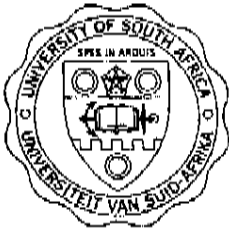


UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS



UNISA

CIP102-E

Oktober/November 2003

SIVIELE PROSESREG 102

Tydsduur : 2 Uur

100 Punte

EKSAMINATORE :

EERSTE :

PROF E HURTER

ME F CASSIM

PROF OS SIBANDA

TWEDE :

PROF JA FARIS

EKSTERNE :

SY EDELE REGTER D MOSENEKE

Hierdie vraestel bestaan uit vier bladsye.

WANNEER U HIERDIE VRAESTEL BEANTWOORD MOET U ASSEBLIEF AAN DIE VOLGENDE VOORSKRIFTE VOLDOEN

Beantwoord al VIER vrae.

- (a) Maak seker dat u redes vir elke antwoord verskaf wanneer u daarom versoek word. 'n Blote JA/NEE sal geen punte verdien in gevalle waar u versoek word om redes te verskaf nie.
- (b) Maak seker dat die tyd wat u aan elke vraag bestee in verhouding is tot die aantal punte wat toegeken is.
- (c) Maak seker dat die tyd wat u aan elke vraag bestee in verhouding is tot die aantal punte wat toegeken is.

PROSEDURE IN DIE HOë HOF

VRAAG 1

Beantwoord **AL** die volgende vrae.

- (a) **Verduidelik** die omstandighede waaronder die volgende aansoeke gebruik kan word.
 - (i) *ex parte* aansoeke
 - (ii) gewone aansoeke
 - (iii) dringende aansoeke
 - (iv) interlokutoriese aansoeke (10)
- (b) **Noem vier** maniere waarop normale/gewone betekening kan geskied. (4)

[BLAAI OM]

- (c) **Vergelyk** die verweerskrif op die meriete en die spesiale pleit. (4)
- (d) **Bespreek** die aard en die doel van die eksepsie. (8)
- (e) **Dui aan** wat beteken "goeie redes" vir doeleindes van die tersydestelling van 'n vonnis by verstek. (3)
- (f) **Bespreek** volledig die gronde vir 'n **tydelike** interdik. (7)
- [36]**

VRAAG 2

- (a) C en D sluit 'n kontrak. D pleeg kontrakbreuk en C wil 'n dagvaarding uitreik teen D. Hou hierdie feite in gedagte en beantwoord die volgende vrae. Gee telkens voldoende redes vir u antwoord.
- (i) Watter tipe dagvaarding behoort C, die eiser, te gebruik indien die terugbetaling van die kontrakprys in die bedrag van R400 000 geëis word? (2)
- (ii) Watter tipe(s) dagvaarding kan C gebruik indien D die kontrakprys by wyse van 'n tjek betaal het, maar D se tjek deur sy bank gedishonoreer is weens 'n tekort aan fondse? (4)
- (iii) Watter tipe dagvaarding behoort C te gebruik indien sy eis om skadevergoeding in die bedrag van R120 000 voortspruit uit D se kontrakbreuk? (2)
- [8]**
- (b) S reik 'n dagvaarding uit teen T vir goedere verkoop en gelewer in die bedrag van R120 000. Ondanks aanmaning weier T om hierdie bedrag te betaal. Hou hierdie feite in gedagte en beantwoord die volgende vrae. Gee voldoende redes waar nodig vir u antwoorde.
- (i) Wat behoort T, die verweerder, te doen indien hy/sy erken dat 'n gedeelte van die eis verskuldig is en hy/sy hierdie gedeelte van die eis onmiddellik wil betaal? (2)
- (ii) Watter prosedure behoort S, die eiser, te gebruik indien T nie op die dagvaarding reageer binne die voorgeskrewe *dies induciae* nie? (1)
- (iii) Behoort S 'n kennisgewing van belet op T te beteken voordat S aansoek kan doen om die prosedure na verwys in (ii) hierbo? (1)
- (iv) Noem die prosedure wat S kan gebruik indien T 'n kennisgewing van voorneme om te verdedig beteken en liasseer binne die voorgeskrewe *dies induciae*, maar dit doen bloot om die aksie te vertraag? (1)

