



<b><u>PROGRAM:</u></b>	<b>LLB</b>
<b><u>MODULE:</u></b>	<b>LAW OF CIVIL PROCEDURE</b>
<b><u>CODE:</u></b>	<b>SPR0000 / CPR41Y0</b>
<b><u>DATE:</u></b>	<b>JUNE 2022</b>
<b><u>DURATION:</u></b>	<b>2 HOURS (120 MINUTES)</b>
<b><u>TOTAL MARKS:</u></b>	<b>80</b>
<b><u>EXAMINERS:</u></b>	<b>MS M DU PREEZ &amp; DR Y JOUBERT</b>
<b><u>MODERATOR:</u></b>	<b>DR GARTH BOUWERS</b>
<b><u>NO OF PAGES:</u></b>	<b>TEN (10)</b>

**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.
- 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.
- Use full sentences and pay attention to grammar, spelling etc.
- You may answer the questions in any order. However, please ensure that you number your answers clearly.
- **Important:**  
**Please answer all drafting questions in the separate drafting booklet.**  
**(Question 7.1; Question 7.5 and Question 9.2 only.)**

### QUESTION 1

- 1.1 Briefly explain the difference between the following concepts/terms:
- 1.1.1 *ratio jurisdictionis* and *ratio decidendi*; (1)
  - 1.1.2 interlocutory application and provisional sentence; (1)
  - 1.1.3 attachment *ad fundandam* and attachment *ad confirmandam*. (1)
- 1.2 Briefly comment on the similarities between the following concepts/terms:
- 1.2.1 liquid document and liquidated demand; (1)
  - 1.2.2 abandonment in terms of section 38 of the Magistrates' Courts Act, 1944 and set off in terms of section 39 of the same Act. (1)

**[5]**

### QUESTION 2

Accept that you act as attorney of record.

Identify the document you will draft on behalf of your client, as a first step, in each of the following instances.

- 2.1 You act for Bottomline Bank. They instruct you to proceed with legal action against one of the bank's debtors, Mr Godivar. He is in default under a credit agreement with the bank and owes an amount of R2.1 million in total. (1)
- 2.2 You act for Mr Lemos. He intends to institute legal action for damages against the Minister of Health N.O. (1)
- 2.3 You act for Mrs Linsifo. She intends to proceed with a divorce action against her husband. However, she informs you that he has left the communal home more than two years ago and she's not been able to make any contact with him since. She believes that he has returned to Harare, Zimbabwe. He is originally from Zimbabwe. Your client wants to proceed with the divorce summons as soon as possible but does not have an address for the defendant. (1)
- 2.4 You act for a well-known student organization, SASSO. During your consultation on 25 June 2022, the representatives inform you that they wish to proceed against four universities where a mandatory C-19 vaccination policy will take effect on 1 July 2022. This means that students will no longer have access to campuses and or be allowed to sit for examinations from 1 July 2022. They wish to approach the court for this to be scrapped without delay. (1)

- 2.5 You act for the plaintiff. Your client has instituted legal action in the High Court for areal rental. The simple summons refers to the written lease agreement between the parties. The defendant has entered an appearance to defend the matter. (1)

**[5]**

## **QUESTION 2**

You act for the applicant.

Indicate whether you will use the long form or the short form of the Notice of Motion in each of the following instances:

- 3.1 An urgent application to prevent the publication of a defamatory newspaper article; (1)
- 3.2 An application to be admitted as an attorney of the High Court of South Africa; (1)
- 3.3 An application for an order allowing the plaintiff to serve the summons by means of edictal citation; (1)
- 3.4 Your client intends to apply for an interdict against his neighbour compelling him to cut the branches of a large oak tree that encroach onto your client's property. (1)

**[4]**

## **QUESTION 4**

You act for the plaintiff.

Indicate which type of summons you will issue on behalf of your client in each of the following matters. You should identify the most appropriate summons.

- 4.1 You are instructed to proceed with a divorce action; (1)
- 4.2 You are instructed to sue the defendant on the basis of an unpaid cheque to the value of R450 000 (four hundred and fifty thousand rand); (1)
- 4.3 You are instructed to proceed with a claim for damages following a motor vehicle collision; (1)
- 4.4 You are instructed to proceed with action for repayment of a loan. There is a written loan agreement between the parties. (1)

**[4]**

## **QUESTION 5**

Refer to the sheriff's return of service attached hereto as Annexure "A".

The return does not include the prescribed averments or allegations.

