

Tutorial Letter 202/1/2018

Techniques in trial and litigation

TLI4801

Semester 1

Department of Criminal and Procedural Law /

IMPORTANT INFORMATION:

This tutorial letter contains important information about the April 2018 examination for your module.

BAR CODE

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1. INTRODUCTORY REMARKS

This examination represents the final summation assessment (non-venue based assessment) in respect of this module. Therefore, do not contact any of the lecturers for guidelines regarding the completion of this assessment.

2. INSTRUCTIONS TO ANSWER THE APRIL 2018 EXAMINATION (NON-VENUE BASED EXAMINATION)

PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THE EXAMINATION (NON-VENUE BASED EXAMINATION).

2.1

Due date for examination:	18 May 2018
Unique number:	785550
Submission period:	18 – 25 May 2018

The myUnisa system will open for submission of your answers on 18 May 2018 at 08:00, and it will close on 25 May 2018 at 24:00 (midnight). You may submit your portfolio assessment answers at any time between these times, and you may only submit during this period. At the expiry of this period, the system will close and you will no longer be able to submit your answers. **NO LATE SUBMISSIONS WILL BE ACCEPTED** since this assessment counts as your examination for this module.

You are advised to submit your examination answers as soon as possible. **NO EXTENSION FOR LATE SUBMISSION WILL BE GRANTED.**

PLEASE NOTE: Tutorial Letter 202/1/2018 will only be available on myUnisa during the period of submission, as it serves the same purpose as an examination paper. Once the submission closes on the system, this tutorial letter is automatically removed and will no longer be available and can no longer be accessed.

- 2.2 You must submit your examination answers as a single document in PDF-format, and may not be submitted with security restrictions under the “protect document”-option. Security restrictions interfere with the electronic marking program used and prevent the electronic marking of assignments. Portfolios e-mailed to lecturers WILL NOT BE ACCEPTED as assignments must be registered and processed on the system by the Assignment Department. If you submit your portfolio in an incorrect format, or if you submit the portfolio with security restrictions under the “protect document”-option, the portfolio will simply be cancelled and you could fail this assessment (which will result in you having to register for this module again next semester).

As you may only submit one document, you must ensure that everything you want us to assess is included in the ONE document that you submit. No additional files will be accepted either on *myUnisa* or via e-mail. This includes the declaration of authenticity! A second submission automatically replaces the first submission on the system, and a submission comprising only a declaration of authenticity will thus result in a zero-mark.

Ensure you keep a copy of the portfolio that you submit AND keep evidence of your submission on the *myUnisa* platform. Also, FOLLOW ALL THE STEPS REQUIRED FOR SUBMISSION. If you fail to do so, the system will show that you did not submit the portfolio assignment, and your examination result will read “absent from examination”.

All queries regarding problems with myUnisa must be addressed to the Assignment Department or the ICT Department and not to the lecturers. We cannot provide any technical assistance and also do not have access to the system.

- 2.3 The examination answers must contain your full names, student number, module code, unique number and declaration of authenticity.
- 2.4 The examination counts 100 marks and consists of TWO (2) questions. Each answer must commence on a separate page. Ensure that you give full reasons for each answer. A mere "Yes" or "No" answer will not earn you any marks. Answer ALL the questions.
- 2.5 Number your answers correctly and write your answers in your own words. Students will lose marks if their answers indicate copying, plagiarism or collaboration with other parties. Scripts may also be investigated for possible disciplinary proceedings in these circumstances.

Your answers must be typed in Arial 12pt with 1.5 line spacing. Your answers must appear on one side of the page. Leave a space between each answer.

- 2.6 Your answers must contain complete references to sections in legislation, principles and relevant case law. Students will be penalised for incomplete or incorrect references..
- 2.7 Please ensure that you complete and sign the DECLARATION OF AUTHENTICITY at the end of this tutorial letter, and attach the signed declaration to your examination answers. You may retype the declaration, or you may attach the signed declaration to your answers in any other manner. EXAMINATION ANSWERS WITHOUT SIGNED DECLARATIONS WILL NOT BE MARKED.

2.8 Please ensure that you submit the correct assignment – a wrong assignment will result in the cancellation of your assignment. If the correct assignment is not resubmitted before the due date, a zero-mark will be.

