



**UNIVERSITY OF JOHANNESBURG**

**FACULTY OF LAW (AUCKLAND PARK CAMPUS)**

**SUBMISSION OF FINAL EXAMINATION PAPERS**

**JANUARY/JANUARIE 2018(3<sup>rd</sup> Round)**

MODULE NAME: Law of Civil Procedure

MODULE CODE: SPRO000 / CPR4140

LECTURER (S): Ms. Du Preez ; Ms Joubert Y

HEAD OF DEPARTMENT: Prof DS DE VILLIERS

EXIT MODULE: YES/ NO \_\_\_\_\_

FOR EXIT MODULES:

EXTERNAL MODERATOR: \_\_\_\_\_

EXTERNAL MODERATOR FORM ATTACHED: \_\_\_\_\_

**INSTRUCTIONS:**

1. How many of the following items will be required per student?

Examination script (4 pages) \_\_\_\_\_

Scanner sheet \_\_\_\_\_

Other (please specify) \_\_\_\_\_

2. How many students are still attending lectures,  
(With a view to the number of examination papers required)? 10

**SIGNATURE OF LECTURER:**

DATE:

26.01.2018

**SIGNATURE AS HEAD OF DEPARTMENT/  
(AS INTERNAL MODERATOR)**

D S DE VILLIERS

DATE:

1/02/2018

**FOR ADMINISTRATIVE PURPOSES:**

Noted: \_\_\_\_\_

Date: 26.01.2018



**PROGRAMME** : FACULTY OF LAW (LLB)  
**SUBJECT** : LAW OF CIVIL PROCEDURE  
**CODE** : SPR0000 / CPR41Y0  
**DATE** : 29 JANUARY 2018  
**DURATION** : 3 HOURS (180 MINUTES) + 15 MIN READING TIME  
**TOTAL MARKS** : 100

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**EXAMINERS** : MS M DU PREEZ & MRS Y JOUBERT  
**MODERATOR** : PROF DS DE VILLIERS  
**NUMBER OF PAGES** : 7 (SEVEN) + A SEPARATE DRAFTING BOOKLET

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### **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. It is important to substantiate your answers with referenced to the relevant sources.
- 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 as provided for in the *separate drafting booklet*.
- Use *full sentences* and pay attention to *grammar, spelling, punctuation* etc.
- You may answer the questions in *any order*.  
However, please ensure that you number your answers clearly.
- **Very important:**  
Please take note of the following -  
You are required to answer Question 7 (the entire question) in the separate drafting booklet (marked Booklet B) - please follow the instructions in this regard. Answer **ONLY** question 7 in the drafting booklet.

**QUESTION 1**

Distinguish between the following:

- 1.1 leave to appeal and noting an appeal; (2)
- 1.2 an exception and an irregular step; (2)
- 1.3 Schedule 1 and Schedule 2 of a discovery affidavit; (2)
- 1.4 a pre-trial conference and a pre-trial minute; (2)
- 1.5 a discovery affidavit and a subpoena *duces tecum*. (2)

[10]

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**QUESTION 2**

- 2.1 The sheriff of the court arrives at a debtor's residence with an order of court to attach property in order to satisfy a judgment debt.  
The sheriff finds the following property at the debtor's premises: a bed with bedding, a sofa, clothing, crockery, pots and toolbox with proper tools (the debtor is a plumber).

