XYZ123GP, on Long Street, Johannesburg. Mr Mnguni intends pleading guilty to a charge of culpable homicide. The post-mortem report confirms that the child died as a consequence of the injuries he suffered. Draw the Section 112 statement on behalf of Mr Mnguni, including the heading and adding any further facts which you deem necessary.

QUESTION 8

Your client, Jacob Smith, has been found guilty of theft in the Magistrate's Court, Cape Town and has been sentenced to three (3) years direct imprisonment. He is aggrieved at the verdict and sentence.

8.1 Advise Mr Smith as to the procedural step that has to be taken before the Court that convicted and sentenced him, in order to challenge the conviction and sentence. (1)

8.2 How and when will the procedural step referred to in 8.1 above be embarked upon? (2)

8.3 If the time period stipulated in law has lapsed before you embark on the procedural step referred to above, what procedure is to be followed to pursue the challenge? Shortly discuss same. (2)

8.4 What test will the court apply in deciding whether or not to allow Mr Smith to proceed with the challenge? (1)
VRAAG 9

'n Staatsgetuië het oor 'n insident waarby u klient betrokke was, getuig. Die staatsgetuië se getuienis verskil in wesenlike opsigte van die weergawë wat u klient aan u verskaf het.

9.1 Wat is u plig gedurende kruisonder- vraging ten opsigte van die weergawe van u klient in soverre dit van die getuië se weergawe verskil?

9.2 Watter risiko loop u klient, indien u nie u plig in hierdie verband nakom nie?

9.3 Wat is die implikasies indien u nie die getuië kruisondervra nie?

VRAAG 10

U klient, 'n Nigeriese burger wat tydelik in Suid Afrika werk word van verkrachting van 'n dame, wat in sy omgewing woonagtig is, aangekla. Noem twee borg voorwaardes wat u aan die hof sal voorstel, wat die hof kan oorweeg om op u klient van toepassing te maak, ten einde die hof te oortuig om u klient op borg vry te laat.

VRAAG 11

Wat is die vier metodes wat gebruik word om seker te maak dat 'n beskuldigde die hofverrigting sal bywoon.

VRAAG 12

U tree op namens Sifiso Ngcobo. U klient is die verweerder in 'n aksie in die Johannesburg Landdrosfosh. Hy word gedagvaar vir R50 000,00 ten opsigte van skade veroorsaak aan die eiser, Richard Ngidi, se motorvoertuig. Tydens die verhoor gee die Landdros uitspraak in die eiser se guns vir die volle eisbedrag plus rente en koste. U klient glo dat die Landdros verkeerd was met beide die feite- en regsbegevings.

QUESTION 9

A state witness testifies as to the events in which your client, the accused, was involved. His testimony differs in material respects from the version which your client has given you.

9.1 What is your duty during cross-examination in respect of the version of your client in so far as it differs from that of the witness?

9.2 What is the risk to your client should you not carry out this duty?

9.3 What are the implications should you not cross-examine the witness?

QUESTION 10

Your client, a Nigerian citizen working temporarily in South Africa, is charged with the rape of a lady who resides in his neighbourhood. Name two conditions that you can propose to the Court to be imposed in an attempt to persuade the Court to grant bail to your client.

QUESTION 11

What are the four methods of securing the attendance of an accused before Court?

QUESTION 12

You act for Sifiso Ngcobo. Your client is the Defendant in an action in the Johannesburg Magistrate's Court where he was sued for R50 000,00 in respect of damages caused to the Plaintiff, Richard Ngidi's motor vehicle. The Magistrate at the Trial finds in favour of the Plaintiff for the full amount plus interest plus costs. Your client believes that the Magistrate was wrong both on findings of fact and rulings of the law.
Draft a Notice of Appeal in which you need to use your own facts where necessary. It is necessary to include the appropriate heading.

**QUESTION 13**

What options to overcome Summary Judgment, are available to a Defendant (who has no counter claim) where the Plaintiff has made an application for Summary Judgment.

**QUESTION 14**

James Brown enters into a contract with Have-a-Garage (Pty) Limited for the construction of an additional garage at his home. The contract price is R70 000,00.

The Defendant is paid R50 000,00 and completed part of the contract and then does not return. The contract is accordingly cancelled and a new contract to complete the job is entered into with Home Additions (Pty) Ltd at a contract price of R60 000,00.

What amount is the Plaintiff entitled to claim for damages?

**QUESTION 15**

You are Plaintiff's Attorney in a motor collision case.

