

NATIONAL BAR EXAMINATION

Preparation for and Conduct of Civil Trials Curriculum

A knowledge of the legal principles relating to the following topics is required. Although candidates are expected to be familiar with the issues discussed in the commentaries which are indicated below, the citation of cases will not be required. Save where otherwise stated, all references to Rules are to the Uniform Rules of the High Court.

Bibliography

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| Van Loggerenberg <i>et al</i> , <u>Erasmus: Superior Court Practice</u> | [“Erasmus”] |
| Harms, <u>Civil Procedure in the Superior Courts</u> | [“Harms”] |
| Van Loggerenberg, <u>Jones & Buckle: The Civil Practice of the Magistrates’ Courts in South Africa</u> , 10 th Ed | [“Jones & Buckle”] |
| AC Cilliers <i>et al</i> <u>Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa</u> 5 th ed | [“Herbstein & Van Winsen”] |
| Zeffert & Paizes, <u>The South African Law of Evidence</u> , 2 nd Ed (2009) | [“Zeffert & Paizes”] |
| Schwikkard & Van der Merwe, <u>Principles of Evidence</u> , 3 rd Ed (2009) | [“Schwikkard & Van der Merwe”] |
| Schmidt & Rademeyer, <u>Law of Evidence</u> | [“Schmidt & Rademeyer”] |
| Mullins & Da Silva, <u>Morris Technique in Litigation</u> | [“Morris”] |
| Joubert (ed), <u>The Law of South Africa</u> | [“LAWSA”] |

A. JURISDICTION

High Court

- Superior Courts Act, 10 of 2013, § 21
- Supreme Court Act, 59 of 1959, § 19
- Commentary on § 19 in *Erasmus*, A1-21 to 38B
- *Harms* chapter A4 “Jurisdiction of the High Court”

Magistrates’ Courts

- Sections 26, 28, 29, 30, 45, 46(2) and 110 of the Magistrates’ Courts Act, 32 of 1944
- Comment thereon in *Jones & Buckle* Vol 1.

B. PARTIES

1. Joinder of parties and causes of action

- Rule 10
- Commentary on Rule 10 in *Erasmus*.

2. Consolidation of actions

- Rule 11
- Commentary on Rule 11 in *Erasmus*.

3. Intervention of persons as plaintiffs or defendants

- Rule 12
- Commentary on Rule 12 in *Erasmus*.

4. Third party procedure

- Rule 13
- Commentary on Rule 13 in *Erasmus*.

5. Proceedings by and against partnerships

- Rule 14
- Commentary on Rule 14 in *Erasmus*.

6. Change of parties
 - Rule 15
 - Commentary on Rule 15 in *Erasmus*.

7. Representation of parties
 - Rule 16
 - Commentary on Rule 16 in *Erasmus*.

C. PLEADINGS

1. The summons
 - Rule 17
 - Commentary on Rule 17 in *Erasmus*.

2. Rules relating to pleading generally
 - Rule 18
 - Commentary on Rule ... in *Erasmus*.

3. Declaration
 - Rule 20
 - Commentary on Rule 20 in *Erasmus*.

4. Plea
 - Rule 22
 - Commentary on Rule 22 in *Erasmus*.

5. Claim in reconvention, replication and plea in convention
 - Rules 24 and 25
 - Commentary on Rules 24 and 25 in *Erasmus*.

6. Barring
 - Rule 26
 - Commentary on Rule 26 in *Erasmus*.

D. CLOSE OF PLEADINGS

- Rule 29
- Commentary on Rule 29 in *Erasmus*.

E. AMENDMENTS TO PLEADINGS AND DOCUMENTS

- Rule 28
- Commentary on Rule 28 in *Erasmus*.

F. EXCEPTIONS

- Rule 23
- Commentary on Rule 23 in *Erasmus*.

G. PREPARATION FOR TRIAL

1. Further particulars for trial

- Rule 21
- Commentary on Rule 21 in *Erasmus*
- *Morris* pp. 124-126.

2. Discovery, inspection and examination of documents

- Rule 35
- Commentary on Rule 35 in *Erasmus*
- *Morris* pp. 114-117.

3. Inspection, examination and expert evidence

- Rule 36
- Commentary on Rule 36 in *Erasmus*
- *Morris* pp. 117-122.

4. Pre-trial conference

- Rule 37
- Commentary on Rule 37 in *Erasmus*
- *Morris* pp. 128-133.

5. Procuring evidence for trial
 - Rule 38
 - Commentary on Rule 38 in *Erasmus*.

6. Advice on evidence
 - *Morris* chapter 7.

H. SPECIAL PRE-TRIAL PROCEDURES

1. Special cases and adjudication upon points of law
 - Rule 33
 - Commentary on Rule 33 in *Erasmus*.
2. Offers to settle
 - Rule 34
 - Commentary on Rule 34 in *Erasmus*.
3. Interim payments
 - Rule 34A
 - Commentary on Rule 34A in *Erasmus*.
4. Withdrawal, settlement, discontinuance, postponement and abandonment
 - Rule 41
 - Commentary on Rule 41 in *Erasmus*.

I. CONDUCT OF CIVIL TRIALS

1. Trial procedure
 - Rule 39
 - Commentary on Rule 39 in *Erasmus*
 - *Harms* chapter B39
 - *Morris* chapters 8-16.

2. Judgments and orders

- *Harms* chapter C1.16-C1.19.