Briefly analyse the *practical implications* for the sheriff and for the judgment creditor. (2)

- 2.2 Briefly *define* each of the following terms:

- 2.2.1 party-and-party costs; (1)
- 2.2.2 liquid document; (1)
- 2.2.3 garnishee order; (1)
- 2.2.4 interpleader. (1)

[6]

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**QUESTION 3**

Critically evaluate the summary judgment procedure in civil court proceedings and indicate whether, in your view, the procedure can be justified having regard to the requirements of the Constitution, 1996. (5)

[5]

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**QUESTION 4**

Discuss the *ratio decidendi* in each of the decisions below.  
In particular, you are required to demonstrate the relevance of the decision for the law of civil procedure:

- 4.1 *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T); (3)
- 4.2 *Gundwana v Steko Development CC and Others* 2011 (3) SA 608 (CC); (3)
- 4.3 *Moolman v Estate Moolman and Another* 1927 CPD 27; (3)
- 4.4 *De La Guerre v Ronald Bobroff and Partners Inc and Others* [2014] ZACC 2. (3)

[12]

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### QUESTION 5

*"The Bill of Rights has significantly impacted our law of civil procedure and will continue to do so in the next few years."*

With reference to practical examples, demonstrate the impact of, or, in other words, the ways in which the Bill of Rights has influenced the South African law of civil procedure.

You are required to refer to specific instances (referring to legislation, case law and the rules of court) in your answer and must not merely quote general fundamental rights. (6)

[6]

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### QUESTION 6

Various scenarios are set out below.

Accept that you act as the attorney of record.

Interpret the facts and indicate, in each instance, what the **next step** is that you should take on behalf of your client.

You are **not** required to motivate your answer.

Please note that you should list only **one** step, ie the next most appropriate step to take, considering the circumstances of the particular matter.

- 6.1 You act on behalf of the plaintiff.  
Following service of a simple summons on the defendant, the defendant enters an appearance to defend the matter.
- 6.2 You act on behalf of the plaintiff.  
Following a civil trial, the court granted judgment in favour of your client. Despite demand, the defendant fails/refuses to make payment to your client.
- 6.3 You act on behalf of the defendant.  
Following service of the plaintiff's summons and particulars of claim, you are advised that the plaintiff's claim has prescribed.

- 6.4 You act for the plaintiff.  
The plaintiff claims ejectment of the defendant on the ground that the defendant is wrongful possession of the plaintiff's property.

The defendant has delivered her plea. She pleads lawful possession by virtue of an agreement of lease between the parties. The plaintiff has considered the plea and wishes to allege that, if there was a lease, it was cancelled by virtue of the defendant's breach.

- 6.5 You act for the defendant.  
The plaintiff had instituted a claim against your client arising from alleged medical negligence. From the particulars of claim however it is not clear whether the claim is based on contract or delict.

[5]

### QUESTION 7

**IMPORTANT: PLEASE ANSWER THIS QUESTION IN THE SEPARATE BOOKLET (MARKED BOOKLET B). QUESTION 7.1 TO 7.14 MUST ALL BE ANSWERED IN THE SEPARATE BOOKLET (MARKED B) PLEASE.**

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

Susan Daniels is a third year law student at the University of Johannesburg.

During August 2017, she instituted an action for damages against Shoprite Checkers (Pty) Ltd. It arose out of an incident that occurred on the 24th of December 2016 in the store's Menlyn shopping centre branch in Pretoria.

On the particular day, employees were cleaning/washing the floor of the shop. Susan slipped on the wet floor and fell. In the process, she sustained serious bodily injuries. In addition to breaking a leg and injuring her fingers, she hit her head against a steel shelf. Aside from cuts and bruises, she also sustained traumatic brain injuries. Her total medical expenses amount to R905 000 (nine hundred and five thousand rand).

In the particulars of claim, it was alleged that the incident was caused by the sole negligence of the defendant in that it failed to take reasonable steps to ensure that use of the floor by members of the public was safe. In addition, the plaintiff alleged that the floor was cleaned without warning signs alerting members of the public to the fact that the floor was wet and that they could slip and fall.

The defendant denies negligence as well as the averments in connection therewith.

- 7.1 Draft the citation of both parties as this will appear in the particulars of claim. (2)
- 7.2 Draft the prayers as this will appear in the particulars of claim. (3)
- 7.3 Draft the defendant's notice of intention to defend. (5)
- 7.4 Accept that you act for the plaintiff.

