

## Learning Units

### Learning Units

#### **Learning unit 04: Pre-litigation phase: Preparing to commence action**

##### **Prescribed reading**

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Read chapter 4 of Marnewick (prescribed textbook).

According to Marnewick: *"Once litigation is decided upon you have to prepare for it in a way that will ensure that you are able to cope with the process as a whole. While the litigation process itself is regulated fairly comprehensively by the rules of court and the law of evidence, there is much more preparation to be done before summons can be issued or a plea delivered. Cases are often won or lost on the strength of the work done before summons is issued... Litigation is adversarial, like war. No general would enter a battle without preparing for it in advance... Lawyers plan for the litigation process in exactly the same way..."*

In chapter 4, Marnewick provides an overview of the preparation stage of litigation. Pay particular attention to his views and suggestions on writing letters of demand and repudiation.

##### **Learning outcomes**

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On completion of Learning Unit 04, you should be able to:

- discuss the preparation stages of litigation
- prepare for the commencement of legal proceedings by gathering and organising evidence
- draft letters of demand and repudiation

##### **Activity**

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You act for Mrs Smith (see Marnewick Appendix 1 for her statement). Read her statement and then make a list of the following:

- a. The possible claims that the children may have
- b. The likely defendants in each instance
- c. The prescription periods for each claim with the date each claim arose
- d. The notice of demand requirements for each claim
- e. The places to visit/inspect

- f. The photographs to be taken and any plans or drawings to obtain or prepare
- g. The documentary evidence to be taken possession of
- h. The experts to consult and retain and their fields of expertise

After making the list above draft a letter of demand to the driver of the other car and discuss your answers on myUnisa under **Forum 4 (discussion 5)**.

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