



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Procedural Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: ALS41Y0 / TPR0000 APPLIED LEGAL STUDIES
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: November 2018

<u>DATE</u>	: 12 November 2018	<u>SESSION</u>	: 08:30-11:30
<u>ASSESSOR(S)</u>	: MR EJ HANEKOM		
<u>MODERATOR</u>	: PROF R CLOETE		
<u>DURATION</u>	: 3 HOURS	<u>MARKS</u>	: 100

NUMBER OF PAGES: 4 PAGES

INSTRUCTIONS:

1. Answer all the questions.
2. Do not make up any facts unless granted permission to do so in the question.
3. Use full sentences.
4. A pocket calculator may be used.

QUESTION 1

A client approaches you to institute a divorce for her. She says that she wants to get divorced because her husband “is sleeping with another woman”. Furthermore she alleges that he assaults your client and when they argue he doesn’t talk to her for weeks thereafter. He also absconded from the communal home for up to 10 months at a time during the past year.

Analyse the above facts in your answer by comparing it to the grounds for a divorce and the circumstances expressly accepted as proof of such grounds as stated in the Divorce Act 70 of 1979.

After doing so, give an opinion on whether or not your client can expect the divorce to be granted based upon the three aspects she mentioned to you. **[15]**

QUESTION 2

You are an attorney. A new client Mr X consults with you. X tells you that another attorney is handling his cases which includes a criminal case as well as a huge claim for damages.

X says that he has entered in an agreement with the other attorney to do his cases on a “no win no fee” contingency fee basis. A now complains to you that the other attorney took 50% of the capital of the claim for damages as his fee.

Furthermore X had been found guilty in the criminal case and now the other attorney told X to first pay his bill of R50 000 before he will further represent X in an appeal.

Analyse the facts and then evaluate the legality of the contingency fees agreement with motivation from the law and current issues surrounding those agreements. **[15]**

QUESTION 3

Apply the Apportionment of Damages, Act 34 of 1956 and calculate the damages to be paid where:

A the driver of motor vehicle X is found to be 28% negligent and the market value of his motor vehicle amounts to R 54 000,00. The vehicle is written off and the salvage value amounts to R 6 200,00;

and

B the driver of motor vehicle Y is found to be 52% negligent and the repair costs for the damage to his motor vehicle amounts to R 85 500,00. **[8]**

QUESTION 4

If a Hortor's costs R420.00 VAT inclusive and VAT is charged at 20%, what would it cost, VAT exclusive? Show the formula and calculation to be used as if you were not in possession of a calculator. [2]

QUESTION 5

Critically evaluate the correctness of the following statement applicable to legal practice management and motivate your answer with reference to the elements of a practice: "A legal practice is aimed at serving the poor and providing free legal services to the community." [5]

QUESTION 6

Assume that the Legal Practice Act is in full operation. You overhear an advocate Miss Z, boasting to a member of the public, a Mr. Y while playing golf with him, that she is practicing in private practice as an advocate in Sandton. She further invites Mr. Y to come and see her if he has any legal problems and that she will assist him. Mr. Y asks her if she can do property transactions for him and her answer is that she and her partners in her advocate's practice can do that. Mr. Y then indicates that he will withdraw his instructions from a well-known attorney, and that he would in future send all his work to Miss Z.

Mr Y also told Miss Z that he would be depositing a million rand into her personal bank account on the next day so that she can assist him as his advocate with buying his first property. He mentioned that the property costs a million rand. Miss Z said to Mr Y that she does not have or need a trust account because she does not steal money from clients.

Analyse these facts with reference to the Legal Practice Act and give an opinion whether Miss Z would in fact be able to legally do the above-mentioned for Mr Y.

Include a comment on whether her behaviour and interaction with Mr Y is ethical or not. [10]

QUESTION 7

Name 5 new control structures that will exist under the Legal Practice Act, 28 of 2014? [5]

QUESTION 8

You are an attorney. Mrs Wanda Da Costa gave you instructions to represent her in a motor vehicle collision case to claim compensation for the damages to a motor vehicle.

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Her own details are: identity number: 630514 1234 08 4, she is a secretary, employed at the University of Johannesburg, and she and her spouse, Mary-Lou Delaney, reside at 123 First street, Melrose, Johannesburg.

Wanda was involved in a motor vehicle collision at the main gate to the University. It occurred at the T-junction between the University entrance and Kingsway on 9 September 2018 – Wanda says at 12 o'clock.

Wanda's instructions to you are that the driver of the other vehicle is one Miss Gerty Naidoo who lives at no 75 Peter Street, Brooklyn, Pretoria, Tshwane.

Wanda alleges that Naidoo was travelling from east to west in Kingsway, and did not stop at the red robot. Wanda was busy exiting the University grounds from south to north at the time of the accident and the robot was green for Wanda.

Naidoo smashed into the right hand side of Wanda's vehicle, then jumped out and said: "My brakes failed, can't you see this is a police vehicle, you moron?" Naidoo then arrested Wanda unlawfully.

Wanda says that she was driving a 2014 Toyota Corolla, registration number LM 44 YU GP which she borrowed from her wife, Mary-Lou Delaney. Mary-Lou told Wanda she wants her vehicle back in perfect shape, or she will move out. She wants to have nothing to do with the accident, she just wants her car back fixed.

Naidoo is employed as a police officer at the Sophiatown Police station and she was driving a government car. Wanda does not know if Naidoo was on duty. The registration number of the government car is GOV 123 G.

Wanda tells you that the Corolla is irreparably damaged. The value of the vehicle amounts to R 478 000,25. The salvage value of the wreck amounts to R 89 000,00. No response has been received to a letter of demand sent via registered post. You have also complied with the requirements of Act 40 of 2002 on 12 September 2018.

Wanda instructs you to issue summons to recover the damages to the vehicle. Naidoo's government vehicle's damages amounts to R210 000, 00.

The Minister of Police is General Bheki Cele. The South African National Police Services' Headquarters according to their website is situated at: "Wachthuis, Building 231 Pretorius Street Pretoria Private Bag X94 Pretoria 0001, GPS Coordinates: S25.74790 E28.18901".

Draft the Particulars of Claim. Ensure that you have evaluated the relevance of the above-mentioned facts for yourself before you start your drafting. You do not have to include a "header" or "footer". **[40]**

Total: 100

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