The defendant has delivered an appearance to defend but fails to deliver a plea within the prescribed *dies*.

Draft the next document to be delivered on behalf of your client. You should start with the tramlines. (5)

- 7.5 Accept that you act for the defendant.

Having perused the plaintiff's summons, you are of the view that the court does not have jurisdiction to entertain the matter.

The incident occurred in Pretoria and the defendant resides in Pretoria. However, the plaintiff instituted action in the High Court in Durban, which is where the Plaintiff resides.

Draft the defendant's plea in this regard. You should start with the tramlines.

It is not necessary to draft a plea on the merits. (3)

- 7.6 Accept that you act for the plaintiff and that pleadings have closed.

The plaintiff has obtained a trial date from the registrar of the court, ie 5 June 2018.

Draft the notice of set down to the defendant. You should start with the tramlines. (4)

- 7.7 The plaintiff intends to present six colour photographs of the scene of the collision as evidence.

Draft the necessary notice in order to ensure that the photograph can form part at the evidence at the trial. You should start with the tramlines. (5)

- 7.8 Accept that the photo was taken by a witness on the scene.

Will it be necessary for the plaintiff to call the photographer to testify? Indicate if and when this will be necessary. (2)

- 7.9 Discuss whether the plaintiff will be able to rely on the photographs if she does not deliver the notice referred to in question 7.7 above. (1)

- 7.10 Accept that you act on behalf of the defendant.

The defendant denies that it's conduct is causally linked to the plaintiff's injuries.

The defendant wants Susan to attend a medical assessment by Dr Gumede, a neurosurgeon based at the Sandton Hospital in Johannesburg, in order to determine the nature, extent and duration of Susan's injuries.

Draft the necessary notice in order to advise the opponent of the proposed examination. You should start with the tramlines. (9)



- 6 -

- 7.11 For purposes of her claim, the plaintiff intends to call Dr Beekman, a surgeon with some 20 years' experience to testify as to the nature and extent of her injuries.

Draw the necessary notice informing the opponent of this witness. You should start with the tramlines. (3)

- 7.12 Identify the steps to be taken by the plaintiff to arrange a pre-trial conference. (3)

- 7.13 One the plaintiff's key witnesses is no longer available to attend the trial due to personal circumstances beyond his control.

The witness will be overseas at the time of the trial.

Indicate whether, and if so, under which circumstances, the plaintiff will be allowed to present the witness' testimony by affidavit. (2)

- 7.14 Assume that the matter has been finalised.

The judge has found in favour of the plaintiff.

You act on behalf of the defendant.

Adv Kampepe, who was the defendant's counsel in the court *a quo*, advises that there is a good chance that the defendant can have the matter overturned. This is on the basis of the judge erring in not taking into account the evidence of the eye witness on the scene, Ms Susy Bollox.

Adv Kampepe is further of the opinion that the trial judge had erred in not taking into account that Susan had contradicted her own evidence during cross examination.

You are required to draw the defendant's Notice of Appeal.

Make up/add your own facts to the extent necessary. (5)

[52]

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### QUESTION 8

Assume that you are a candidate attorney.

Your principal gives you the following documents:

- a) a complete combined summons pertaining to the Smith divorce matter;
- b) a notice of Intention to defend relating to the Moloi matter (claim for damages).

He instructs you to "issue" the combined summons and to ensure that it is sent off to be delivered.

He then instructs you to **see** to the delivery of the notice of intention to defend.

8.1 Explain how you will *issue* the combined summons. (1)

8.2 How will the combined summons be *delivered*? (1)

8.3 In contrast to 8.2 above, how will you **see** to the *delivery* of the notice of intention to defend?

You should deal with each of these actions/steps in detail. (2)

**[4]**

**TOTAL: [100]**

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the bottom.



