



UNIVERSITY  
OF  
JOHANNESBURG

<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Procedural Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: ALS41Y0 / TPR0000 APPLIED LEGAL STUDIES
<b><u>SEMESTER</u></b>	: Second
<b><u>EXAM</u></b>	: 2 <sup>nd</sup> opportunity SSA January 2019

<b><u>DATE</u></b>	: January 2019	<b><u>SESSION</u></b>	: 08:00-10:00
<b><u>ASSESSOR(S)</u></b>	: MR EJ HANEKOM		
<b><u>MODERATOR</u></b>	: PROF R CLOETE		
<b><u>DURATION</u></b>	: 3 HOURS	<b><u>MARKS</u></b>	: 100

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NUMBER OF PAGES: 4 PAGES

INSTRUCTIONS:

1. Answer all the questions.
2. Do not make up any facts unless granted permission to do so in the question.
3. Use full sentences.
4. A pocket calculator may be used.

**QUESTION 1**

You are acting on behalf of the husband in a divorce case. The facts are that the parties have been married for 35 years in community of property and both parties have in turn for approximately half of the time that they were married engaged in successful businesses.

The wife also promised to give the husband an option to buy certain shares from her, which she now refuses. She claims forfeiture of matrimonial benefits. The husband (your client) instructs you that he is not too worried about her claim due to the fact that he and his brother inherited very wealthy from their father and the father created a trust. All assets had been signed over to that trust and the husband alleges that he always had full control over those trust assets with no interference from the wife or anyone else. He could even take loans from banks with the trust assets as collateral.

Evaluate the facts and then create an argument based on case law on behalf of your client to prevent an order for forfeiture. Cite authority to support your argument. **[20]**

**QUESTION 2**

You are an attorney. After taxation of a High Court Bill of Costs, where the initial totals before taxation were R 500 000,00 on fees and R 70 000,00 on disbursements, the Taxing Master taxed off R 20000,00 off the fees and R 10 000,00 off the disbursements.

Complete the Allocatur. **[15]**

**QUESTION 3**

You are the Judge. Apply the Apportionment of Damages, Act 34 of 1956 and calculate the damages to be paid where:

A the driver of motor vehicle X is found to be 28% negligent and the market value of his motor vehicle amounts to R 54 000,00. The vehicle is written off and the salvage value amounts to R 6 200,00;

and

B the driver of motor vehicle Y is found to be 52% negligent and the repair costs for the damage to his motor vehicle amounts to R 85 500,00. **[8]**

**QUESTION 4**

Critically evaluate the correctness of the following statement applicable to legal practice management and motivate your answer with reference to the elements of a practice: "A legal practice is aimed at serving the poor and providing free legal services to the community." **[5]**

**QUESTION 5**

Assume that the Legal Practice Act is in full operation and that you want to be admitted as a “legal practitioner”, either an attorney or an advocate, in 2020. Critically evaluate the 3 types of legal practitioners that are available for you in the legal profession. Mention the requirements for each and then criticize the positive and negative aspects of each of the possible options. [17]

**QUESTION 6**

**You are an attorney. Read the “Particulars of Claim” and set of facts and draft the “Plea and counterclaim” for the Defendant, Matshela Zuma. [35]**

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**‘Particulars of Claim’**

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1. The Plaintiff is John Davids, identity number 630614 0014 08 1, a major male driver by occupation who resides at no 230 Justin Bieber Street, Soweto.
2. The Defendant is Matshela Zuma, a major male who resides at no 35 Drake Street, Wynberg, Johannesburg, whose full and further particulars are to the Plaintiff unknown.
3. At all relevant times hereto the Plaintiff was the owner of a GWM Steed 5 with registration number: MY 08 FY GP and Matshela drove a blue 2015 BMW with the registration number: BE 24 CH GP (hereinafter referred to as ‘Plaintiff’s vehicle’).
4. On the 17th of December 2017 at the corner of Fox and Ntemi Piliso Streets, Johannesburg, a motor vehicle collision occurred between the Plaintiff’s vehicle driven by the Plaintiff and a blue BMW motor vehicle bearing registration number: BE 24 CH GP (hereinafter referred to as ‘Defendant’s vehicle’) driven by the Defendant.
5. The whole cause of action arose within the jurisdiction of this Honourable Court.
6. The said collision was caused solely as a result of the negligent driving of the Defendant in one or more of the following respects:
  - 6.1 failing to keep a proper lookout;
  - 6.2 failing to apply his brakes timeously or at all;
  - 6.3 failing to adhere to road signals; and
  - 6.4 failing to avoid the collision when by the exercise of reasonable care and skill, he could have done so;
7. As a result of the Defendant’s negligent conduct the Plaintiff’s vehicle was damaged.

8. The reasonable and necessary costs of repair to the Plaintiff's vehicle's to its pre-collision state, amounts to: R 26 767.00 (twenty six thousand seven hundred and sixty seven rand).

9. Despite written demand, the Defendant fails or refuses to pay the amount or any part thereof to the Plaintiff or the Plaintiff's Attorneys.

10. In the circumstances, the Defendant is liable to the Plaintiff in the amount of R 26 767.00 (twenty seven thousand seven hundred and sixty seven rand).

**WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AGAINST DEFENDANT FOR:**

1. Payment of the amount of R 26 767.00 (twenty seven thousand seven hundred and sixty seven rand);

2. Interest of 9% per annum according to the interest rate prescribed by law, *a tempore morae*;

3. Costs of suit; and

4. Further and alternative relief.

**SET OF FACTS: MOTOR VEHICLE COLLISION (Summary of your consultation with the defendant, Matshela Zuma)**

Mr Matshela Zuma says his particulars is correctly cited but he knows nothing of the plaintiff and has never met him before.

The detail of the collision is also correctly cited. Zuma denies that he was negligent in any way.

Mr Zuma alleges that John Davids alone caused the collision because John attempted to "jump" the intersection and made an illegal emergency stop, whereafter Mr Zuma collided with the rear of John's vehicle. Zuma's damages to his motor vehicle amounts to R21 000, 00.

Mr Zuma further instructs you that he himself is a detective policeman who was in full uniform and was on duty but driving his private vehicle.

(You may make up and add all necessary information that are required to draft documents, within the context of the above facts provided).

Draft Zuma's Plea and Counterclaim.

**TOTAL: 100**

**---END---**