



**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS**

FACULTY OF LAW

ONLINE EXAMINATION: 16 NOVEMBER 2020

<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

MEMORANDUM

PART 1

Multiple choice questions (questions 1 – 27).
This must be completed online.

(30)

PART 2

Longer questions (questions 28 – 35).
Please submit your answers in Word/Pdf format on Blackboard.

(50)

TOTAL

[80]

QUESTION 28

Consider the facts below and then answer the following question:

Your client is Mrs Smith. You have successfully assisted her in litigating a contractual matter in the High Court, where she was the plaintiff. The court has found in her favour, and has made the following order as to costs:

“The defendant is ordered to pay the plaintiff’s costs, including the cost of counsel.”

In light of the above order, Mrs Smith is under the impression that she does not have to pay you as her legal representative anything and that your fee will be covered by the court’s order.

Is Mrs Smith correct?

Motivate your answer. (5)

ANSWER:

- No
- In general – the legal representative must be paid regardless of what the costs order is/who is ordered to pay / Client must still pay the attorney, regardless of what she can recover from the opponent. She will in any event only be able to recover a portion of her legal costs from the opponent due to the different scales.
- Party and party costs (definition) - costs that are necessarily incurred for the purpose of litigation according to the tariff set out in the rules of court
- Vs Attorney and own client costs (definition) - remuneration that attorney is entitled to in terms of an agreement with the client
- When the court simply makes an order for costs this is deemed to be party and party costs

[5]

QUESTION 29

Consider the following response to the decision of the Constitutional Court in the case of *University of Stellenbosch Legal Aid Clinic (Clinic) & Others v Minister of Justice and Correctional Services & Others; Association of Debt Recovery Agents NPC v Clinic & Others; Mavava Trading 279 (Pty) Ltd & Others v Clinic & Others* [2016]:

“The judgment is a victory for the poor, who previously did not have access to justice. However, it does not mean they don’t have to pay outstanding debt. Going forward, forum shopping will also not be allowed.”

Critically discuss this statement.

Please limit your answer to the issues raised in this statement. (5)

ANSWER:

- **Exploitation by micro lending industry has been stopped/financially unsophisticated consumers are now being protected.**
- **They still have to pay but EAO will be subject to judicial oversight to determine if it's just and equitable for the EAO to be issued and**
- **Court to consider also whether the amount is appropriate.**
- **EOA can't be granted on the basis of the debtor's consent to the jurisdiction of a Magistrate's court outside the area where the debtor resides or work – creditors can't simply choose whichever court they like. This has caused more costs and difficulties for debtors in the past.**
- **NCA provides legislative framework to protect consumers.**
- **S 129 and 130 of NCA etc.**

[5]

QUESTION 30

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.

You should not provide any motivation/explanation for your answer.

- 30.1 Your client, Mr Simpson, is claiming damages following alleged breach of contract by the defendant, Asics Construction Works Ltd. He is claiming an amount of R2.5 million as general damages as well as R1.5 million as special damages. His claims relate to construction work at the plaintiff's premises that has not been completed due to the Covid-19 lockdown period. As a result, the plaintiff, a property developer, has not been able to open a number of businesses before the Christmas period.

Accept that pleadings have closed and that the parties are preparing for trial. The summons does not contain any details of how the plaintiff's claim for special damages is calculated and no further information/documents have been provided in this regard. (1)

ANSWER:

- **Request further particulars for trial (ito HCR 21)**

- 30.2 Your client applied for urgent relief. The opponent is resisting this relief.

The opponent subsequently served an answering affidavit on your client. Upon perusal of this document, it is clear to you that the affidavit is rather

vague and confusing. The opponent did not respond to all of your client's allegations and did not clearly state his defence. (1)

ANSWER:

- **Applicant must deal with this in the replying affidavit or give notice of the intention to raise a question of law ito HCR6(5) – no exception may be taken to an affidavit, it is not a pleading.**

30.3 You act for the plaintiff.

Following delivery of your client's summons and particulars of claim in a High Court matter, the opponent delivers an exception. The exception is based on the fact that the summons lacks the necessary allegations which are necessary to sustain a cause of action.

You notice that the exception is signed by a candidate attorney and does not contain any prayer. (1)

ANSWER:

- **Exception/notice of exception.**

30.4 You act for the defendant.

Following delivery of your client's plea, the plaintiff proceeds with an application for summary judgment.

