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.

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 toegeken word.

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

4. Skryf asseblief siegs 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**

(i) U kliënt, Peter Black, deel u mee dat op 20 Augustus 2007 terwyl hy aan diens was, hy ernstig beseer is in 'n botsing tussen 'n bus en die motorvoertuig wat hy bestuur het.

(ii) Hy het gelede hospitaal en mediese onkoste van R60 000,00 opgedoen.

(iii) Daarbenewens:

   a) Hety 'n verlies van inkomste van R20 000,00 gely;  
   b) Hy ontvang tans 'n pensioen van R1 000,00 per maand van die Vergoedingskommisaris wat 'n gekapitaliseerde waarde van R80 000,00 het tot sy datum van aftrede;  
   c) Die Kommisaris het sy verlies van gelede inkomste en sy mediese en hospitaalonkostes betaal;  
   d) Sy eis is by die Padongelukfonds ingedien wat aangedui het dat voordat enige toepaslike aftrekkings gemaak is, hulle bereid sou wees om die kwantum van die eis te skik op die volgende basis:

<table>
<thead>
<tr>
<th>Mediese en hospitaalonkostes</th>
<th>R 60 000,00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gelede verlies van inkomste</td>
<td>R 20 000,00</td>
</tr>
<tr>
<td>Toekomstige verlies van inkomste</td>
<td>R200 000,00</td>
</tr>
<tr>
<td>Algemene skadevergoeding</td>
<td>R100 000,00</td>
</tr>
<tr>
<td><strong>TOTAAL</strong></td>
<td><strong>R380 000,00</strong></td>
</tr>
</tbody>
</table>

**QUESTION 1**

(i) Your client Peter Black tells you that on 20 August 2007 whilst he was on duty he was severely injured in a motor vehicle collision that occurred between the motor vehicle he was driving and a bus.

(ii) He has incurred costs in the sum of R60 000,00 in respect of past hospital and medical expenses.

(iii) In addition:

   a) He has suffered loss of earnings in the sum of R20 000,00;  
   b) He is presently receiving a pension from the Commission for Compensation for Occupational Injuries and Diseases of R1 000,00 per month which has a capitalised value until his date of retirement of R80 000,00;  
   c) The Commissioner has paid his past loss of earnings and his medical and hospital expenses;  
   d) The claim was lodged with the Road Accident Fund who have indicated that before making any relevant deductions they would be prepared to settle the quantum of the claim on the following basis:

<table>
<thead>
<tr>
<th>Medical and hospital expenses</th>
<th>R 60 000,00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Past loss of earnings</td>
<td>R 20 000,00</td>
</tr>
<tr>
<td>Future loss of earnings</td>
<td>R200 000,00</td>
</tr>
<tr>
<td>General damages</td>
<td>R100 000,00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>R380 000,00</strong></td>
</tr>
</tbody>
</table>
(iv) The merits were settled at 50% in favour of your client.

Having regard to the abovementioned facts, answer the following questions.

1.1 Discuss the principles involved in arriving at the amount of damages that your client should receive from the Road Accident Fund.

1.2 Bearing the above factors in mind what amount will your client receive if the claim is settled on the basis indicated by the Fund? Set out your calculation showing how you arrive at this amount.

QUESTION 2

If a claimant fails to submit an affidavit as required in terms of Section 19(f)(i) of Act No 56 of 1996, what are the remedies available to the Road Accident Fund under the following circumstances:

2.1 Where the Road Accident Fund fails to object to the validity of the claim within the prescribed period;

2.2 Where the Road Accident Fund objects to the validity of the claim within the prescribed period. Explain fully with reference to the relevant provisions of the Act.