- (v) Dui aan watter stappe T kan doen om die verrigtinge wat deur S in (iv) hierbo ingestel is, te verdedig. (2)
- (vi) Bespreek die verskille in die aard van die getuienis wat deur sowel S as T voorgelê word by die verhoor van die verrigtinge wat deur S in (iv) hierbo ingestel is. (3)
[10]
- (c) L en M is betrokke in 'n motorbotsing. L ly ernstige beserings aan sy rug en moet 'n reeks groot operasies ondergaan. L dagvaar M om skadevergoeding. Op hierdie stadium is die pleitstukke gesluit en albei partye begin om voor te berei vir verhoor. Hou hierdie feite in gedagte en beantwoord die volgende vrae.
- (i) **Noem twee** prosedures wat gebruik kan word om te verhoed dat die partye onkant betrap word by die verhoor. (2)
- (ii) **Noem twee** stappe wat geneem kan word ten einde die verhoor te verkort soos vereis ingevolge die Eenvormige Hofreëls. (2)
- (iii) **Noem twee** maniere waarop partye hul getuienis aan die verhoorhof kan voorlê. (2)
[6]

PROSEDURE IN DIE LANDDROSHOF

VRAAG 3

Beantwoord **AL** die vrae.

- (a) **Noem ses** besonderhede wat in 'n dagvaarding moet verskyn ingevolge reëls 5 en 6 van die Landdroshofreëls. (6)
- (b) **Noem die vyf** gronde waarop 'n eksepsie opgewerp kan word teen 'n dagvaarding. (5)
- (c) **Skryf 'n kort aantekening** oor die voorskrifte rakende die vorm en inhoud van die verweerskrif op die meriete in die landdroshowe. (8)
- (d) **Bespreek** die wysiging van pleitstukke in die landdroshowe. (8)
- (e) **Bespreek** absolusie van die instansie aan die einde van 'n saak wanneer die bewyslas op die verweerder rus. (3)
[30]

APPÈL, HERSIENING EN WYSIGING VAN VONNISSE**VRAAG 4**

Z stel verrigtinge in teen X in 'n landdroshof. Die landdros staan vonnis toe teen X. X is ontevrede daarmee en neem die saak op appèl. Op sterkte van hierdie feite, beantwoord die volgende vrae. Gee voldoende redes vir u antwoord waar nodig.

- (a) Moet X aansoek doen om verlof tot appèl na 'n Hoë Hof? (1)
- (b) Hoeveel regters moet hierdie appèl aanhoor? (1)
- (c) Hoe moet X sy/haar appèl aanteken ingevolge reël 51(3)? (5)
- (d) Mag X steeds die appèl voer indien hy/sy aan enige deel van die vonnis waarteen geappelleer word, voldoen? (1)
- (e) Sal tenuitvoerlegging van die vonnis wat in die landdroshof gevel is opgeskort word hangende die uitslag van die appèl in die Hoë Hof? (2)

[10]**TOTAAL: [100]**

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS



UNISA

CIP102-E

October/November 2003

CIVIL PROCEDURE 102

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

PROF E HURTER

MS F CASSIM

PROF OS SIBANDA

SECOND :

PROF JA FARIS

EXTERNAL :

THE HON MR JUSTICE D MOSENEKE

This paper consists of 4 pages.

PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THE EXAMINATION PAPER

Answer all FOUR questions

- Ensure that you give reasons for each answer when instructed to do so. A mere **YES/NO** will earn **NO** marks if instructed to discuss or provide reasons for your answer.
- You must not give reasons for an answer when merely instructed to name a pleading, notice, process or procedure.
- Please ensure that the time you devote to each question is proportionate to the marks allotted.

HIGH COURT PROCEDURE**QUESTION 1**

Answer **ALL** the following questions.

- Explain** the circumstances in which the following applications may be used

- ~~(i)~~ *ex parte* applications
- ~~(ii)~~ ordinary applications
- ~~(iii)~~ urgent applications
- ~~(iv)~~ interlocutory applications.

