



RHODES UNIVERSITY

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FACULTY OF LAW

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# ***CIVIL PROCEDURE A***

## **2009**

***PRESENTED BY: GYS NIESING***

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### ***GENERAL INFORMATION REGARDING THE COURSE***

#### **1. OVERVIEW**

Civil Procedure A is a first semester course that counts as a credit in the Faculty of Law in the penultimate LLB year. The aim of the course is to ensure that students are able to attend to the handling of a simple civil action from the time of taking instructions to the time of the trial. More particularly, the aim of the course is:

- 1.1. To introduce students to the nature of civil procedural law;
- 1.2. To familiarise students with the body of rules governing the action procedure in the civil courts;
- 1.3. To introduce students to the theory underlying the drafting of notices, pleadings, etc.

The course will concentrate on important aspects of the action procedure in both the Magistrates' Courts and High Court. The aim is to provide students with the necessary theoretical knowledge of the action procedure, which will provide a basis upon which they can develop drafting skills during their second semester course (Legal Practice). Civil Procedure B (taken in the first semester of the final LLB year) will cover topics not covered by Civil Procedure A. In particular, Civil Procedure B will focus on selected primary and interlocutory applications and specific topics around provisional sentence, appeals, reviews and rescission of judgments, costs, enforcement of judgments and administration orders.

## **2. ASSUMPTIONS OF PRIOR LEARNING**

It is assumed that students are able to read, understand and extract relevant information from statutes and case law. It is vital that students are able to write legibly and to express themselves clearly in coherent English as a precursor to developing students' drafting skills.

## **3. OUTCOMES**

### **3.1. Critical Outcomes**

It is intended that students will be able to:

- 3.1.1. collect, analyse and evaluate information from statutes, case law and other source materials;
- 3.1.2. work in groups during class discussions;
- 3.1.3. identify and solve problems;
- 3.1.4. use technology; and
- 3.1.5. communicate effectively in class debates and written assignments.

### **3.2. Specific Outcomes**

It is intended that students will be able to demonstrate the following upon successful completion of the course:

- 3.2.1. a broad knowledge of the fundamental principles underlying civil procedural law and the impact of the Constitution of the RSA upon civil procedure;
- 3.2.2. a broad knowledge of the Magistrates' Court and High Court action procedures;
- 3.2.3. an ability to identify the correct jurisdiction for a particular action;

- 3.2.4. an ability to identify whether to institute an action or application procedure on any given set of facts;
- 3.2.5. an ability to identify the most appropriate response to a procedural step taken by the opposing litigant in a matter, and to evaluate the utility thereof;
- 3.2.6. an ability to describe and explain the context of action procedures commonly utilised in civil claims.

#### **4. TEACHING METHOD**

The course has been divided into four parts which will be covered during the first semester in the form of lectures. Students are expected to take notes and to study additional sources in respect of these topics. Students are referred to the Faculty's 'Law Student's Survival Guide' in respect of DP requirements for attendance of lectures. Feedback for assignments and tests will be given as soon as possible within formal lecture periods.

#### **5. SOURCES**

The most important sources of civil procedure are the Constitution, legislation and case law governing the subject. Thus, the following sources should be constantly consulted by students:

- 5.1. Prescribed sections of the Constitution of 1996;
- 5.2. Juta's Statute Editors, The Supreme Court Act and Magistrates' Courts Act and Rules (2006/7), Juta (The Acts can be found electronically on Netlaw);
- 5.3. Prescribed case law and articles in law journals;

During the course, students will be expected to read cases and articles in which the rules of civil procedure are discussed and applied. These sources may be found in the library in both paper and electronic form. There is no prescribed textbook for this course. However, you will be referred to various textbooks with regard to certain procedures. Excerpts from these books, which are available in the library, must be studied.

There are several additional sources, which are primarily aimed at the needs of legal practitioners. Although these books are not suitable textbooks for purposes of this course you will be referred to some of these books with regard to certain procedures. These books are available in the library for perusal. The most important books on the practice of the civil courts, relevant to Civil Procedure A include the following:

