



PROGRAMME : FACULTY OF LAW (LLB)
SUBJECT : LAW OF CIVIL PROCEDURE
CODE : SPR0000 / CPR41Y0
DATE : 3 JUNE 2017
DURATION : 3 HOURS (180 MIN) + 15 MIN READING TIME
TOTAL MARKS : 100

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MODERATOR : PROF DS DE VILLIERS
NUMBER OF PAGES: : 8 (EIGHT)

MEMORANDUM

QUESTION 1

Note:

No 1/2 marks

- 1.1 Any 1:
Legal standing
Place to stand before the court
What supports a party's participation in a matter
Legal capacity to institute/defend legal proceedings (1)
- 1.2 Any order:
Person must indeed be acting in the public interest
&
Public must have sufficient interest in proposed remedy (2)
- 1.3 in mora (in default) (1)
- 1.4 Any 1:
Proceedings between spouses
Relating to spouses separate property
Recovery of non-patrimonial damages
Related to spouse's profession or trade (1)

- 1.5 protect interests during litigation/represent party in litigation
&
property/assets (2)
- 1.6 2 medical practitioners/doctors
(may add - one of which must be alienist or psychiatrist) (1)
- 1.7 consent/permission (not leave) (1)
- 1.8 trustees
&
Representative capacity/nomine officii (1)
- [10]**
-

QUESTION 2

ITEM	<i>EX PARTE</i> APPLICATION	BILATERAL APPLICATION
1. Parties before court	Only one party with an interest/ Applicant only.	More than one party with an interest/ Applicant and Respondent/ 2 parties.
2. Notice of Motion is addressed to:	Registrar.	Registrar and/plus respondent/opponent.
3. Form of Notice of Motion used:	Form 2 HC/Form 1 MC/short form.	Form 2(a) HC/Form 1(a) MC/long form.
4. Is the involvement of the Sheriff of the High Court necessary or not?	No. No reason required (Only the applicant is before court, no service on anyone else.)	Yes. No reason required (The sheriff must serve the NOM on the respondent(s)).
5. Is there automatic set down for the hearing, or must a separate notice of set down be filed?	Automatic set down / no notice of set down required. No reason required. (Date of the hearing is stipulated in the Notice of Motion.)	No automatic set down/Notice of set down required. No reason required (It is not known whether the respondent will oppose or not - a separate Notice of Set down must be done at a later stage.)

[10]

QUESTION 3

Note:

Student can use own words/description

- 3.1 15 kilometers
- 3.2 notices/court documents/service of all processes in the proceedings/court documents
- 3.3 (not less than) 5
- 3.4 15
- 3.5 set the matter down/place the matter on the roll for hearing/draft notice of set down
- 3.6 all the allegations in the applicant's founding affidavit/all the allegations of fact in founding affidavit/founding affidavit
- 3.7 facts which make up his or her defence/additional facts constituting his defence/defence
- 3.8 the applicant wishes to place a further explanation or further evidence before the court
- 3.9 the court has given leave for further affidavits/there is a satisfactory explanation for this and not prejudice to opponent which can't be cured by a costs order
- 3.10 5
- 3.11 respondent
- 3.12 Thursday (Not Tuesday)
- 3.13 court

[13]

QUESTION 4

Note:

No marks for discussion of facts.

Reason for decision to be discussed.

- 4.1 *Plascon-Evans Paint Limited v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A); (2)
 - If a respondent's denial of a fact alleged by an applicant does not result in a real, genuine or bona fide dispute of fact (although there may appear to be a dispute of fact on the papers) the court may decide the disputed fact in the applicant's favour without hearing oral evidence.
 - When final interdict may be granted – facts in dispute – qualifications to general rule required – in certain cases the denial by respondent of a fact alleged by the applicant may not be such to raise a real, genuine or bona fide dispute of fact.
- 4.2 *Trustees for The Time Being of the Children's Resources Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* 2013 (2) SA 213 (SCA); (4)
 - Class actions may be used in ordinary litigation where the claims are not based on a right infringement as such / Class actions are available in cases not involving constitutional rights
 - Gave guidance on the procedure to be followed to obtain court certification/Set out requirements for class actions.
 - Court must be satisfied: any 2 -

- Existence of class identifiable by objective criteria
- Cause of action raising triable issue
- Issues of fact/law or both, common to members of class
- Relief or damages flow from cause of action and are ascertainable and capable of determination
- There is appropriate procedure to allocate damages to class members
- Proposed representative is suitable to conduct action and to represent class
- Class action is most appropriate means to determine members' claims, in light of composition of class and nature of proposed action.

4.3 *Mukadam v Pioneer Foods (Pty) Ltd* 2013 (5) SA 89 (CC); (5)

- Set out requirements for an application for certification
- Any 4:
 - There must be a cause of action rising a triable issue.
 - The right to relief depends on the determination of issues of fact, law, or both, common to all members of the class.
 - Relief sought or damages claimed must flow from the cause of action and be ascertainable.
 - Where it's a claim for damages, there must be an appropriate procedure for allocating damages to members of the class.
 - Proposed representative must be suitable to be permitted to conduct the action and represent the class.
 - Whether a class action is the most appropriate means of determining the claims of members.