Upon perusal of this application, you notice that, in so far as the founding affidavit in support of the application goes, the deponent is the plaintiff's legal representative. You are of the view that this person does not have personal knowledge of the facts. The affidavit also makes no reference to the plaintiff's cause of action. (1)

ANSWER:

- **Arrive at court on the date of the hearing to bring the defects to the court's attention or err on the side of action and file an opposing affidavit, setting out the defects in addition to a bona fide defence on the merits.**

30.5 You act for the defendant, who has entered an appearance to defend the matter.

Having considered the plaintiff's summons, you are of the view that the court does not have jurisdiction in the matter. (1)

ANSWER:

- **Special plea or exception (no cause of action)**

QUESTION 31

Consider the facts below and then answer the questions that follow:

Innocentia is the plaintiff in a High Court matter.

While visiting the Cresta Shopping Centre in Johannesburg, she slipped on a puddle of hand sanitizer and fell, fracturing her coccyx (tailbone). She subsequently discovered the foot dispenser of the sanitizer was stuck, which let the sanitizer drip onto the floor. She has since had to undergo various medical procedures and is unlikely to make a full recovery. Her medical expenses exceed R500 000. In addition, she is claiming general damages.

Pleadings in the matter are closed and the parties are preparing for trial.

31.1 The plaintiff intends to present the evidence of a medical practitioner, Dr Joyce Karim. Similarly, the defendant has lined up its own witness in the form of Dr Ben Noapop.

Briefly discuss the practical steps that will need to be taken for purposes of a single joint expert. (1)

ANSWER:

- **Parties shall endeavour, as far as possible, to appoint a single joint expert and file a joint minute of experts within 20 days of date of last filing of expert reports. Experts meet – exchange views – reach agreement on some issues – saving costs and time.**

31.2 The plaintiff intends to tender 5 (five) colour photographs as evidence during the trial in this matter. She has given the necessary notice to the defendant in terms of rule 36.

Accept that the defendant does not admit these documents and delivered a formal objection to the admission of the photographs in evidence.

Briefly discuss the practical implications for 1) the plaintiff to the extent that she wishes to rely on this evidence during the trial and 2) the defendant. (2)

ANSWER:

- **Plaintiff will have to prove photos by calling the photographer. Authenticity of documents have to be proven.**
- **Defendant may be ordered to pay the costs of proving the photos.**

31.3 The defendant requires the plaintiff to attend a medical examination.

The plaintiff received the notice as set out below on 16 November 2020.

The notice contains several errors.

You are requested to identify and correct 5 (five) errors. (5)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case no 1/2020

In the matter between

MATABELLA, INNOCENTIA

Claimant

and

XXX (PTY) LTD T/A CRESTA SHOPPING CENTRE

Defendant

NOTICE IN TERMS OF RULE 36

TAKE NOTICE that the defendant hereby requests that the plaintiff attends a medical examination by Dr Nicola Sturgeon at Flora Life Hospital, 353 West Street, Constantia Park, Johannesburg at 11:00 am on Monday, 23 November 2020.

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 R2000 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 16th day of NOVEMBER 2020.

Q. Tarrantino

Attorney with right of
appearance in terms of the
Legal Practice Act
BLAKE ATTORNEYS
Defendant's Attorneys
1A Katherine Street
SANDTON, 2169

**TO: THE REGISTRAR OF THE ABOVE NAMED COURT
JOHANNESBURG**

AND TO:

SEEDAT ATTORNEYS
Plaintiff's Attorneys
24 Animone Ave
LENASIA SOUTH EXT 1, 2536

ANSWER: Any 5

- **Dates are problematic. Notice is delivered on 16 Nov and examination is proposed for 23 Nov. At least 15 days' notice is required (HCR36(2)).**
- **Purpose as stated is not correct. It should relate to assessment of claim/to determine if claim amount is reasonable or not.**
- **Should state that Plaintiff can have her medical advisor present (vs legal advisor)**
- **Def is liable for costs – notice should not state the plaintiff will bear the costs**
- **5 days are allowed to object, not 10 days**
- **This is not a pleading, no need for attorney with right of appearance to sign.**

31.4 Accept that the court finds in favour of the plaintiff.

At the time that the plaintiff instituted the action, the prescribed interest rate was 15.5%. However, at the time of judgment (in November 2020), the prescribed rate of interest is in fact 10.5%.