QUESTION 3

Your client tells you that whilst driving his motor vehicle on the N2 freeway, he collided with a tyre which had fallen from a truck because it was not properly secured. As a result thereof your client’s vehicle somersaulted and he was seriously injured. Does your client have a third party claim against the Road Accident Fund? Discuss and motivate your answer.
VRAAG 4

Philip Jones, 50, het met sy vrou Mary, 48, en hulle drie kinders Rose, 18, Joyce, 16 en klein Mary, 8 gereis toe die voertuig waarin hulle gery het, die pad verlaat en omgeslaan het. Hulle oom, Peter, wat op besoek van oorsee was, het saamgery. Klaarblyklik het Mrn Jones aan die slaap geraak. Peter het liggaamlike beserings opgedoen en is by die Rob Ferreira Hospitaal te Nelspruit behandel. Peter kon nie vir 'n periode van 6 weke daarna werk nie en gedurende hierdie periode het hy geen inkomste ontvang van sy werk. Hy het die volgende skade gely:

- Hospitaalonkostes R15 600,00
- Mediese onkostes R 6 200,00
- Verlies van inkomste R15 000,00
- Algemene skadevergoeding R25 000,00

Daarbenewens is 'n ipod wat aan klein Mary behoort onherstelbaar beskadig tesame met haar bril. Die ipod is R2 000,00 en die bril R1 500,00.

4.1 Watter skadevergoeding mag Peter van die Padongelukfonds ten opsigte van die beserings wat hy opgedoen het, eis? (1)

4.2 Word Peter se eis in enige mate beperk? Indien wel, verskaf volle besonderhede daarvan. (1)

4.3 Kan Mrn Jones enige skadevergoeding ten opsigte van die vervangingskoste van die beskadigde ipod en bril verhaal? Motiveer u antwoord. (2)

4.4 Gedurende u ondersoek van di eis, vind u uit dat Peter nie 'n veiligheids gordel gedra het nie en die gevolg dat sy beserings erger was as wat hulle sou gewees het as hy wel 'n veiligheids gordel gedra het. Watter uitwerking op sy eis het sy versuim om die gordel te dra? Motiveer u antwoord ten volle. (2)

QUESTION 4

Mr Philip Jones, 50, was travelling with his wife Mary, 48, and their three children Rose, 18, Joyce, 16 and little Mary, 8 when the vehicle they were travelling in left the road and overturned. Their uncle Peter who was visiting from overseas was travelling with them. Mr Jones apparently fell asleep. Peter sustained bodily injuries and was treated at the Rob Ferreira Hospital in Nelspruit. Peter was unable to work for a period of six weeks thereafter and for which period he was not paid. He suffered the following damages:

- Hospital expenses R15 600,00
- Medical expenses R 6 200,00
- Loss of income R15 000,00
- General damages R25 000,00

In addition an ipod belonging to little Mary was irreparably damaged in the accident together with her spectacles. The value of the ipod is R2 000,00 and the spectacles R1 500,00.

4.1 What damages may Peter claim from the Road Accident Fund in respect of the injuries that he sustained? (1)

4.2 Are there any limitations that apply to Peter’s claim? If so, give full details of such limitations. (1)

4.3 Can Mr Jones recover any damages for the replacement costs of the damaged ipod and spectacles? Motivate your answer. (2)

4.4 During the course of your investigations you discover that Peter was not wearing a seatbelt with the result that his injuries were more severe than would have been the case had he been wearing a seatbelt. What effect does his failure to wear a seatbelt have on his claim? Motivate your answer fully. (2)
4.5 Would Peter be able to sue Mr Jones for any of the damages that he sustained? If so, furnish full details thereof and motivate your answer fully.

4.6 Would Peter's claim be different in any way were it proved that a truck had in fact collided with the rear end of Mr Jones' vehicle, thereby causing it to leave the road and overturn? Motivate your answer fully.

**QUESTION 5**

5.1 List the classes of passengers whom the RAF is obliged to compensate who at the time of the occurrence were injured when conveyed in the motor vehicle concerned.

5.2 What is the maximum amount such passengers may claim against the RAF and in respect of what kind of damage?

**QUESTION 6**

You receive instructions from your client, Peter Brown, a creditor of John Smith to launch an urgent application for the sequestration of the estate of John Smith, a factory owner married in community of property, to Beryl Smith. Smith employs 20 registered members of a registered trade union in his factory. After considering all the facts you are satisfied that good cause exists to launch the application.

Draft the notice of motion to give effect to your instructions.
**AIP 7**

A is woonagtig in Kaapstad. B is woonagtig en
gedomisilieer in Harare in Zimbabwe. Terwyl hy
met vakansie is in Kaapstad het 'n motorvoertuig
bestuur deur B, gebots met A se motor voertuig.
Beide voertuie is erg beskadig en B se voertuig
word tans herstel deur 'n paneelklopper in
A wil graag aksie instel vir die skade aan sy
voertuig.