Indicate to what extent and in which respects the return is defective by listing at least 5 (five) errors.

You are required to motivate your answers.

[5]

### QUESTION 6

Indicate in each instance below which is the *most appropriate court* that has jurisdiction. You are required to indicate the level of court. It is not necessary to indicate the exact court/division on that particular level.

- 6.1 Ariel wants a court order declaring her elderly mother to be incapable of dealing with her estate, because her mother has advanced Alzheimer's disease. (1)
- 6.2 Butler entered into a contract with Costa for the provision of pallets. In terms of the contract, the parties consented to the jurisdiction of the Regional Magistrate's Court in respect of any dispute arising. Despite delivering the pallets to Costa's premises, Butler has not received payment. The outstanding amount is R450 000. (1)
- 6.3 David was involved in a motor vehicle accident and he is out of pocket in the following amounts: to repair the engine of his car: R200 000, to repair the body of the car: R150 000, to repair the auto-electrics: R50 000 and finally, to replace the mag wheels: R50 000. He wants to bring one action to claim these damages. (1)
- 6.4 Esther is in the process of divorcing Frank. She has always been a housewife, whereas Frank worked as an electrician. Esther wants to apply to court for interim spousal maintenance whilst the divorce is pending. (1)
- 6.5 Diale Attorneys are bringing a class action in respect of a number of clients who will be affected by a new Provincial Bill relating to housing. The clients are complaining that the Bill will affect their right to primary housing. (1)
- 6.6 Eusebius is not content with the outcome of an action that took place in the High Court before a single judge. He is of the opinion that the judge misinterpreted the facts and applied the law incorrectly. He intends to take the matter further. (1)

- 6.7 Happy wants to sue her uncle, Isaac, for the return of family assets which he has removed from the household after her mother died. Isaac claims that the mother's will bequeathed these assets to him, whereas Happy disputes this. They are in complete disagreement as to the terms and provisions of the will. The value of the items amount to R250 000, but the parties will consent to the jurisdiction of the District Magistrate's court in order to keep costs to a minimum. (1)

[7]

### QUESTION 7

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

You act for the plaintiff (Mr David Langa).

During the first consultation, your client informs you as follows:

Ruth Mandla is a student at the University of Johannesburg (UJ). She was apparently on her way to her best friend's 21<sup>st</sup> birthday party in the Johannesburg city centre. However, she was running very late and just as luck would have it, she got stuck in traffic along Empire Road in Milpark, Johannesburg. She was eager to get to her destination and moved onto the verge of the road to pass the stationary cars on the left. Unfortunately there was a vehicle broken down on the verge of the road, which vehicle belonged to your client. Ruth collided with the back of this vehicle.

Your client asks that you issue and serve summons on Ruth for the damages sustained to his vehicle car, which amount to R120 000.

- 7.1 Draft the Particulars of Claim on behalf of our client.  
Make up additional facts where necessary for purposes of drafting a complete document.  
**Please answer this question in the drafting booklet.** (10)
- 7.2 Explain to your client why the summons is required to be issued and what this step entails. (2)
- 7.3 Indicate the time period within which your client has to proceed with legal action to prevent his claim from becoming unenforceable. (1)
- 7.4 What can your client do to interrupt the running of prescription? (1)

7.5 Accept that you act for the defendant.

Your client does not agree with the plaintiff's allegations and intends to defend the matter.

Draft the required notice to the plaintiff informing him of this.

**Please answer this question in the drafting booklet. (4)**

**[18]**

### QUESTION 8

Briefly discuss only the *ratio decidendi* in each of the following cases.

Note that no marks will be awarded for a discussion of the facts.

8.1 *Luna Vervaeardigers (Edms) Bpk v Makin (t/a Makin Furniture Manufacturers 1977*

(4) SA 135 (W): (5)

8.2 *CMC Woodworking Machinery (Pty) Ltd v Pieter Odendaal Kitchens 2012 (5) SA*

604 (KZD). (5)

**[10]**

### QUESTION 9

On 13 June 2022 you consult with Miss Melani Nkunzi. She is a chartered accountant. She's previously instructed you to institute divorce proceedings against her husband, Mr Ronald Nkunzi. You have been unable to serve the combined summons in this matter on the defendant, who left the parties' communal home in Johannesburg more than six months ago. It seems that the defendant had also left his previous employment and his family is unaware of his whereabouts. All indications are that he resides somewhere in KwaZulu-Natal.

Multiple attempts to contact the defendant have been unfruitful.

