

PIC QUESTIONS:

1. Mr Walker, a pedestrian, was fatally injured when a reach stacker collided into him. A reach stacker is a hoisting device for stacking, lifting and manoeuvring containers in the container yards of small terminals or medium-sized ports. It is designed for propulsion of containers over short distances. Reach stackers are equipped with booms capable of being extended and raised hydraulically. The vehicle has six wheels and is fitted with a rear-view mirror. The reach stacker in question was equipped with full road going lighting, including taillights, indicators, brake lights and reverse lights. Furthermore, it was fitted with windscreen wipers and washers, a hooter, and a handbrake.

1.1 Can a reach stacker be classified as a motor vehicle? Discuss with specific reference to the definition of a “motor vehicle” in terms of the Road Accident Fund Act 56 of 1996 which sets out the requirements for a vehicle to be classified as a motor vehicle and applicable case law.

2. Name the claims for compensation that can be instituted against the Road Accident Fund and under which circumstances precisely?

3. You are consulted by Mr and Mrs Williams who advise you as follows:

- On the 30th of June 2012 they were travelling from their home in Johannesburg to visit relatives in Durban. Mr Williams was driving and Mrs Williams, who was seven months pregnant at the time, was seated in the front passenger seat.
- Whilst travelling on the national road (N3) in the vicinity of Pietermaritzburg, a collision occurred between the vehicle driven by Mr Williams and another motor vehicle. The driver of the other vehicle was solely to blame for the collision.

- Mr Williams suffered a fractured femur, a dislocated shoulder and a soft tissue injury of the lower back.

Mrs Williams injured her abdomen and fractured her pelvis as well as several ribs. The foetus also sustained injuries and Mrs Williams had to undergo an emergency caesarean section.

As a result of the injuries sustained in utero their baby, a boy, was born severely brain damaged. The doctors have advised Mr and Mrs Williams that their son's injuries are permanent, and that he will require future medical treatment.

- Prior to the collision Mrs Williams was a housewife and Mr Williams was employed as an accountant.

He was unable to work for 6 months and only received sick leave for 3 months. He has since returned to his former employment as his injuries have healed fully and he requires no future treatment.

- They also hand to you a number of vouchers in respect of their hospital and medical expenses which they have already paid and advise you that Mrs Williams will require further surgery in the future.

You advise the couple that there are certain claims that can be made against the Road Accident Fund. Answer the following questions with reference to the above factual information:

3.1. Do Mr and Mrs Williams have claims for compensation in respect of their personal injuries against the RAF?

3.2. Do the couple have a claim for compensation against the RAF in respect of injuries sustained by their son? If so who would be entitled to lodge such a claim?

3.3. List the heads of damages in respect of the pecuniary loss that may be recovered by each claimant.

3.4. What criteria must be established in order for your clients to recover non-pecuniary loss?

3.5. Assume that you have duly prepared the relevant claim documentation.

3.5.1. Where would you lodge the relevant claims?

3.5.2. In the case of legal proceedings having to be commenced, which court will have jurisdiction?

4. Mrs Mthimunye instructs you to lodge a claim for damages against the Road Accident Fund. You have less than 36 hours to lodge the claim before it prescribes. You are unable to locate the clinical and hospital records.

What steps would you take to lodge a valid claim timeously?

How would you deliver the claim to the Road Accident Fund?

5. Your client was involved in a motor collision on the 13 March 2013. You are instructed to lodge a claim against the Road Accident Fund.

5.1. By when must a valid claim be lodged? Please make a distinction between any prescriptive period applicable to the lodgement of claims.

5.2. What steps, if any, would you take to motivate your client's claim for general damages?

5.3. By when should such steps, if any, be taken?

6. You are acting for Sam Dube, the stepfather of twin boys, who instructs you as follows:

On the 15th of April 2012, 10 (ten) year old Andile and his twin brother Sandile were playing football on an overgrown field next to their home. Jabulani Xhosa was on his way to make a delivery when he lost control of the truck he was driving causing it to leave the road and plough into the field.