4.4 *Permanent Secretary, Department of Welfare, Eastern Cape Ngxusa and Others* 2001 (4) SA 1184 (SCA); (2)

- Set out the most important characteristics of a class action
- Whether other members of the class, although not formally and individually joined, benefit from and are bound by, the outcome of the litigation

[13]

QUESTION 5

5.1 Explain the notion that a Magistrate's Court has no inherent jurisdiction but that it is a "creature of statute". (2)

Since the Magistrate's Courts derive jurisdiction from the Magistrate's Courts Act, a court may hear only those matters which the Act authorizes it to hear./The court can only do what legislation entitles it to do. (1)

&

The Magistrate's Court also do not have inherent power to regulate their own procedure. They must regulate their procedure strictly in accordance with the Magistrate's Courts rules. (1)

5.2 Briefly explain the extension of the Magistrate's Court's jurisdiction in accordance with sections 38, 39 and 45 of the Magistrate's Courts Act 32 of 1944. (4)

In terms of section 38 a plaintiff can abandon a portion of the claim in order to bring it within the jurisdiction of the Magistrate's court. (1)

In terms of section 39 a plaintiff may deduct from the claim any admitted amount owed to the defendant. (1)

In terms of section 45 parties can consent to the increase the monetary jurisdictional limit of a magistrate's court with reference to a particular claim.(1)

Parties can also consent to particular magistrate's court in respect of proceedings which are imminent or about to be instituted.(1)

- 5.3 The National Credit Act, 34 of 2005 provides for debt enforcement in two stages. Briefly discuss this with reference to the so-called section 129 notice. (2)

In the first stage, the credit must send a s 129 notice to the debtor (1/2)

This draws the default to the attention of the consumer in writing (1/2)

&

In second stage, the credit may sue/approach the court (1)

[8]

QUESTION 6

6.1

High Court of South Africa, Gauteng Division Pretoria (1)

Amir resides there and section 2(1) of the Divorce Act (1) states that action may be instituted where either of the parties are resident or domiciled.

AND

High Court of South Africa, Kwa-Zulu Natal Local Division, Durban, (1) because Sauda resides there and again section 2(1) of the Divorce Act applies.

(3)

- 6.2 High Court of South Africa, Western Cape Division, Cape Town (1)

(Note - some students are going to answer Magistrate's Court, because of the NCA and unlimited MC jurisdiction, but the question specifically asks which division of the HIGH court)

- 6.3 High Court of South Africa, Western Cape Division, Cape Town (1)

Reason: s 21 of Superior Courts Act - where cause of action arose - because the damages occurred there. (1/2)

She will have to attach the property in Cape Town ad confirmandam in order to establish jurisdiction for SA court. (1/2)

- 6.4 No (1/2)

Although the American Flag case states that it is not necessary and in fact not permitted to attach the property in Johannesburg for purposes of jurisdiction when the defendant consented to jurisdiction, this is only applicable when the plaintiff is an incola, and Aimee is a peregrinus in respect of the relevant court.

(1)

[7]

QUESTION 7

7.1

- Too urgent for usual 10 court days - set down for weekly motion day
- Too urgent for weekly motion day - set down for hearing on the next motion day
- Too urgent for next motion day - set down for hearing on next court day
- Too urgent for next court day - set down for hearing at any reasonably convenient time

(4)

7.2

One must comply as far as is practicable, with the rules of court.

Rule 6(12) does not permit practitioners to select any day of the week and any time of the day (or night) to demand a hearing.

Urgency primarily involves the abridgment of time periods prescribed by the rules and secondarily, the departure from established filing and sitting times.

(3)

7.3 Usually the long form, altered to reflect the shortened time periods. (1)

7.4 Notice of motion (attached). (8)

[16]

QUESTION 8

8.1.

Provisional or interim order with return date. (1/2)

Provisional order is served on respondent, calling on him/her appear before court on the return day to furnish reasons why the order should not be made final. (1)

Respondent must file an answering affidavit setting out reasons why order should not be made final.(1)

On return date order is made final or dismissed.(1/2)

(3)

8.2

Is a provisional or temporary application which is brought in order to obtain ancillary relief incidental to certain main proceedings pending between the parties.

(1)

[4]

QUESTION 9

Notice of motion (attached). (5)

[5]

QUESTION 10

Note:

If refer to adult rather than major - deduct 1/2 mark

Locus standi depends on majority, not adulthood

10.1

The Plaintiff is Mrs Karen West, a major female legal secretary (1) employed at/residing at (any address) (1)

(2)

10.2

The Plaintiff is (any business name), a firm/partnership (1) carrying on the business of retail bag sales and exports having its place of business at ..., Brixton, Johannesburg.(1)

(2)

OR

The first PI is Mr (name) East, a major male businessman residing at .. (1)
&

The second PI is Mr (name) South, a major male businessman residing at ... (1)

10.3

The Plaintiff is Mr (name) Radebe, a major male (occupation), residing/employed at ... (1), in his representative capacity as the father and natural guardian of his son, Sammy Radebe, residing at the same address.(1)

(2)

Note:

PI can't be the minor litigating in his own name as this is an infans.

10.4

Note:

Dual citation required.

PI can't be minor litigating in his own name.

The PI is Mr Peter Bradshaw, a major male (occupation) residing/employed at ... in his personal capacity as well as in his representative capacity (1) as the father and natural guardian of his minor son, Alex Bradshaw, residing the same address. (1)

(2)

[8]

QUESTION 11

Notice of motion - attached.

(5)

[5]

QUESTION 12

Thur, 15 June.

(1)

[1]

TOTAL: 100

