

Below you will find popular questions that have been asked in competency-based oral examinations in years past, however, please note that this is only intended to be a supplementary tool in effectively preparing for the oral exam. In no way do we guarantee that these questions will be asked in the 2022 oral exam.

1. The requirements an applicant must satisfy to succeed with an application for an interim interdict:

- a. a *prima facie* right, even if it is subject to some doubt;
- b. a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted;
- c. the balance of convenience must favour the granting of the interdict; and
- d. the applicant must have no other remedy.

2. There is significant distinction between the possessory remedy of spoliation and *rei vindicatio* which are both remedies for reclaiming possession, explain the difference.

- a. Three requirements must be met for a claim to be based on the *rei vindicatio*:
 1. There must be proof of **ownership** on the part of the person instituting the action;
 2. the property must exist and be identifiable; and
 3. the defendant must be in physical control of the property at the time the action is instituted.
- b. **Spoliation is the wrongful deprivation of another's right of possession.** The aim of spoliation is to prevent self-help. An applicant must prove two requirements;
 1. The first is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant - that is why a thief is protected.
 2. The second is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant, as that would go to the merits of the dispute.

3. How to calculate accrual calculation:

The accrual of a spouse's estate is calculated by subtracting the net asset value of his or her estate at the commencement of the marriage from the net asset value of his or her estate upon dissolution of the marriage. Net accrual is calculated by subtracting the "smaller" accrual from the "larger" accrual.

Various assets are excluded from the determination of the accrual of a spouse's estate, and they are:

1. Any amount which accrued to the estate by way of **damages** other than damages for patrimonial loss;
2. Any asset which has been **expressly excluded** from the accrual system in terms of the antenuptial contract of the spouses as well as any other asset which a spouse has acquired by virtue of his or her possession or former possession of such asset;
3. An **inheritance, a legacy or a donation** which accrues to a spouse during the subsistence of his or her marriage as well as any other asset which he or she acquired by virtue of his or her possession or former possession of such inheritance, legacy or donation, except insofar as the spouses may agree otherwise in their antenuptial contract or insofar as the testator/testatrix or donor may stipulate otherwise;
4. **Donations between spouses** other than a donation mortis causa (after death).

4. Types of marriages:

In- out- and customary marriages.

5. Requirements for customary marriage:

1. The couple must consent to a customary marriage in accordance to customary law;
2. couple must be older than 18 years or have parental consent;
3. and the marriage must be negotiated and entered into or celebrated according to customary law.

6. Failure to register a customary marriage does not affect the validity of that marriage.

7. Customary marriage does not include customary marriages entered into within other religions, for example, Hindu or Muslim, however customary Muslim marriages conducted by Imams registered as marriage officers are in community unless ANC.

Trust funds

8. When can you pay money out of trust?

1. payments to third parties on instruction of the client
2. an investment in terms of section 86(4) of the Legal Practice Act made under the written instruction of the client
3. payment of expenses for a specific purpose, as determined by the client
4. payment to the instructing attorney in respect of correspondent transactions

5. transfer of money from the trust bank account to the business bank account when the attorney has rendered a service for which an amount is due by the client.

9. Trust money is clients' money!

10. Can you use trust money to pay business expenses?

No

11. Can an attorney share fees with a candidate LP?

No

12. Can they pay them a commission?

Yes

13. What is LITIS CONTESTATIO? When are pleadings considered to be closed?

- Where neither party has made a new allegation or served another pleading.
- The prescribed time period to file a replication or subsequent pleading has elapsed without any new pleading being served.
- The parties agree in writing that pleadings are closed, and this agreement is filed with the registrar or clerk of the court.
- The court declares the pleadings to be closed.

14. Ways in which you can approach the court in a civil matter?

a. Application, Applicant and Respondent

To apply for leave to appeal

Rule 43 applications for interim relief

Review

Rescission of Judgments

Interlocutory applications

Interdicts

Third party procedures

Joinder of parties

Consolidation of actions

b. Action, Plaintiff and Defendant

Illiquid or unliquidated

Personal injury claims

Motor vehicle accident claims

Divorce matters

15. What test will you use to determine what to use?

Whether or not there is a substantial factual dispute or not.

16. What is locus standi? (standing in court)

17. Which test is used to determine locus standi?

a. First interest in the matter;

- Anyone acting in his or her own interest
- Anyone acting on behalf of another person who cannot act in his own name
- Anyone acting as a member of or in the interest of a group or a class of persons
- Anyone acting in the public interest
- Association acting in the interests of its members.

b. Second legal capacity

- minors
- persons suffering mental disability, declared incapable of managing their affairs by a competent court
- prodigals.
- insolvents
- liquidated companies

18. Factors that determine jurisdiction?

- Geographical area
- Cause of action (divorce exception)
- Type of matter (e.g. civil, crime)
- Monetary limit
- Whether the matter is taken on appeal or review

19. Sources of law

- Constitution
- Legislation
- Common law
- Customary law
- Case law

20. Procedure after arrest

Arrested person he or she shall be brought before a lower court as soon as reasonably possible, but not later than **48 hours after the arrest**. However, if the 48-hour period expires **outside ordinary court hours** or **on a day which is not an ordinary court day**, the accused shall be brought before a lower court **not later than the end of the first court day**.

