



UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS

FACULTY OF LAW

SPECIAL EXAMINATION: 5 FEBRUARY 2021

**PROGRAMME:** LLB

**MODULE:** LAW OF CIVIL PROCEDURE

**MODULE CODE:** SPR0000 & CPR41Y0

**DURATION:** 4 HOURS (240 MINUTES)

**MARKS:** 80

**EXAMINERS:** MS M DU PREEZ  
MRS Y JOUBERT

**Instructions:**

- General
  - This part of the paper consists of 11 (eleven) pages.
  - Please read all questions carefully and answer all questions.
  - Ensure that you clearly number your answers.
  - Answer *only* what has been asked.
  - *Don't* waste time by providing information/answers which has/have not been asked for.
  - Accept that you act as the *attorney of record* where you are required to provide an opinion and/or advice to a client.
  - Please refer to authority (case law, legislation and, most importantly, the *rules of court*) where relevant.
- Drafting
  - To the extent that you are required to draft court documents, please ensure that the documents are *complete* (with a proper heading, conclusion, signature etc) and that you include all relevant information/details, unless you've been asked to omit some information.
- Format
  - Use *full sentences*.
  - Please pay attention to *grammar, spelling* etc.

- Use your own words. Refrain from simply copying and pasting from other sources.
- Submission
  - Answers must be typed and saved in Word/Pdf format or, if handwritten, photographed and saved in Pdf format. Please ensure that photos are clear and legible.
  - Answer scripts must be electronically uploaded on Blackboard. A separate link is provided for this purpose.
  - If it is not possible to upload the answer electronically and, as a last resort only, the answer script can be submitted to the lecturers via email within the allocated 4-hour examination time period.
  - **Late submissions will not be accepted.**

▪ **NOTICE IN RELATION TO PLAGIARISM:**

It is important that, as a law student, you are honest when it comes to your academic work.

You are expected to act with integrity and honesty.

You are expected to submit your own work and to not, under any circumstances, to commit plagiarism.

Plagiarism is the representation of another person's language, thoughts, ideas, or expressions as one's own original work.

Students are reminded of this announcement on the UJ website:

Be academically honest and abide by the rules at all times even while writing online assessments.

While writing your assessment you may not:

- 1) Provide assistance to another student.
- 2) Receive assistance from another student or any third party.
- 3) Use unauthorized material or sources.
- 4) Plagiarise or submit plagiarised material.

**You will be held accountable for dishonest behaviour during assessments.**

By answering this paper, you acknowledge and accept the University's rules and plagiarism and dishonest behaviour.

This assessment is made up of the following parts - you have to complete both parts:

**PART 1**

Multiple choice questions (questions 1 – 20).

This must be completed and submitted online.

**(20)**

**PART 2**

Longer questions (questions 21 – 28).

Please submit your answers in Word/Pdf format on Blackboard.

**(60)**

**TOTAL**

**[80]**

**QUESTION 21**

Briefly set out the advantages only of each of the following procedures, from the applicant/plaintiff's point of view.

Note that no marks will be awarded for general definitions.

21.1 an interlocutory application; (2)

21.2 a provisional sentence summons; (2)

21.3 confession/consent to judgment; (2)

21.4 anton piller order. (2)

**[8]**

**QUESTION 22**

Briefly set out the advantages only of each of the following steps, from the defendant's point of view.

Note that no marks will be awarded for general definitions.

22.1 special plea; (1)

22.2 settlement offer in terms of HCR 34. (1)

**[2]**

**QUESTION 23**

Consider the following facts and answer the questions below in relation thereto:

Mr Michael Vuyisa is suing the Minister of Police (first defendant) and Constable Willis Faber (second defendant). He seeks payment of an amount of R850 000.00 for damages he allegedly suffered consequent to his arrest, assault and detention by members of the South Africa Police Service (SAPS), interest on the said amount and costs.

The claim is premised on vicarious liability. Michael alleges that the constables who arrested and detained him, were employed by the State and committed the alleged unlawful acts during the course of their employment and whilst in the execution of their duties.

The alleged assault was inflicted by clapping the plaintiff with open hands on the face and back; by hitting the plaintiff with fists on the head and all over the body and by kicking the plaintiff on the head and all over the body with booted feet until he fell down. He was kicked continuously whilst on the ground and was suffocated with black plastic which was put on his head to cover his face; he was further assaulted when his head was covered with the black plastic.