3. MAY/ JUNE 2018 EXAMINATION (NON-VENUE BASED ASSESSMENT) QUESTION PAPER

Due date for examination:	18 May 2018
Unique number:	785550
Submission period:	18 – 25 May 2018

PORTFOLIO EXAM: MAY/ JUNE 2018

TECHNIQUES IN TRIAL AND LITIGATION (TLI480-1)

INTRODUCTORY REMARKS:

This type of assessment (non-venue based assessment) represents the final assessment in this module. Therefore, do not contact any of the lecturers for guidelines regarding the completion of this assessment as it is considered a formal examination, which must be completed independently.

FORMAL REQUIREMENTS:

COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN WRITING THE EXAMINATION (NON-VENUE BASED ASSESSMENT)

PLEASE NOTE THE FOLLOWING RULES:

- (1) THE PAPER CONSISTS OF TWO QUESTIONS, NAMELY 1 and 2. BOTH QUESTIONS ARE COMPULSORY.**
- (2) THE ANSWERS IN THIS QUESTION PAPER ARE TO BE OBTAINED FROM YOUR PRESCRIBED STUDY MATERIAL, NAMELY, THE PRESCRIBED TEXTBOOK, CG Marnewick *Litigation Skills for South African Lawyers*, 3rd edition, (2012 LexisNexis) and tutorial letter 201.**
- (3) ANNEXURES A1, A2, A3 and B, CONTAIN THE MOST IMPORTANT INFORMATION WHICH YOU REQUIRE TO COMPLETE THE PORTFOLIO. PLEASE READ THESE ITEMS CAREFULLY BEFORE PROCEEDING.**
- (4) YOU ARE REQUIRED TO EXHIBIT OWN INITIATIVE WHEN ANSWERING QUESTIONS, IN ORDER TO SHOW THAT YOU UNDERSTAND THE CONTENT. IN OTHER WORDS, YOU MUST, AS FAR AS POSSIBLE USE YOUR OWN WORDS WHEN WRITING YOUR ANSWERS. THE WORD-FOR-WORD REGURGITATION OF ANSWERS FROM THE STUDY MATERIAL WILL NOT BE REWARDED WITH FULL MARKS.**
- (5) THE QUESTIONS MUST BE WRITTEN OR TYPED. YOUR COMPLETED ANSWERS MUST THEN BE CONVERTED INTO PDF FORMAT AND SUBMITTED ONLINE IN THE SAME MANNER THAT YOU SUBMIT ALL OTHER ASSIGNMENTS ONLINE.**

The questions hereunder are based on the statements below, which are marked as Annexures A1, A2, A3 and B, below.

Question 1

Your name is Clever Attorney. You are approached and briefed by the client, Violent Mashaya, to defend him on against the charges preferred by the State, represented by Cruel Prosecutor.

The prosecutor has provided you further particulars, which include the copies of witness statements marked Annexures A1, A2 and A3, and a copy of the charge sheet which the state intends to use in the subsequent trial. The charges in the charge sheet read as follows:.,

(1) The accused, Violent Mashaya is accused of the crime of Murder in that upon or about 12 March 2015 and at or near 20584 Mamelodi West in the regional division of North Gauteng, the accused did unlawfully and intentionally kill Victim Skepsel, a human being, assaulting him with a chair;

(2) The accused, Violent Mashaya is accused of the crime of Rape, in contravention of s 3 (1) (a) of the Sexual Offences Act 12 of 2009, in that upon or about 12 March 2015 and at or near 724 Mamelodi East in the regional division of North Gauteng, the accused did unlawfully and intentionally have sexual intercourse with Poppy Floozy without her consent;

(3) The accused, Violent Mashaya is accused of the crime of Kidnapping, in that upon or about 12 March 2015 in the regional division of North Gauteng, the accused did unlawfully and intentionally deprive Poppy Floozy of her freedom of movement by forcefully removing her from the address, 20584 Mamelodi West, and holding her without her consent; and

(4) The accused, Violent Mashaya is accused of the crime of Assault, in that upon or about 12 March 2015 and at or near 20584 Mamelodi East in the regional division of North Gauteng, the accused did unlawfully and intentionally assault Poppy Floozy slapping her across the face with an open hand.

The accused denies all the charges and intimates that he will plead *not guilty* to all the charges. Meanwhile, during the consultation, the accused, makes certain admissions to you, which he agrees, may be duly recorded in the subsequent trial, in order to avoid a lengthy trial.

He makes the following admissions in respect of the charges:

(1) In respect of the charge of *Murder*, the accused admits that:

- (a) he was at the scene of the offence;
- (b) he was involved in a physical altercation with the deceased;
- (c) he assaulted the deceased with a chair;
- (d) the injuries inflicted by his actions caused the death of the deceased;
- (e) the injuries set out in the medical report are consistent with the cause of death of the deceased.

