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| <u>PROGRAMME</u> | : FACULTY OF LAW (LLB) |
| <u>SUBJECT</u> | : LAW OF CIVIL PROCEDURE |
| <u>CODE</u> | : SPR0000/CPR41Y0 |
| <u>DATE</u> | : MAIN EXAMINATION – NOVEMBER 2019 |
| <u>DURATION</u> | : 3 HOURS (180 MIN) |
| <u>TOTAL MARKS</u> | : 100 |
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| <u>EXAMINERS</u> | : MS M DU PREEZ & MRS Y JOUBERT |
| <u>MODERATOR</u> | : PROF DS DE VILLIERS |
| <u>NUMBER OF PAGES</u> | : 8 (EIGHT) + A <u>SEPARATE</u> DRAFTING BOOKLET |

INSTRUCTIONS:

- Please read all questions carefully.
- Plan your answers before you write them down.
- 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.
- To the extent that you are required to draft court documents and/or notices, please ensure that the documents are complete (with a proper heading, conclusion, signature etc) and that you include all relevant information/details.
- Use full sentences and pay attention to grammar, spelling etc.
- You may answer the questions in any order.
However, please ensure that you number your answers clearly.
- **Important:**
Please answer Question 3 in the separate drafting booklet.

QUESTION 1

Briefly distinguish between each of the following:

- 1.1 evidence on commission and evidence by way of interrogatories; (1)
- 1.2 leave to appeal and noting an appeal; (1)
- 1.3 garnishee order and emolument attachment order; (1)
- 1.4 schedule 1 and Schedule 2 of a discovery affidavit; (1)
- 1.5 a discovery affidavit and a *subpoena duces tecum*. (1)

[5]

QUESTION 2

Critically comment on each of the following statements.

In particular, you are required to indicate whether or not you agree with the statement and to motivate your answer.

- 2.1 The Anton Piller procedure may be considered to be unconstitutional; (2)
- 2.2 A claim in reconvention need not relate to the plaintiff's claim or even arise out of the same set of facts. As such, it serves little purpose; causes unnecessary confusion and practical difficulties and should be avoided as far as possible to do so; (2)
- 2.3 When a party seeks leave to amend a pleading and it involves the withdrawal of an admission, the court will require a satisfactory *bona fide* explanation. Amendments of this nature are difficult to obtain. (2)
- 2.4 Ordinarily, the opinion of a witness constitutes inadmissible evidence. However, expert evidence will be allowed in certain circumstances and there are very good reasons for this. (2)
- 2.5 Claims of a personal nature, such as a claim for damages for pain and suffering, do not fall away when the plaintiff dies. In such a case the executor of the plaintiff's deceased estate will step into the shoes of the plaintiff and the matter will continue for the benefit of the deceased estate. (2)

[10]

QUESTION 3

Consider the following facts and answer the questions below in relation thereto. Please remember to answer Question 3 in its entirety in the separate drafting booklet.

You act for Mrs Reynolds. She works as a nurse at the Midvaal Private Hospital in Vereeniging. She informs you that she was recently involved in a motor vehicle collision with Mr John Browne.

It is common cause that the collision occurred opposite the sports gate of Overvaal High School in Mixit Street, Vereeniging.

There are two south bound lanes in this part of Mixit Street. The north bound section of Mixit Street is separated from the south bound section by a grass island. Directly opposite the sports gate, is a gap in the island allowing traffic to exit the south bound carriageway, and turn right into the north bound carriageway.

The plaintiff was driving her daughter to the school when the collision occurred. She had come up the northbound carriage way, past the gap in the island and had turned right at the intersection to access the south bound carriageway. As she was running a little late, she did not enter the main gate of the school, which was already closed. She instead proceeded down the south bound carriageway towards the sports gate entrance. Her intention had been to drop off her daughter at the sports gate entrance as usually this closes a little later than the main school gate. However, when they got there, they saw that the sports gate entrance had also been locked. This meant that the plaintiff had to go back up the north bound carriageway to the main school gate again. She intended to accompany her daughter into the school premises because as the school bell had already rung, she would have to report at the office and fill in a late slip. In order to do this, plaintiff had to drive from where she had parked at the sports gate, directly across the two lanes of south bound carriageway of Mixit Street, and through the gap in the island to turn into the north bound carriageway, back to the school.