The truck went over both boys, killing Sandile immediately. Andile was pinned under the truck and sustained severe spinal injuries which rendered him a paraplegic. He is also suffering from significant emotional shock and trauma as a result of being unable to walk.

Mr Dube also furnishes you with the following information. The twin's father passed away before they were born. He married their mother when the boys were 2 years old. Their mother died when they were 7. He has always taken care of all their needs and considers them to be his children.

He has suffered significant emotional shock and trauma as a result of Sandile's death and is being treated by a psychologist. Mr Dube has incurred funeral expenses iro of Sandile. Andile's medical expenses have thus far been paid by the medical aid scheme.

- 6.1. By what date must the claim for Sandile's funeral expenses be lodged with the RAF?
- 6.2. By when must the claim iro Andile's damages be lodged with the RAF?
- 6.3. Can Mr Dube lodge a claim iro of Sandile's funeral expenses?
- 6.4. Can Mr Dube lodge a claim iro of Andile's damages?
- 6.5. Can Mr Dube lodge a claim with the RAF in his personal capacity for the emotional shock he has suffered.
- 6.6 Identify the heads of damages you intend pursuing iro of Andile's claim.
- 6.7. Would your answer to no 6 above differ if Andile's past medical expenses had not been paid by the medical aid scheme?
- 6.8. Is Andile entitled to recover damages for emotional shock from the RAF.

7. You are approached by a motor vehicle accident victim who instructs you that his accident happened on 6 September 2009 when another vehicle collided into the back of his vehicle. You are instructed to assist with the lodgement and prosecution of his claim against the RAF. The accident and the subsequent injuries, have rendered your client unemployable as he is now, in a/wheelchair-bound. Your client worked as a financial advisor at ABSA Bank with an annual salary package of R420 000,00 at the time of the accident.

7.1 Would your client be in a position to recover from the RAF the entire annual package of R420 000,00 per annum as loss of earnings, for each of the years that he would have remained in employment?

7.2 In the event your client is unable to recover all of his damages from the RAF, what steps, if any, can be taken to recover damages on behalf of your client in terms of the common law.

7.3 In the event that the RAF objects to the RAF 4 form submitted on behalf of your client: By when must the RAF notify you of their objection? (

7.4 Can your client make an argument on whether the injuries he sustained are of a serious nature, or not, in the Court out of which his action was instituted?

7.5 Under what circumstances is your client entitled to costs from RAF?

8. Does a claimant have a claim for bodily injury against the negligent driver and or owner of a vehicle, and, if so, when?

9. You are acting for Martha Mbhense and Amos Khumalo, security guards who were injured as a result of a motor vehicle collision which occurred on 27th July 2007.

The circumstances of the collision were as follows:

- Martha was a passenger in a vehicle which was driven by her co-worker, Amos Khumalo.
- They were traveling to the scene of a house-breaking when Amos lost control of the vehicle and collided into a tree.
- Both Martha and Amos were seriously injured. Martha sustained a fractured pelvis and a fractured clavicle. Amos's right leg was crushed and was amputated at the hip joint.

Due to their injuries, both have been unable to work subsequent to the collision.

- Both Martha and Amos have incurred, and will in future incur, hospital and medical expenses, as well as suffering a loss of earnings.

You may assume that all the appropriate legal steps were taken within the prescribed time limits, such that no claim has become prescribed. However, neither Martha nor Amos has been compensated to date.

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

9.1 Does Martha Mbhense have a claim against the Road Accident Fund, and if so is her claim limited in any way?

9.2 Does Amos have a claim and, if so, against whom?

9.3 Identify all the heads of damages in respect of Martha's claim against the Road Accident Fund.

9.4 Assume that Martha is assessed and it is established that she has sustained a 20% whole person impairment (and does not satisfy any of the criteria of the narrative test.) What effect will this have on the heads of damages identified above?

9.5 Identify any other claims that Martha may have.

9.6 In the event that Martha is unable to recover general damages from the Road Accident Fund, is she able to recover same from any other source?

10. Mr A is a passenger in a vehicle driven by Mr B. A collision occurs between the vehicle driven by Mr B and a cyclist Mr C. Mr D was a passenger on Mr G's bicycle.

