



PROGRAMME : FACULTY OF LAW (LLB)
SUBJECT : LAW OF CIVIL PROCEDURE
CODE : SPR0000 / CPR41Y0
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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

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 some questions in the separate drafting booklet (Marked Booklet B) - please follow the instructions in this regard.

QUESTION 1

1.1 Briefly distinguish between the following:

- | | | |
|-------|--|-----|
| 1.1.1 | judgment and order; | (1) |
| 1.1.2 | party-and-party costs and costs <i>de bonis propriis</i> ; | (1) |
| 1.1.3 | emolument attachment order and garnishee order. | (1) |

1.2 As a result of the drastic nature of the summary judgment remedy, our courts require substantial compliance with the rules of court.

Critically analyse this statement with reference to the highly technical approach adopted to a plaintiff's application for summary judgment. (3)

[6]

QUESTION 2

Critically analyse the practical implications of each of the following in a civil matter:

- | | | |
|-----|-------------------------------|-----|
| 2.1 | Pleading over; | (1) |
| 2.2 | Anton Piller order; | (2) |
| 2.3 | Absolution from the instance; | (2) |
| 2.4 | <i>Rule nisi</i> ; | (1) |
| 2.5 | Misjoinder; | (1) |
| 2.6 | Separation of issues. | (1) |

[8]

QUESTION 3

A number of scenarios are set out below.

You are required, in each instance, to indicate whether your client's remedy lies in a **RESCISSION, VARIATION, REVIEW** or **APPEAL** of the judgment in question OR **NONE OF THESE OPTIONS**.

You must therefore choose one of the five options (rescission, variation, review, appeal OR none of these options).

Do not refer to any other procedure/s when answering this question.

In addition, please provide a comprehensive explanation for your answer in each instance.

- 3.1 In terms of the judgment, the defendant (your client) has to pay an amount of R290 000 to the plaintiff. This relates to a business credit agreement. Your counsel is however of the opinion that the judge had erred in applying the case law applicable to business rescue proceedings under the National Credit Act, 2005. (2)
- 3.2 As part of the judgment in favour of the plaintiff, the judge had ordered costs in the plaintiff's favour, however, on the typed copy of the judgment, the order as to costs had been omitted. (2)
- 3.3 Your client, the defendant, had not been present at court when the judgment was handed down. The reason for this is that he was at a conference in Dubai at the time of service of the summons and never received it. He has a *bona fide* defence to the plaintiff's claim. (2)
- 3.4 Your client is involved in a divorce matter. His wife had brought an application to court for a contribution towards the legal costs of the pending divorce and the court has granted the application. Your client wishes to have this order changed. (1)
- 3.5 The judge in a high court matter had attended an inspection during the trial and in his judgment, granted in favour of the plaintiff, the presiding officer relied heavily on the findings made at the inspection. Your client (the defendant) is of the opinion that was a procedural irregularity in that not all the parties were present at the said inspection. (2)
- 3.6 The magistrate had given judgment in favour of the defendant. Your client, the plaintiff, is however of the opinion that the magistrate had been biased towards the defendant. The defendant happens to be the magistrate's second cousin. (1)

[10]

QUESTION 4

Discuss only the *ratio decidendi* in each of the decisions below.

In particular, you are required to indicate the relevance of the decision for the law of civil procedure:

- 4.1 *Ronald Bobroff & Partners Inc v De La Guerre* 2014 (3) SA 134 (CC); (2)
- 4.2 *H A Millard & Son v Enzenhofer* 1968 (1) SA 330 (T); (2)
- 4.3 *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* 2016 (6) SA 596 (CC); (3)
- 4.4 *Doman v Selomo* (20455/2014) [2015] ZASCA (21 September 2015); (1)
- 4.5 *Biowatch Trust v Registrar Genetic Resources* 2009 (6) SA 232 (CC). (3)

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QUESTION 5

Consider the Plaintiff's Discovery Affidavit annexed hereto as Annexure "A".

This document contains a number of errors in so far as substance goes.

Carefully consider this document and identify 3 (three) errors in the document.

In addition, you must indicate how the errors that you identified should be corrected.

Important:

Please answer this question in the separate booklet (Booklet B) by completing the table in the booklet. Do not answer this question in any other booklet.

[3]

QUESTION 6

- 6.1 Write a short paragraph wherein you provide the most important characteristics of statutory induced court annexed mediation.

In your answer you must, *inter alia*, indicate whether this process is available in all our courts. (4)

- 6.2 In your opinion, what is the main disadvantage of the mediation process referred to in 6.1 above? (1)

- 6.3 What is the purpose of a pre-trial conference?

Refer to the issues that may be discussed/agreed or disagreed on during such a conference. (3)

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

Write a short paragraph wherein you provide at least 6 (six) examples of ways in which the Bill of Rights has influenced the South African law of civil procedure.

