



# Tutorial Letter 201/2/2018

## Techniques in trial and litigation TLI4801

### Semester 2

### Department of Criminal and Procedural Law

**IMPORTANT INFORMATION**

Please register on myUnisa, activate your myLife e-mail address and make sure that you have regular access to the myUnisa module website, TLI4801-2018-S1/S2, as well as your group website.

Note: This is an online module and therefore it is available on myUnisa. However, in order to support you in your learning process, you will also receive some study material in printed format.

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# 1 INTRODUCTION

Dear Student

This tutorial letter contains model answers to Assignments 01 and 02 for the 2nd Semester of 2018. Please read its content carefully.

## MEMORANDUM

### Assignment 01: Semester 02

**NB: Some of the answers to the Questions in this Assignment are sourced from the prescribed textbook, Marnewick CG *Litigation Skills for South African Lawyers* 3rd edition (2012 LexisNexis).**

#### 1. Particulars of Claim

**According to the merits presented in the statement, no disputed facts are set out explicitly. However, in litigation certain facts are usually contested. The student can set out disputed facts in any manner that he or she chooses. The marks awarded in this regard are generally guided by the analyses and reasoning which is proffered by the student in answering the question.**

You were required to assess all losses Anne Smith suffered in your particulars of claim. In other words, your particulars of claim must include all general and special damages, see *Evins v Shields Insurance Co Ltd* 1980 (2) SA 814 (A). In this respect, claims for Anne Smith's children would have to be filed in the same legal action, where Anne Smith will stand as a guardian since her children's age will deprive them of the capacity to sue. Thus, it was essential for students to consider the losses suffered or likely to be suffered by Anne Smith in totality. It is also necessary for students to draft particulars of claim in a manner that would be acceptable to a court of law. Remember, this course is designed to prepare you in respect of the process of litigation, and to enable you to gain practical experience in filing claims at a court of law. We also advised you to be imaginative, and to invent some of the information. Hence, we moved the accident from Durban to Pretoria. So, we will be mindful of any relevant additions. The particulars of claim for Anne Smith should have been drafted in the manner below.

North Gauteng High Court

Case no 122 [2018]

#### **Between**

Anne Smith

FIRST PLAINTIFF

Anne-Elise Smith (guardian Anne Smith)

SECOND PLAINTIFF

James Andrew Smith (guardian Anne Smith)

THIRD PLAINTIFF

**And**

Road Accident Fund (RAF)

DEFENDANT

## PARTICULARS OF CLAIM

1. The First Plaintiff is, an adult female person, Anne Smith who was born on 02 February 1970, an unemployed widow currently residing at 9 Van Wouw St, Groenkloof, Pretoria.

1.1 The Second Plaintiff is, a female person who is a minor, born on the 17th of April 2005, and is represented by the first plaintiff as guardian.

1.2 The Third Plaintiff is, a male person who is a minor, born on the 23rd of August 2009, and is also represented by the first plaintiff as guardian.

2. The deceased, Mr John William Smith, was born on the 6th of September 1968, and he married Anne Smith on the 14th of February 2003. The first and the second plaintiffs were conceived of that marriage.

3. The Defendant is ROAD ACCIDENT FUND, ("the RAF") a body entitled to sue and be sued in its own name by virtue of the provisions of the Road Accident Fund Act 56 of 1996 (the Act) with its principal place of business situated at 2, Eco Glades Office Park, 420 Witch-Hazel Ave, Centurion, Pretoria and 38-44 Ida St, Lynnwood Glen, Pretoria.

4. The ROAD ACCIDENT FUND is liable to handle claims arising from motor collision where the identity of neither the owner nor the driver has been established.

5. On or about the **01st of January 2017** and at intersection of Main street and Long street, in Waterkloof, Mr Smith and his two children were passengers in a certain motor vehicle, a Honda with registration letters and numbers AA 01 BB GP driven by Mrs Smith when it collided with a certain Toyota Fortuner with registration number ZZ 01 XX GP driven by Mr Joe Soap (Hereinafter referred to as the insured driver). The collision between the two vehicles resulted in the death of Mr Smith, and injuries to the first, the second and the third plaintiffs.

6. The aforementioned collision was caused solely as the result of negligent driving of the insured driver in one or more of the following:-

- 6.1. He failed to keep a proper look out
- 6.2. He failed to avoid the collision when he could and should have done so.
- 6.3. He was traveling at an excessive speed in the circumstances.
- 6.4. He failed to obey the rules of the road.
- 6.5. By failing to exercise proper control over the insured vehicle.