7.1 In watter hof sal u hom adviseer om die
aksie in te stel? (1)

7.2 In welke hof sou u dagvaarding uitek
indien A woonagtig was in Durban in
plaas van Kaapstad? (1)

7.3 U laat beslag lê op B se voertuig ten
einde jurisdiksie te bevestig. B se
woonadres in Harare is aan u bekend.
Verduidelik kortlikis die prosedure wat A
kan volg in 'n poging om skadevergoeding
van B in so 'n geval te verhaal. (2)

**VRAAG 8**

Watter soort proses sal u u kliënt adviseer om in
die Hooggeregshof in te stel in die volgende
omstandighede? Motiveer asb kortlikis u
antwoord:

8.1 U kliënt is die verhuurder van 'n sekere
sakeperseel binne die regsgebied van
die hof waar u praktiseer. Hy het
gedurende verlede jaar 'n huurkontrak
tov daardie perseel gesluit en het die
huurtermyn 'n maand gelede versyflik.
Die huurder het nog nie die perseel ontruim
nie en u kliënt benodig die perseel nou
ten einde okkupasie aan 'n nuwe huurder
tee gee met wie hy 'n huurkontrak gesluit
het. Die perseel moet nog verander word
in sekere opsigte ten einde aan die
vereistes van die nuwe huurder te voldoen
en is tyd 'n wesenlike faktor, andersins
kan u kliënt die nuwe huurder verloor. (2)

**QUESTION 7**

A is resident in Cape Town. B is resident and
domiciled in Harare, Zimbabwe. Whilst on holiday
in Cape Town, a motor vehicle driven by B
collided with the motor vehicle of A. Both vehicles
were badly damaged and B’s vehicle is at present
being repaired at a panel beater in Cape Town.
B has returned to Harare by bus. A wishes to
institute action for damages to his vehicle.

7.1 In which court would you advise him to
proceed? (1)

7.2 In which court would you issue summons
if A had been resident in Durban instead
of Cape Town? (1)

7.3 You caused B’s vehicle to be attached to
confirm jurisdiction. B’s residential
address in Harare is known to you. Briefly
explain the procedure which A could follow
in an attempt to recover damages from B
in this instance. (2)

**QUESTION 8**

What type of proceeding would you advise your
client to institute in the High Court under the
following circumstances? Please motivate your
answer briefly:

8.1 Your client is the landlord of certain
business premises within the area of
jurisdiction of the court where you practice.
He, during last year concluded an
agreement of lease in respect of the said
premises, which lease expired a month
ago. The tenant has still not vacated the
premises and your client now requires
the premises in order to give occupation
to a new tenant with which he has
concluded an agreement of lease. The
premises still have to be altered in certain
respects to suit the requirements of the
new tenant and time is of the essence,
otherwise your client stands to lose the
new tenant. (2)
VRAAG 9

9.1 Hoeveel dae word toegelaat in die Hooggeregshof om verskyn met verdediging aan te teken en hoe word die dae bereken in die volgende gevalle:

9.1.1 Waar die adres vir betekening van die dagvaarding op die verweerder, een privaat persoon, binne die reëgsgebied is van die Hooggeregshof waar dagvaarding uitgereik is.

9.1.2 Waar die adres vir betekening buite die hof se jurisdictie is naamlik 500 km vanaf die hofsetel.

9.2 Kan u steeds verskyn tot verdedig aanteen indien die dies verstryk het? Motiveer kortlik.

VRAAG 10

Onderwatter omstandighede is hoorsê getuëenis toelaatbaar in strafregtelike verringinge?

VRAAG 11

U kliënt is aan verkragting skuldig bevind. Gedurende konsultasies noem hy aan u dat hy alreeds drie keer skuldig bevind is aan misdade waarby 'n element van geweld teenwoordig is. Die SAP69 dokument maak geen melding van die kliënt se vorige veroordelings nie.

11.1 Berus daar 'n plig op u om die vorige veroordelings van u kliënt aan die Hof te openbaar? Hoe sal u hierdie aspek behandeler wanneer u die Hof toespreek ter versagting van vonnis.
### VRAAG 12

U word geraadpleeg om namens X op te tree. Hy is aangekla van die moord van 'n polisiebeampte wie tydens 'n gewapende rooif gepoog het om u klient te arresteer. U instruksies is om 'n aansoek om borg namens u klient te loods.

