



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

EXAMINATION: 15 NOVEMBER 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 10 (ten) 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.
 - 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.

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

(50)

TOTAL

[80]

QUESTION 1

Briefly set out the advantages 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 only on the advantage/s or benefit/s:

- 1.1 suing ABC Partnership in the name of the partnership itself; (2)
- 1.2 an application for summary judgment; (2)
- 1.3 *litis contestatio*. (2)

[6]

QUESTION 2

Briefly set out the advantages only of each of the following procedural steps, from the defendant'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 only on the advantage/s or benefit/s:

- 2.1 pleading over; (2)
- 2.2 no counterplea being delivered in response to his counterclaim. (2)

[4]

QUESTION 3

Consider the matters below and in each of the scenarios, indicate what the next step is that you will take on behalf of your client.

You are required to identify the next step with reference to the specific document you will deliver on behalf of your client.

In addition, you are required to motivate your answer.

..../5

3.1 You act for the defendant, Mr Tunde.

The plaintiff arranged for a simple summons to be served on your client. You enter an appearance to defend. The plaintiff has not replied to this notice. Upon perusal of the simple summons, you see that the document is rather vague.

It is not clear whether the plaintiff is suing on the basis of contract or delict and your client is not in a position to answer to this.

Briefly motivate your answer. (3)

3.2 You act for the defendant, Mr Richard, in a High Court matter.

Your client received notice of the trial date in this matter (15 March 2022) but has not yet made discovery in terms of the rules of court. Your client intends to rely on various documents (ie agreements, bank statements and receipts) during the trial.

Briefly motivate your answer. (3)

3.3 You act for the plaintiff, Miss Speedy, following a motor vehicle collision.

During the collision, your client's vehicle was damaged beyond repair. In response to your client's summons, the defendant delivered an appearance to defend and thereafter a plea in which he alleges that he does not have a valid driver's license and is therefore not liable for any damages. How will you advise your client to respond to this?

Briefly motivate your answer. (3)

[9]

QUESTION 4

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

On 1 May 2021 a motor vehicle collision occurred on the R27 Highway around Pretoria at about 03h05 in the morning.

The particular road carried two lanes of traffic in each direction (north and south), separated by a ditch with bushes and grass in it.

In each direction the road had a tarred shoulder on the left, separated from the left-hand traffic lane by a yellow line. The ground (gravel) then fell away slightly into the veld. To judge by the photographic evidence, the width of the centre ditch was more or less the same as the tarred surface in each direction. The road surface was good and the weather fine at the time.

The defendant, Mr Moodley, was driving in a northerly direction in a silver Isuzu 4x4 double-cab bakkie. The plaintiff, Miss Sammy Paddock, was driving in a southerly direction in a black Audi. She is a law student at the University of Johannesburg and was on her way back to campus following celebrations at a friend's place. The Isuzu veered across the road and the central ditch, colliding with the oncoming Audi. Fortunately the drivers did not sustain any serious or life threatening injuries.

You act for the plaintiff in this matter. You have instituted legal action to recover damages on behalf of your client.

Your client instructs you as follows:

- Her Audi was very badly damaged and sheered in half;
- The Isuzu rolled, landing upside down about 25 meters into the veld on the left-side of the southerly road;
- The photographic evidence indicates quite severe damage to both vehicles;
- When she got out of her vehicle following the collision, Mr Moodley shouted that he can't recall what happened. He added that he could smell liquor and asked if she had been drinking. He also wanted to know why she was on the road at that time of the morning, considering the curfew hours during the national lockdown period;
- She did not reply to any of his comments, in an attempt to avoid further confrontation;
- She later found out that Mr Moodley is a mechanic in Pretoria. His work quite often required him to go to the airport to work on vehicles there and he was on his way to the airport at the time of the collision; and
- There were two eyewitnesses, a motorist (Mr Servia Champi) and a cyclist (Mr Daniel).

- 4.1 Accept that the defendant has given notice of his intention to defend the matter. The plaintiff is of the view that the defendant has no *bona fide* defense and is simply trying to delay the matter.

Indicate whether the plaintiff is entitled to apply for summary judgment under these circumstances.

..../7

You are required to motivate your answer with reference to authority.
(2)

4.2 You act for the plaintiff.

Accept that, following delivery of the notice to defend, the defendant fails to deliver a plea in this matter.

Draft the next court document on behalf of your client.

Please ensure that the document is complete.
(4)

4.3 Accept that you act for the defendant and that pleadings have closed.

Your client is of the view that the claim amount in respect of the vehicle is unreasonable and that the amount has been inflated.