7. The deceased owed the plaintiffs a duty of support, as he was the sole breadwinner. The deceased would have continued to support the plaintiffs and the plaintiffs needs that support. The Plaintiffs loss of support can be deduced to be:

7.1. The loss of support that the First Plaintiff would suffer as a result of the death of Mr Smith is in the amount of R 959 999,94

Calculations: Mr Smith received an annual salary of  $R35\,000 \times 12 = R\,420\,000$

This amount has to be divided by 2 since half of the deceased salary was used for support, thus R 210 000 represent the amount that Mrs Smith would have used to support her family if it was not for the death of the breadwinner. However, section 17(4)(c) of the RAF Act 56 of 1996, limits the amount of maintenance or support to R160 000 per annum. R160 000 must be divided by three to deduce the loss of support that the first plaintiff would suffer ( $160\,000/3 = R\,53333,33$ ). This amount (R 53333,33) would have to be multiplied by the number of years of life expectancy of the first plaintiff. Let's assume the plaintiff's life expectancy to be 70 years, therefore from the accident henceforth the plaintiff would live 23 years. But Mr Smith would have retired at the age of 65 years, which means (2017 – 2035) 18 more years after his death. Thus the deceased would have supported the plaintiff 18 more years. Accordingly  $18 \times 53\,333,33 = R\,959\,999,94$ .

7.2 The loss of support that the Second Plaintiff would suffer as a result of the death of Mr Smith is in the amount of R 319 999,98.

Calculations: The second plaintiff loss of support per annum amounts to 53 333,33 (as already calculated). Although, the second plaintiff was badly injured, according to medical reports she will recover and lead a normal life. This then means that upon reaching the age of majority (18 years) the second plaintiff according to the law can no longer claim support or maintenance, (see *Langa v Road Accident Fund* (2014/67644) [2016] ZAGPPHC 876 (22 September 2016)). At the time of Mr Smith death the second plaintiff was approaching the age of twelve. This means that the second plaintiff would have depended on the support from the deceased for 6 years. Consequently, the loss is  $R\,53\,333,33 \times 6 = R\,319\,999,98$ .

7.3 The loss of support that the Third Plaintiff would suffer as a result of the death of Mr Smith is in the amount of R 959 999,94.

Calculations: The third plaintiff is medically declared to be paralyzed for life. The amount of loss of support is calculated taking life expectancy of both parties into account. Mr Smith life expectancy is 70 years, but he would have worked until the age of 65. This means that he would have supported the plaintiff for (2035 – 2017) 18 more years. The life expectancy of the third plaintiff has been shortened to 40 years. Mr Smith, is estimated, would have worked for 18 more years if it wasn't for the accident, while the third plaintiff, is estimated, will live for (2044 – 2017) 27 years. The shorter of the two estimates should be used to determine loss of support. Thus  $18 \times 53\,333,33 = R\,959\,999,94$ .

8. As a result of the said collision, the first plaintiff sustained multiple bodily injuries:

8.1. A broken leg (left tibia and fibula)

8.2. Head injuries (loss of consciousness, concussion, and permanent facial scarring)

8.3 Bruises and abrasions on the right side of the body

8.4 The aforesaid injuries sustained by the first plaintiff in the collision amounts to damages of R 263 920 (facial disfigurement 33 000; concussion 94 000; broken leg 120 000; body bruises 16 000 and shoe alignment for shortened leg  $40 \times 23$  (life expectancy)).

9. As a result of the said collision, the second plaintiff sustained multiple bodily injuries:

9.1. A broken pelvis

9.2 The aforesaid injuries sustained by the first plaintiff in the collision amounts to damages of R 623 360 (pelvis 578 000 and physio-therapy 420 × 3 × 4 × 9).

10. As a result of the said collision, the first plaintiff sustained multiple bodily injuries:

10.1. Partial paralysis on the left side of the body

10.2. Head injuries (involving loss of consciousness and permanent loss of some intellectual and motor function)

10.4 The aforesaid injuries sustained by the first plaintiff in the collision amounts to damages of R 2 741 000 (hemiplegia 1 523 000; brain injury 1 176 000 and therapy 1 750 × 24).

11. As a result of injuries sustained in the accident, the Plaintiffs

11.1. Experiences pain and suffering.

11.2. Suffered loss of amenities of life.

11.3. Suffered loss of earning capacity.

11.4. Were disfigured.

12. The nature, effect and duration of pain and suffering, loss of amenities of life, disfigurements and disability are set out in the medical legal reports.

13. A claim for compensation as prescribed by Section 24 of the Act has been submitted to the Defendant on the **03 October 2017** and the requirements of the Act and regulations have been complied with insofar as may be necessary.