However, he denies that he acted unlawfully.

(2) In respect of the charge of *Rape*, the accused admits that:

- (a) had sexual intercourse with the complainant, Poppy Floozy on the date in question;
- (b) the DNA swabs drawn from the genitals of the complainant, Poppy Floozy, are consistent with his own DNA.

His contention is, however, that the sexual intercourse between himself and the complainant was consensual.

(3) In respect of the charge of *Kidnapping*, the accused admits that he drove away with the complainant in his motor vehicle from the address, 20584 Mamelodi West.

However, he makes the following submissions, namely, that:

- (a) he removed the complainant from the scene for her own safety because “the crowd was getting restless and angry”, and some of party revelers were already accusing Poppy of “causing the whole trouble”.
- (b) he did not hold the complainant, Poppy Floozy, against her will. In fact, she “begged” him to take her away because she was afraid of what the crowd at the party might do to her if left on her own.

(4) In respect of the charge of Assault, the accused simply denies that he assaulted the complainant, Poppy Floozy, in any manner.

Based on the statements below marked **Annexures A1, A2 and A3**, prepare a trial strategy which is based on the so-called *proof-making model*. Your preparation should be based on the sketch set out in your prescribed textbook, **CG Marnewick *Litigation Skills for South African Lawyers*, 3rd edition, (2012 LexisNexis) (p. 243 Table 14.2: See also Annexure B below)**.

The following hints should be taken into account in the completion of your strategy:

(1) The information which is supplied above (i.e the case information and the admissions) is an integral part of the strategy. You will need it in order to complete some of the queries noted in **Annexure B**.

(2) Whilst some aspects discussed in Table 14.2 are easily determinable, some of the items require a measure and creativity and ingenuity on your part. In other words, you are expected to invent some of the facts which are provided by the accused during consultation, and which may provide the best defensive strategy and tactics for the forthcoming trial.

(60)

Question 2

Based on the facts presented below (Annexures A1, A2 and A3), approach the prosecutor and negotiate a *guilty plea* in terms of s 105A of the Criminal Procedure Act 51 of 1977. **PLEASE NOTE: YOU ARE NOT REQUIRED TO DRAW UP A PLEA AGREEMENT, SUCH AS THE ONE IN ASSIGNMENT 02 SEMESTER 01. YOU MUST, INSTEAD DISCUSS THE MANNER IN WHICH YOU ARE LIKELY TO GO ABOUT WHEN NEGOTIATING ONE.**

In your answer, you are required to:

(1) Discuss the different methods of negotiation which are mentioned in your prescribed textbook, **CG Marnewick *Litigation Skills for South African Lawyers*, 3rd edition, (2012 LexisNexis)**.

NB: Your discussion should exclude a tabulation of the advantages and disadvantages of each strategy, as explained in tutorial letter 201. These aspects may, however, be mentioned in passing wherever they are relevant to argue the strategy chosen.

(2) Choose the most appropriate method of negotiation. Your discussion in this regard must elaborate fully on,

(a) why the method chosen is the most appropriate, when weighed against factors such as, for example, the strength of the case on either side, the type charges preferred against the accused and the available evidence; and

(b) why the other methods are not appropriate.

(3) Set out your own proposal regarding the agreement which you envisage, regarding the proposed charges and the sentences thereto. For example, after setting out the proposed charges and sentences you might say, "I submit that a charge of *culpable homicide* instead of murder is appropriate because ..." and "... a suspended sentence in respect of the charge of *assault* is more appropriate because ..."

Please note that the agreement must be in respect of each charge. **(NB: whilst you may take a leaf from the sentence agreement which was arrived at in Assignment 02 (par. 5), you are advised to duly compose your own sentence agreement.**

(40)

TOTAL: [100]

Annexure: A 1

I, Matchmaker Makopansa, I.D. No. 864408 3247 008, declare hereunder in English as follows: I reside at 4158 Mamelodi East.

1.

The deceased in this case, Victim Skepsel, was a friend of mine. On 12 March 2015, myself, and the deceased Victim Skepsel attended a party at 20584 Mamelodi West. During the party we had a few drinks. As we were busy enjoying ourselves we were joined by a lady named Poppy Floozy. Before this day, Poppy and Victim were unknown to each other. I introduced them because I knew Poppy from way back in high school.

2.

