



UNIVERSITY
OF
JOHANNESBURG

<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Procedural Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: IRS0000/ILS41Y0 Introduction to Legal Studies
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: November 2019

<u>DATE</u>	:	<u>SESSION</u>	:
<u>ASSESSOR(S)</u>	:	MS KB MOKOENA	
<u>MODERATOR</u>	:	DR ES FOURIE	
<u>DURATION</u>	:	<u>MARKS</u>	: 100

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INSTRUCTIONS:

1. Answer ALL THE QUESTIONS IN YOUR ANSWERBOOK.
 2. Number your answers clearly
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QUESTION 1

1.1. Name the persons involved in a trial who could “recuse” themselves, and also name those who may “withdraw”.

[4]

1.2. Distinguish between the appeal and review procedures.

[4]

1.3. With reference to the case *Goodriche & Son v Auto Protection Insurance Co Ltd (In Liquidation)* 1967 (2) SA 501 (W) at 503, what is an attorney’s ethical duty towards his/her client?

[5]

1.4. You are Ms Robyn Rihanna Fenty’s attorney. Ms Fenty instructs you to institute a claim against Mr Chris Brown for R 120’ 000.00 in a case for damages incurred in a motor vehicle collision. You have neglected to institute a claim and three years have gone by since the date Ms Fenty instructed you to institute the claim for damages. May your client claim the money from the Attorney’s Fidelity Fund? Explain your answer.

[5]

1.5. The Constitutional Court exercises its exclusive jurisdiction over certain matters. List them.

[6]

1.6. Discuss “mediation” as a form of alternative dispute resolution.

[3]

1.7. LM Du Plessis in “The Ideal Legal Practitioner” *De Rebus*, Volume 1981, Issue 165, Sep 1981, p. 424 – 427, discusses certain characteristics that the model legal practitioner should possess? Discuss any three of these characteristics.

[6x ½]

1.8. Section 35(3) (f) of the Constitution of the Republic of South Africa provides the right of an accused person to choose, and be represented by, a legal

practitioner and paragraph (g) provides the accused with a right to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result. Distinguish between *pro deo*, *pro amico* and *pro bono* as forms of legal aid. [3]

1.9. Your client admits to having committed murder. She tells you that there were no eye-witnesses to the incident. She is of the opinion that the state will not be able to prove the case against her. What are your ethical duties towards (a) your client, (b) the state and (c) the court. [5]

1.10. In his article “The Fourth Industrial Revolution and education”, Butler-Adam discusses two implications of the fourth industrial revolution on institutions of education. Discuss these implications. [2]

[40]

QUESTION 2

Mr Mourinho is a big fan of Arsenal FC and openly sells scarves marked in large lettering with the word “**ARSENAL**” – a sign which is registered as a trademark by Arsenal FC for those and other goods. Arsenal FC seeks to ensure that “official” Arsenal FC products - that is, products manufactured by Arsenal FC or with its authorisation - can be identified clearly, and has endeavoured to persuade its supporters to buy official products only.

Mr Mourinho has sold football souvenirs and memorabilia, almost all marked with signs referring to Arsenal FC, from several stalls located outside the grounds of Arsenal FC's stadium. He was able to obtain from KT Sports, licensed by Arsenal FC to sell its products to vendors around the stadium, only very small quantities of official products. Mr Mourinho, however, sells unofficial products to customers – however, he clearly distinguished the official products from the unofficial ones, in particular by using a label with the word “official” for the former and ensuring that all official products are sold at higher prices.

2.1.1. When is a mark registrable as trademark? Refer to the relevant section of the Trade Marks Act 194 of 1993.

[3]

2.1.2. Do Mr Mourinho's actions amount to trademark infringement? Refer to the relevant provision in the Trade Marks Act 194 of 1993.

