



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

AEGROTAT EXAMINATION: 3 DECEMBER 2021

<u>PROGRAMME:</u>	LLB
<u>MODULE:</u>	LAW OF CIVIL PROCEDURE
<u>MODULE CODE:</u>	SPR0000 & CPR41Y0
<u>DURATION:</u>	4 HOURS (240 MINUTES)
<u>MARKS:</u>	80
<u>EXAMINERS:</u>	MS M DU PREEZ MRS Y JOUBERT
<u>MODERATOR:</u>	PROF DS DE VILLIERS

Instructions:

- General
 - This part of the paper consists of 9 (nine) 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.
- 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.
 - Answers can not be submitted by email.
 - 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. Plagiarism therefore is the misappropriation and misrepresentation of someone else's work and presenting it as your own. This is not allowed.

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 – 30).

This must be completed online.

(30)

&

PART 2

Longer questions.

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

Please use the submission link on Blackboard to upload your answers.

(50)

TOTAL

[80]

QUESTION 1

Briefly set out the disadvantages only of each of the following procedural steps, from the plaintiff's point of view.

Please note that no marks will be awarded for general definitions/an explanation of the procedure generally.

Instead, you should focus on the disadvantages of each:

- 1.1 the court dismissing the plaintiff's application for summary judgment; (2)
- 1.2 the sheriff of the court serving the plaintiff's combined summons on the defendant's minor son, at his place of residence; (2)
- 1.3 the defendant, in a matter in the High Court, replying to the plaintiff's simple summons by delivering an appearance to defend the matter; (2)
- 1.4 the defendant, in a matter in the Magistrate's Court, delivering a notice of intention to defend the matter but this notice is not signed at all. (2)

[8]

QUESTION 2

Accept that you are a senior attorney with Baker Attorneys. You have recently taken sick leave for a period of 14 days. During your absence, an associate (junior lawyer) named Peter Green, was tasked to take care of your matters. Peter attended to your files and reports that he has taken various steps as and when required.

When you return to the office, you conduct a complete review of your files.

In each of the following situations, critically comment on whether the appropriate step has been taken or not. You are required to motivate your answers.

2.1 **Matter 1:**

This is a divorce matter. You act for the plaintiff. The defendant has given notice of her intention to defend the matter. During your absence, the defendant proceeded to deliver her plea.

..../5

Peter is of the view that the defendant's defence is rather confusing and, in any event, that it does not raise any issue for trial. The parties seem to agree that the marriage relationship has broken down irretrievably. In the circumstances, Peter proceeded with an application for summary judgment.

(2)

2.2 Matter 2:

This is a matter involving a claim for arrear rental. In terms of the lease agreement between the parties, rent was agreed upon at a sum of R1000 (one thousand rand) per week. You act for the plaintiff. The defendant has given notice of his intention to defend the matter. No plea has been delivered as yet. Peter is of the view that defendant can't possibly have a defence to the claim – he has been occupying the property without paying any rent whatsoever. Following receipt of the notice to defend, Peter proceeded with an application for summary judgment as he does not want the client to waste time or money.

(2)

2.3 Matter 3:

One of your existing clients, MP Exports Ltd, was served with papers in an urgent application. In terms of the application, the applicant is seeking an interim interdict against your client. Peter has delivered a notice of intention to oppose the application. As the applicant's supporting affidavit does not set describe any reasons for urgency, Peter proceeded with an exception.

(2)

2.4 Matter 4:

This is matter involving a delictual claim for damages. You act for the defendant. Prior to taking leave, you arranged for a notice of intention to defend to be delivered on behalf of your client. Peter has since delivered a special plea alleging that the court does not have jurisdiction as the cause of action did not arise within the court's area neither does the defendant reside within its area. There is a file note indicating that the client can consider pleading a defence on the merits at a later stage, but that it is not required for now.

(2)

[8]

QUESTION 3

Provide a practical example of circumstances where a litigant will use each of the following documents.

Note that no marks will be awarded for a general discussion / restatement of the theory. Instead, you should provide a practical example.

3.1 an *intendit*, (1)

3.2 a provisional sentence summons; (1)

3.3 an interpleader; (1)

3.4 an *allocatur*. (1)

[4]

QUESTION 4

4.1 In a High Court action, the plaintiff failed to respond to a notice calling on him to discover.

4.1.1 What remedy/ies does the defendant's attorneys have? (2)

4.1.2 Accept that the plaintiff subsequently duly files his discovery affidavit. The defendant believes that the plaintiff has in his possession two letters which are relevant to the case. These letters have not been included in the plaintiff's discovery affidavit.

What are the options available to the defendant in this regard? (2)

4.2 May an applicant call for discovery in an application? (1)

4.3 Your client is a protect whistleblower and has informed you that the company she works for has valuable documentation in its possession, which is of great importance in the High Court matter you are handling on her behalf. You do not want to alert the company or any related party to the fact that your client is aware that this documentation exists. You also have good reason to believe that, should it come to light that your client knows about this documentation, the company may destroy the information.

..../7

What type of application will you bring to ensure the preservation of the documentation and what type of order will you seek from the court?

(2)

4.4 You act for the plaintiff in a High Court matter.

The claim is for the unpaid purchase price of certain goods which your client had previously sold and delivered to the defendant. After being served with a copy of the summons on 15 November 2021, the defendant ignores it. The *dies induciae* have expired.

4.4.1 What is the next step that you will take on behalf of your client to bring the matter to an end? Briefly explain the procedure.

(3)

4.4.2 Should the defendant receive notice of this next step? Briefly explain your answer.

(2)

4.4.3 Briefly explain if/how your answer in 4.3.1 would change if the plaintiff's claim was for damages following a motor vehicle collision?

(1)

[13]

QUESTION 5

The following is an extract from the plaintiff's declaration:

- 1) *The plaintiff is the Jones Family Trust, based at 18 Broadway Crescent, Durban.*
- 2) *The defendant is Malusi Gibaba, a minor learner residing at 14 Dickson Avenue, Durban.*
- 3) *On or about 14 November 2021 the defendant's vehicle collided with the plaintiff's vehicle.*
- 4) *It will cost R50 000 to repair the plaintiff's vehicle.*

Wherefore the plaintiff prays for judgment against the defendant in the amount of R50 000 plus interest of 23% per annum from 14 November 2021 to date of payment and costs on the attorney and own client scale.

Briefly identify the errors in this document.

(6)

[6]

..../8

QUESTION 6

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 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 Toyota motor vehicle, and proceeds to attach the property.

- 6.1 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)

- 6.2 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 7

Critically discuss the following statement:

An order in terms of which a foreign plaintiff must provide security for costs serves a very important purpose. Our courts are entitled to protect an incola to the fullest extent.

Note that no marks will be awarded for:

- a general discussion of the theory and/or
- simply quoting from external sources.

(7)

[7]

[SUB-TOTAL: 50]

PART 1	[30]
	&
PART 2	[50]
TOTAL:	[80]