The action is being defended and the matter is set down for Trial.

Draw the Expert Notice filed in support of the evidence to be given by the Panelbeater in support of your client's claim for damages. (Omit headings).

**QUESTION 16**

You act for the Plaintiff. Please advise your client what action can be taken in the following circumstances:
(a) Your client was injured as a result of an exposed manhole and his damages amount to R105 000,00. Your client wishes to institute an action in the District Magistrate’s Court for the damages he has sustained.

(b) Your client lent the Defendant R10 000,00. The amount was repayable on the 1st December 2012 and the Defendant has failed to pay the said amount. The precise address of the Defendant is unknown but after an extensive search your client has ascertained that he is living in Johannesburg, but his precise address is unknown.

(c) Your client has granted a Mortgage Bond to the Defendant. The Defendant is in arrears with his monthly instalments. What action must be taken before Summons can be issued?

VRAAG 17

U.tree namens die verweerder op. Adviseer u klient oor wat in die volgende omstandighede gedoen kan word:

(a) U klient ontvang ’n dagvaarding. Hy het verdediging aangeteken maar beskou die dagvaarding as vaag en verwarrend.

(b) U klient wil fotos gebruik tydens die verhoor.

QUESTION 17

You act for the Defendant. Please advise your client what action can be taken upon these circumstances:

(a) your client receives a Summons. He has entered an Appearance to Defend but considers the Summons to be vague and embarrassing.

(b) your client wishes to use photographs at the trial of the action.
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

1.1.1 Yes. It is clear that he sustained serious brain damage and it will be established that he has a 30% or higher whole person impairment (WPI) because he is also not in a position to manage his own affairs. (2)

1.1.2 RAF1 claim form
RAF1 medical report
RAF4 serious injury assessment report,
sworn affidavit relating to the circumstances of the accident,
medical and hospital records (5)

1.1.3 No. He is unable to give instructions because of his serious brain injury. (2)

1.1.4 An application will have to be made to the High Court for the appointment of a curator-ad-litem. (2)

QUESTION 2

2.1 Yes. She is entitled to claim in respect of her personal injuries on the basis that her injuries arise from a collision at least caused by / arising out of the negligent driving of her fiancé. (2)

2.2.1 She is entitled to her full claim/unlimited claim as the R25 000-00 limitation of passengers claims and the exclusion in respect of members of the same household have been repealed. (3)

2.2.2 Yes. Loss of a foetus is one of the express grounds mentioned in the narrative test. (2)

2.3 Yes, as she does not have a claim for loss of support against the RAF, she is entitled to recover her damages in respect of loss of support from the farmer.

(Note to examiner: the common law has been extended to establish a reciprocal duty of support between partners in a permanent heterosexual life partnership. – Paixao v Road Accident Fund (640/2011) [2012] ZASCA 130). (3)
QUESTION 3

3.1 The merits must have been conceded or determined, the defendant must be in a position to pay and a claim can only be made in respect of special damages.

3.2 Past medical expenses,
Past loss of earnings.

QUESTION 4

4.1 The plaintiff's citation is incomplete. It must be described as a company with limited liability duly registered in terms of the laws of the Republic of South Africa (or company laws or legislation of the RSA).

4.2 The 1st defendant's citation is incorrect. It must be described as "The Trustees for the time being of The Christopher Trust" or the individual trustees may be cited by name.

4.3 There is no mention of plaintiff's ownership or risk in respect of the Ford truck. It should be alleged that plaintiff was at all material times the owner thereof or the bona fide possessor thereof bearing the risk of loss or damage thereto.

4.4 There is no allegation regarding the jurisdiction of the Cape Town High Court. The particulars of claim should contain an averment that the court has jurisdiction by reason of the fact that the whole cause of action arose within its area of jurisdiction.

4.5 It is not sufficient to merely allege negligence on the part of the 2nd defendant. The grounds of negligence should be set out in paragraph 5.

4.6 Vicarious liability of the 1st defendant is not alleged. It should be stated that the 2nd defendant drove the said vehicle at the time of the collision during the course and scope of her employment with 1st defendant or during the course of its business or as its agent.

4.7 It is not sufficient to merely state the repair costs. It should be alleged that the amount of repair costs does not exceed the difference between the fair and reasonable pre-collision and post-collision market values of the vehicle at the relevant time. It should therefore indicate that it was economical to repair the vehicle for the amount claimed.

4.8 The prayer should set out that judgment is claimed against the defendants jointly and severally, the one paying, the other to be absolved.