Indicate at which rate the plaintiff will be entitled to recover interest from the defendant? (1)

ANSWER:

- **15.5%/Rate that applied when proceedings were instituted and summons issued.**

31.5 For purposes of this question - accept that the plaintiff passed away two weeks before the commencement of the trial in this matter.

Indicate whether her heirs will be entitled to inherit her claims.

Motivate your answer. (1)

ANSWER:

- **Yes**
- **Claims of a personal nature can be transferred to a deceased estate after litis contestatio only.**

[10]

QUESTION 32

You are consulted by Mr Nelson Purco.

He informs you as follows:

He is the sole owner of an estate agency trading as Hopes for Homes Estate Agents ("HHEA") at 17 Mandela Drive, Pretoria. During January this year, he received written instructions from a client, Ms Springsteen, on behalf of the SSS Trust (registration number 134/1999) to market and sell fixed property situated at 122 Summit Road, Midrand, Pretoria, for an amount of at least R2 million.

The property belongs to the SSS Trust, of which the trustees are Ms Springsteen and her accountant, Mr Jobs. They later orally agreed that, in the event of HHEA carrying out the mandate successfully, they would be entitled to agent's commission of 5% of the purchase price, plus VAT.

According to Mr Purco, he introduced various potential buyers to the property. This was done through, for example, placing various advertisements on the internet and in local newspapers. Due to the national lockdown period, they were not able to host actual show days but arranged for a virtual tour of the property and made this video available on various sites. Records show that the video was viewed by more than 100 people, including a certain Mr Tshabalala.

Mr Purco was aware of the fact that HHEA did not have a sole mandate and that

a number of other agencies also tried to sell the property. It has now (in November 2020) come to his attention that one of the persons whom he introduced to Ms Springsteen and the property as early as May 2020, namely Mr Victor Tshabalala, had in fact bought the property from the owner for an amount of R3 million.

Ms Springsteen denies any liability to pay commission at the agreed rate (R150 000 plus VAT) or at all to your client. Her version is that she met Mr Tshabalala at a Christmas function in December 2019 already and that she dealt with him directly after he had come across the virtual tour video and her details on social media. She further indicates that estate agents are becoming obsolete – deals are now being done online without human intervention. She also questions whether Mr Purco is in fact a duly registered estate agent. She has since retired and moved to Durban.

As there has not been any reply to his letter of demand, you clients instructs you to proceed with legal action.

Make up your own facts to the extent necessary and draft the complete particulars of claim for purposes of a High Court summons. (8)
za

ANSWER:

- **1** PI is Mr Nelson Purco, a major male estate agent residing at ... or trading under the name and style of HHEA from 17 Mandela Drive, Pretoria.
- **2** The first Def is Ms (name) Springsteen (NO), a major female (occupation) residing / employed at in her capacity as trustee for the time being of the SSS Trust (reg no 134/1999).
- **3** The second Def is Mr (name) Jobs (NO), a major male accountant residing / employed at ... in his capacity as trustee for the time being of the SSS Trust (reg no 134/1999).
- **4** The above honourable court has jurisdiction to hear the matter ...
- **Optional** PI is an estate agent who, at all relevant times, was the holder of a valid fidelity fund certificate / was duly registered.
- **5** On (date) at (place) the first defendant in writing gave the plaintiff a mandate to find a purchaser for the following property (description ie 122 Summit Road, Midrand, Pretoria registered in the name of the SSS Trust) at a selling price of at least R2 million.
- **6** Attach copy of contract.
- **7** On (date) at (place) the first defendant and the plaintiff orally agreed that agent's commission of 5% would be payable.
- **8** PI accepted the mandate.
- **9** On (date) PI introduced Mr Victor Tshabala to the said property.

- 10 As a direct result of the introduction Mr Tshabalala purchased the property at a purchase price of R3 million. (copy of deed of sale is attached)
- 11 PI was the effective cause of the sale and duly performed his obligations in terms of the mandate given to him.
- 12 Despite demand the defendants fail/neglect to pay the amount claimed.
- 13 Where the plaintiff prays for judgment against the defendants jointly and severally the one to pay the other to be absolved for:
- 14
 - Payment of the amount of R150 000 plus VAT
 - Interest at the rate of (ie 10.75 or 10.5% p/a) from date of more to date of payment
 - Costs
 Optional: Further and or alternative relief

[8]

QUESTION 33

Consider the following facts and answer the question below:

The plaintiff proceeds with a summons against the defendant.

