



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>	: First
<b><u>EXAM</u></b>	: June 2019

<b><u>DATE</u></b>	: 3 June 2019	<b><u>SESSION</u></b>	: 08:30-11:30
<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: 6 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**

Analyse the statement: "The body of a letter should be organised" and explain what is meant by that? **[6]**

**QUESTION 2**

What documents must be attached to the affidavits in an Application, why should they be attached and what will happen if the Court is of the opinion that you have burdened the Court with these documents? **[5]**

**QUESTION 3**

You are an attorney. You have taken instructions to bring an application on behalf of a client. You draft the Notice of Motion and the Founding affidavit.

In the Founding Affidavit your client refers to a fact that she had been told about by a witness. Your client was not there when this fact occurred, but the witness was present.

**3.1** How will you deal with this fact in the papers in order to bring it to the attention of the Magistrate? How will you ensure that it is not disregarded by the Magistrate as being hearsay? **[4]**

**3.2** If you later realise before the date that the application had been set down that certain important facts were not included in your client's Founding Affidavit, how will you deal with those additional facts in order to place it before the court as well? **[2]**

**3.3** If you later realise that there is a factual mistake in the Founding Affidavit, how will you rectify that? **[2]**

**QUESTION 4**

Analyse the facts below and compare it to the grounds for a divorce and the circumstances expressly accepted in the in the Divorce Act 70 of 1979 as proof of such grounds as stated in the Divorce Act 70 of 1979.

A client approaches you to institute a divorce for her. She says that she wants to get divorced because her wife, Sheilagh, "is sleeping with another woman". Client and Sheilagh, both female, are married in terms of the Civil Union Act 17 of 2006. Furthermore client alleges that Sheilagh assaulted her and when they argue Sheilagh doesn't talk to client for weeks after. Sheilagh also absconded from the communal home for up to 10 months at a time during the past year.

Analyse the above facts and compare it to the grounds for a divorce and the circumstances expressly accepted in the act as proof of such grounds as stated in the Divorce Act 70 of 1979.

After doing so, give an opinion on whether or not your client can expect the divorce to be granted based upon the three aspects she mentioned to you. **[15]**

### **QUESTION 5**

#### **Read the set of facts and then answer the question at the end**

##### **Set of facts**

You are working at a firm of attorneys as an attorney. The secretary at reception informs you that a new client, Miss A, has arrived and that the attorney who supervises you has allocated this client to you for an immediate consultation.

You consult with the client. Miss A informs you that she is the human resources manager at a well-known firm. She wants your legal advice regarding a criminal case that might be instituted against her. She is of the opinion that she will be charged with fraud.

The facts are that she has recommended that another employee, named X that worked with her, should be allowed to retire on early pension. The managing director then offered X a retirement package amounting to R 1000 000. X accepted it and retired early.

After a year on retirement X however applied at the same firm to be re-appointed in his old position. Your client held the opinion that the early retirement of X was an immense loss for the firm, and she recommended that he should be reappointed. The managing director then made an offer to X to get his old job back. X accepted the offer and he now again works at the firm.

Another member of the firm's board of directors, director Y, is of the opinion that Miss A and X colluded unlawfully regarding X's early retirement and re-appointment. Y laid criminal charges with the police against A and X. Y is of the opinion that A and X committed fraud together in order to get their hands on the R 1 000 000 payout.

A tells you that she was honest and that she never colluded or committed fraud. She does admit that X gave her a little gift of R 50 000 after his early retirement.

Analyse the information that you received above and decide whether it is confidential and/or privileged. Motivate your answer and explain the meaning of the two concepts. **[10]**

**QUESTION 6**

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 7**

If a Hortor's costs R420.00 VAT inclusive and VAT is charged at 20%, what would it cost, VAT exclusive? Show the formula and calculation to be used as if you were not in possession of a calculator. [3]

**QUESTION 8**

You are an Attorney. You will act on behalf of Mrs. Danny da Gama.

Read the Consultation notes hereunder and then draft the complete Particulars of Claim. You may not make up any facts. [45]

**CONSULTATION NOTES**

Mrs Danny da Gama gave your firm instructions to represent her. She wants to issue a divorce summons against her husband in the High Court in Johannesburg because she knows an advocate that will appear on her behalf.

The person that did the consultation wrote down the following:

Her husband is Vasco da Gama, identity number: 630520 3456 084, a professional wrestler, residing at 5 Kingsway, Auckland Park, Johannesburg. He earns a net income of R40 000,00 per month.

Her own details are: identity number: 630514 1234 08 1, she is a lecturer at the University of the Witwatersrand and she still lives with her husband. Her nett income is R 20 000,00 per month. She has always contributed her fair part to the household expenses. They have one child together namely James, a boy born on 16 September 2006. When James was born she had to give up promotion to raise him and as such missed out on an increase in salary.

They got married to each other on 15 July 1998 in Parys, Free State. Danny said that they did not sign an ante-nuptial contract before the marriage.

.../5

Danny also stated that she does not belong to any Pension Fund, but Vasco belongs to the Government Employees Pension Fund. Danny said she is entitled to half of his pension fund.

James is in grade 10.

Danny also stated that she found herself a new man with the name Vito Casanova. She will be moving out of the house on 30 June 2019. She doesn't love Vasco anymore. They don't talk to each other anymore.

From 1990 they lived together in his house that is still registered in his name only. The house was paid off by him. They have divided their loose assets and Danny said all assets must be equally distributed.

She however wants R 10 000,00 per month as fair maintenance from Vasco. She also said that the child must definitely stay with her after the divorce and for him she wants R 2000,00 per month.

Danny is in a hurry with the case.

Danny consults with you at your practice, IAM Goody and Partners Attorneys, at 8 Empire road, Auckland Park, Johannesburg. It is the very first case that you will handle. The detail of your practice is as follows:

P.O. Box 555 Auckland Park 2006 Tel +27 11 567 2121 Fax: (011) 567-2049

**Draft only the particulars of claim that is required to execute your clients' instructions.**

**---END---**