



<u>FACULTY</u>	:	Law
<u>DEPARTMENT</u>	:	Procedural Law
<u>MODULE</u>	:	ALS41Y0 / TPR0000 APPLIED LEGAL STUDIES
<u>SEMESTER</u>	:	SECOND
<u>EXAM</u>	:	JANUARY 2021 SUPPLEMENTARY EXAM

<u>DATE</u>	:	18 January 2021			
<u>ASSESSOR(S)</u>	:	Mrs. N. Naidoo			
<u>MODERATORS</u>	:	Prof D S de Villiers, Mr E J Hanekom			
<u>DURATION</u>	:	4 Hours	<u>MARKS</u>	:	70

NUMBER OF PAGES: 6 PAGES (4 questions)

INSTRUCTIONS:

1. This is an online open book exam.
2. You have 4 hours to compete it.
3. The question paper will be uploaded to Blackboard on 18 January 2021 at 08:00 and you must download the question paper and start answering online. When you are ready to submit, you must upload your answers to blackboard by no later than 12:00

4. You may make use of your lecture slides, your clinical law textbook, the orientation bundles and your own notes.
5. Answer all questions.
6. Use full sentences.

QUESTION 1

Read the under-mentioned consultation notes carefully, and then answer the questions that follow. You may make up facts that amplify these facts, but you may not alter the given facts at all.

CONSULTATION NOTES.

Client, Miss Petunia Pillay, explained that she is a co-owner of a small family business, **BEAUTIFUL SOULS** that provides a range of beauty therapy services, situated at 12 Beauty Lane, Melrose Arch, Melrose North, Johannesburg, 2191. The property from where she conducts business is also family owned. The business is a CC. Her business partner is her brother, Nathan. Her brother manages the clients, while she works behind the scenes. The business has been in the family for 10 years. They have expanded the business and entered into a partnership with **C U FIT**, to include a wellness and fitness programme. Cleopatra Fitwell who is the sole proprietor owns C U FIT. Since COVID and the national lockdown, business has been very difficult. The partnership with **C U FIT** will help the client to alleviate some of the financial difficulties the business is experiencing.

Client wants to formalize the relationship between Beautiful Souls and C U FIT.

Client also informs you that she wants C U FIT to pay rental for the space that Miss Fitwell will be using to conduct her end of the business. She will be renting **80 square meters** of the property at an amount of **R10 000.00** per month inclusive of water and electricity.

QUESTION 1.1

What agreement/contract will you draw up for the client to formalise the relationship with C U FIT? **[1]**

QUESTION 1.2

Draft the dissolution clause of this agreement. **[3]**

QUESTION 1.3

Draft the following clauses that will regulate the rental arrangement between the client and C U FIT, which will give effect to the client's instruction.

1.3.1 The clause defining the parties.

1.3.2 The main clause.

1.3.3 The consideration clause.

1.3.4 The method of payment clause.

1.3.5 The breach clause.

[2x5=10]

QUESTION 2

Mr Zuma who owns a shoe shop at Campus Square approaches you. He has three employees namely, Mavis, Shani and Jenny. He has had to close his shop during the COVID- 19 lockdown and has no income. His business is not an essential service. He does not want to apply for any of the government loans because he will be placed in a worse position.

He was able to pay rent for March 2020 (R12 000.00) and April 2020 (he received a R1500.00 discount and paid R10 500.00). He was unable to pay salaries for April 2020.

He lives from month to month without an income and he can therefore not pay his staff.

His employees have been at home without a salary for the month of April.

Mr Zuma has applied for the UIF-COVID19 TERS national disaster relief to pay salaries.

He fears that when he reopens he will not be able to keep all his staff. He will have to work in the store himself. Mavis started working in January this year. Jenny is his best sales person but Shani has been working the longest.

It would be fair to keep Shani, she is a single mother and has been working for about 15 years. Mavis and Jenny will unfortunately no longer have jobs once he reopens. He believes that he will not be able to afford to pay them due to the loss in sales.