Bespreek die beginsels wat die Hof in ag sal neem tydens hierdie aansoek sowel as die prosedure wat gevolg sal word.

### VRAAG 13

U klient is van strafbare manslag skuldig bevind. Die Hof het bevind dat u klient sy motorvoertuig nalatiglik bestuur het en met die oorledene, 'n voetganger, gebots het. Die beskuldigde is 25 jaar oud en is 'n eerste oortreder. Hy is getroud en het 'n vaste betrekking. Hy onderhou sy bejaarde moeder. Sy verdediging dat die botsing veroorsaak is deurdat die beskuldigde in 'n noodtoestand verkeer wanneer die voorligger van sy voertuig gebars het wat veroorsaak het dat hy beheer oor die voertuig verloor, word deur die Landdros verwerp. Die Landdros het verder die getuienis van die distrikgeneesheer dat die oorledene kon gesterf het as gevolg van longontsteking wat hy in die hospitaal kon opgedoen het, nie aanvaar nie. Die beskuldigde is gevonnis tot 6 jaar gevangenisstraf.

U ontvang instruksies drie dae na vonnis en skuldigbevinding om appèl aan te tek en teen die skuldigbevinding sowel as die vonnis wat opgelê was.

13.1 Stel die beskuldigde se aansoek om verlof om te appelleer op, insluitende die kopstuk.
13.2 Binne hoeveeldae vanaf datum van vonnis moet die aansoek om verlof om te appelleer van datum van vonnis geroets word?

13.2 Within how many days from date of sentence must an application for leave to appeal be filed?

VRAAG 14

U ontvang instruksies om namens vry beskuldigdes op te tree wie aangekla is van gewapende roof. U konsulteer afsonderlik met elkeen van u kliente wat die meriete betref. Een van die beskuldigdes noem aan u dat hy nie in die roof betrokke was nie, maar dat al sy vier mede-beskuldigdes daaraan deegeneem het. Bespreek die etiese beginsels en verskaf redes vir u antwoord.

QUESTION 14

You receive instructions to act on behalf of five co-accused charged with armed robbery. You consult separately with each of the clients on the merits. One of the accused advises you that he was not involved in the said robbery, but that his four co-accused all participated therein. Discuss the ethical situation, furnishing reasons for your answer.

VRAAG 15

Dolly Dlomo spreek u oor ’n dagvaarding wat teen haar uitgereik is in die Johannesburge landdroshof. Daar is ’n aantal foute in die besonderhede van vordering wat hieronder uiteengesit word. Identiﬁséer die foute.

1. Eiser is B L NDLOVU, ’n minderjarige boer, wat woonagtig is te Weststraat 1, Johannesburge.

2. Eerste verweeër is DOLLY DLOMO, ’n meerderjarige onderwyser wat woonagtig is te Smithstraat 1, Durban.

3. Tweede verweeër is BONGANI DLOMO, ’n meerderjarige skoolhoof woonagtig te Smithstraat 1, Durban.

4. Op 1 Februarie 2008 het eiser en eerste verweeër ’n kontrak aangegaan ingevolge waarvan eiser ’n motorhuis moes bou by eerste verweeër se huis in Pretoria teen ’n koste van R110 000,00.

5. Op 1 Februarie 2008 het tweede verweeër homself mondelings verbind as ’n borg teenoor eiser vir die nakoming van eerste verweeër se verplichtinge kragtens die kontrak.

1. Plaintiff is B L NDLOVU, a minor builder who lives at 4 West Street, Johannesburg.

2. First defendant is DOLLY DLOMO an adult teacher who lives at 1 Smith Street, Durban.

3. Second defendant is BONGANI DLOMO, an adult school headmaster who resides at 1 Smith Street, Durban.

4. Plaintiff and first defendant entered into a contract on 1 February 2008 for plaintiff to build a garage at first defendant’s house in Pretoria at a cost of R110 000,00.

5. Second defendant on 1 February 2008 bound himself verbally as surety to the plaintiff for the first defendant’s obligations in terms of the contract.
6. Defendants have failed to pay the amount despite demand on the 1st April 2008.