4.9 The rate of interest is incorrect. Interest should be claimed at the rate prescribed in terms of the Prescribed Rate of Interest Act, per annum, which rate is currently 15.5% per annum.

4.10 Interest can only be claimed at the prescribed rate from either the date set for payment in the registered letter of demand (mora) or service of summons.

QUESTION 5

IN THE HIGH COURT OF SOUTH AFRICA

CASE NO:
In the matter between:
Alice Jones
and
Darryl Black
Ann Black

Applicant
1st Respondent
2nd 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. Dispensing with the forms and service provided for the rules of the above honourable court and entertaining this matter as one of urgency in terms of Rule 6(12).

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.

3. That a rule nisi on ................. (date) be issued calling upon the respondents and all persons interested to show cause why the estate of the respondents should not be placed under final order of sequestration.

4. That this order be served by the Sheriff of this honourable court on the respondents personally and on Hakuna Matata Trade Union representing the employees of the respondents, and the South African Revenue Services as prescribed in the Insolvency Act.

Note to Examiner: Different practice rules may apply e.g. it is not wrong to require that notice be given to all known creditors.

5. That the costs of this application be costs in the sequestration.

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.

Kindly enrol the matter accordingly.

Dated at .................................. this ................. day of ....................................... 20...

..................................
ABC Inc
Applicant’s attorney
Address

To: The Registrar, High Court
(1)

To: The Master, High Court
(1)
QUESTION 6

Simple summons (½) Declaration (1) Plea (¼) Claim in reconvention (¼) Plea to claim in reconvention (¼)

QUESTION 7 [10]

For the Examiner: the accused pleads guilty to culpable homicide, a competent verdict.

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

CASE: RC3/112/2012

In the matter between:

M MNGUNI THE ACCUSED

and

THE STATE

STATEMENT IN TERMS OF SECTION 112

I, the undersigned

M MNGUNI

do hereby declare that:

1. I am the accused in this matter.

2. I understand the nature of the charge.

3. I hereby plead guilty to a charge of culpable homicide, being in my sound and sober senses.

4. On the 10th February 2012 I was the driver of motor vehicle, XYZ123GP on Long Street, Johannesburg, a public road within the area of jurisdiction of the above Honourable Court.

5. Whilst driving the said vehicle, I collided with Peter Bold, a child aged 10 years. At the time the said child was crossing the road at a pedestrian crossing.

6. I admit that I drove the vehicle negligently when I struck the said child in that I:
   6.1 Drove the vehicle at an excessive speed in the circumstances;
   6.2 Failed to keep a proper lookout
6.3 Failed to avoid a collision when I could have done so had I driven with due care and consideration for other road users
(For the examiner: further appropriate grounds of negligence can be added by the candidate)

7. I admit that the said child suffered bodily injury as a result of the collision and died as a consequence thereof. The contents of the post-mortem medical report relating to the child is admitted.

8. In the light of the aforesaid I admit that my actions were wrongful and unlawful and accordingly plead guilty to the charge of culpable homicide.

DATED AT JOHANNESBURG THIS DAY OF 2012

M MNGUNI – The Accused

QUESTION 8 [6]

8.1 Mr Smith will have to bring an application for leave to appeal against the sentence and conviction before the court that heard the matter. (1)

8.2 The application will be brought before the Court that convicted and/or sentenced the accused either verbally or in writing. The application must be brought within a period of 14 days after the passing of sentence. (2)

8.3 An application for condonation for the late application for leave to appeal will have to be brought on a notice of motion accompanied by an affidavit explaining the reasons for the delay. The accused will have to show that good cause exists for his belated application for leave to appeal. (2)

8.4 The Court will have to determine whether prospects of success exist should the matter be taken on appeal, that is whether another Court constituted differently from the trial court may come to a different conclusion. (1)

QUESTION 9 [3]

9.1 It is the duty of an attorney to ensure that the version of the accused is put to a witness particularly where same differs from the witness’s version of events. Each and every difference should be put to the witness.