At some point Victim and Poppy went onto the dance floor and danced with each other. Thereafter they disappeared for about one hour before coming back to join us. They sat about two metres from myself and a group of revelers. They proceeded to kiss and cuddle. Just then, the accused Violent Mashaya appeared. He accused the deceased of having a romantic relationship with his girlfriend, namely, Poppy. He thereupon ordered Poppy to leave with him. When she refused, he approached her, grabbed her by the wrist and proceeded to drag her away.

3.

Victim went over to both the accused and the deceased and tried to intervene. In the process, he verbally tried to dissuade the accused from dragging Poppy away. Violent became very angry and told the deceased not to interfere in his affairs. Victim thereupon grabbed a plastic chair from the floor and threatened to hit Violent with it if he did not desist from doing what he was doing. When Violent refused to accede to this demand, Victim then proceeded to hit him with the chair. Victim was merely trying to stop the Violent from assaulting Poppy.

4.

Violent managed to grab the same plastic chair from the deceased and began to hit him with it all over the body. The chair broke in the process. In the course of the fracas I realized that Violent was in possession of what appeared like an iron rod, and hitting the accused on the head. By now a group of other people had gathered around the accused and the deceased and some of the people were trying to separate them.

5.

After the accused was dragged away, I saw the deceased lying face down in a pool of blood. I approached him in an attempt to offer help; and noticed that he was still alive, but was bleeding from the nose and ears. I tried to talk to him but he could not speak. An ambulance arrived on the scene after about two hours. One of the ambulance attendants confirmed a few minutes after arrival that Victim had, in fact, died.

6.

The police were also called. However, upon arrival it was discovered that Violent and Poppy were nowhere to be seen. The accused was allegedly arrested one week later at the house of his grandparents in Ga-Mashashane, Limpopo.

7.

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

8.

Place: Date: Time:

Signature:

9.

I certify that the above statement was taken from me and that the deponent has acknowledge that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents signature/mark/thumb print was placed thereon in my presence.

At:onat

Commissioner of Oaths

(Details to be provided on physical and postal address e.g. stamp of police station)

.....

Force number/Rank/Name - print

Annexure: A 2

I Poppy Floozy I.D. No. 908967 2314 999 declare hereunder in English as follows:

1.

On 12 March 2015 I attended my friend, Sindy Marara's birthday party at 20584 Mamelodi West. I was there on my own. After some time I joined Victim and Piet. Piet is a friend of mine, and I knew him for many years before this incident. A few hours later my ex-boyfriend, Violent Mashaya, arrived at the party. He saw me sitting with Victim and demanded to speak to me.

2.

When I refused, he grabbed me by the arm and forced me to go and talk to him aside. He continued to drag me away and even slapped me across the face with an open hand. Victim intervened and told Violent to leave us alone. Violent replied and said to Victim: "I will kill you for taking my woman". Victim replied that I was not Violent's girlfriend, and as far as he was aware, our relationship had been terminated a few months earlier.

3.

Violent threatened to assault Victim with the bottle of beer that he had in his possession. As Violent said these words, he let go of my arm and moved towards Victim, who was then about two metres away from myself and Violent. Victim quickly grabbed a chair from the floor and held it in front of himself in a defensive posture. Violent was about to hit Victim with the bottle when Victim moved forward and started to hit Joe with the chair. A fight ensued during which Victim and Violent grabbed each other across the body and hit each other.

4.

Other people gathered around them and tried to intervene. I think I also noticed two of Violent's friends by the names of Skunky and Coward, who were assisting Violent to assault Victim. In the end, the people managed to separate Victim and Violent, but Victim remained lying on the ground. I tried to help him up, but Violent dragged me away to his car and forced me to leave with him.

5.

He took me to his home in Mamelodi East where he forced me to sleep with him. The following day I learnt that Victim had died at the party due to the injuries that he had sustained during the fight.

6.

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: Date: Time:

Signature:

7.

I certify that the above statement was taken from me and that the deponent has acknowledge that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents signature/mark/thumb print was placed thereon in my presence.

At:onat

Commissioner of Oaths

(Details to be provided on physical and postal address e.g. stamp of police station)

.....

Force number/Rank/Name - print

Annexure: A 3

I Spy Ndabazabantu, I.D. No. 894567 3425 998 residing at 445 Section D Mamelodi East declare as follows in English:

1.

On 12 March 2015 I attended a party in Mamelodi East with two of my friends, Speedy and Gonzalez. We were seated on the eastern side of the house enjoying our beer when we heard a commission on the western side of the premises. I requested Speedy and Gonzalez to accompany me in order to see what was going on, but they refused, saying that whatever it was, was none of their concern.

2.