Plaintiff prays for judgment against both defendants for:

a) Payment of R110 000.00.

b) Interest thereon at the rate of 10% per annum from 1 March 2008.

c) Costs on the scale between attorney and client.

VRAAG 16

It is consulted with Billy Naidoo during 2006. He dealt with a Flymo grasscutter at Lawnmower Repairs BK because of the repair work. The grasscutters was never delivered to the client due to the inability to deliver the repair work. Nadax he does not hear anything further from Lawnmower Repairs BK and Billy Naidoo saw the client on extended overseas holiday.

Met sy terugkeer word hy gekonfronteer deur die Balju in Mei 2008, met 'n lasbrief, uitgereik na aanleiding van 'n vonnis toegestaan ten gunste van Lawnmower Repairs BK teen hom in November 2007 vir R7 000.00 vir herstelkoste terwyli hy oorsee was.

Omdat hy die hoop gekoester het om die aangeleentheid met Lawnmower Repairs BK op te los, het hy u slegs 'n maand later geraad pleeg. Stel die nodige aansoek namens mnr Naidoo op sodat hy verweer voor die hof kan plaas. (Geen kopstuk, slot en beëdigde verklaring word benodig).
QUESTION 17

You act for a defendant. Your request for further particulars to plaintiff's summons has been unanswered. You require the information requested before you can draft your client's plea. Draft the necessary application to compel delivery of the further particulars (omit heading and ending).

QUESTION 18

You have obtained judgment against Golden Estate Agency (Pty) Limited in the Magistrate's Court. The sheriff could not find any attachable assets at their place of business. He was told by a director, S Golden, that all the equipment was on lease.

From sale boards and sold notices on display outside various local houses it is apparent that the defendant's business is doing well.

Your client does not want you to institute liquidation proceedings. What steps are available in the Magistrate's Court to find out what commissions are due to them and having found out, what would you do next to obtain satisfaction of the judgment?
QUESTION 1

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

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>R380 000,00</td>
</tr>
<tr>
<td>Less: 50% Apportionment</td>
<td>R190 000,00</td>
</tr>
<tr>
<td>Less: WCC Award:</td>
<td></td>
</tr>
<tr>
<td>Hospital expenses</td>
<td>R 60 000,00</td>
</tr>
<tr>
<td>Future loss of earnings</td>
<td>R 80 000,00</td>
</tr>
<tr>
<td>Past loss of earnings</td>
<td>R 20 000,00</td>
</tr>
<tr>
<td>Amount due to client</td>
<td>R 30 000,00</td>
</tr>
</tbody>
</table>
QUESTION 2

2.1 If the Fund does not, within a period of sixty (60) days from the date on which a claim was sent by registered post or delivered by hand, object to the validity thereof, the claim shall be deemed to be valid in law in all respects. There are no remedies available to the Fund in these circumstances (Section 24(5) of the Act).

2.2 The Fund shall not be obliged to compensate any person if the claimant refuses or fails to submit to the Fund an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out (see Section 19(f)(i) of the Act).

QUESTION 3

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

QUESTION 4

1. Peter will be able to claim for special damages only, being the hospital expenses, the medical expenses and the loss of income.

2. Yes. Peter's claim is limited to R25 000.00 in respect of special damages only.

3. No. Mr Jones cannot bring a claim on behalf of his daughter arising from his own negligence as little Mary is not only a member of the same house hold but he can only claim for bodily injuries sustained in the collision.

₄. Should it be proved that Peter was not wearing a seatbelt, an apportionment would be applied to the amount of damages that he has suffered, as he was contributorily negligent.

5. Peter has a claim against Mr Jones in respect of:

5.1 Any amount of the special damages that exceeds the sum of R25 000.00; and

5.2 The general damages in terms of the common law.

6. In the event another vehicle was to blame for the accident, Peter will be entitled to claim both special and general damages against the Road Accident Fund.
QUESTION 5

R25 000.00 in respect of passengers conveyed.

1.1 for reward (1)

1.2 in the course and scope of their employment less any award by the Compensation Commissioner (1)

1.3 in the course of the lawful business of the owner/driver of that motor vehicle (1)

1.4 for the purposes of a lift club (1)

2. R25 000.00 for special damages only in respect of any ordinary passenger who does not fall into any of the above categories. (1)

QUESTION 6

IN THE HIGH COURT OF SOUTH AFRICA

(---------------------- DIVISION)

Case No:..............

