

Learning Units

Learning Units

Learning unit 07: Pleading stage: Drafting pleas and special pleas

Prescribed reading

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Read chapter 7 of Marnewick (prescribed textbook).

According to Marnewick: *"The plea is the defendant's answer to the plaintiff's statement of claim... The main function and aim of the plea is to state the grounds of the defence to the plaintiff's claims and the material facts upon which the defendant relies to defeat or oppose those claims."*

In chapter 7, Marnewick sets out various factors which must be considered in offering a plea, and then details specifics of pleading: an admission, denial, confession and avoidance, pleading that an allegation is not admitted, pleading the material facts, pleading and explanation or qualification and the use of prayers in pleadings. The chapter further details special pleas.

Learning outcomes

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On completion of Learning Unit 07, you should be able to:

- describe the nature, scope and content of plea in general
- identify the preliminary steps in the plea stage
- describe the form and content of the plea
- describe the meaning and use of special pleas

Activity

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You are instructed by the RAF to draft a plea to the particulars of claim you drafted in for Mrs Smith and her children in the previous activity (pretend someone else drafted the initial particulars of claim). The RAF instructs you to raise the following defences:

- a. Joe Soap was not negligent. The collision and the death of the deceased and all the injuries were caused by Mrs Smith's own negligence.
- b. There was contributory negligence on Mrs Smith's part.
- c. The RAF does not know what injuries were suffered or whether there has been any loss to the plaintiff and her children as a result of the death of the deceased.

They instruct you further to deny all allegations in the particulars of claim. Draft the plea and discuss your answers on myUnisa under **Forum 4 (discussion 8)**.

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