



PROGRAMME : FACULTY OF LAW (LLB)
SUBJECT : LAW OF CIVIL PROCEDURE
CODE : SPR0000 / CPR41Y0
DATE : 28 NOVEMBER 2018
DURATION : 3 HOURS (180 MINUTES) + 15 MIN READING TIME
TOTAL MARKS : 100

EXAMINERS : MS M DU PREEZ & MRS Y JOUBERT
MODERATOR : PROF DS DE VILLIERS
NUMBER OF PAGES : 12 (TWELVE) + SEPARATE DRAFTING BOOKLET

MEMORANDUM - DRAFTING

QUESTION 2.1

2.1 POC (8)

Award 8 marks as follows:

- 1) The plaintiff is Jemma Mashaba, a major female manager residing at/employed at... (full citation required)
- 2) The defendant is Jim Mashaba, a major male attorney currently employed and residing at ... (full citation required)
- 3) Details of marriage (regime, fact that it still exists)
- 4) Details of minor children:
 - Names
 - Age/date of birth
- 5) Best interest
 - Care
 - Contact
- 6) Allegation that marriage has broken down irretrievably
- 7) Reasons for breakdown of marriage
- 8) Prayers (at least 2 issues)
 - Decree of divorce
 - Costs
 - Minor children
 - Maintenance

PARTICULARS OF CLAIM

1.

The Plaintiff is ...

2.

The Defendant is ...

3.

The Plaintiff and the Defendant are domiciled within the area of jurisdiction of this Honourable Court and have been so domiciled on the date on which the action was instituted.

[You could also have drafted: “The Plaintiff and the Defendant are both ordinarily resident within the area of jurisdiction of the above-mentioned Honourable Court and have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the date on which the action was instituted.”]

4.

4.1 The parties were married to each other in community of property on ... in ...and the marriage still subsists.

5.

5.1 During the marriage two children were born, namely:

5.1.1 ..., a boy born on ...;

5.1.2 ..., a boy born on

5.2 The minor children are presently in the care of Plaintiff and resides with Plaintiff at the address stated in paragraph 2 hereof.

5.3 It is in the minor children’s best interest that the parental responsibilities and rights in respect of the minor children are awarded to the Plaintiff.

5.4 It is in the minor children’s best interest to mainly reside with the Plaintiff.

6.

The marriage relationship between the parties has reached such a state of disintegration that it has broken down irretrievably and there is no reasonable prospect of the restoration of a normal marriage relationship between them for the following reasons:

- 6.1 le
 Plaintiff and Defendant argue constantly;
- 6.2 Defendant is a violent woman that assaults the children;
- 6.3 The parties have not lived together as husband and wife since ... on which date the Defendant left the common household.

7.

(Optional - forfeiture claim)

Having regard to the duration of the marriage, the circumstances which gave rise to the breakdown as mentioned in paragraph 6 and the substantial misconduct on the part of the Defendant as mentioned in paragraphs 6.1 to 6.3, it is respectfully submitted that if an order for forfeiture of the patrimonial benefits of the marriage is not made, the Defendant will be unduly benefited to the detriment of the Plaintiff, more particularly as:

- 7.1 the Plaintiff acquired all the assets from his own funds and as a result of his own contributions.
- 7.2 the Defendant possessed no assets at the date of the marriage and made no contribution to the household.

8.

(Optional - pension benefits)

The defendant is a member of a pension fund / provident fund, namely the ABCD Pension Fund.

- 8.1 The pension fund pension fund as named in paragraph 8 is a pension fund as described in section 1 (1) of the Divorce Act 70 of 1979.
- 8.2 The pension benefits of the defendant are regarded as part of the joint estate.
- 8.3 The above-mentioned pension fund pension fund is not a retirement annuity.

WHEREFORE THE PLAINTIFF PRAYS FOR JUDGMENT (AGAINST THE DEFENDANT) AS FOLLOWS:

- (1) A decree of divorce;
- (2) Optional:

Forfeiture by the Defendant of the patrimonial benefits from the marriage;

That the ABCD pension fund or its successor in title be ordered to pay 50% of the benefits to which the Defendant is entitled to as a member of the fund on the date of the divorce, to the Plaintiff within 60 days after receiving a notice from the Plaintiff wherein he elects to receive a cash benefit.

- (3) That parental responsibilities and rights in respect of the minor children be awarded to the Plaintiff subject to the provisions set out below:
- (a) the minor children will mainly reside with the Plaintiff:
 - (b) the Defendant shall, having regard to the minor children's social, religious, school and extra-mural activities, have reasonable contact with the minor children.
- (4) Optional:
- Maintenance for the Plaintiff in the amount of R ... per month to be paid by the Defendant;
- (5) Maintenance for the minor children in the amount of R ... per month to be paid by the Defendant;
- (6) Costs of the action/costs if defended;
- (7) Further and/or alternative relief.

DATED AT JOHANNESBURG ON THIS THE ... of ... 2018.

A. LOAFER
Attorney with right of appearance ito Act ... (or signed by counsel)
Loafer and Partners Inc.
Attorneys for the Plaintiff
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Ref: AL123/08

8 marks in total

IN THE HC OF SA
GAUTENG LOCAL DIVISION, JHB (1/2)

In the matter between:	Case no:
Mashaba, Jemma	Plaintiff
and	
Mashaba, Jim	Defendant

NOTICE OF BAR

Kindly take notice that plaintiff herewith requests defendant to file/deliver his plea within 5 (five) days after receipt hereof failing which he will ipso facto be barred to deliver his plea and in which event plaintiff will apply for default judgment against defendant

Signed at JOHANNESBURG on this the ____ 2018.

Name
Attorneys for Plaintiff
Address

TO: The Registrar of the above Honourable Court

AND TO: Name
Attorneys for Defendant
Address

5 marks in total

2.8 Expert notice (4)

Take notice that:

The plaintiff intends to call Dr Sue Roper,
A clinic psychologist
To testify on her behalf/give evidence on the Plaintiff's behalf at the trial in the above matter

Dated at ... on ...

Name
Attorneys for Plaintiff
Address

TO: The Registrar of the above Honourable Court

AND TO: Name
Attorneys for Defendant
Address

4 marks in total