Section 50(2) of the CPA defines for the purposes of this section -
'a **court day**' is the day on which the court in question normally sits as a court;
and
'**ordinary court hours**' means the hours from 9:00 until 16:00 on a court day.

21. Securing attendance before court

- Arrest
- Summons (for lower courts only)
- Written notice in terms of section 56 of the CPA (for magistrates' courts only)
- Indictment (for the High Court only)

22. Statement in terms of Section 115 of the Criminal (Plea of NOT GUILTY) VS Statement in terms of Section 112(2) of CPA (Plea of guilty at summary trial)

23. Appeal vs Review

Conduct vs Judgment

24. Rule nisi (provisional order with a return date)

25. Wills

If the testator signs the will by the **making of a mark**, or the will is signed by some other person whom the testator directed to do so, a **commissioner of oaths** must certify that –

- he has satisfied himself of the identity of the testator; and
- the will so signed is the will of the testator.
- The commissioner of oaths must also sign **each page**, anywhere on the page, of the will other than the page on which his certificate appears, in his capacity as commissioner of oaths.

26. *animo revocandi* (intention to revoke will)

27. Capacity to make a will (16 years)

28. Capacity to sign as witness (14 capability to give evidence in a court of law)

29. Important powers to give your nominated executor;

- Power of assumption
- Exempt from furnishing security

30. Joint vs Mutual wills

31. Persons who are disqualified from inheriting under a will?

- A person or his/her spouse who writes a will on behalf of the testator;
- A person or his/her spouse who signs a will on instruction of the testator; and
- A person or his/her spouse who signs the will as a witness.
- de bloedige hand erft niet
- Undue influence

32. Intestate scenario

John dies intestate and was married according to customary law with an ANC and is survived by;

Wife 1: Pulane

Wife 2: Zodwa

Son: Peter

Daughter: Ayanda

Daughter from Zodwa's previous marriage: Amanda

Brother: Jan

Uncle: Tom

Who inherits his estate?

Polygamous wives (R250 000 or child share), Peter and Ayanda.

33. In Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma v National Director of Public Prosecutions and Others 2009 (1) SA 1 (CC) the court listed four requirements for legal privilege:

- The legal practitioner must have acted on the information in his or her professional capacity.
- The consultation with the legal practitioner must have been in confidence. There must therefore also be an element of confidentiality present in the exchange.
- The purpose of the consultation must have been for the client to obtain legal

advice.

- The advice given must not have facilitated the commission of a crime or fraud.

34. The meaning of “without prejudice”

Here a particular type of privilege comes into play. It namely means that that particular statement cannot be used in court against the person who made it. The purpose of making a statement without prejudice is to try to settle the matter out of court, to shorten the legal process.

35. Go look at the code of conduct gazetted 29 March 2019 by the Legal Practice Council. Focus on part ii, iii, vi.

36. What is a discretionary trust?

Trust where the trustees have the discretion when and how the funds are given to the beneficiaries.

37. What is the first meeting of the creditors for, on insolvency?

The main purpose of the first meeting is to provide the creditors an opportunity to prove their claims against the estate, nominate a trustee, give directions to the trustee, interrogate the insolvent and other persons and to consider an offer of composition by the insolvent.

38. How would you site the parties if the defendant is a partnership?

Site the partnership as the first respondent and then site all the partners in their personal capacity

39. Client comes into your office, he signed a contract which has an arbitration clause however he was issued with summons and no arbitration took place – what do you do?

You raise a special plea of arbitration

40. Client hands you photos as evidence how do you present it in your case?

Notice in terms of Rule 36(10)(a)

41. Difference between the AIF and the Fidelity Fund?

The Attorneys Fidelity Fund exists to protect the public against loss as a result of theft of trust funds.

The AIF is to provide all legal practitioners who are obliged to be in possession of a Fidelity Fund certificate, with a primary level of professional indemnity insurance.

42. Who drafts an ANC and what types of ANC's are there and where are they registered?

Notary, With and without accrual, deeds office

43. Can you claim damages in a criminal matter?

Yes, only patrimonial damages and not punitive (punishing) damages.

44. What are patrimonial damages?

Special damages suffered out of the persons estate i.e., the monetary value of the actual loss suffered.

45. What does it mean to take a matter on pro bono?

(For public benefit) Free of charge for a member of public

46. What does it mean to assist someone as *pro amico*?

Free of charge for friends and family

47. May you assist your bank manager *pro amico*?

No