9.1 Set out your advice to your client with regard to having the summons served on the defendant. Motivate your answer. (2)

9.2 Draft the next document for purposes of giving effect to your advice set out in 9.1 above. Note that you do not need to draft any affidavit. Make up additional facts where necessary for purposes of drafting a complete document.

**Please answer this question in the drafting booklet. (8)**

**[10]**

### QUESTION 10

When answering the questions below, you are reminded to name the courts correctly by providing the full name, otherwise you will forfeit the mark.

10.1 Hlalanathi Nxumalo is a member of a partnership trading as Arthousa (A), that supplies African art and sculpture around the world. A company in the Netherlands, Kasenmaken (K), purchased artworks to the value of R500 000 (five hundred thousand rand) from them and they paid the purchase price in full. K is now suing because the artworks have not been delivered. Hlalanathi has found out that one of her partner has stolen the money and has disappeared. A summons was served on Hlalanathi at her home in Pimville, Soweto. The summons was issued out of the High Court in Johannesburg.

10.1.1 Hlanathi wants to know from you whether she can raise a special plea of lack of jurisdiction, because her other partners all stay in Pretoria.

Motivate your answer. (1)

10.1.2 What prevents K from attaching Hlanathi's property in Pimville for purposes of jurisdiction? Motive your answer with reference to relevant legislation. (1)

10.2 Moses Msipa wants to divorce his wife, Funeka. Moses admits to you that he is the cause of the breakdown of the marriage. Funeka left the marital home more than a year ago. The couple got married in Durban. When they were married, the couple stayed in Shoshanguve, Pretoria, but after Funeka left, Moses has been staying in and around the Randburg area, because this is where he works. Funeka has relocated to Cape Town.

10.2.1 Identify which division/s of the High Court has/have jurisdiction. (1)

10.2.2 Motivate your answer. (1)

- 10.3 Katlego Pooe, a resident of Westdene, Johannesburg, entered into a contract with Joshua Mbae in terms of which they were going to run events together. They organised a very successful event which took place at Mark's Park in Emmarentia, but Katlego paid for all the expenses from his personal account. Joshua promised to reimburse Katlego once they were paid, but Joshua disappeared with all the profits. Katlego intends to sue Joshua but discovers that Joshua is a resident of Nairobi, Kenya and that he has no property in South Africa.

You consider the contract and see that there is a clause where the parties consent to the jurisdiction of the High Court in Johannesburg in the case of any dispute arising between them.

- 10.3.1 Will the High Court in Johannesburg have jurisdiction? Motivate your answer. (1)

- 10.3.2 Would your answer be different if Joshua had property in South Africa? (1)

- 10.4 Mrs A, the plaintiff, resides in Johannesburg. She was recently involved in a motor vehicle collision whilst on holiday in Cape Town. The driver of the other vehicle resides in Cape Town. Mrs A intends to proceed with a claim for damages.

- 10.4.1 Indicate which division/s of the High Court will have jurisdiction. (1)

- 10.4.2 Motivate your answer. (1)

**[8]**

## QUESTION 11

- 11.1 When is jurisdiction determined for purposes of civil litigation? (1)

- 11.2 Why are Magistrates' Courts referred to as so-called creatures of statute? (1)

- 11.3 What will be the implications for a plaintiff who institutes civil proceedings in the incorrect court, in other words, a court lacking jurisdiction? (1)

- 11.4 Briefly comment on the following statement:

"It is compulsory for civil litigation to be preceded by a written demand for payment." (1)

**[4]**

**TOTAL: [80]**

9/...



**ANNEXURE A**

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 142/2021

In the matter between :

**Muktar Exports Pty Ltd**

Plaintiff

and

**Essa Fabrics Ltd**

Defendant

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**RETURN OF SERVICE**

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This is to certify that on Sunday, the 22<sup>nd</sup> day of May 2022, at 17:05 pm and the place of residence of Mr Frederick Essa, director of the Defendant, at 364 Mountainview Ave, Johannesburg, I displayed the original document to Hamza Essa, the son of Mr Essa, and handed a copy of the document to Hamza Essa.

DATED at Johannesburg on this the 27<sup>th</sup> day of May 2022.

Signed

*Mrs TS Sibongile*

The Sheriff of the High Court

Cape Town

1143 West Street

Cape Town, 8000

To:

The Clerk of the Court, Johannesburg

And to:

Plaintiff's Attorneys

22 South Road

Morningside

Johannesburg