In the matter between:

Peter Brown

and

John Smith

and

Beryl Smith

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)

1. Dispensing with the forms and service provided for in the rules of the above honourable court

and entertaining this matter as one of urgency in terms of rule 6(12). (1)
2. That the estate of the first and second respondents be placed under provisional sequestration in the hands of the Master of the above honourable court. (2)

3. That a rule nisi be issued calling upon the respondents and all persons interested to show cause on the …… (date) (½) why the estate of the respondents should not be placed under final order of sequestration. (2)

4. That this order be served by

4.1 the Sheriff of this honourable court on the respondents personally (½) / on all the registered trade unions representing the employees of the respondents (½) / and the South African Revenue Services (½) as prescribed in the Insolvency Act.

4.2 by affixing copy of the order to a notice board accessible to the employees (½)

4.3 by giving notice by registered post to all known creditors (½)

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

6. Further and or alternative relief.

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

Kindly enroll the matter accordingly. (1)

Dated at ……………………. this day of 2008.

ABC Inc
Applicant’s attorney
Address

To: The Registrar, High Court (½)
To: The Master, High Court (½)
QUESTION 7

7.1 Cape Provincial Division.

7.2 Still Cape Provincial Division

7.3 Apply to court by way of an ex parte application (1) for an order authorising service by way of edictal citation (1).

QUESTION 8

8.1 An urgent application for eviction.

8.2 A combined summons.

QUESTION 9

9.1.1 Ten court days. Day of service excluded, last day included.

9.1.1 Twenty one calendar days, first day excluded, last day included but if last day falls on a Sunday or public holiday, such day is excluded and the following day included.

9.2 Yes, provided default judgment has not been entered.

QUESTION 10

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

QUESTION 11

11.1 There is no duty upon an attorney to advise the court as to the previous convictions of an accused if the state does not prove same. The practitioner may however not in his address on sentence refer to the previous convictions of the accused and state that the accused does not have previous convictions. Such an action shall amount to misleading the court. (3)

11.2 In terms of Section 60 (11B), an accused or his legal advisor is compelled to inform the court whether the accused has previously been convicted of any offence and whether there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges. (2)
QUESTION 12

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

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

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

QUESTION 13

13.1

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

In the matter between: 

Case No: 61/321/08

APPLICANT

THE STATE

RESPONDENT

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

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

LEGAL EDUCATION AND DEVELOPMENT [L.E.A.D]
AD CONVICTION:

1. That the Learned Magistrate erred in rejecting the evidence of the Applicant that he had been placed in a sudden emergency situation when the left front tyre of his vehicle burst causing him to lose control over the said vehicle, as being reasonably possibly true.

2. That the Learned Magistrate erred in rejecting the evidence of the District Surgeon that the death of the deceased could have been caused by pneumonia contracted whilst the deceased was in hospital as not being reasonably possibly true.

AD SENTENCE:

1. The sentence imposed upon the Applicant induces a sense of shock;

2. The Learned Magistrate failed to take into consideration the personal circumstances of the Applicant and in particular that he is a first offender, is in fixed employment and supports his aged mother;

3. The Magistrate erred in not taking into consideration the degree of negligence as being fairly slight and tempering the sentence accordingly.

4. The Magistrate erred in finding that imprisonment was the only suitable sentence and furthermore erred in not considering the imposition of a sentence which would have the effect of keeping the Applicant out of jail.

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

APPLICANT'S ATTORNEYS

TO: THE CLERK OF THE COURT
PRETORIA

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

(6)
13.2 Fourteen days.

**QUESTION 14**

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

**QUESTION 15**

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

*(NOTE: National Credit Act does not apply)*

**QUESTION 16**

**APPLICATION FOR RESCISSION OF DEFAULT JUDGMENT**

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

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

---

*LEGAL EDUCATION AND DEVELOPMENT [L.E.A.D]*
3. That the applicant be granted leave to defend this action;

4. That the respondent pay the costs of this application in the event of it being opposed.

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

QUESTION 17

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

1. That the respondent (plaintiff) furnish a response to the applicant’s (defendant’s) request for further particulars to his summons written 5 days of service of this order on him.

2. That the respondent be ordered to pay the costs of this application.

QUESTION 18

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