



RHODES UNIVERSITY

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CIVIL PROCEDURE A

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 court and High court. The bulk of the course focuses on civil proceedings in the magistrate's Court although some reference will be made to High Court civil procedure. The course covers the courts with civil jurisdiction, *locus standi*, action proceedings from letter of demand to trial, including commonly utilized interlocutory applications such as summary judgment, exceptions, and Applications to Strike Out.

Civil Procedure A lays the foundation required for students to undergo the Civil Procedure B course in the first semester their final year of study. It is thus an introduction to civil procedure. It is also designed to complement the Legal Practice course also taken in the penultimate year of study. The Legal Practice course focuses on the development of legal skills, whilst the civil procedure course focuses on the procedures and rules of practice; not the actual practice.

The course is assessed by way of one examination written in June, as well as class work comprised 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 in 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 law including basic causes of action such as contract, delict, and the structure of our courts;
- be capable of independent learning and research;
- be able to work in groups.

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 will be able to achieve the following outcomes:

- To understand and identify the preliminary issues involved in civil procedure such as *locus standi*, jurisdiction and cause of action;
- To understand the difference between application and action proceedings;
- To set out the essential elements of a letter of demand;
- To know and understand the order, purpose and content of major pleadings in Magistrate's Court and High court such a summons, appearance to defend, plea, counterclaim and request for further particulars;
- To know and understand the purpose and content of specific interlocutory applications such as exceptions, applications to strike out and summary judgment;
- The ability to identify the legal procedure should be followed to dispose of a matter through litigation from a given set of facts.

3. TEACHING METHODS

The teaching method adopted is class room learning and learning through assessment. The course will be presented through two weekly lecture sessions, during which there will be class discussions and instruction. Students are referred to the Faculty Survival Guide for the Faculty's lecture attendance policy.

Outside lecture periods, students are required to complete one written assignment, and one test.

4. COURSE CONTENT

- **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, request for further particulars, exception, application to strike out, plea and counterclaim
 - **Selected Interlocutory Applications**
 - Summary judgment
 - **Pre Trial Proceedings**
 - Discovery, pre-trial conference
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5. RESOURCES

A course guide will be handed to students during lectures. 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 prescribed text book but it is highly recommended that students purchase the following books, especially if they intend to practice law.

- Pete Hulme, Du Plessis and Palmer Civil Procedure: A Practical Guide (2005) New Africa Books (Pty) Ltd;
- Paterson Eckhard's Principles of Civil Procedure in the Magistrates' Courts (5th ed 2005) Juta;

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

- 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;
- Harms Civil Procedure in the Supreme Court (loose leaf) Butterworths; Relevant sections of the Constitution of 1996;
- 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);
- Farlam, Fichardt and Van Loggerenberg Erasmus Superior Court Practice (Loose leaf) Juta;
- Erasmus and Van Loggerenberg Jones and Buckle The Civil Practice of the Magistrates' Courts in South Africa (loose leaf) Volumes 1 and 2 Juta;
- Theophilopoulos, Rowan, Van Heerden & Boraine Fundamental Principles of Civil Procedure (2006) LexisNexis.
- Farlam, Fichardt and Van Loggerenberg Erasmus Superior Court Practice (Loose

6. STUDENT ASSESSMENT

6.1 ASSESSMENT BREAKDOWN

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

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

6.2 ASSESSMENT OUTCOMES

Specific Outcomes	Assessment Criteria	Assessment Tasks
At the end of this course, students must 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"> ▪ Identify preliminary issues in civil procedure 	<ul style="list-style-type: none"> ▪ The student is able to correctly issues of standing, jurisdiction as well as identify the cause of action in matters 	<ul style="list-style-type: none"> ▪ Written Test
<ul style="list-style-type: none"> ▪ Understand the difference between action and application proceedings 	<ul style="list-style-type: none"> ▪ A 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"> ▪ Class Exercises ▪ Written Assignment
<ul style="list-style-type: none"> ▪ Set out the essential elements of a letter of demand 	<ul style="list-style-type: none"> ▪ A student is able to draft a complete letter of demand, including all the necessary information. 	<ul style="list-style-type: none"> ▪ Class Exercises
<ul style="list-style-type: none"> ▪ Know and understand the purpose and content of major pleadings 	<ul style="list-style-type: none"> ▪ A student is able to understand which pleading to file and what 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 Test ▪ Exam ▪ 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 Exam ▪ 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.