



UNIVERSITY
OF
JOHANNESBURG

<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Procedural Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: ALS41Y0 / TPR0000 APPLIED LEGAL STUDIES
<u>SEMESTER</u>	: First
<u>EXAM</u>	: July 2019 Aegrotat / Special Exam

<u>DATE</u>	: July 2019	<u>SESSION</u>	:
<u>ASSESSOR(S)</u>	: MR EJ HANEKOM		
<u>MODERATOR</u>	: PROF R CLOETE		
<u>DURATION</u>	: 3 HOURS	<u>MARKS</u>	: 100

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

Explain the approaches required to the concepts of “proof”, “relevance”, “facta probanda” and “facta probantia” in the drafting of pleadings. [15]

QUESTION 2

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.

2.1 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? [3]

2.2 If you later realise before the date that the application had been set down that certain important facts were mistakenly 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? [4]

2.3 If you later realise that there is a factual mistake in the Founding Affidavit, how will you rectify that? [1]

QUESTION 3

What is a proper approach to the drafting of “Heads of Argument”? [6]

QUESTION 4

You are an advocate in Johannesburg. You have to appear in the Gauteng Division of the High Court. You travel between Johannesburg and the City of Tshwane. It takes you 1 hour and 15 minutes to cover the distance of approximately 66 km between the two cities. Calculate the speed at which you were driving. Show all the steps in your calculation. [5]

QUESTION 5

An amount of R 1 500.00 is deposited into an attorney’s trust investment account paying an annual interest rate of 6.5%, compounded *halfyearly*. What is the balance after 3 years?

Show all your calculations and any formula that you use in the script. **[6]**

QUESTION 6

You are an attorney acting on behalf of the Plaintiff in a divorce. Suppose that you have identified a crucial witness regarding the events and reasons leading up to a divorce. You have already ascertained that the defendant's attorney has subpoenaed this person in order to call him as a witness. You also want to consult with this witness and take a statement from him.

Discuss whether you are allowed to consult with this witness and/or subpoena him with reference to the rules of ethics. Make sure that you cover all possibilities. **[10]**

QUESTION 7

You are an attorney. Sara Mahlangu instructs you in a divorce matter to represent her. Her husband Jan Mahlangu has instituted divorce proceedings against her. She hands you a Summons issued from the Regional Court for the Region of Gauteng, held at Johannesburg as well as a "Particulars of Claim". She says a sheriff handed this to her last week. You have consulted with Sara and you have accepted her instructions.

While you have been busy consulting, your secretary has already drafted a proper "Notice of Intention to Defend". You will sign it and have it served.

Refer to and read hereunder what Sara has told you in consultation as well as the ANNEXURE A hereunder – the plaintiff's "Particulars of Claim". You note that there are a number of mistakes in the Particulars of Claim.

After you have read that, do the following:

Draft the necessary Plea and Counterclaim in order to execute Sara's current instructions. You may make up detail regarding your firm, but no other detail may be made up unless it is consistent with the facts. **[50]**

SARA HAS TOLD YOU THE FOLLOWING IN CONSULTATION:

Jan and her own particulars are correct in the document that she received. Both of them and the children have been living at her address as set out in paragraph 2 for 10 years before Jan left on 1 May 2016. They were married on 1 January 1990 in community of property, in Pretoria. They never entered into an ante-nuptial contract as he alleges.

(You know that there is a Regional Court that does divorces in Pretoria which is part of the Regional Division of Gauteng)

Before their marriage they also lived together for many years. (She hands you the original marriage certificate. You decide that everything she has told you is correct). The two children's particulars are correct. Jan is a good parent. The case number is JHB/GP/RC/321/2019.

It is correct that the children still stays with her because they choose to do so, and she does not know why Jan wants to take them away from her. Vusi is at school. Refilwe is employed, earns a huge income as an IT specialist and supports herself. Sara says she drinks alcohol socially but says she is certainly no alcoholic.

Jan earns R 20 000,00 per month as a lecturer at the University of Johannesburg. The breakdown of the marriage is, according to Sara, all Jan's fault. Jan was very jealous and always accused her of having affairs. She never had any affairs or committed adultery.

Sara says that Jan is lying about a lot of things here especially the part where he wants to keep all the assets. Sara always had to work too and the children were supported by her and Jan together.

Regarding their property Sara states that she wants only her share of the estate. Sara also wants R 4 000,00 maintenance per month per child, but nothing for herself.

Sara says that there is also no way that the children are going to live with their father. They refuse. Sara wants the children to live with her after the divorce but they must sometimes see their father.

You advised Sara properly on maintenance and where the children must live, and she accepted your good advice.

Jan belongs to the UJ Pension Fund. Sara says she wants 50% of his pension fund because she made 50% of the payments on behalf of Jan. She does not belong to a pension fund.

ANNEXURE A

PARTICULARS OF CLAIM

1.

The Plaintiff is Jan Mahlangu, Identity number: 630514 4321 08 4, a major male lecturer, residing at 123 First street, Auckland Park, Johannesburg.

2.

The Defendant is Sara Mahlangu, Identity number: 630520 6543 08 3 a major female secretary residing at 456 Second street, Germiston.

3.

The Plaintiff is residing within the area of jurisdiction of the above honourable court and had been residing there on the date that this action was instituted.

4.

The parties were married to each other, in community of property, subject to the accrual system in terms of the provisions of Chapter I of the Matrimonial Property Act, 1984 (Act No. 88 of 1984) on 1 January 1990 in Auckland Park and the marriage still subsists.

5.

5.1 During the marriage two minor children were born, namely:

5.1.1 Vusi, a boy born on 15 December 2006;

5.1.2 Refilwe, a girl born on 16 December 1994.

5.2 The children are presently in the care of defendant and reside with defendant at the address in paragraph 2.

5.3 It is in the minor children's best interests that the children live with the plaintiff.

6.

It is in the best interests of the minor children born from the marriage if the defendant's rights to see the children are restricted because the defendant is an alcoholic that neglects her children.

7.

The marriage relationship between the parties has reached such a state of disintegration that it has broken down irretrievably and there is no reasonable prospect of the restoration of a normal marriage relationship between them for the following reasons:

- 7.1 the defendant committed adultery and the plaintiff is not prepared to condone it;
- 7.2 the defendant is a bad mother and she neglects the children.

8.

Plaintiff wants to keep all the assets from the marriage because he bought it.

WHEREFORE THE PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

- (a) A decree of divorce;
- (b) An order for division of the joint estate;
- (c) Custody over the children
- (d) Further and/or alternative relief.

DATED AT JOHANNESBURG ON THIS THE 26th DAY OF MAY 2019.

A. SMART

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**To: THE REGISTRAR
OF THE ABOVE HONOURABLE COURT**

And to: DEFENDANT SERVICE BY SHERIFF
SARA MAHLANGU
456 Second street
Germiston, Johannesburg.

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