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CIVIL PROCEDURE A - 2019

1. INTRODUCTION

1.1 Overview

The Civil Procedure Course is a compulsory semester course undertaken in the first semester of the penultimate year of the LLB degree.

The purpose of the course is to introduce students to basic civil procedure in the Magistrate's and High court. The course covers the courts with civil jurisdiction, questions of *locus standi*, action proceedings from letter of demand to trial and commonly used interlocutory applications such as summary judgment, exceptions, and Applications to Strike Out.

It is designed to complement the Legal Practice course. The Legal Practice course focuses on the development of legal skills, whilst the civil procedure course focuses on the necessary theoretical background and practical application of procedures and rules of practice.

The course is assessed by way of one **examination written in June**, as well as class work comprising of **one written assignment** and **one test**.

1.2 Credit Value

10 credits.

1.3 Assumptions of Prior Learning

In order to be able to successfully complete this course, students must:

- be able to read and write good English;
 - be able to express themselves clearly and coherently in English as a precursor to developing good drafting skills;
 - have a working knowledge of the foundations of our law including basic causes of action in areas such as contract, delict and the structure of our courts;
 - be capable of independent learning and research;
 - be able to work in groups.
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2. OUTCOMES

2.1 Critical Outcomes

Students will be able to:

- Collect, analyse and evaluate information from statutes, case law and other source materials;
- Interact and apply court acts and rules;
- Work in groups;
- Communicate effectively and use technology;
- Identify and solve problems.

2.2 Intended Specific Outcomes

At the end of the course, students should have achieved the following outcomes:

- To understand the reason for the existence of civil rules of practice, given the historical and cultural context in which the rules developed.
- To understand and identify the preliminary issues involved in civil procedure such as *locus standi*, jurisdiction and causes of action;
- To understand the difference between application and action proceedings;
- To know and understand the order, purpose and content of major pleadings in Magistrate's and High court such a summons, appearance to defend, declaration, plea and counterclaim;
- To know and understand the purpose and content of specific interlocutory applications such as exceptions, irregular proceedings, applications to strike out and summary judgment;
- The ability to identify the legal procedure to be followed to dispose of a matter through litigation from a given set of facts.

3. TEACHING METHODS

The course is taught by **Professor Bert Bester and Mr. Shaun Bergover**. It has been divided into specific topics which will be covered in the form of *viva voce* lectures. Students are expected to read ahead of the next lecture so that they may participate in the lecture and solve legal problems either individually or in groups. Assignments will also be placed on RUCONNECTED ahead of some classes which will be discussed at the class. There is no comprehensive handout for the course and as such, students will be expected to take their own notes during lectures and to supplement these notes with readings provided in the course outline. It is expected that students assume responsibility for their own learning by independent study according to the guidance provided by the detailed course outline. Feedback for assignments and tests will usually be given at the voluntary seminars. Students are referred to the Faculty's 'Law Student's Survival Guide' in respect of DP requirements for attendance of lectures. Students are welcome to discuss problems with the lecturers.

4. COURSE CONTENT

- **Introduction to civil procedural law**
 - Background and context of civil procedure in South Africa
 - **Overview of Civil Procedure**
 - The court system and key officials, the sheriff, stages of a dispute, action vs application procedure.
 - **Pre litigation Issues**
 - Cause of action, *locus standi*, jurisdiction.
 - **Pleading Stage**
 - The summons, particulars of claim, service of the summons, default judgment, notice of intention to defend, declaration, exceptions, irregular proceedings, application to strike out, plea, counterclaim and replication.
 - **Selected Interlocutory Applications**
 - Summary judgment
 - **Pre Trial Proceedings**
 - Discovery, pre-trial conference and further particulars for purposes of trial.
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5. RESOURCES

This is designed to give some guidelines as to the most important aspects of each topic and assist in preparation for lecture sessions. There is no specifically prescribed textbook, but it is highly recommended that students purchase the following book as it will be used as the primary reference work in class:

S Pete et al Civil Procedure: A Practical Guide (2016) 3 ed OUP

In addition to the above, the following texts will be of great assistance:

- Cilliers, Loots and Nel *Herbstein and Van Winsen The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* (2009) 5 ed Juta.
- C Theophilopoulos et al *Fundamental Principles of Civil Procedure* (2015) 3 ed LexisNexis
- Harms *Civil Procedure in the Superior Courts* (loose leaf) Butterworths
- Juta's Statute Editors *The Supreme Court Act and Magistrates' Courts Act and Rules* Juta (The Acts can be found electronically on Netlaw);
- Van Loggerenberg et al *Erasmus: Superior Court Practice* (loose leaf) Juta;
- Paterson Eckard's *Principles of Civil Procedure in the Magistrates' Courts* (2005) 5 ed Juta
- Mullins and Da Silva *Morris Technique in Litigation* (2010) 6 ed Juta;
- Van Loggerenberg *Jones & Buckle: The Civil Practice of the Magistrates' Courts in South Africa* (loose leaf) vols 1 & 2, Juta.
- Harms *Amlers Precedents of Pleadings* (2015) 8 ed
- Marnewick *Litigation Skills for South African Lawyers* (2012) 3 ed

Besides the texts on civil procedure, students will need to consult other sources, in particular:

- Chapters 2 and 8 of the Constitution of the Republic of South Africa, 1996.
 - Supreme Court Act 59 of 1959, Magistrate's Courts Act 32 of 1994 and various other acts also regulate procedural aspects. References are given in *Fundamental Principles*.
 - Students will be referred to relevant journal articles and cases during the course.
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6. STUDENT ASSESSMENT

6.1 ASSESSMENT BREAKDOWN

The percentage mark allocation for the course will be broken down as follows:

Test	15
Assignment	15
Examination	<u>70</u>
	<u>100</u>

6.2 ASSESSMENT OUTCOMES

Specific Outcomes	Assessment Criteria	Assessment Tasks
At the end of this course, students should be able to:	The evidence students must provide in order to show that they are competent	How evidence of competence is collected
<ul style="list-style-type: none"> ▪ Understand the background of, and the need for, civil procedure rules in South Africa 	<ul style="list-style-type: none"> ▪ The students is able to identify the context and purpose of rules in civil litigation 	<ul style="list-style-type: none"> ▪ Written Test ▪ Written examination
<ul style="list-style-type: none"> ▪ Identify preliminary issues in civil procedure 	<ul style="list-style-type: none"> ▪ The student is able to correctly identify issues of standing, jurisdiction as well as identify the cause of action in matters 	<ul style="list-style-type: none"> ▪ Written Test ▪ Written examination
<ul style="list-style-type: none"> ▪ Understand the difference between action and application proceedings 	<ul style="list-style-type: none"> ▪ The student is able to identify the appropriate proceedings to follow from a given set of facts and explain why. 	<ul style="list-style-type: none"> ▪ Written Test ▪ Written examination ▪ Class exercises
<ul style="list-style-type: none"> ▪ Know and understand the 	<ul style="list-style-type: none"> ▪ A student is able to understand which pleading to file and what 	<ul style="list-style-type: none"> ▪ Written Test

purpose and content of major pleadings	stage of a dispute. Furthermore, a student is able to list and discuss the content of the pleading.	<ul style="list-style-type: none"> ▪ Written Examination ▪ Class Exercises ▪ Written Assignment
<ul style="list-style-type: none"> ▪ Identify the legal procedure to be followed in a specific matter 	<ul style="list-style-type: none"> ▪ Students are able to correctly apply their knowledge of civil procedure to a given set of facts. 	<ul style="list-style-type: none"> ▪ Written Examination ▪ Written Test

7. EVALUATION

This course is evaluated by the students by completing a course evaluation form that requires students to respond to specific questions that invite them to make comments about good and bad aspects of the course.

8. CONTACT DETAILS

- Professor Bert Bester, SC (B.Bester@ru.ac.za)
 - Office number 1010, First floor, Law Faculty.
- Mr. Shaun Bergover (S.Bergover@ru.ac.za)
 - Law Clinic, 41 New Street, Grahamstown.
- Appointments to be made by email.