14. The Plaintiffs have suffered serious injuries as contemplated in the Act and are consequently entitled to damages for non-pecuniary loss, as provided in the Act and has complied with the peremptory procedures prescribed by the Act and the Regulations.

15. Notwithstanding the expiration of 120 days from the date on which the Plaintiff lodged the claim the Defendant has not compensated the Plaintiffs for the aforesaid damages or any part thereof.

16. In the premises the Defendant is liable to compensate the Plaintiffs the Sum of **R 5 868 279,9** which amount or any portion thereof the Defendant has failed to pay.

**WHEREFORE** the Plaintiffs prays for judgment as follows: -

1. Payment of the sum of **R 5 868 279,9**
2. Interest on the aforesaid amount according to law
3. Costs of suits;
4. Further and / or alternative relief.

**DATED AT PRETORIA ON THIS THE 26<sup>th</sup> FEBRUARY 2018.**

## 2. Advice on evidence

**Please note that there is no “right” and “wrong” answer in respect of the answer which may be proffered by the student this regard. In other words, none of the advice discussed below may be said to be the most appropriate. Marks shall be awarded according to the student’s arguments and reasoning. The answers for the question are sourced from various authorities including uniform rules of court.**

(2) Advising Mrs Smith on evidence of loss of support would require you to considered circumstances that warrants her to seek such compensation. Injuries sustained during collision may rendered the plaintiff incapable of supporting themselves, similarly the plaintiff may not be equipped to fend for themselves after the death of the breadwinner. The information evidencing such losses would be vital in convincing the court to award damages.

When a plaintiffs seek compensation for loss of support, they must indicate that indeed they are unable to support themselves. The relationship between the plaintiff and the deceased must be established as a point of departure. This is essential to establish the degree of dependency. In this instance, a marriage certificate or any sort of evidence that can establish the relationship between the plaintiff and the deceased must be furnished. The plaintiff must prove that he, she or they were depended on the deceased for support. For instance, it is essential for the plaintiff to indicate that he/she is not skilled enough to generate sufficient income to support him/herself upon the death of a breadwinner, or the injuries sustained in the accident precludes him/her from earning in the future. This may require that additional evidence that demonstrates the plaintiff incapacity to support him/herself be submitted. Therefore, any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof to submit to medical examination. It is likely that RAF will submit a notice to the plaintiff indicating that the injured will have to undergo medical examination and specifying the nature of the examination required, the person or persons by whom, the place where and the date (being not less than fifteen days from the date of such notice) and time when it is desired that such examination shall take place, and requiring such other party to submit himself for examination then and there. The person whom it is required to have examination may have their medical adviser present at such examination. RAF may, alternatively, request the plaintiffs to submit any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof. If the information obtained is insufficient, a second and final medical examination may be sought. All full reports of the examination will have to be submitted to the court.

Similarly, when a plaintiff needs to call an expert witness, a notice must be delivered not less than fifteen days before the hearing, and a summary of such expert's opinion and his reasons therefor must be delivered not less than ten days before the trial. It would be essential for Mrs Smith to have an expert to testify on the injuries of the third plaintiff, thus it is advisable to consult an expert timeously.

The plaintiff needs to furnish certain documents to support her evidence for loss of support. First and foremost, the plaintiff needs to produce proof of the amount the deceased was earning. Thus the plaintiff ought to produce salary slip of the deceased. In addition, the plaintiff should produce the deceased's or her bank statements to indicate the amounts that were used to support the family. This should be accompanied by the relevant documentation indicating, the amounts used to pay for various family necessities, e.g. municipal rates, school fees, monthly expenditure on food, annual clothing costs and transportation costs. Evidence pertaining to any plan, diagram, model or photograph will be inadmissible unless a notice stating the intention to submit is tendered not less than fifteen days before the hearing.

(15)

[50]

**Assignment 02: Semester 02**

**Question 1**

**IN THE MAGISTRATE COURT FOR THE DISTRICT OF TSHWANE-NORTH**

**HELD AT PRETORIA NORTH**

Case No.:

In the matter between:

**APPLICANT**

And

**THE STATE**

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**AFFIDAVIT IN SUPPORT OF BAIL APPLICATION**

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1. I, the undersigned, Violent Mashaya, hereby state under oath that:
2. I am the Applicant in this matter
3. I am of sound and sober mind and I make this statement voluntarily without being influenced thereto.
4. I seek humbly relief from this Court to be released on bail. I respectfully submit, as I will demonstrate herein, that the interests of justice permit my release on bail.

4. The contents of this document are within my personal knowledge, and to the best of my knowledge and belief, both true and correct, unless otherwise the contrary exists.