(10)

[TURN OVER]

- (v) Indicate the steps that T can take to defend the proceedings instituted by S in (iv) above. (2)
- (vi) Discuss the differences in the nature of evidence presented by both S and T at the hearing of the proceedings instituted by S in (iv) above. (3)
- [10]
- (c) L and M are involved in a motor vehicle accident. L suffers some serious injuries to his back and has to have a number of major operations. L sues M and claims for damages. At this stage, the pleadings have closed and both parties begin to prepare for trial. With these facts in mind, answer the following questions.
- (i) Name two procedures that may be used to prevent the parties from being caught unprepared at the trial. (2)
- discovery
- (ii) Name two steps that may be taken to shorten the trial as required under the Uniform Rules of Court. (2)
- Pre-trial
- (iii) Name two methods by means of which the parties may present their evidence in court. (2)
- orally
- affidavit - commission - interrogatory
[6]

MAGISTRATES' COURTS PROCEDURE

QUESTION 3

Answer **ALL** the following questions.

- (a) Name six particulars that must be included in a summons in terms of rules 5 and 6 of the Magistrates' Court rules. (6)
- (b) Name the five grounds in terms of which an exception can be raised to a summons. (5)
- (c) Write a short note on the provisions governing the form and content of a plea on the merits in the magistrates' courts. (8)
- (d) Discuss the amendment of pleadings in the magistrates' courts. (8)
- (e) Discuss absolution from the instance when the onus is on the defendant at the close of the case. (3)

absolution only if onus on plaintiff
never on def - the plaintiff wins

[30]

[TURN OVER]

2

Summary Judgment
- interdict
- new
- ejectment

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- (b) Name four methods by which normal service can be effected. (4)
- (c) Compare the plea on the merits and the special plea. (4)
- (d) Discuss the nature and purpose of the exception. (8)
- (e) Indicate what is meant by "sound reasons" in regard to setting aside an order for default judgment. (3)
- (f) Describe fully the grounds for a temporary interdict. (7)

[36]

QUESTION 2

action = summons → simple
combined - damages
Prelim S. Summons

(a) C and D enter into a contract. D breaches the contract and C wishes to issue summons against D. With these facts in mind answer the following questions, giving adequate reasons for your answer in each instance.

- (i) What type of summons should C, the plaintiff, use for repayment of the contract price, being in the amount of R400 000? (2)
Simple
- (ii) What type(s) of summons could C use if D paid the contract price by cheque but D's cheque was dishonoured by his bank because of insufficient funds? (4)
Prelim → simple or ss.
Summons →
- (iii) What type of summons should C use in regard to a claim for damages in the amount of R120 000 arising from D's breach of contract? (2)
Combined

[8]

(b) S issues a summons against T for goods sold and delivered in the amount of R120 000, which T refuses to pay despite demand. With these facts in mind, answer the following questions, giving adequate reasons for your answer where necessary.

- (i) What should T, the defendant, do if he/she acknowledges that part of the claim is due and owing and wishes to settle this part of the claim immediately? (2)
- (ii) What procedure should S, the plaintiff, use if T does not respond to the summons within the period stated in the dies induciae? (1)
Judgment by default.
- (iii) Should S deliver a notice of bar to T before S can apply for the procedure stated in (ii) above? (1)
No, since it is summons - not a pleading.
- (iv) Name the procedure that S may use if T files a notice of intention to defend within the period stated in the dies induciae but does so merely to delay the action? (1)

Summary Judgment
[TURN OVER]

Prelim sentences summons.

SS summons.

APPEAL, REVIEW AND VARIATION OF JUDGMENT**QUESTION 4**

Z institutes proceedings in a magistrate's court against X. The magistrate grants judgment against X. X is dissatisfied and takes the matter on appeal. On the basis of these facts, answer the following questions, giving reasons where necessary.

- (a) Must X apply for leave to appeal to a High court? (1)
- (b) How many judges must hear the appeal? (1)
- (c) How must X note his/her appeal to the High court in terms of rule 51(3)? (5)
- (d) May X still conduct the appeal if he/she satisfies any part of the judgment against which the appeal is brought? (1)
- (e) Will execution of the judgment given in the magistrate's court be suspended pending the decision of the appeal in the High court? (2)

[10]**TOTAL: [100]**