**LAW OF CIVIL PROCEDURE  
(SPR0000/CPR41Y0)**

**29 JANUARY 2018**

**SECTION B  
DRAFTING BOOKLET**

**PLEASE ANSWER *QUESTION 7*  
IN THIS BOOKLET. NO OTHER  
QUESTIONS TO BE ANSWERED  
IN THIS BOOKLET.**

**SURNAME, INITIALS:**

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**STUDENT NUMBER:**

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**QUESTION 7.1**

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**[2]**

**QUESTION 7.2**

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**[3]**

**QUESTION 7.3**

**IN THE HIGH COURT OF SOUTH AFRICA**

**1/2017**

**In the matter between**

**Plaintiff**

**and**

**Defendant**

**NOTICE OF INTENTION TO DEFEND**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED at Johannesburg on this 20th day of August 2017.

XXX Attorneys  
Attorneys for Defendant  
Address

TO: THE REGISTRAR OF THE COURT

AND TO:  
YYY Attorneys  
Attorneys for Plaintiff  
Address

[5]

**QUESTION 7.4**

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DATED at Johannesburg on this 20th day of August 2017.

XXX Attorneys  
Attorneys for Plaintiff  
Address

TO: The Registrar

AND TO:  
YYY Attorneys  
Attorneys for Defendant  
Address

[5]

**QUESTION 7.5**

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DATED at Johannesburg on this 20th day of August 2017.

XXX Attorneys  
Attorneys for Defendant  
Address

TO: The Registrar

AND TO:  
YYY Attorneys  
Attorneys for Plaintiff  
Address

[3]

**QUESTION 7.6**

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**NOTICE OF SET DOWN**

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DATED at Johannesburg on this 20th day of October 2017.

XXX Attorneys  
Attorneys for \_\_\_\_\_  
Address

TO: The Registrar

AND TO:  
YYY Attorneys  
Attorneys for \_\_\_\_\_  
Address

[4]

**QUESTION 7.7**

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TAKE NOTICE THAT \_\_\_\_\_

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\_\_\_\_\_

DATED at Johannesburg on this 20th day of August 2017.

XXX Attorneys  
Attorneys for Plaintiff  
Address

TO: The Registrar

AND TO:  
YYY Attorneys  
Attorneys for Defendant  
Address

[5]

**QUESTION 7.8**

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[2]

**QUESTION 7.9**

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[1]

**QUESTION 7.10**

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TAKE NOTICE THAT \_\_\_\_\_

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TAKE NOTICE THAT \_\_\_\_\_

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TAKE NOTICE THAT \_\_\_\_\_  
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TAKE NOTICE THAT \_\_\_\_\_  
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DATED at Johannesburg on this 20th day of October 2017.

ABC Attorneys  
Attorneys for Defendant  
Address

TO: THE REGISTRAR OF THE COURT

AND TO:  
DEF Attorneys  
Attorneys for Plaintiff  
Address

[9]

**QUESTION 7.11**

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TAKE NOTICE THAT \_\_\_\_\_

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DATED at Johannesburg on this 20th day of October 2017.

XXX Attorneys  
Attorneys for Plaintiff  
Address

TO: THE REGISTRAR OF THE COURT

AND TO:  
YYY Attorneys  
Attorneys for Defendant  
Address

**[3]**

**QUESTION 7.12**

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**[3]**

**QUESTION 7.13**

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[2]

**QUESTION 7.14**

1/2017

**In the matter between**

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**and**

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**NOTICE OF APPEAL**

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TAKE NOTICE THAT \_\_\_\_\_

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TAKE FURTHER NOTICE THAT \_\_\_\_\_

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DATED at Johannesburg on this 20th day of January 2018.

XXX Attorneys  
Attorneys for \_\_\_\_\_  
Address

TO: THE REGISTRAR OF THE COURT

AND TO:  
YYY Attorneys  
Attorneys for \_\_\_\_\_  
Address

[5]

[TOTAL: 52 MARKS]

TOTAL: 40 MARKS