5. I herein state that I have been informed by my legal representative that the record of this bail application shall form part of the record of the trial following this application. Further, that whatever I say during this bail application can and may be used against me, subsequently, during trial.

6. I understand the charges that I am facing. I confirm that it has been explained to me that, in terms of section 60 (11B) of Act 51 of 1977, I am compelled to disclose whether I have any previous convictions or pending charges against me, failing which/ or providing false information, constitute an offence punishable by fine of up to R40 000 or imprisonment not exceeding two years.

7. I further declare herein that I have no previous convictions or outstanding cases against me

8. I hereby implore the court to take into consideration the following aspects regarding the application:

9. The interests of justice justify my release on bail as follows:

9.1 I deny all the allegations against me. To this extent, I welcome the opportunity to prove my innocence at trial

9.2 Even though I am aware of the identities of all the potential witnesses, I submit that I will not interfere with any of them, either directly or indirectly.

9.3 I undertake to attend all subsequent court proceedings in the quest to prove my innocence

9.4 I will endeavour not to commit any of the offences listed in Schedule 1 of the Criminal Procedure Act 51 of 1977

9.5 I have no intention of undermining or jeopardising the objectives or proper functioning of the criminal justice system.

10. I further request the court to take into account the following personal circumstances:

10.1 I have been gainfully employed at Shoprite, Silverton for the past seven (7) years

10.2 I earn R 8000 per month

10.3 I am currently single

10.4 My salary supports myself, my mother and three siblings

10.5 I can afford bail of R 1000 if it is fixed by the court

I UNDERSTAND THE CONTENTS OF THIS AFFIDAVIT. I HAVE NO OBJECTION TO TAKING THE PRESCRIBED OATH. I CONSIDER THE SAME TO BE BINDING ON MY CONSCIENCE.

Dated and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017

\_\_\_\_\_  
Signature of deponent

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTAND THE CONTENTS HEREOF THAT WAS SWORN TO BEFORE ME AND THE DEPONENT'S SIGNATURE WAS PLACED THEREON IN MY PRESENCE.

Dated and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017

\_\_\_\_\_  
Commissioner of Oath

(23)

**Question 2**

**PLEASE NOTE, IN REGARD TO THIS QUESTION, THAT ANY OF THE OTHER COMPETENT VERDICTS OF MURDER ARE APPLICABLE. TO THIS EXTENT, YOUR ANSWER MAY BE FRAMED IN THE CONTEXT OF A CHARGE OF Assault with intent to cause grievous bodily HARM OR EVEN SIMPLE Assault.**

**IN THE MAGISTRATE COURT FOR THE DISTRICT OF TSHWANE-NORTH  
HELD AT MAMELODI**

Case No.:

In the matter between:

**APPLICANT: VIOLENT MASHAYA**

And

**THE STATE**

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**STATEMENT IN TERMS OF SECTION 112 (2) OF THE CRIMINALPROCEDURE  
ACT 51 OF 1977**

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I, the undersigned, Violent Mashaya state hereunder that:

1.

I am the accused in this matter. I am charged with the offence of culpable homicide, and I understand the charge

2.

My legal representative has explained the legal consequences of this statement and I hereby provide that I understand same.

3.

I confirm that I make this statement freely and voluntarily whilst in my sane and sober mind.

4.

I have been informed of my constitutional rights, and I know that I have the following rights, amongst others:

- 4.1. The right to be presumed innocent until proven guilty beyond a reasonable doubt;
- 4.2. The right to remain silent and not to testify during the proceedings; and
- 4.3. The right not to be compelled to give self-incriminating evidence. (1)

5.

I know and understand that the court may convict me only on the basis of this statement without the prosecution leading any evidence against me.

6.

I admit that on the 12<sup>th</sup> of March 2015 I was at 20584 Mamelodi West.

7.

I admit that on the day in question I did unlawfully and negligently cause the death of the deceased, Victim Skepsel.

8.

I encountered the deceased at the above address with my girlfriend, Poppy Floozy. The deceased attacked me with a chair when I tried to make conversation with Poppy. In the end, I subsequently relieved the deceased of the chair and continued to repeatedly hit him with it.

9.

I admit that my initial intention was merely to ward off the attack from the deceased. I further concede, however, that I should have ceased with my attack just as soon as I hit him a few times around the body. To this extent, I went beyond the ordinary call for private defence.

10.

I submit that my actions were unlawful and negligent, and that I have no valid defence in law for my conduct.

11.

I place myself at the mercy of the court in this regard.

Dated and signed at Pretoria on this 15th day October 2015

Signature of deponent

Signature of legal representative

(25)

**[50]**