The collision occurred after the plaintiff had proceeded across the first traffic lane and had just entered the second lane. The speed limit in the area is 60kph. Mixit Street follows a straight path from before the main gate of the school down to the area where the incident occurred. Photographs show that approaching the school from the north along the south bound carriageway (i.e. the direction in which the defendant travelled) there is a 60kph traffic sign, with a speed camera warning below. A second warning sign is located closer to the school just before the main gate. This is a caution: children crossing sign.

The plaintiff accepts that the defendant had right of way, and that the collision occurred in the defendant's lane of travel. However, the plaintiff's case is that the defendant was travelling at an excessive speed, and that he failed to keep a proper lookout, both of which acts of negligence caused the collision. The plaintiff also contends that the defendant could, and should have avoided the collision through the exercise of reasonable care. According to the plaintiff, the defendant's negligence substantially exceeded that of the plaintiff.

The damage to your client's vehicle, a Toyota Fortuner with registration number SUPERMOM 13 GP, amounts to R600 000.

In the circumstances, your client intends to proceed with a claim for damages in the amount of R600 000 in the High Court in Johannesburg.

3.1 You act for the plaintiff.

Draw the particulars of claim in order to give effect to your client's wishes.

Supplement the above facts with your own particulars where necessary in order to draft a complete document.

(10)

3.2 You act for the plaintiff.

Your client wishes to tender the following in evidence during the trial in this matter: 16 (sixteen) full colour photographs of the scene of the collision as well as a diagram showing the general area and the direction in which the vehicles were travelling when the collision occurred.

Draft the necessary notice to the defendant in terms of Uniform Rule 36.

(6)

3.3 You act for the plaintiff.

Your client wishes to call a medical practitioner, Dr Michelle Keanly, to testify on her behalf at the trial in this matter.

Dr Keanly will testify as to the nature of the injuries your client sustained in the collision.

Draft the necessary notice informing the defendant of the involvement of this witness in terms of Uniform Rule 36. It is not necessary to draft a summary of the doctor's opinion.

(5)

3.4 Accept, for purposes of this part of the question, that you act for the defendant.

3.4.1 Your client intends to defend the matter and consults with you after the summons has been served on him.

Draft the relevant notice informing the plaintiff of your client's intention.

(5)

3.4.2 The plaintiff is of the view that your client has no *bona fide* defence (as his negligence caused the collision) and that he is simply trying to delay the matter.

Indicate whether the plaintiff can apply for summary judgment.

You are required to motivate your answer.

(2)

3.4.3 Your client insists that the plaintiff should attend a medical examination by a specialist of the defendant's choice, namely Dr Peter Berrington. He is a well-known neurosurgeon based in Pretoria.

Draft the necessary notice to the plaintiff in terms of Uniform Rule 36 for purposes of arranging this examination.

(8)

3.4.4 Indicate whether the plaintiff may object to this proposed examination.

Motivate your answer.

(1)

3.4.5 Indicate who pays for the costs of the examination referred to in 3.4.3 above.

(1)

3.4.6 Your client wishes to inspect the plaintiff's vehicle.

Draft the necessary notice to the plaintiff in terms of Uniform Rule 36 for purposes of arranging this inspection.

Please answer this question in the drafting booklet.

(3)

3.4.7 Indicate whether the plaintiff may refuse to make the vehicle available for the proposed inspection.

(1)

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QUESTION 4

4.1 List four circumstances indicating the close of pleadings. (4)

4.2 For a number of reasons, it is important to determine precisely when pleadings have closed.

List these reasons.

(3)

4.3 Briefly discuss the purpose of so-called further particulars as provided for in the Uniform Rules of Court. (1)

[8]

QUESTION 5

Indicate what the next step is you will advise your client to take in each of the following High Court matters.

You are not required to motivate your answer and or to provide any explanation.

You will be penalized if you provide any information other than what the next step will be.

5.1 You act for the defendant.

The plaintiff issued and arranged for a simple summons to be served on your client. The defendant entered an appearance to defend.