- 5.4. **Farlam, Fichardt and Van Loggerenberg *Erasmus Superior Court Practice (Loose leaf)* Juta;**
- 5.5. **Erasmus and Van Loggerenberg *Jones and Buckle The Civil Practice of the Magistrates' Courts in South Africa (loose leaf) Volumes 1 and 2* Juta;**
- 5.6. Van Winsen, Cilliers and Loots (Dendy ed) Herbstein and Van Winsen *The Civil Practice of the Superior Courts in South Africa* (4th ed 1997) Juta;
- 5.7. Harms *Civil Procedure in the Supreme Court* (loose leaf) Butterworths;
- 5.8. Paterson *Eckhard's Principles of Civil Procedure in the Magistrates' Courts* (5th ed 1996) Juta;
- 5.9. Van Blerk *Legal Drafting: Civil Proceedings* (1998) Juta;
- 5.10. Marnewick *Litigation Skills for South African Lawyers* (2002) Butterworths;
- 5.11. Taitz *The Inherent Jurisdiction of the Supreme Court* (1985) Juta;
- 5.12. Daniels Morris *Technique in Litigation* (5th ed 2003);
- 5.13. Forsyth *Private International Law* (4th ed 2003) Juta;
- 5.14. Erasmus et al *Workbook for Civil Procedure* (1973) Digma;
- 5.15. Pete Hulme, Du Plessis and Palmer *Civil Procedure: A Practical Guide* (2005) New Africa Books (Pty) Ltd;
- 5.16. Theophilopoulos, Rowan, Van Heerden & Boraine *Fundamental Principles of Civil Procedure* (2006) LexisNexis.

## 6. STUDENT ASSESSMENT

6.1. <b>Specific Outcomes</b>	6.2. <b>Assessment Criteria</b>	6.3. <b>Assessment Tasks</b>
<i>Students are expected to develop:</i>	<i>Students must provide evidence of competency in the following ways:</i>	<i>Students may be expected to:</i>
<ul style="list-style-type: none"> <li>• A broad knowledge of the fundamental principles underlying civil procedural law and the impact of the Constitution upon this discipline.</li> </ul>	<ul style="list-style-type: none"> <li>• Discuss the content and application of the basic principles underlying civil procedural law</li> <li>• Discuss the impact of the Constitution upon</li> </ul>	<ul style="list-style-type: none"> <li>• Write essays, "advice to clients" or "judgments" on the above topics.</li> </ul>

	various facets of civil procedural law.	
<ul style="list-style-type: none"> <li>A broad knowledge of the Magistrates' Courts and High Court action procedures;</li> </ul>	<ul style="list-style-type: none"> <li>Describe the context and purpose of rules governing the action procedure.</li> </ul>	<ul style="list-style-type: none"> <li>Answer short questions concerning rules on civil procedure.</li> <li>Explain the context and purpose of rules governing the action procedure <i>vive voce</i> or in short essay form.</li> </ul>
<ul style="list-style-type: none"> <li>An ability to identify the correct jurisdiction for a particular action;</li> </ul>	<ul style="list-style-type: none"> <li>Evaluate and identify which courts have jurisdiction on any given set of facts and explain why.</li> <li>Explain mechanisms for tailoring a case to bring it within the jurisdiction of a particular court.</li> </ul>	<ul style="list-style-type: none"> <li>Write an advice to a 'client' explaining which courts have jurisdiction on the facts of the matter.</li> <li>Write a case note on selected cases dealing with jurisdictional matters.</li> </ul>
<ul style="list-style-type: none"> <li>An ability to identify whether to institute an action or application procedure on any given set of facts;</li> </ul>	<ul style="list-style-type: none"> <li>Explain which actions are compulsory.</li> <li>Identify whether to use the action or application procedure on any given set of facts.</li> </ul>	<ul style="list-style-type: none"> <li>List the circumstances in which action procedures are compulsory.</li> <li>Explain to a 'client' why an action or application procedure is to be utilised on the facts of the matter.</li> </ul>
<ul style="list-style-type: none"> <li>An ability to identify the most appropriate response to a procedural step taken by the opposing litigant in a matter and to evaluate the utility thereof;</li> </ul>	<ul style="list-style-type: none"> <li>Identify the possible responses and explain the advantages of making a particular response.</li> </ul>	<ul style="list-style-type: none"> <li>Write short essays on particular pleadings with reference to case law where appropriate.</li> <li>Explain possible responses to a procedural step in class.</li> </ul>
<ul style="list-style-type: none"> <li>An ability to describe and explain the context of action procedures commonly utilised in civil claims;</li> </ul>	<ul style="list-style-type: none"> <li>Describe the contents and requirements for various procedures.</li> <li>Explain the context in which the procedures would be utilised.</li> </ul>	<ul style="list-style-type: none"> <li>Track the action procedure in diagram form.</li> <li>List the requirements for various procedures.</li> </ul>

#### 6.4. **Assessment Strategy**

The final mark for the course comprises the following components:

Examination written in June:	70 marks
Class work:	30 marks
Total:	100 marks

Note that the examination paper and students' answers are assessed by an external examiner.

The class work component may consist of either a test and/or a number of assignments.

### **7. EVALUATION**

Students may be required to complete evaluation questionnaires on the course content and lecturer according to the Law Faculty's evaluation cycle. Answers and comments are then compiled by the Academic Development Centre who in turn writes an evaluation report on the outcomes.

### **8. CONTACT DETAILS**

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