You are required to provide specific instances (referring to legislation, case law and the rules of court) in your answer and must not merely quote general rights, such as "the right of access to courts". (6)

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QUESTION 7

Various scenarios are set out below.

Accept that you act as the attorney of record. You must 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.

- 7.1 You act on behalf of the plaintiff.
During your preparation for trial you establish that you need access to the defendant's cellular phone records as these are crucial to your client's case. You intend to take the necessary steps to ensure that these documents are available for trial.
- 7.2 You act on behalf of the plaintiff.
Summons had been issued and served on the defendant in an action claiming the transfer of specified crates of frozen fish. The defendant, despite having entered an appearance to defend, knows that he owes the money for the fish but he is trying to buy some time.
- 7.3 You act on behalf of the defendant.
As part of your trial preparation, you served a notice calling for discovery on the plaintiff. This notice notwithstanding, the plaintiff has not furnished her discovery affidavit, which you need to see in order to ascertain whether you have all the documents relevant to the matter in hand.
- 7.4 You act for the defendant.
The plaintiff had instituted a claim for damages against your client arising from an assault. The particulars of claim does not however stipulate what the nature and extent of the plaintiff's injuries are.
- 7.5 You act on behalf of the defendant.
The sheriff has recently served the summons on your client. After having considered the plaintiff's summons, you conclude that the plaintiff's claim has prescribed.
- 7.6 You act on behalf of the plaintiff.
Your client's claim is based on a debt and you served a simple summons on the defendant. The defendant has entered a notice of intention to defend. You have to file the next document.
- 7.7 You act for the plaintiff.
The defendant has delivered his plea in the matter. You have applied for summary judgment against the defendant but the court refused this application. You are of the view that the court's decision in this regard is incorrect.
- 7.8 You act for the execution creditor in a High Court matter.
Your client intends to attach the primary residence of the judgment debtor and for this property to be sold in execution.

[8]

QUESTION 8

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

Lebonah Msimang works as a model in Johannesburg.

She drives an adapted BMW motor vehicle, because she has a disability. On the day in question, it was dusk and she was driving along Rivonia Road on her way to the opening of a show at Sandton Square. At the intersection of Katherine street and Rivonia road, the traffic light turned to orange, but Lebonah accelerated and attempted to cross the intersection.

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A Toyota motor vehicle, driven by Jedy at the time, was standing at the red traffic light in Katherine street. Jedy was revving the engine. A second before the light turned in green in his favour, Jedy pulled off as fast as he could and he entered the traffic light with a squeal of tyres. The BMW and the Toyota collided in the middle of the intersection. Fortunately Lebonah did not sustain any serious injuries but her vehicle was damaged beyond repair.

Accept that you act on behalf of Lebonah.

You've institute a claim on her behalf for damages relating to her vehicle. Proceedings were instituted in the High Court in Johannesburg.

Lebonah requires a new vehicle as soon as possible, as she can only drive a vehicle that has been specifically adapted for her.

Summons has been issued and served. Jedy entered an appearance to defend.

8.1 Accept that the defendant fails to deliver a plea within the prescribed *dies*.

Draft the next document to be delivered on behalf of your client.

Important:

Please answer this question in the separate booklet (Booklet B). (5)

8.2 Accept that Jedy served a plea, a copy of which is attached hereto marked **Annexure "B"**.

What is the next step that you have to take on behalf of your client, following receipt of this document (Annexure B)? (1)

8.3 Briefly distinguish between a denial in a plea and the mode of pleading used in paragraph 3 of Annexure B attached hereto. (1)

8.4 Following delivery of the defendant's plea and counterclaim, Jedy notices that the counterclaim incorrectly refers to an amount of R150 000. The correct amount is in fact R250 000 and he needs to correct this in the papers.

Draft the necessary notice on behalf of the defendant to correct the papers accordingly. You should start with the tramlines.

Important:

Please answer this question in the separate booklet (Booklet B). (6)

8.5 Assume that pleadings are closed.

Refer to **Annexure "C"**.

The plaintiff intends to present this photograph in evidence. Do the necessary notice in order to ensure that the photograph can form part at the evidence at the trial.

Important:

Please answer this question in the separate booklet (Booklet B). (6)

- 8.6 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. (1)

- 8.7 Assume that you act on behalf of the defendant.

The defendant wants Lebonah to attend a medical assessment by Dr Max Miles, a mobility expert from Rosebank in Johannesburg, in order to ascertain what the nature of her disability is and why she requires an expensive specifically adapted motor vehicle.

Draw the necessary notice in order to advise the opponent of the proposed examination. You should start with the tramlines.

Important:

Please answer this question in the separate booklet (Booklet B). (9)

- 8.8 For purposes of the counterclaim, Jedy intends to call Mr Shreen Patel, a panel beater with some 15 years' experience. Mr Patel will testify as to the costs of repairing the defendant's vehicle to its pre-collision state.