[5]

2.2. Lesedi Mathumetse is a polymath, whose areas of interest include invention, painting, sculpting, architecture, music, astronomy, mathematics, botany, history and writing. Lesedi has been called the “Father of Architecture” and is widely considered one of the greatest painters of all time. Pictures of his latest artistic work, **the Aladeen**, have been distributed extensively on social media platforms and as such, can easily be downloaded without Lesedi’s consent. You are Lesedi’s attorney. Lesedi approaches you for legal advice and asks if he can possibly get the Aladeen patented. With reference to the Patents Act 57 of 1978, advise Lesedi on whether the Aladeen may be patented.

[2]

2.3. Can one work embody different copyrights? Explain by making use of a relevant example.

[2]

[12]

QUESTION 3

Read the passage below and answer the questions that follow.

“After dinner at a guest lodge during a business trip to Botswana, Adrian Simmers (hereinafter referred to as ‘the Respondent’ or ‘Mr. Simmers’) invited another guest, Catherine Markides (hereinafter referred to as ‘Ms. Markides’) to his room. Ms. Markides was not a co-employee but an external consultant who worked for Loci Environment (Pty) Ltd. Mr. Simmers and Ms. Markides were both in Botswana relating to a joint project their companies were working on.

According to Ms. Markides, the Respondent, in addition to the room invitation, told her that he felt lonely and made advances towards her. She refused the request and the Respondent asked her to phone him in the middle of the night if she changed her mind.

According to the Respondent, he asked Ms. Markides once and half-jokingly, ‘do you want a lover tonight?’ After Ms. Markides rebuffed the request, he said to her: “come to my room if you change your mind”. This was merely a once-off incident and he did not persist with his conduct after she rebuffed him.

Ms. Markides complained that she felt insulted and shocked by the Respondent's conduct and also voiced concern about comments made by the Respondent about another male colleague who was present at the lodge, a one Mr. Le Roux. After she informed the Respondent's employer, Campbell Scientific Africa ('the employer'), about the incident, the Respondent was charged with sexual harassment and was subsequently dismissed."

3.1. Compare the judgments of the Labour Court and the Labour Appeal Court in *Simmers v Campbell Scientific Africa (Pty) Ltd and Others* (2014) 35 ILJ 2866 (LC) and *Campbell Scientific Africa (Pty) Ltd v Simmers and others* [2015] JOL 34906 (LAC). [10]

3.2. Assume Ms Markides is dismissed by her employer for falsifying invoices. Which factors must the employer consider when deciding on dismissal as a sanction for her misconduct? [6x ½]

[13]

QUESTION 4

4.1. Write a short note detailing what the step of "absolution from the instance" implies for the parties in the action procedure, with reference to when it may take place and what it means for the parties when it is granted by a court.

[3]

4.2. What is the purpose of pleadings in the action and application procedure.

[3]

4.3. Distinguish between the following concepts:

(a) A founding affidavit and an answering affidavit; and

[2]

(b) A plea and a replication in civil proceedings.

[2]

4.4. With reference to Dendy's article, discuss how a legal practitioner is to decide whether to use the action or application procedure. [5]

[15]

QUESTION 5

5.1. Provide four objectives of the Superior Courts Act 10 of 2013 as amended.

[4]

5.2. Under which circumstances can evidence be regarded as unconstitutionally obtained and when would a court exclude such evidence?

[1]

5.3. A stand in court accused of rape. One of the witnesses, B, testifies that she did not see A rape the victim, C. She testifies that she received a WhatsApp message from D telling her that A had raped C and that D, although not having witnessed the rape himself, had heard of the alleged rape from E. B testifies that E says she heard about the rape from F who had also heard of the rape from a bus driver, Mr G.

Discuss the relevant admissibility issue and advise B on whether her testimony is admissible as evidence before the court. Also advise B on the admissibility requirements of this form of evidence.

[5]

5.4. Write a note on the implications of the Legal Practice Act on the South African legal profession. In your answer you are required to address the purposes of the Legal Practice Act, with due regard to the rules relating to the determination of legal fees charged, community service, the role of the legal services ombudsman and the provision of equal opportunities for all legal practitioners.

[10]

[20]

TOTAL MARK ALLOCATION: 100