A and D sustained serious injuries in the accident.

Answer the following questions:

10.1 It is found that C was exclusively negligent in causing the collision. Will A have a claim against the Road Accident Fund?

10.2 If it is found that B's negligence contributed 20% to the collision will your answer above be different?

10.3 On acceptance that B's negligence contributed 20% to the cause of the collision will D have a claim against the Road Accident Fund?

11. How soon after a claim has been lodged with the Road Accident Fund can summons be issued and/or under what circumstances?

12. When would a Plaintiff be entitled to compensation for general damages (non pecuniary loss)?

13.1 Mr X was involved in a motor vehicle collision as a passenger on the 20th of April 2014 whilst on duty. The vehicle in which he was a passenger was driven by a fellow employee. His claim against the Road Accident Fund was duly lodged and his employer also lodged a claim against the Compensation Commissioner in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. The Compensation Commissioner made a final award in the total amount of R224 000.00 which award is made up as follows:

a) R11 000.00 in terms of Sec 47 for the temporary total disablement.

b) R63 000.00 in terms of Sec 49 for permanent disablement.

c) R150 000.00 in respect of medical, transport and hospital expenses in terms of Sec 73 read with Sections 72 and 76.

The Road Accident Fund accepts liability towards the plaintiff and his claim is quantified as follows:

aa) Past medical and hospital expenses R150 000.00

bb) Past loss of earnings R 70 000.00

cc) Future loss of earnings R430 000.00

dd) General damages (non-pecuniary loss) R200 000.00

TOTAL: R850 000.00

What amount should be paid out by the RAF to the claimant?

13.2 Assume that the vehicle in which Mr X was travelling was driven by his employer. How would this affect his claims?

14. You are consulted by Mrs Patience Ngubane, a widow, who advises you as follows:

- Her daughter, Margaret Shezi, passed away on the 2nd of January 2015 as a result of injuries sustained in a motor vehicle collision.
- Margaret is survived by her three dependent children namely Moses (aged 18), Mandia (aged 10) and Thulile (aged 8) all of whom are attending school.
- The children have been residing with Mrs Ngubane in Durban from the 1st of January 2010, when their father passed away and their mother moved to Gauteng, where she obtained employment as a domestic worker.
- Whilst she was alive Margaret regularly sent money home to her mother to pay for the children's education and maintenance.
- Subsequent to Margaret's death Mrs Ngubane has successfully applied for and is in receipt of child support grants however she has already incurred considerable personal expenses in supporting the children.

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

14.1 Identify the claims, if any, that Moses, Mandia and Thulile may have as a result of their mother's death.

14.2 Are Mandia and Thulile able to lodge any claims you have identified above in their personal capacities, bearing in mind that both parents are deceased?

14.3 Is Mrs Ngubane entitled to lodge claims on behalf of any of the children?

14.4 Who may lodge claims on behalf of the three children?

14.5 After the claims have been duly lodged and investigated you enter into settlement negotiations with the Road Accident Fund and obtain an offer of settlement in the amounts you have claimed save for the fact that the RAF has deducted the amounts received as child support grants. What advice would you give your clients regarding the proposed settlement?

15. You are consulted by June Mbatha who advises you as follows:

On the 25th of April 2016, June was travelling in a motor vehicle driven by her boyfriend Joseph Sibiya. Their 4 (four) year old daughter, Silindile Sibiya, was seated in the rear passenger seat.

Whilst travelling along the National Road (N2) in the vicinity of Port Shepstone, the driver of a minibus taxi, lost control of the taxi and collided into the rear of the vehicle driven by Joseph Sibiya. Neither the owner nor the driver of the taxi was identified.

June suffered fractured ribs and severe facial lacerations.

Silindile sustained a severe head injury.

Joseph sustained serious head injuries which rendered him comatose. He was transported to the nearest ICU unit where he was admitted. Unfortunately, he passed away as a result of his injuries on the 12th of May 2016.