4.3.1 Briefly discuss whether you can arrange for an inspection of the vehicle and if so, what this procedure entails.
(2)

4.3.2 Briefly explain whether the plaintiff can object to the proposed examination.

You are required to motivate your answer.
(2)

4.3.3 Accept that you act for the plaintiff.

Your client notices, after close of pleadings, that the particulars of claim is incorrect. The document refers to an amount of R957 000 instead of the amount of R975 000 in respect of damages claimed. It appears that one of the candidate legal practitioners in your office made a typing error when preparing the particulars of claim and that this went unnoticed.

You intend to correct this without delay.

Discuss, with reference to the rules of court, the procedure to be followed by your client and the documents required to ensure that the pleading are in fact correct.
(3)

4.3.4 The plaintiff intends to tender 24 (twenty four) photographs as evidence during the trial in this matter.

She has given the necessary notice to the defendant in terms of HCR 36.

Accept that the defendant does not admit the photographs and delivered a formal objection.

Briefly discuss the practical implications for the plaintiff to the extent that she wishes to rely on this evidence during the trial.

You are required to motivate your answer. (2)

4.3.5 As part of preparation for trial, the defendant requires the plaintiff to attend a medical examination. The sheriff served the notice as set out below on the plaintiff on Monday, 15 November 2021.

The notice contains several errors. You are requested to identify and correct 4 (four) errors.

You may accept that the heading is complete/correct and that this omission does not constitute an error. (5)

NOTICE IN TERMS OF RULE 36 (1)

TAKE NOTICE that the defendant hereby requests that the plaintiff attends a medical examination by a medical practitioner at MediHealth Hospital, 135 Baxter Street, Pretoria at 11:00 am on Thursday, 18 November 2021.

TAKE NOTICE FURTHER that the purpose of the examination is to curtail proceedings and limit legal costs.

TAKE FURTHER NOTICE that:

- a) The plaintiff is entitled to have her own legal advisor present; and
- b) The defendant tenders the plaintiff's cost in the amount of R2500 for attendance of the examination;
- c) The plaintiff will bear the costs of the examination.

ALSO TAKE NOTICE that should the plaintiff have any objection to the proposed examination she must notify the defendant accordingly in writing within 10 (ten) days from delivery of this notice and indicate whether she has any objection to:

- a) The nature of the proposed examination;
- b) The person who will conduct the examination;
- c) The place, date or time of the examination;
- d) The amount of costs tenders.

In the event of an objection the plaintiff may propose an alternative date, time of place for the examination or provide particulars of such increased amount as she desires.

Should the plaintiff fail to deliver an objection as set out above, she will be deemed to have agreed to the examination on the terms set out herein.

DATED at JOHANNESBURG on this the 2nd day of November 2021.

Q Tarrantine

Attorney with right of
appearance in terms of the
Legal Practice Act, 28 of 2014
BIFF AND SMITH
ATTORNEYS
Defendant's Attorneys
1A Katherine Street
Pretoria, 0184

TO: THE REGISTRAR OF THE ABOVE NAMED COURT
JOHANNESBURG

AND TO:

HENDERSON ATTORNEYS
Plaintiff's Attorneys
241 Kipa Ave

Pretoria, 0184..../10

Law of Civil Procedure CPR41Y0 / SPR0000

4.3.6 Accept that you act for the plaintiff.

Briefly explain the procedure for securing the attendance of the two eyewitnesses at court. You intend to present their evidence as part of your client's case.

(1)

4.3.7 Accept that you act for the defendant.

In terms of the order, the court "finds in favour of the plaintiff and orders the defendant to pay the plaintiff's legal costs".

..../10

The plaintiff employed the services of a very senior attorney and advocate in this matter. The attorney rendered professional services at an agreed hourly rate of R5 000.

Her total legal fees amount to R750 000.

Briefly explain to your client whether the plaintiff will be entitled to recover the full amount in respect of legal fees from the defendant and what he will be liable for.

You are required to motivate your answer. (2)

[23]

QUESTION 5

Critically discuss, with reference to authority, the legal position in South Africa with regard to the following issue:

A judgment creditor obtaining an order in terms of which the employer of the judgment debtor is compelled to pay a defined amount of the judgment debtor's salary on a regular basis to the judgment creditor.

Please note that no marks will be awarded for a general discussion of case law and or sections copied/pasted from external resources.

Instead, you are required to use your own words and to provide a critical evaluation of the existing legal position when answering the question. You should identify any problems/shortcomings. (8)

[8]

[SUB-TOTAL: 50]

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