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

Important:

Please answer this question in the separate booklet (Booklet B). (4)

- 8.9 Assume that the matter has been finalised.
The judge has found in favour of the plaintiff and dismissed the defendant's counterclaim with costs. You act on behalf of Jedy. Adv Khoza, who was Jedy's counsel in the court *a quo*, advises that there is a good chance that Jedy 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, Piet Roux, who is a beggar at the intersection. Adv Khoza is also of the opinion that the trial judge had erred in not taking into account that Lebonah had contradicted her own evidence by stating in examination in chief that the traffic light was green when she entered the intersection, whereas she conceded under cross-examination that the traffic light had already turned orange and may even have been red, when she entered the intersection.

You are required to draw the defendant's Notice of Appeal. Make up/add your own facts to the extent necessary.

Important:

Please answer this question in the separate booklet (Booklet B). (6)

- 8.10 Indicate whether the appeal will be to the Supreme Court of Appeal. Motivate your answer. (1)

[40]

TOTAL: [100]

ANNEXURE A

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Nr. 789/17

In the matter between:

SOUTH AFRICAN INLAND REVENUE SERVICE

Plaintiff

and

GIGBA, R

Defendant

DISCOVERY AFFIDAVIT

I, the undersigned

SARS

do hereby make oath and state that:

1. I am the plaintiff in this matter and am duly authorised to make this affidavit and have personal knowledge of the contents thereof.
2. I object to the discovery of the documents set out in the First Part of the First Schedule hereto.
3. I object to the discovery of such documents, because they:
 - 3.1 Contain press photographs which show me in an unflattering light.
 - 3.2 Contain invoices and receipts relating to purchases which I do not want the public to know about.
 - 3.3 Contain a printout of the cell phone calls I made to a colleague.
4. I have had, but do not now have in my possession or power the documents relating to the matters in question in this action as set forth in the Second Part of the First Schedule hereto.
5. I have in my possession and control the documents relevant to the issue in this action which are set out in the Second Schedule.

6. According to my knowledge and belief, I have in my possession, custody or power, and in the possession, custody or power of my attorney or agent or any other person on my behalf, other documents or copies of or extracts from any documents relating to matters in question in this cause, other than the documents included in the First and Second Schedules hereto.

Rex Gigaba

SIGNED and SWORN TO at JOHANNESBURG on this 1st day of NOVEMBER 2017 by the Deponent having acknowledged that:

He knows and understands the contents hereof and that it is true and correct; and

He has no objection to taking the prescribed oath; and

That he regards the prescribed oath as binding on his conscience.

COMMISSIONER OF OATHS

ANNEXURE B

DEFENDANT'S PLEA

Kindly take notice that defendant pleads as follows to the Plaintiff's Particulars of Claim:

1.

AD PARAGRAPH 1, 2 AND 3 THEREOF:

The contents of these paragraphs are admitted.

2.

AD PARAGRAPH 4 AND 5 THEREOF:

The contents of these paragraphs are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

3.

AD PARAGRAPH 6 THEREOF:

The Defendant bears no knowledge of the allegation contained herein cannot admit or deny same and accordingly puts the Plaintiff to the proof thereof.

4.

The Defendant pleads that he was in no respect negligent and can consequently not be held liable for the Plaintiff's damages, which damages he lawfully refuses to pay. Demand is admitted.

Wherefore the Defendant prays that the Plaintiff's claim be dismissed with costs.

COUNTERCLAIM

1.

Brevitas causa the parties are referred to as in convention.

2.

Paragraphs 1 and 2 of Plaintiff's particulars of claim are referred to as if specifically incorporated herein.

3.

At all relevant times hereto the Defendant was the owner of a Toyota Yaris, registration number ABC 123 GP.

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4.

On 15 October 2017 and at the corner of Rivonia road and Katherine street, Sandton, Johannesburg, a collision occurred between the Defendant's vehicle and the Plaintiff's vehicle, a BMW X5 with registration number XYZ 456 GP, which vehicle was at all material times driven by the Plaintiff.

5.

The aforementioned accident was solely caused by the negligence of the Plaintiff in that she:

- a) Failed to keep a proper lookout.
- b) In the prevailing circumstances, drove at an unreasonably high speed.
- c) Drove into the intersection when the traffic light was red for her.

6.

As a result of the Plaintiff's negligence the Defendant suffered damages in the amount of R150 000, being the fair, reasonable and necessary costs to repair his vehicle to its pre-collision condition.

7.

Despite proper and lawful demand Plaintiff fails and/or refuses to pay to Defendant the aforementioned amount or any part thereof.

Wherefore Defendant prays for judgment against Plaintiff for:

- a) Payment of R150 000;
- b) Interest on the above amount at 10,25% *a tempore morae*;
- c) Cost of suit; and
- d) Further and alternative relief.

Signed
Advocate Maximillian

ANNEXURE C

PHOTO PICTURING THE INTERSECTION OF RIVONIA ROAD AND KATHERINE STREET, SANDTON, JOHANNESBURG