I saw everything that happened that evening. A guy that I know from high school, named Violent Mashaya was busy arguing with another person about a girlfriend. Joe had a sharp object in his possession and kept threatening to stab the other guy (whose name I do not know) with it, if he did not leave his girlfriend alone.

3.

The girlfriend in question told Violent that she did not love him any more, and that she had "found a new flame" and "was very happy". As far as she was concerned, she said, she and Violent "were history". Violent started to assault girl, whereupon the other guy tried to intervene by physically coming between Violent and the girl. All three of them fell to the floor and the other partygoers tried to stop the fight.

4.

I later learned that the other guy who had been fighting with Violent had died. I think it was Violent who killed him. I saw it with my own eyes. He has a previous conviction of murder. He also killed Unfortunate Manaka some years ago.

5.

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: Date: Time:

Signature:

6.

I certify that the above statement was taken from me and that the deponent has acknowledge that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents signature/mark/thumb print was placed thereon in my presence.

At:onat

Commissioner of Oaths

(Details to be provided on physical and postal address e.g. stamp of police station)

.....

Force number/Rank/Name - print

Annexure B

Table 14.2 General scheme for trial preparation based on the Proof-making Model

Stage	What counsel has to do	Skill involved
1	<i>Determine the area of law involved</i>	Legal research. Fact analysis.
2	<i>Determine the cause of action (criminal charge) or defence</i>	Legal research. Analysis of legal documents.
3	<i>Determine the material facts (the legal elements) in issue.</i> 1 In a civil case, compare the Particulars of Claim (the "Claim") and the Plea. The issues are the allegations in the Claim which are denied (or not admitted) in the Plea. 2 In a criminal case the issues are all the material facts alleged in the Charge Sheet or Indictment put in issue by a plea of "Not guilty". 3 Ascertain the precise legal content or meaning of each material fact in issue.	Legal research. Analysis of legal documents.
4	<i>Ascertain the propositions of fact to support each material fact in issue.</i> 1 These facts are arrived at as deductions from the available evidence. 2 Some facts may also be arrived at as valid deductions from other facts.	Fact analysis. Analysis of legal documents.
5	<i>Determine what evidence is available for each proposition of fact by way of:</i> 1 oral evidence; 2 exhibits (including documents); and 3 admissions.	Fact analysis. Analysis of legal documents.
6	<i>Consider the admissibility, reliability and sufficiency of the evidence.</i> 1 Deal with all admissibility problems. 2 Consider the reliability of the evidence. 3 Consider whether the available evidence is sufficient, having regard to the incidence of the onus of proof and the standard of proof required (<i>prima facie</i> , balance of probability or beyond reasonable doubt).	Fact analysis. Legal research.
7	<i>Develop a theory of the case.</i> 1 Identify the central issue in the case. 2 State your position on that issue. 3 State the main facts supporting your position on the central issue. 4 Identify the opposition's theory. 5 Discredit the opposition's theory.	Logic
8	<i>Develop appropriate tactics to pursue the theory of the case.</i> 1 Decide which witnesses to call. 2 Decide which exhibits to prove. 3 Prepare a timeline for each witness. 4 Anticipate who the other side's witnesses will be. 5 Prepare themes for the cross-examination of each opposition witness. 6 Prepare an opening statement. 7 Prepare a closing address (in draft).	Trial tactics.

4. DECLARATION OF AUTHENTICITY / VERKLARING VAN OORSPRONKLIKHEID

We enclose a sample declaration for completion. Please attach the signed declaration to your examination answers. We will not mark your examination **UNLESS** you attach the signed declaration to your examination answers.

DECLARATION OF AUTHENTICITY

I,.....(Full name/s and surname)

Student number:

declare that I am the author of this examination in CMP3701 I further declare that the entire examination is **my own, original work** and **that where** I used other information and resources, I did so in a responsible manner. **I did not plagiarise in any way** and I have **referenced and acknowledged any legal resources** that I have consulted and used to complete this examination. By signing this declaration I acknowledge that **I am aware of what plagiarism is, and the consequences thereof**. Furthermore, I acknowledge that I am aware of UNISA's policy on plagiarism and understand that if there is evidence of plagiarism within this document, UNISA may take the necessary action.

Date:

Place:.....

Signature:.....

(provide an electronic signature or type or write your name or surname again)

5. CONCLUDING REMARKS / SLOTOPMERKINGS

Your results will be released by the Department of Examination Administration (DEA) during the May/June 2018 official release period of examination results. We as lecturers are not authorised to release any results in any manner. We wish you success with your future studies.

Regards

Dr M T Mokoena