

UNIVERSITY OF FORT HARE
FACULTY OF LAW
(East London Campus)

CIVIL PROCEDURE A
LEC 411E / 412E

JUNE / JULY EXAMINATIONS 2023
SUPPLEMENTARY EXAMINATION PAPER

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Time: 3 HOURS
Subject: CIVIL PROCEDURE A
Code: LEC 411E / 412E
Marks: 100

EXAMINERS:

Internal Examiners:
Adv S. Seti

External Examiner:
Prof T. Van der Walt

INSTRUCTIONS

1. Answer ALL questions.
2. Please ensure that your assessment paper comprises FIVE (5) pages.
3. It is in your interest to write clearly.
4. Number your questions appropriately.
5. Substantiate your answer by reference to applicable case law and/or legislation.

QUESTION 1

The certification process is one of the key features of class actions in South Africa. It plays an important role in informing potential class members and therefore, it is well justified requirement for class actions. In *Children Resources Centre Children's Resource Centre Trust and Others v Pioneer Foods (Pty) Ltd and Others* [2012] ZASCA 182; 2013 (2) SA 213 (SCA) (*Children's Recourse Centre*), the Supreme Court of Appeal stated that at paragraph [24]: "Most jurisdictions around the world require certification either before institution of the class action or at an early stage of the proceedings. The exception is Australia. The justifications are various."

Critically discuss the reasons or justifications, as stated in *Children's Recourse Centre*, for setting class certification as a requirement for class actions in South Africa.

[20 Marks]

QUESTION 2

The South African National Road Agency (SANRAL) has concluded a contract with an Italian company called Salini Impregilo Group for the construction of a bridge near Aliwal North crossing the Orange River from the Eastern Cape to the Free State Provinces. The parties signed the contract in Genoa, Italy and the construction process began in October 2022. During the course of construction, a dispute arose between the parties and it could not be resolved amicably. SANRAL as the aggrieved party want to institute civil proceedings claiming damages totalling to R10 million against Salini Impregilo Group. However, there is concern around the question of jurisdiction based on the fact that the Salini Impregilo Group is a foreign *perigrini* with no assets in South Africa.

You are an Advocate and member of the Bisho Bar Society of Advocates. You have been briefed by SANRAL to provide a legal opinion addressing its concern around the question of jurisdiction in this matter. Your opinion must also touch on whether the SA courts will have jurisdiction to determine this matter? If yes, which High Court(s) and why?

[20 Marks]

QUESTION 3

On 04 October 2022 of Sugar Palm Farm Co-operative ('SPF') of 8 Palm Crescent, Vincent Park, East London entered into oral agreement with Mr Tractor Mechanic (Pty) Limited ('MTM') of 17 Beacon Business Park, Beacon Bay, East London. In terms of the agreement, MTM would repair the SPF's Massey Ferguson MF6700 R tractor (the Tractor'). The repairs were set to be done on or before 15 October 2022 and the repairs were to be done in an efficient and workmanlike. The costs of repairs was a sum of R 250 000, which was paid by the SPF on 15 October 2022.

When the agreement was concluded, Mr George Benya of SPF made it clear to Mr McConarchie of MTM that their co-operative possessed only one tractor, which is the one that was the subject of repairs. The said tractor was needed for ploughing their fields on or before 20 October 2022. Moreover, it was made clear to MTM that should the tractor not be repaired properly, SPF would be unable to plough timeously. Consequently, SPF would have no summer crop and would therefore suffer a loss of income from its farming venture.

MTM breached the contract by failing to properly repair the tractor in a workmanlike and efficient manner. When the tractor was returned, it was in a worse state than

before. SPF had to take the tractor to the Tractor World (Pty) Ltd for further repairs and it remained there for three months until 13 February 2023.

SPF's incurred a loss of income as a result of the failure of its summer crop. The said loss of income is calculated as follows: R600 000, 00 (estimated value of crop) less R100 000, 00 (production costs equals to R500 000, 00. As a result thereof, the SPF is considering to institute claim of R500 000, 00 against the MTM for the loss of income incurred pursuant to inability to plough the fields on time and failing the summer crop.

Instruction:

You have been instructed by SPF to proceed to institute litigation against the MTM. In this regard, you are required to draft ONLY the Particulars of Claim to be annexed into Combined Summons using the above facts.

[20 Marks]

QUESTION 4

You are an attorney acting on behalf of your client Ms Khwezi Daka, who is the plaintiff in a claim for damages to her new Mercedes Benz Maybach Exelero. The damages arise out of a car collision allegedly caused by Mr Sakhumzi Ngozi. Now Ms Daka claims against Mr Ngozi an amount of R700 000, 00, that being the reasonable costs of repairing the aforesaid damages. According to the plaintiff's particulars of claim, the proceedings were instituted before Bisho High Court and the collision occurred on 22 July 2019 along Second Avenue in East London. A collision occurred between the new Mercedes Benz Maybach Exelero owned by Mrs Daka and a white Toyota Quantum driven by one Mr Sakhumzi Ngozi. Mr Ngozi was solely to blame for the collision. Pleadings are closed between the parties and the matter is set down for hearing in a period of 20 court days.

Among your other witnesses, you intend to call Mr Andrew Labuschagne of Cape Motors as an expert witness in the trial. Mr Labuschagne has been working in the motor trade for 20 years and for the past 11 years he has been working strictly with Mercedes Benz brands. As a result, he has thorough knowledge of the current prices of Mercedes Benz vehicles and the costs of their repairs. In his testimony, Mr Labuschagne will indicate that he examined the damage to the vehicle of the plaintiff and that he is of the opinion that the reasonable and necessary costs to repair the vehicle is R700 000.00.

In light of the above information, you are required to answer the following:

4.1 Draft a legal opinion setting out the procedure that should be followed when a party to the proceedings intend calling an expert witness.

(10 Marks)

4.2 Draft the necessary Expert Notice & Summary.

(10 Marks)

[20 Marks]

QUESTION 5

You are an Advocate and practising member of the Bisho Society of Advocates with chamber at Berea in East London and you receive a brief from Mr Lionel Makwetu, a newly appointed director of Brighton Bizos Attorneys. Mr Makwetu seeks a legal opinion relating to the case which is pending before the Supreme Court of Appeal. The appeal has already been noted and it is waiting allocation of the hearing date.

Mr Makwetu has been advised by his client that there are some new developments regarding the case. He is of the view that the developments might justify the application/request for: (i) the introduction of further evidence; and, (ii) raising of new points that were not presented before the High Court which served as the trial court or court of first instance. However, he is not sure whether it is possible to pursue the aforesaid application/request since the matter is already before the appeal court. The issues brought by the developments were never raised before the trial court and were never part of the appeal record. Mr Makwetu advised his client that they should adopt a rather cautious approach in dealing with this aspects of the appeal. It is for this reason that Mr Bizos has briefed you and seeks your opinion on these technical issues.

Instruction:

You are required to draft a legal opinion on whether it is possible or not to introduce further evidence; and, raise new points on appeal? If yes, what is the procedure? In your opinion, critically discuss the principles regarding the introduction of further evidence on appeal and the raising of new points. Refer to relevant authorities.

[20 Marks]

TOTAL: 100 MARKS

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