Accept that proceedings take place in the High Court in Johannesburg.

23.1 You act for the plaintiff.

Draft the citation of both defendants as this will appear in the summons. (2)

23.2 Indicate where the summons should be served on the first defendant. (1)

23.3 You act for the second defendant, who stays in Nelspruit.

How long does the second defendant have to enter an appearance to defend the matter?

(1)

23.4 You act for the plaintiff.

Accept that, following delivery of the notice to defend on behalf of the defendants, they fail to deliver a plea in this matter.

Draft the next court document on behalf of your client. (5)

23.5 Accept that your act for the defendants and that pleadings have closed.

Your clients are of the view that that the claim amount in respect of personal injuries is unreasonable and inflated.

The defendants would like the plaintiff to be examined by a specialist medical practitioner, Dr Siemens, in Rosebank, Johannesburg.

Add your information to the extent required and draft the necessary court notice to the plaintiff for purposes of this examination.

You may omit the heading.

Please start with the tramlines. (6)

- 23.6 Accept that the plaintiff does not want to attend the proposed examination as he works long hours and simply does not have time for this. In any event, he has already been examined by his own doctor, Dr Pinn, in Brixton, Johannesburg. Dr Pinn provided a detailed report.

Indicate whether the plaintiff may object to the proposed examination. Briefly explain your answer. (1)

- 23.7 The plaintiff intends to tender 10 (ten) colour photographs showing his personal injuries and the scene of the assault as evidence during the trial in this matter. He has given the necessary notice to the defendants in terms of HCR 36. However, the defendants do not admit the photos and delivered a formal objection to the admission of these in evidence.

Briefly discuss the practical implications for the plaintiff to the extent that he wishes to rely on this evidence during the trial. (2)

[18]

#### **QUESTION 24**

Accept that you act as the attorney of record.

In each of the following scenarios, identify the next step that you will take on behalf of your client. In particular, you are required to identify the *next document* to be delivered on behalf of your client.

In addition, you should provide a brief motivation/explanation for your answer.

- 24.1 You act for the plaintiff.

On Thursday, 4 February 2021, the parties attended a pre-trial conference in terms of HCR 37. (1)

- 24.2 You act for the plaintiff.

Pleadings have closed and the registrar has allocated a trial date. (1)

- 24.3 You act for the defendant.

The Magistrate's handed down judgment in favour of the plaintiff. Your client is of the opinion that there was gross irregularity in the proceedings and wants to challenge the judgment. (1)

- 24.4 You act for the defendant.

The defendant was served with a summons. On perusal of the pleadings, you note that the plaintiff is a citizen of Zimbabwe. Apparently he owns no property in South Africa. (1)

- 24.5 You act for the plaintiff in a delictual matter claiming damages for personal injury.

The defendant has entered an appearance to defend. It appears that the defendant has no *bona fide* defence and it may be that he entered appearance to defend as a technical step to buy some time. (1)

- 24.6 You act for the plaintiff.

The defendant has failed to respond to the plaintiff's notice to remove cause of complaint in relation to the defendant's plea. (1)

- 24.7 You act for the respondent.

The applicant's replying affidavit contains various vexatious allegations that are most upsetting to the respondent. (1)

- 24.8 You act for the defendant in a divorce matter.

The sheriff could not locate the defendant at his place of residence. The defendant recently discovered that the sheriff proceeded to serve the summons on the receptionist at the defendant's place of work, as she was a person apparently in authority and over the age of 16 years. (1)

- 24.9 Pleadings have closed and both parties have made discovery of relevant documents. The plaintiff in this High Court matter wishes to see certain documents, including bank statements, that are listed in Part I of Schedule 1 of defendant's discovery affidavit. (1)

- 24.10 You act for the plaintiff.

The plaintiff in a High Court matter has examined the defendant's discovery affidavit. The plaintiff is of the opinion that there are further documents relating to the matter that the defendant needs to make available for purposes of the trial in this matter. (1)

[10]

## **QUESTION 25**

Briefly distinguish between the following concepts.

Please note that no marks will be awarded for general definitions.

Instead, you should list only the main differences.