Prior to the collision, the couple had lived together for 5 (five) years. Joseph was employed by the Department of Education as a cleaner. June was unemployed and took care of the home. Joseph supported both June and Silindile financially and his death has left them destitute. Although June and Joseph were not married their respective families had met and negotiated the lobola. Joseph had in fact already made payment of half the agreed lobola to June's family. The couple intended to marry once the lobola was paid in full.

June produces a number of vouchers in respect of Joseph's medical expenses as well as funeral expenses and advises that Joseph's medical expenses were paid by his medical aid but she has paid the funeral expenses. You advise June that there are certain claims that can be made against the Road Accident Fund.

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

15.1 Does June have locus standi to lodge a claim with the Road Accident Fund in respect of the injuries sustained by Silindile in the light of the fact that Silindile's surname differs from June's.

15.2 Who has locus standi to lodge a claim with Road Accident Fund in respect of Joseph's funeral expenses? .

By what date must each of the following claims be lodged with the Road Accident Fund:

15.3.1 June's personal claim for her own injuries.

15.3.2 The claim in respect of Silindile's injuries.

15.3.3 The claim in respect of funeral expenses.

15.4 Can a claim be lodged with the Road Accident Fund in respect of the medical expenses incurred in respect of the treatment rendered to Joseph prior to his death?

15.5 Is Silindile entitled to be compensated for the support she has lost arising from the death of Joseph?

15.6 Is June entitled to be compensated for the support she has lost arising from Joseph's death?

15.7 Assume that it is established that Joseph was intoxicated and lost control of his motor vehicle thereby causing it to overturn. No other motor vehicle was involved. What effect would this have:

15.7.1 On the personal injury claims of June and Silindile.

15.7.2 On the loss of support claims of June and Silindile.

16. Your client was 6 (six) months pregnant when she was run over by an intoxicated driver of a stolen go-cart.

16.1.1 Will she have a claim against the RAF for the injuries which she sustained in the accident?

16.1.2 Will your answer differ if she was run over under the same circumstances by a speeding bus?

16.1.3 The only damages suffered by your client was the loss of her foetus. Advise your client regarding the probability of instituting a claim against the RAF for non-pecuniary loss (general damages).

17. Your client sustained serious injuries in a motor vehicle accident. You have forwarded the RAF1 medical report to the hospital where he was treated after the accident for completion by the treating doctor. The hospital informs you that the doctor who treated your client has since passed away. The claim will prescribe in a month's time. Who else can complete RAF1 medical report under the circumstances?

18. You act on behalf of Mrs X who was injured in a motor vehicle accident on 2 March 2015. You are of the view that she will qualify for non pecuniary loss (general damages) and your client's claim consists of general damages, past medical and hospital expenses, future medical expenses and past loss of earnings.

You lodge the claim for her damages arising out of her injuries sustained in the accident with the RAF on 5 April 2016. A duly completed RAF4 (Serious Injury Assessment Report) was lodged with the claim documents. On 6 May 2016 you receive a letter from the RAF in terms of which the RAF4 (seriousness of your client's injuries) is rejected, with the result that the RAF is of the view that your client will not be entitled to be compensated for non-pecuniary damages. You are convinced that your client indeed suffered serious injuries.

18.1 Describe what steps you must take to challenge the rejection of the RAF, within what time limit this must be done, what documents will be required to challenge the rejection by the RAF, and where must the challenge of the dispute with the RAF be lodged?

18.2 Accept that it is eventually found that your client's injuries are not serious to the extent that she will qualify for non-pecuniary damages, will she still be able to claim for past medical expenses, future medical expenses and past loss of earnings?

19. You are consulted by Mrs van der Merwe. She informs you that on 1 February 2016 she was the driver of her motor vehicle and that her two (2) minor children were passengers in her vehicle.

On the day in question she had parked her vehicle in a street in Port Elizabeth at an incline. She had switched off her vehicle's engine after which she alighted from the vehicle to go around the vehicle to fetch her two (2) minor children from the back seat. While in the process of moving around her vehicle it started moving down the incline and eventually collided with an oncoming bus. She could do nothing to stop the moving vehicle and noticed the accident while standing on the pavement. Both minor children sustained serious injuries in the motor vehicle accident. Will it be possible to lodge claims on behalf of the two (2) minor children in terms of the Road Accident Fund Act 56 of 1996, arising out of the bodily injuries which they sustained in the Accident?

