



**UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS**

**FACULTY OF LAW**

**TEST 2: 14 JUNE 2021**

**PROGRAMME:** LLB  
**MODULE:** LAW OF CIVIL PROCEDURE  
**MODULE CODE:** SPR0000 & CPR41Y0  
**DURATION:** 3 HOURS (180 MINUTES)  
**MARKS:** 60  
**EXAMINERS:** MS M DU PREEZ  
MRS Y JOUBERT

**MEMORANDUM**

**QUESTION 31**

31.1 arbitration; (1)

Quicker/faster  
Less formal/no need to comply with the rules of court  
Expert presiding officer  
Private/not open to the general public  
Final, unless parties agree on appeal

31.2 a letter of demand; (1)

May avoid costly and time consuming litigation  
May lead to a settlement  
May trigger the running of interest

31.3 suing a partnership in the name of the partnership in terms of HCR 14; (1)

Makes process easier/procedural advantage  
No need to cite individual partners, their details may not be known  
Forces opponent to provide the details of the individual partners

31.4 the *intendit*. (1)

Set out particulars of plaintiff's claim

This is the name of the document in the action procedure that can validly be served outside of SA following an application for edictal citation

Note: NOT INTERDICT!

[4]

### **QUESTION 32**

32.1 Identify any procedural requirements with which you have to comply, prior to the issuing and service of the summons on the defendants. (2)

Note: You want to sue the state (national, provincial, local) – legislation applies

Compliance with legislation regulating proceedings against the State, namely the Institution of legal proceedings against certain organs of state Act

Notice must be given before summons is issued and served ie - Notice of intention to sue must be sent within 6 months of cause of action arising

32.2 Draft the citation of both the plaintiff and the first defendant as this will appear in the summons. Add your own facts to the extent required to provide a complete citation. (2)

Note: Full citation; Comply with rules of court by including all prescribed elements

The Plaintiff is Mr Michael Vuyisa, a minor male .... residing at/employed at...

OR

The Plaintiff is Mr/Mrs Vusyisa, a major male/female .... in his/her capacity as parent and natural guardian of Michael Vuyisa ...

Vs

The First Defendant is The Minister of Police NO

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

The office of the State Attorney situated in the area of the court's jurisdiction ie in Pretoria

32.4 Accept that the second defendant previously resided in Pretoria. He has since resigned from the SAPS and moved to Durban on a permanent basis.

Indicate whether the court in which proceedings were initiated will continue to have jurisdiction and explain your answer. (1)

Yes.

Once jurisdiction is established at the beginning of the proceedings it continues to exist.

32.5 Refer to the sheriff's return of service relating to the second defendant, attached hereto as Annexure "A".

As the attorney acting for the plaintiff, you examine the return and notice that it is not in order.

Identify the errors in the return of service. You are required to motivate your answer in each instance. (4)

Any 4:

- The heading is incorrect. This is not a nulla bona return. Nulla bona refers to no assets.
- Document was served at 8 pm. Ito the rules service must be effected between 7 am and 7 pm, unless the court directs otherwise.
- Service was effected on a person who is 15 years old. Ito the rules it must be a person who is apparently not younger than 16 years.
- Incorrect sheriff - the Pretoria sheriff does not have jurisdiction to serve in Durban.

[10]

### **QUESTION 33**

Note:

Identify step + Add motivation

33.1 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 a gardener at the defendant's place of work, as she was a person apparently in a position of authority and over the age of 16 years. (1)

Challenge this.

Irregular service – personal service is required in status matters.

33.2 You act for the plaintiff in a matter concerning a contractual claim for damages.

The matter is set down for trial on 1 August 2021. Despite various requests, your client has not provided you with any instructions and, in the circumstances, you are not in a position to prepare for trial. (1)

Notice of withdrawal.

Not able to proceed.

33.3 Mrs Lynn Bradley disappeared more than a year years ago, during a family vacation while onboard an international cruise ship, the Royal Oceans. Despite various efforts, her body was never discovered.

Her parents have now proceeded with an application for her to be declared presumably dead. The matter is set down for hearing on 14 August 2021. However, her husband, who is not a party to the matter, intends to oppose this application and approaches you for advice. (1)

Notice of application for leave to oppose.

Husband's interests may be affected.

33.4 On 14 June 2021 you consult with your client, Mr Magai. Mr Magai is a South African citizen but resides in Dubai in the United Arab Emirates.

He informs you that he wants to proceed with legal action to recover an amount of R75 000 that he is owed to him by his brother, Sadock. His brother apparently provided him with a signed cheque in the amount of R75 000 on or about 1 August 2015. This was given to your client as payment for various household items and computer equipment that your client sold when he moved to Dubai to take up a permanent position with a construction company. The cheque was subsequently dishonoured by the bank, who refused to make payment on the basis of insufficient funds.

Summons/Provisional sentence.

Liquid document – claim has not prescribed.

33.5 You act for the plaintiff.

Your client has instituted legal action to recover damages on the basis of a claim for goods sold and delivered. In his plea, the defendant admits the purchase of goods in terms of a contract between the parties, but avers that his refusal to make full payment is due to the plaintiff's failure to deliver the goods as agreed. The plaintiff does not agree with this statement and explains to you that there were further negotiations between the parties and that he did in fact deliver the goods to the defendant. (1)

Replication.

Answer to plea other than by way of denial/places additional facts before the court.

[5]

### **QUESTION 34**

You act for the defendant.

The sheriff of the court recently served a combined summons on your client.

Your client informs you that it relates to a contract he concluded some time ago.

The papers were issued in the High Court in Johannesburg.

When considering the plaintiff's Particulars of Claim attached hereto as Annexure "B", you notice that the document is defective/irregular in a number of respects.

Draft a short note to your client in which you:

- Identify the errors/problems. In each instance, you are required to provide a brief motivation for your answer. You are required to refer to authority in support of your answer. (6)

Any 6:

- Citation of PI incomplete – no address;
- Jhb court does not have jurisdiction. Def resides in Durban.
- Contract not attached (HCR 18)
- No allegation on ground of jurisdiction – ie cause of action arose within area.
- Par 8 is irrelevant, evidence should not be pleaded.
- PI's attorneys should indicate address within 15 km of Jhb court.
- Signature incorrect – right of appearance or counsel.

[6]

### **QUESTION 35**

Critically review this document and list, in bullet format, all the amendments that are required to be made in order for it to be correct/compliant.

You may accept that the notice of motion will be supported by an affidavit and that the contents of the affidavit is in order. (5)

Amendments:

Any 5 -

- should refer to edictal citation not substituted service;
- minimum of 21 days should be allowed to enter an appearance to defend, not 1 week;
- strike out/delegate some content - no need to address jurisdiction in the notice of motion – this should be in the supporting affidavit;
- delete allegation about breakdown and grounds - no need to set out grounds for breakdown of marriage/cause of action – this should be in the supporting affidavit;
- wrong form of notice of motion is used – this is an ex parte application that requires the short form
- no need to include or serve on the master of the court, it should be the registrar

[5]

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**SUB TOTAL (PART 2)**

**(30)**

**TOTAL**

**[60]**