9.2 Should you fail to do so the Magistrate will be entitled to accept the version of the witness as being correct.

9.3 Should the witness not be cross-examined his evidence can be accepted in its entirety.
QUESTION 10
For the Examiner: the candidate may provide any two acceptable conditions including the following:

Accused to report to a police station at specified times
The accused is forbidden to go to any particular place, e.g. the home of the complainant.
Accused is forbidden from communicating with the complainant and witnesses.
The accused is to surrender his passport pending the outcome of the matter.
Any other condition which will ensure that the proper administration of justice is not placed in jeopardy

QUESTION 11
Arrest (Section 39)
Written Notice (Section 56)
Summons (Section 54)
Indictment (Section 114)

QUESTION 12
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF JOHANNESBURG
HELD AT JOHANNESBURG CASE NO.
In the matter between:
RICHARD NGIDI Plaintiff
and
SIFISO NGCOBO Defendant

NOTICE OF APPEAL

TO THE CLERK OF THE COURT JOHANNESBURG
AND TO KHUMALO INCORPORATED
Plaintiff's Attorneys
32 JEPPE STREET
JOHANNESBURG

SIRS

BE PLEASED TO TAKE NOTICE that the Defendant hereby notes an Appeal against the whole of the Judgment handed down by Magistrate Khumalo on the 10th December 2012 in terms of which he granted Judgment for the Plaintiff in the sum of R50 000.00 plus interest plus costs.
The Defendant appeals against both the findings of fact and rulings of law set out in the Grounds of Appeal below:

The Grounds of Appeal are as follows:

1. **Findings of facts**

   The Magistrate erred:

   (a) in finding that the Defendant drove on the wrong side of the road;
   (b) that the Defendant drove at an excessive speed;
   (c) that the Defendant failed to keep a proper look out.

2. The learned Magistrate erred on the following Rulings of Law:

   (a) that the Apportionment of Damages Act did not apply;
   (b) In allowing inadmissible evidence of one of James Naidoo;
   (c) In holding that the Defendant bore the onus of proof.

AND FURTHER TAKE NOTICE that the Defendant has lodged security in the sum of R1 000,00.

DATED at JOHANNESBURG on this day of December 2012.

__________________________
Defendant's Attorneys

LEX ATTORNEYS
12 RUSSELL STREET
JOHANNESBURG

**QUESTION 13**

1. Give security to the Plaintiff to the satisfaction of the Clerk of the Court for any Judgment including costs, as may be given;

2. Satisfy the Court by Affidavit that the Defendant has a *bona fide* defence to the action.

**QUESTION 14**

The Damages amount to R40 000,00. The original contract price was R70 000,00. The Defendant has paid R50 000,00 to Have-a-Garage (Pty) Limited and R70 000,00 to Home Additions (Pty) Limited, making a total of R110 000,00. This is R40 000,00 more than the original contract price.
EXPERT NOTICE IN TERMS OF RULE 24 (9) (a) and (b)

1. The Plaintiff intends calling JAMES SMITH as an expert witness. James Smith is a panelbeater and has been working as a panelbeater for the past 20 years. He has for the last 6 years owned his own panelbeating business.

2. He will give evidence that on the 24th August 2012 he inspected motor vehicle ND 3427, a BMW, which motor vehicle had suffered damages in a motor collision.

3. He will give evidence that the total costs necessary to repair the damages to the motor vehicle did not exceed its fair and reasonable market value.

4. He will give evidence that he assessed the damages to the vehicle and the damages report annexed hereto, marked “A” will reflect the damages to the vehicle and the costs of repair.

5. He will give evidence that the fair and reasonable costs of restoring the motor vehicle to the condition it was in prior to the damage having been caused amounts to R20 000,00.

DATED at DURBAN on this day of January 2013.

Plaintiff’s Attorneys

NAIDOO & COMPANY
23 WEST STREET
ESCOURT

QUESTION 16

(a) The Plaintiff will abandon R5 000,00 to bring the claim within the jurisdiction of the District Magistrate’s Court. (1)

(b) The Plaintiff will bring an Application for leave to serve the Summons by way of substituted service by advertising in a paper circulating in the Johannesburg area. (1)

(c) The Plaintiff would be required to issue a registered letter in terms of Section 129 of the National Credit Act. The letter would have to be sent by registered post and draw the Defendant’s attention to the fact that he would be entitled to apply for Debt Review. (2)
QUESTION 17

(a) As the pleading is vague and embarrassing the Defendant shall provide a Notice to the Plaintiff providing them with an opportunity of removing the cause of complaint within 15 days.

Should the Plaintiff not remove the cause of complaint with the stipulated time then the Defendant would file an Exception. (2)

(b) He shall not less than 10 days prior to the hearing, give the Plaintiff notice of his intention to do so. The notice shall give the Plaintiff an opportunity to inspect the photographs and to state whether he objects to such photographs being admitted in evidence without proof. (2)

TOTAL: [100]