QUESTION 2.1

Outline the procedure that Mr Zuma must follow to ensure that the dismissal of his staff does not amount to an unfair dismissal. Refer to the applicable legislation. **[5]**

QUESTION 2.2

Jenny alleges that her dismissal is unfair as Mr Zuma just sent her a letter whilst she was at home and informed her not to come back to work because he cannot pay her.

Is Jenny's dismissal unfair or not and why? **[3]**

QUESTION 2.3

Advise Jenny on what steps she should take to enforce her rights. You have to advise/ her on how to complete the necessary form/s as well. **[12]**

QUESTION 3

You are a student legal advisor at the Law Clinic; your client is the Plaintiff in a divorce. The parties are married in community of property. The issue in dispute is the immovable property. Each party wants to retain the immovable property as their own and exclusive property. The property is valued at Three Million rand. The immovable property comprises of the main house and a garden cottage at the back of the main house. The parties rent out the garden cottage for an amount of Ten Thousand rand per month. A portion of the rental income is used towards the upkeep of the main house and the balance is shared equally between the parties. Both parties still reside in the main house in separate rooms.

Plaintiff: She has been retrenched and it is unlikely that she will find work due to COVID. She loves their home and wants to keep it. She believes that the rental income will sustain her until she can find work. She is willing to pay the Defendant One Million rand from her pension money. She used her own money to build the boundary wall and plant the lush and lavish garden.

Defendant: He is a successful businessman and he wants the house and live in it with his new family. He is willing to pay the Plaintiff, half the value of the house. He is also prepared to allow her to reside in the house for a period three months after the divorce without having to pay rent. He has a hotshot attorney from ENS.

QUESTION 3.1

What are the stated positions of the Plaintiff, her underlying interests and needs? **[3]**

QUESTION 3.2

What are the stated positions of Defendant, his underlying interests and needs? **[3]**

QUESTION 3.3

Select a dispute resolution mechanism that would resolve this dispute, define the mechanism, the main role player and when/required? Explain why the chosen dispute resolution mechanism is the most suitable to the facts. Note: the answer must be in full sentences. **[5]**

QUESTION 4

Samuel Jackson has approached the law clinic to assist him with changing his will.

Sam is an elderly man, employed as a porter at the Helen Joseph Hospital. He was born on 13 June 1960. His id number is 6006131111082.

His next of kin is his sister, Taraji Henderson. Taraji's id number is 9905121111000. They live in a three-bedroom town house situated at 123 Henderson Avenue, Lenasia South

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(erf 123 Lenasia S). The house is a family home and they are the only remaining family members of the Jackson clan. The title deed to the house is registered in Sam's name.

Since the onset of COVID Sam has been thinking about what will happen to the family home should he die? The provisions of his previous will hold that his wife would inherit the home. His wife died in 2019 and he has since not changed that provision in his will.

He does not have any children and his only beneficiaries are his sister and her daughter. Taraji is also the nominated beneficiary for his pension fund. He wants Taraji to get the house, movables and residue of his estate. However, if Taraji dies then everything goes to Maria Mthembu, Taraji's daughter. Maria's id number is 9905121111008. He wants, his best friend, George Nkosi to be the executor. Calen Nkosi, George's son, to be the alternate executor. He could only provide their date of births. George was born on 1 January 1964 and Calen was born on 12 June 1992. The executors must be granted the power of assumption and must be exempt from furnishing security. He indicated that he has no debts. He also wants a clause that excludes any beneficiary's partners from benefiting from the inheritance they receive. He wants his body to be buried next to his father's grave when he dies.

He has requested that we draft a **two-page** will for him. We have accepted the mandate.

QUESTION 4.1

Draft the will for the client giving effect to his instructions (if you are typing your will it MUST be **font Arial, Size 12, single spacing**). **[20]**

QUESTION 4.2

Explain to client the formalities of a valid will? **[5]**

TOTAL [70]

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