20. You are consulted by your client who has suffered damages as a result of the injuries that he sustained in a motor collision. The driver of the motor vehicle in which he was a passenger was to blame for the accident. Your investigations into your client's claim reveal that your client does not have a claim for non-pecuniary loss as contemplated in terms of Section 17(1A) of the Road Accident Fund Act, however your client does have a substantial claim for past and future loss of earnings.

Your instructions are that your client has received his full salary whilst away from work. His employer paid him in full during his period of absence from work although the employer was not obliged to do so in terms of your client's contract of employment.

20.1 Draft a letter to your client's employer setting out all the information that you require to formulate and subsequently substantiate a claim for loss of earnings on your client's behalf.

20.2 Is your client entitled to recover in respect of past loss of earnings?

21. One Sunday afternoon Mr. X, whilst mowing his lawn with a man-driven (ride on) lawnmower, decides to cross the street with the mower so as to mow his neighbour's lawn. Whilst crossing the street the neighbour's minor child age 4 runs into the street causing him to be knocked down by Mr X.

Will the minor child have a claim against the RAF for his injuries?

22. You are consulted by Mrs Mildred Kunene, who advises you as follows:

On the 15 of February 2018, her 6 year old grandson, Wilfred Kunene was travelling in the bin of a Toyota Hilux. The driver of the Toyota lost control of the vehicle on a sharp bend, causing the vehicle to swerve violently. As a result, Wilfred was thrown out of the vehicle and suffered serious injuries. Neither the owner nor the driver of the Toyota has been identified.

Wilfred resides with his grandmother as both his parents are deceased and she has been supporting him with the aid of the child support grant she receives on his behalf.

Mrs Kunene lodged a claim on Wilfred's behalf directly with the Road Accident Fund on the 1 of May 2018. She is unhappy with the RAF's offer today to settle the merits of Wilfred's claim on the basis of an 80/20% apportionment meaning the RAF want to deduct 20% from Wilfred's claim because he was negligent in travelling in the bin of the vehicle. She now instructs you to issue summons against the RAF.

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

22.1 Can summons be served upon the Road Accident Fund bearing in mind that the claim has not been repudiated?

22.2 Does Mrs Kunene have the necessary locus standi to act on Wilfred's behalf?

22.3 Is the Road Accident Fund correct in applying a 20% apportionment to Wilfred's claim?

22.4 How would you place yourself on record with the Road Accident Fund in respect of Wilfred's claim?

22.5 By when must summons be served upon the RAF?

22.6 Assume that after the matter is litigated you receive an offer of settlement but the RAF has deducted the value of the child support grant Mrs Kunene has received over the years. What advice would you give Mrs Kunene in this regard?

22.7 Assume that the matter is finalised and the RAF makes payment in the sum of R 5 000 000-00. Mrs Kunene requests that the funds be paid to her personally. What advice would you give?

23. You are consulted by Mr A. He informs you that he was involved in a motor vehicle accident on 01 March 2015. He was a passenger in a vehicle of which the driver lost control and overturned. It can be accepted that the driver of the vehicle in which the plaintiff was a passenger, was negligent in causing the accident. Although Mr. A. was a passenger in the said vehicle, he was the owner of the vehicle.

Due to the injuries sustained in the accident Mr. A. has been paralysed and is no longer able to work. He therefore suffered damages in the form of past medical and hospital expenses, future medical expenses, future loss of earnings and non-pecuniary damages (general damages).

Furthermore, his vehicle was written off (was not economically repairable), his contact lenses were destroyed in the accident and his cell phone was damaged beyond repair. His instructions are to recover all the damages which he suffered. From whom will the damages which he suffered, as mentioned above, be recovered?

24. John is the driver of a motor vehicle that is involved in a head-on collision with a truck. It has been established that both John and the driver of the truck were 50% to blame.

