

## Learning Units

### Learning Units

#### **Learning unit 09: Pleading stage: Drafting exceptions and applications to strike out and objections to a charge**

##### **Prescribed reading**

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Read chapter 9 of Marnewick (prescribed textbook).

According to Marnewick: *“An exception is a defence or answer of a legal nature, it does not rely on any new or additional facts. The exception procedure is used when a statement of claim or a plea is on the face of it defective... An application to strike out, on the other hand, is an interlocutory application designed to set aside a pleading which either contains scandalous, vexatious or irrelevant allegations or constitutes an irregular proceeding because it does not comply with certain technical requirements of the rules.”*

##### **Learning outcomes**

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On completion of Learning Unit 09, you should be able to:

- identify the nature, scope and content of exceptions and applications to strike out
- draft an exception or application to strike out according to the applicable rules of court

##### **Activity**

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You act for a defendant who is sued as a surety. The declaration pleads the underlying cause of action quite properly. A contract of loan had been concluded between a bank (plaintiff) and the principal debtor. When the loan fell due for repayment, the principal debtor failed to pay. The bank alleges in its declaration that that the defendant has stood surety for the debt, but there is no allegation in the declaration that the suretyship was in writing, and no copy is attached to the declaration. All the bank has alleged in the particulars of claim is: “(8) On 31<sup>st</sup> May, 2004, and at Pinetown the defendant guaranteed payment of the debt referred to in the preceding paragraphs.” Draft an exception to the statement of claim and discuss your answers on myUnisa under **Forum 4 (discussion 10)**.

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