It relates to goods sold and delivered to the defendant at the defendant's special instance and request.

The defendant enters an appearance to defend the matter and when the plaintiff fails to reply thereto, the defendant delivered the notice below.

The notice contains several errors.

You are requested to identify and correct 3 (three) errors in this document.

You may accept that the document is duly signed by the legal representatives on behalf of the parties. (3)

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG		Case no 2/2020
In the matter between		
TRAILER IMPORTS (PTY) LTD		Plaintiff
and		

MEATLOAF STORES CC

Defendant

NOTICE OF BAR

TAKE NOTICE THAT the defendant herewith requests the plaintiff to file its plea within 10 (ten) days from receipt hereof, failing which the defendant will be ipso facto be barred and the defendant will be entitled to apply for summary judgment.

DATED at JOHANNESBURG on this the 16th day of **NOVEMBER 2020**.

Defendant's Attorneys

TO: Registrar of the Court
JOHANNESBURG

AND TO:

Plaintiff's Attorneys

ANSWERS:

- **Not plea but replication is outstanding.**
- **5 days to deliver not 10.**
- **Failing which default judgment will follow, not summary judgment.**

[3]

QUESTION 34

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.

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

(4)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case no 3/2020

In the matter between

Keep Calm (Pty) Ltd

Plaintiff/Applicant

and

African Imports CC

Defendant/Respondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

I, Keep Calm (Pty) Ltd, 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 personal protective equipment (PPE) from Germany.
 - 5.2 The plaintiff supplied PPE to the value of R750 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 and the quality of the PPE to the local media. As a result of this, the plaintiff suffered damage to its reputation and claims an additional amount of R100 000 from the defendant in this regard.

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 about the plaintiff and its products.

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

ANSWERS: any 4

- **The document does not comply with the rules of court in that:**
 - **Juristic person/company can't signed affidavit. Must be signed by duly authorized representative ie director.**
 - **Par 4 is not correct – should ito amended rule 32 explain why defence as pleaded does not raise any issue for trial**
 - **Omitted from affidavit: it should identify any point of law relied upon by plaintiff.**
 - **No annexures are allowed (other than liquid document). Part 6 and 7 are therefore not correct.**

- **Par 5.4 refers to claim in respect of which summary judgment can't be applied for – damages claim. It is not a claim for a liquid amount.**

[4]

QUESTION 35

Write a note in which you critically discuss and comment on ONE of the following statements.

You may refer to relevant case law as part of your answer.

Please note however that NO marks will be awarded for a discussion of the facts of the case or for simply copying from the judgment itself. Instead, you should indicate whether you agree with the court's decision or not and motivate your answer.

You may choose any ONE of these topics:

TOPIC 1

How does case management affect the adversarial nature of South African civil litigation?

In your answer you must discuss features of the South African civil trial that align with the adversarial system and how this may be affected by case management.

OR

TOPIC 2

There are fundamental differences between discovery in terms of the rules of court, pre-action discovery in terms of the Promotion of Access to Information Act, 2 of 2000 and access to documents through the so-called Anton Piller procedure.

Discuss the main differences between these procedures.

Take care not to include general definitions and an overview of each procedure in your answer. Instead, you are required to distinguish between these procedures.

ANSWER:

Discovery	PAIA	Anton Piller
1 Timing differs In terms of formal litigation	Before litigation, not available once litigation has started	Before litigation
2 Purpose differs Enable parties to prepare for trial, save costs and time	Protect constitutional rights	Search and seize – preserve vital evidence
3 Procedure differs Set out in rules of court ie notice/request and discovery affidavit with annexures	Access to record/s its specific procedure/form set out in the act	Urgent application
4 Requirements differ Compulsory in terms of rules. Can't use document unless discovered	Element of need or substantial advantage of access to information at pre action stage	Granted when – Real apprehension that specified evidence will be destroyed, removed or hidden before discovery or by the time matter is set down for trial. Only in exceptional circumstances where – 1) strong prima facie case against respondent 2) potential damage to applicant is serious

		3) clear evidence that respondent have this in their possession and there is real possibility of this being destroyed or hidden
5 What it applies to differs Documents and tape recordings	Records	All evidence

IMPORTANT: You should select **ONE** of these topics only.

(10)

[10]

FORMAT:

- You don't need to include any footnotes.
- There is no minimum word count for this question.