The plaintiff has not provided his declaration or done anything within the 15 day time period stipulated by the rules of court. (1)

5.2 You act for the defendant in a High Court matter in Johannesburg.

You are informed that the sheriff appointed for Bloemfontein served the summons on your client in Johannesburg. (1)

5.3 You act for the plaintiff.

Following service of the summons, the defendant failed to deliver a notice of intention to defend at all. (1)

5.4 You act for the defendant.

Your client delivered a claim in reconvention, together with a plea. The plaintiff fails to give an indication as to whether he/she intends to defend the claim in reconvention. (1)

5.5 You act on behalf of the plaintiff.

A pre-trial was held in terms of Rule 37. What step must you take to ensure that the court is aware of the agreements reached at the pre-trial? (1)

5.6 You act for the defendant.

Having considered the plaintiff's summons and particulars of claim, it is not clear to you whether the claim is based on contract or delict and your client is not in a position to respond thereto. (1)

5.7 You act for the defendant.

The plaintiff is a foreign national from Mauritius, Mrs Hein. Your client feels as if he is being dragged into litigation and that Mrs Hein will be unable to pay the costs of the litigation should she not be successful with her case. (1)

5.8 You act for the plaintiff.

The defendant proceeds to enroll the matter for trial. However, this is done prematurely as pleadings have not closed. (1)

5.9 Your client wishes to amend her summons and particulars of claim.

The defendant however has raised an objection against the proposed amendment. (1)

5.10 You act for the defendant.

Having considered the plaintiff's summons and particulars of claim, it appears that the plaintiff's claim has prescribed. (1)

[10]

QUESTION 6

Discuss only the **ratio decidendi** in each of the following decisions:

- 6.1 *Coopers (SA) (PTY) LTD V Deutsche Gesellschaft fur Schadlingsbekampfung MBH* 1976 (3) SA 352 (A); (2)
- 6.2 *Jaftha v Schoeman and Others; Van Rooyen v Scholtz and Others* 2005 (1) BCLR 78 (CC); (2)
- 6.3 *Luna Meubelvervaardigers (Edms) Bpk v Makin Furniture Manufacturers* 1977 (4) SA 135 (W); (4)
- 6.4 *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC). (2)

[10]

QUESTION 7

Choose **ONE** of the topics below and write a short note/paragraph. Please use full Sentences - no marks will be awarded for bullet points only.

- 7.1 Provide at least 7 (seven) examples of ways in which the Constitution of the Republic of South Africa, 1996, has prompted reform in civil procedure. You must also refer to relevant case law.
- 7.2 Discuss, with reference to case law, the procedure to be followed by a judgment creditor when intending to attach and sell a debtor's primary residence in execution.
- 7.3 Explain what judicial case management in terms of Rule 37A of the Uniform Rules of Court entails.

[8]

QUESTION 8

- 8.1 "Costs follow the outcome of a case. The losing party in a civil matter is therefore required to pay a substantial portion of the costs incurred by the winning party, as well as his/her own costs".

In your own words, explain to your client why he will probably not be able to recover all his legal costs even if he succeeds with the matter/wins the case, but only a portion thereof. (2)

8.2 Consider the following facts and answer the questions below:

The sheriff of the court arrives at a debtor's residence with an order of court to attach movable property in order to satisfy a judgment debt.

The sheriff finds the following property at the debtor's premises: one single bed with bedding, a sofa, a few items of clothing, crockery, pots, a toolbox with tools (the debtor is a qualified electrician) and a new Toyota motor vehicle.

8.2.1 Indicate which of these items may be attached in execution. (1)

8.2.2 A third party, ABC Bank, subsequently informs the sheriff that the Toyota motor vehicle which had been attached, is the subject of credit agreement with the bank and that there is a significant amount owing by the judgment debtor.

Indicate if/how this will change the position and whether the sheriff may proceed with attachment and execution. (1)

8.2.3 To the extent that the judgment debtor has no attachable movable property, indicate which other options/remedies are available to the judgment creditor. (1)

8.3 List 2 (two) grounds for review of proceedings of Magistrates' Courts. (2)

[7]

TOTAL: [100]