24.1 What effect will this have on the quantum of John's claim against the Road Accident Fund?

24.2 Assume that the court concludes that John was the sole cause of the collision. What effect will this have on John's claim?

24.3 Assume that John was a passenger in the motor vehicle driven by a friend, but that both drivers were 50% to blame. What effect will this have on John's claim?

25. You are consulted by Mrs Patricia Khumalo, who advises you as follows:

Her husband, Sibusiso Khumalo was killed outright in a motor vehicle collision. Mr Khumalo was a self-employed builder prior to his death and was the sole breadwinner of the family. As a result of Mr Khumalo's death, Mrs Khumalo and their three (3) children are now destitute.

Mrs Khumalo requests your assistance in pursuing a loss of support claim against the Road Accident Fund.

25.1 What documentation should accompany your client's claim documents in support of the allegation that Mr Khumalo's death resulted from the accident on which the claim is based?

25.2 What documentation must be lodged with the claim in order to satisfy the legal nexus and prove that Mrs Khumalo and the couple's three (3) children were legally dependent upon Mr Khumalo for support.

25.3 List three (3) documents you could submit to the RAF in support of Mr Khumalo's pre-morbid income?

26. Assume that Miss X went for a serious injury assessment and that according to the results of the assessment her injuries were considered serious enough to claim for general damages. The Road Accident Fund has however rejected the assessment report. Miss X is unhappy about the rejection and wants to take the matter further. Advise Miss X on what further steps she could take and who will be liable for the costs thereof.

27. After the adjudication of the merits of your client's claim it comes to your attention that she has fallen on hard times and in dire need of some financial assistance. You are required to advise as to the possibility of assisting your client pertaining to the following heads of damages:

27.1 Past hospital and medical expenses

27.2 Future hospital and medical expenses

27.3 Past loss of income

27.4 Future loss of income

27.5 General damages.

28. You are required to list three suspensive conditions relating to prescription as well as the time frame until which each suspension runs.

29. Indicate when a curator ad litem will be required for a person and when a curator bonis will be required for a person.

30. Upon consulting with your client it becomes evident that he will not satisfy the 30% threshold to qualify for non-patrimonial damages under the whole person impairment test. Advise you client as to the claim for non-patrimonial loss.

31. You are consulted by Ms Emilia Adams who instructs you as follows:

She had been in a long term monogamous relationship with a life partner Peter Jansen for 10 years

From this relationship two minor children were born

Ms Adams instructs you that she and Mr Jansen lived together as man and wife and that throughout their relationship he had supported her and the children.

He was the sole breadwinner for the family as she was by agreement between them unemployed

Two months ago Mr Jansen, whilst being conveyed as a passenger in a motor vehicle was killed in a motor vehicle accident.

ANSWER THE FOLLOWING QUESTIONS WITH REFERENCE TO THE ABOVE FACTUAL INFORMATION

31.1 Can Ms Adams claim loss of support for herself in her personal capacity?

31.2 Can Ms Adams claim for loss of support for the children and if so over what period?

31.3 On the assumption that Mr Jansen was not wearing a seatbelt and was thus flung from the vehicle when it rolled resulting in fatal injuries explain, if at all, how this will affect your answers to above?

32. You are consulted by Mr Jones who was knocked off his motorcycle by a motor vehicle which executed a right hand turn into his path of travel. Mr Jones had never obtained a license to ride a motorcycle. He instructs you to claim for personal injuries suffered in the accident and for the value of his motorcycle which was written off as a result of damage caused by the accident.

What damages, if any, can be claimed by Mr Jones from the Road Accident Fund?

Against who can Mr Jones claim for damages, if any, not covered by the Road Accident Fund Act 56 of 1996?

What effect, if any, will the fact that Mr Jones does not have a licence to ride a motorcycle have on any claims he might have?

33. You are required to distinguish between the degrees of negligence that need to be proven in respect of a passenger claim and a driver's claim.

34. Explain what collateral benefits are?

List four non-deductible collateral benefits.

35. Explain the difference between General Damages & Special Damages.

Provide six (6) examples of Special Damages.