- 25.1 Absolution from the instance granted against the plaintiff at the end of the plaintiff's case and absolution from the instance granted against the plaintiff at the end of the close of trial; (1)
- 25.2 A notice of bar and a notice to compel ito HCR 30A; (1)
- 25.3 Taking a magistrates' court decision on appeal and taking a High Court decision on appeal. (1)
- 25.4 A declinatory plea and a denial in defendant's plea. (1)

**[4]**

## **QUESTION 26**

Consider the following facts and answer the questions below:

The court found in favour of your client, the judgment creditor. In terms of the order, the debtor is liable to pay:

- "1) The amount of R250 000;
- 2) Interest on the this amount at the rate of 10.5% from date of demand;
- 3) Costs."

The sheriff of the court arrives at the debtor's residence to attach movable property in order to satisfy the judgment debt. The sheriff finds various items at the debtor's premises, including a motor vehicle, and proceeds to attach the property.

- 26.1 Following attachment, a third party, Confident Bank, informs the sheriff that the Toyota motor vehicle is the subject of a credit agreement with the bank and that there is a significant amount owing to the bank by the judgment debtor.

Indicate whether the sheriff may proceed with attachment and execution. Briefly explain your answer. (1)

- 26.2 You rendered your professional services at an hourly rate of R1 500 in this matter. In total, your client's legal fees amount to R85 000. You've provided your client with an account for this amount, which is now due and payable.

Your client asks whether he will be able to recover his full legal costs from the debtor. He would prefer for the debtor to settle your account directly.



Briefly explain the position to your client. (3)

[4]

**QUESTION 27**

Critically evaluate the following:

27.1 The general rule relating to legal costs is that the losing party has to pay a portion of the winning party's costs, but the Constitutional Court has adopted a new principle that persons should not be deterred from enforcing their rights.

Discuss this statement with reference to relevant case authority. (5)

27.2 The decision in *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* 2016 (6) SA 596 (CC).

Indicate whether or not you agree with the decision of the court and motivate your answer. No marks will be awarded for restating the facts and or quoting from the judgment. (5)

[10]

**QUESTION 28**

Consider the following facts and answer the question below:

The defendant, African Imports CC, is met with an application for summary judgment following delivery of its plea.

The plaintiff relies on the affidavit below in support of its application for summary judgment.

The affidavit contains several errors/is insufficient in various respects.

You are requested to identify and correct 4 (four) errors in this document.

These should relate to the content/substance and not to formatting.

You can accept that the signatures of the deponent and Commissioner of Oath are in order.

Please use full sentences to 1) identify each error and 2) explain why this is incorrect. (4)

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case no 13/2021**

In the matter between:

**Digital Solutions CC**

Plaintiff/Applicant

and

**African Imports Inc**

Defendant/Respondent

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**AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT**

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I, Digital Solutions CC, declare under oath/affirm as follows:

- 1 I am the plaintiff in this action.
- 2 The contents hereof is within my personal knowledge and I swear positively to the facts contained herein.
- 3 I verify the cause of action and the amount claimed in the summons.
- 4 I believe that the defendant does not have a no bona fide defence and has entered an appearance to defend solely for purposes of delay.
- 5 The plaintiff's claim is based on the following facts:
  - 5.1 The plaintiff is the sole importer and distributor of sports equipment.

5.2	The plaintiff supplied equipment to the value of R1 400 000 to the defendant at the defendant's special instance and request.
5.3	Despite demand, the defendant has failed to make payment of this amount to the plaintiff.
5.4	Upon receipt of a letter of demand, the defendant proceeded to make all sorts of defamatory statements about the plaintiff to the local media. As a result of this, the plaintiff suffered damage to its reputation and claims an additional amount of R37 250 from the defendant.
6	I enclose, as Annexure A, a copy of the written agreement between the parties.
7	I enclose, as Annexure B, a copy of the newspaper article quoting the defendant's defamatory remarks.
8	I respectfully pray for the court to grant the relief set out in the notice of motion.
Signature: Deponent	
The deponent has acknowledged that he/she knows and understands the contents of this affidavit.	
Signature: Commissioner of Oaths	

[4]

**SUB TOTAL (PART 2)**

**(60)**

**TOTAL**

**[80]**