



UNIVERSITY OF NAMIBIA

FACULTY	LAW		
DEPARTMENT	Private and Procedural Law		
SUBJECT	Civil Procedure		
SUBJECT CODE	LPCI 3771		
DATE	May/June 2020		
DURATION	Three (3) Hours	MARKS	100

Regular Examination

Examiner: Ms. I.N. Hamulungu

Moderator: Prof. H. Chitimira

This question paper consists of 5 pages, including the cover page.

Instructions:

- 1) Read carefully and understand the question before answering.
- 2) Candidates are required to refer to authority where necessary.
- 3) All questions in Section A are compulsory. You should only answer **ONE** question from Section B.

SECTION A: COMPULSORY

QUESTION 1: MAGISTRATES COURT PRACTICE

Jafta lent N\$ 34 000.00 to Barbara in June 2017, their agreement was that the loan would be repaid in full by June 2018 at the interest rate of 16.5%. Barbara lost her job in December 2017, by June 2018 the loan had not been repaid to Jafta. Jafta would like to sue Barbara for the outstanding balance in the Okahandja Magistrate's Court which is N\$ 39 610.00. but he was told by the Clerk of Court when brought the summons to court that it is not possible to do that. The Clerk of Court advised Jafta to read The Magistrates Court Act 32 of 1944 in order to get more clarity on the issue. Jafta approaches you to represent him in this case because he does not understand the technicalities of his claim.

- 1.1. What is jurisdiction? [3]
- 1.2. Advice Jafta whether the Okahandja Magistrate Court has jurisdiction in this matter. [3]
- 1.3. How would Jafta overcome any impediment to his suit. Advise with reference to the relevant section in the Magistrates Court Act 32 of 1944. [8]
- 1.4. On the advice of his attorney, Jafta abandoned part of his claim and only claimed N\$ 25 000. At the end of the civil suit, Jafta was only able to prove 23 000 which is the amount upheld by the court. With reference to the section referred to in your answer in 1.3. above, apply that specific section to determine exactly how much money is Jafta going to receive. [6]
- 1.5. Name any five (5) causes of action that are specifically excluded from the jurisdiction of Magistrates Courts? [5]
- 1.6. Name and discuss the two forms of prescription as provided for in the Prescription Act 68 of 1969. [10]

TOTAL: 35 MARKS

Question 2: High Court Practice

Your client Ms. Mary Dan comes to see you at your office for consultation. She informs you that she is married to Mr. Anton Cloete. They were married on 16 June 2005 in community of property at Rehoboth. Mrs Dan further informs you that two children were born during the marriage, namely Elih Cloete born on 15 May 2007 and Christa Cloete born on 20 June 2010. Ms. Dan never took her husband's surname. The parties reside at 234 Naguil street, Khomasdal, Windhoek.

Mrs. Dan would like to institute divorce proceedings against her husband because he shows no love and affection, he emotionally abuses her, he uses foul and abusive language against her and he physically assaulted her on numerous occasions. You act for Mrs. Dan in this matter. She wants full custody of the minor children and also wants the joint estate to be divided. Furthermore, she also informs you that she wants her husband to pay N\$2,500.00 maintenance per month per child.

- 2.1. As the attorney acting on the behalf of Dan, what is/are the first document(s) that you would draft for your client and what is the is purpose of drafting this document. [5]
- 2.2. You anticipate that Mr. Anton Cloete will deliver a notice of intention to defend, name and clearly discuss the document(s) that Mr. Anton Cloete would have to deliver with/after the notice of intention to defend. [8]
- 2.3. Which court would have jurisdiction in this matter and why? [5]
- 2.4. Define the concept "interdict" and explain the difference, if any, between a prohibitory and a mandatory interdict. What are the requirements for the granting of a final interdict? [7]
- 2.5. Briefly discuss the most important factors that have to be taken into account when deciding which form of proceeding is to be used in a particular instance.[5]
- 2.6. Distinguish between "appeal" and "review" and outline any four (4) grounds for review. [5]

TOTAL: 35 MARKS

SECTION B

Only answer ONE question from this section.

Question 1

- 1.1. Discuss writ of execution in the High Court. [6]
- 1.2. What is a *nulla bona return*? [1]
- 1.3. Discuss the Plascon-Evans rule. [8]
- 1.4. Name and discuss the three most important functions of pleadings. [6]
- 1.5. In an application proceeding between Youth Empowerment Movement (YEM) and the Minister for Education, Youth and Culture, the Minister is suing YEM for defamation of character. The matter arose out of certain public comments made by the leader of YEM about the Minister at their rally in 2019. YEM has already received the Notice of Motion as well as the founding affidavit. The parties have already exchanged all the necessary documents and the matter has been set down for hearing. Answer the following questions:
- (i) Name two further affidavits found in application proceedings apart from the founding affidavit. In your answer, clearly state which party to the proceedings is obliged to deliver such an affidavit. [4]
- (ii) Which High Court rules provide for application proceedings? [1]
- (iii) Assume that the Minister had made an error in his founding affidavit, would it be possible for him to amend the affidavit? Motivate your answer. [4]

TOTAL: 30 MARKS

Question 2

- 2.1. In which circumstances can a Plaintiff apply to court for Summary Judgments in terms of Rule 14 of the Rules of the Magistrates 'Courts? [4]
- 2.2. In terms of Rules 17 of the Magistrates' Courts Rules a party to proceedings can raise an Exception. Outline the five (5) grounds on which this can be done. [5]

- 2.3. What is the underlying rationale for acquisitive prescription? [4]
- 2.4. With reference to the relevant rules in the Magistrate's court discuss amendments. In your discussion include the procedures followed in the amendment of court documents.

[10]

- 2.5. What is discovery? How is discovery made in a civil claim? [6]
- 2.6. After all the evidence has been led, it is apparent that such evidence is insufficient to justify either party being granted judgement. What should the Magistrate's judgement be?

[1]

TOTAL: 30 MARKS

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END OF PAPER.