

# Tutorial Letter 202/2/2018

## Techniques in trial and litigation

### TLI4801

#### Semester 2

#### Department of Criminal and Procedural Law /

**IMPORTANT INFORMATION:**

This tutorial letter contains important information about the October 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 OCTOBER 2018 EXAMINATION (NON-VENUE BASED EXAMINATION)

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

Due date for examination:	5 October 2018
Unique number:	855792
Submission period:	5 -12 October 2018

The myUnisa system will open for submission of your answers on 5 October at 08:00, and it will close on 12 October 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 202/2/2018 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. You are, therefore, expected to use your own wording when using the study material to answer questions. 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. OCTOBER/ NOVEMBER 2018 EXAMINATION (NON-VENUE BASED ASSESSMENT) QUESTION PAPER

Due date for examination:	5 October 2018
Unique number:	855792
Submission period:	5-12 October 2018

#### PORTFOLIO EXAM: OCTOBER/NOVEMBER 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 AND the e-reserves, which you must access from the Unisa library website.

- (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

1. On 2<sup>nd</sup> April 2018, Mrs A Smith was driving her car, a Honda with registration number TN565GP along Long Street, Johannesburg. Her husband Mr Smith was seated in the passenger seat and her two children were seated in the back seats. They all had their seat belts. As Mrs Smith approached the intersection of Green Street, the lights turned green in her favour, and she drove through the intersection. A car driven at high speed by Mr J Soap approached from the right and collided with Mrs Smith's vehicle. Mrs Smith and her family have all sustained personal injuries, and her car was also damaged as a result of the collision. Mrs Smith approaches you for legal advice. Answer the following questions, using proper references.
- (a) State briefly what the case is about in an introductory paragraph. (2)
- (b) Who bears the onus of proof in civil cases and what is the standard of proof? (3)
- (c) What is the cause of action in Mrs Smith's case? Substantiate your answer. (2)
- (d) What type of summons is appropriate to use in the above case. Substantiate. (3)
- (e) Draft the particulars of claim for personal injuries and damages to Mrs Smith's car. (20)
- (f) Mr J Soap blames Mrs Smith for the collision and he wants to claim damages to his car. Discuss the pleading that his attorney may use and draft the pleading. (15)
2. Discuss how attorneys render advice to their corporate clients. (5)

**[50]**

## QUESTION 2

Source: Palmer, R & McQuoid-Mason, D. *Basic Trial Advocacy Skills: Chapter 1*

1. Attorney Crooked Face represents Honest One in the criminal trial where the accused is charged with *Fraud* which was allegedly committed at the local supermarket. After the initial consultation Honest intimates that he is going to plead guilty to the charge. Upon receipt of the copies of the case docket from the prosecutor, Crooked Face is somewhat unconvinced of his client's guilt. He thereupon conducts a thorough investigation and analysis of his own, whereupon he confronts his client with the conclusion that someone else might have committed the offence in question. Honest One finally concedes that the offence was, in fact, committed by his 17-year-old son, Baby Face. According to Honest One, he is pleading guilty in order to carry the blame and to save Baby Face from incurring an "unnecessary criminal record". Baby Face just recently received a scholarship to study law at the Harvard Law School. It is Honest One's passionate belief that Baby Face committed a childish mistake, and should be given a second chance. To this extent, Honest is willing to take the blame for his son.
    - (a) Discuss Crooked Face's options, especially when taking into account Honest One's insistence to plead guilty to the charge. (10)
    - (b) In your view, did Crooked Face act within his scope of duties by inquiring into the client's version? (3)
    - (c) Discuss, in the light of the merits, the duty of Crooked Face not to mislead the court, *vis a vis* his duty not to breach client confidentiality. (8)
    - (d) Discuss, in the light of the merits presented above, Crooked Face's right to choose appropriate method of presenting case. (9)
    - (e) Discuss Crooked Face's predicament in the context of the lawyer's duty to maintain a scrupulous level of integrity as discussed in Gravett, W. H. *The fundamental principles of effective trial advocacy* (2009) Chapter 1: Characteristics of effective trial lawyers. (5)
  2. The accused must not be released on bail unless the interests of justice permit. Discuss the grounds which the court must take into account in this regard. (5)
  3. Discuss the presence in court, of a witness who is yet to testify. (3)
  4. Novice Attorney represents a client in criminal proceedings. The prosecutor of the case is an old acquaintance with whom she went to University. During adjournments Novice chats merrily and openly to the prosecutor about some of their previous University experiences together. Discuss the professional conduct of the lawyer in this regard. (4)
  5. During her cross-examination of a state witness, Novice Attorney is pleasantly surprised about the funny and "stupid" manner in which the witness answers her questions. She cannot hold the laughter in, and intermittently laughs out loud. Discuss Novice Attorney's conduct as it relates to court etiquette. (3)
- (50)**

#### 4. DECLARATION OF AUTHENTICITY

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

Your results will be released by the Department of Examination Administration (DEA) during the October/November 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**  
**Prof F Cassim**