J. RESCISSION OF JUDGMENT

High Court

- Rule 31(2)(b)
- Commentary on Rule 31(2)(b) in *Erasmus*
- Rule 42
- Commentary on Rule 42 in *Erasmus*.

Magistrates' Courts

- Section 36 of the Magistrates' Courts Act
- Commentary thereon in *Jones & Buckle* Vol 1
- Magistrate's Court Rule 49
- Commentary thereon in *Jones & Buckle* Vol 2.

K. APPEALS

High Court

- Superior Courts Act, § 16-19
- Supreme Court Act, § 20-22
- Rule 49
- Commentary on § 20-22 and Rule 49 in *Erasmus*
- *Harms* chapters C1.7-C1.40

Magistrates' Courts

- Sections 83 and 84 of the Magistrates' Courts Act
- Commentary thereon in *Jones & Buckle* Vol 1
- Magistrate's Court Rule 51
- Commentary thereon in *Jones & Buckle* Vol 2
- Uniform Rule (High Court) 50
- Commentary thereon in *Erasmus*

Argument

- *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd* 1998 (3) SA 938 (SCA)
- *Morris* chapters 16 and 18

L. COSTS

1. Fundamental rules

- *LAWSA* Vol 3 paras 769-781

2. Exceptions to fundamental rules

- *LAWSA* Vol 3 paras 782-794

M. INTEREST

- Sections 1, 2, 2A and 4 of the Prescribed Rate of Interest Act, 55 of 1975
- *The MV "Sea Joy": Owners of the cargo lately laden on board the MV "Sea Joy" v The MV "Sea Joy"* 1998 (1) SA 487 (C) at 504J-508I
- *Nedbank Ltd and Others v National Credit Regulator and Another* 2011 (3) SA 581 (SCA) paras 33 – 49 (on the "statutory" *in duplum* rule applicable wherever the cause of action arises from a credit agreement as defined in the National Credit Act, 34 of 2005)

N. REVIEWS OF DECISIONS OF REGIONAL- AND OTHER MAGISTRATES' COURTS

- Section 22 of the Superior Courts Act
- Section 24 of the Supreme Court Act
- Commentary thereon in *Erasmus*
- Uniform Rule (High Court) 53.

O. LAW OF EVIDENCE

1. The burden of proof and duty to begin (in civil cases only)
 - *Zeffertt & Paizes* chapters 3 and 5.1-5.3
 - *Schwikkard & Van der Merwe* chapter 32
 - *Schmidt & Rademeyer* chapter 2 (excluding criminal proceedings) and 9.1.1.3 (pp. 9-5 to 9-7)
2. The assessment/weight of evidence
 - *Zeffertt & Paizes* chapter 5
 - *Schwikkard & Van der Merwe* chapter 30 (excluding criminal proceedings)
 - *Schmidt & Rademeyer* chapter 3
3. Real evidence and documentary evidence
 - *Zeffertt & Paizes* chapters 19, 20 and 21
 - *Schwikkard & Van der Merwe* chapters 19, 20 and 21
 - *Schmidt & Rademeyer* chapters 10, 11 and 12
4. Oral evidence
 - *Zeffertt & Paizes* chapter
 - *Morris* chapters 10 and 13
 - *Schwikkard & Van der Merwe* chapter 18
 - *Schmidt & Rademeyer* chapters 8 and 9
5. Relevance and admissibility
 - *Zeffertt & Paizes* chapter 7
 - *Schwikkard & Van der Merwe* chapter 5
 - *Schmidt & Rademeyer* chapter 13

6. Hearsay evidence

- The Law of Evidence Amendment Act, 45 of 1988, § 3
- *Zeffertt & Paizes* chapter 13
- *Schwikkard & Van der Merwe* chapter 13
- *Schmidt & Rademeyer* chapter 18

7. Admissions (civil cases only)

- *Zeffertt & Paizes* pp. 475-499
- *Schwikkard & Van der Merwe* chapter 26
- *Schmidt & Rademeyer* chapter pp. 19-3 to 19-5

8. Opinion evidence

- *Zeffertt & Paizes* chapter 10
- *Schwikkard & Van der Merwe* chapter 8
- *Schmidt & Rademeyer* chapter 17

9. Similar fact evidence (civil cases only)

- *Zeffertt & Paizes* chapter 9
- *Schwikkard & Van der Merwe* chapter 7
- *Schmidt & Rademeyer* chapter 15

10. Character evidence (civil cases only)

- *Zeffertt & Paizes* chapter 8 parts C and D
- *Schwikkard & Van der Merwe* chapter 6
- *Schmidt & Rademeyer* chapter 16

11. Privilege

- *Zeffertt & Paizes* chapter 17
- *Schwikkard & Van der Merwe* chapter 10
- *Schmidt & Rademeyer* chapter 20

12. Parol evidence

- *Zeffertt & Paizes* chapter 11
- *Schwikkard & Van der Merwe* pp. 37-41
- *Schmidt & Rademeyer* chapter 15

13. The leading of witnesses

- *Schmidt & Rademeyer* para 9.2.4.1
- *Morris* chapter 11

14. Cross-examination

- *Schmidt & Rademeyer* para 9.2.4.2
- *Morris* chapter 12

15. Re-examination

- *Schmidt & Rademeyer* para 9.2.4.3
- *Morris* chapter 13

16. Examination by the court

- *Schmidt & Rademeyer* para 9.2.4.4