

NATIONAL BAR EXAMINATION

Motion Court Practice and Procedure Curriculum

The attention of pupils is drawn to the following:

1. In the examination candidates will be required to demonstrate an ability to read a question, understand it, and to formulate a direct answer to it without evasion or padding.
2. The provisions of all rules referred to hereunder are to be read subject to the definitions contained in Rule 1. All references to rules are to the Uniform Rules of the High Court.
3. In addition to the specified Rules and cases listed hereunder, pupils are referred to the commentary on the Rules contained in Erasmus, "Superior Court Practice" and in the other textbooks referred to below.

Bibliography

- Van Loggerenberg *et al*, Erasmus: Superior Court Practice ["Erasmus"]
Harms, Civil Procedure in the Superior Courts ["Harms"]
Van Loggerenberg, Jones & Buckle: The Civil Practice of the Magistrates' Courts in South Africa, 10th Ed ["Jones & Buckle"]
AC Cilliers *et al* Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa 5th ed ["Herbstein & Van Winsen"]

GENERAL

1. General requirements for applications

Rule 6;

Form of notice of motion:

Mynhardt v Mynhardt 1986 (1) SA 456 (T)

2. **Disputes of fact in application proceedings**

The distinction between motion proceedings and actions:

Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T);
Soffiantini v Mould 1956 (4) SA 150 (E);
Metallurgical and Commercial Consultants v Metal Sales Co 1971 (2) SA 388 (W).

Referral to oral evidence:

Metallurgical and Commercial Consultants v Metal Sales Co *supra*;
Kalil v Decotex (Pty) Ltd and Another 1988 (1) SA 943 (A) at 981D-E;
Administrator, Transvaal and Others v Theletsane and Others 1991 (2) SA 192 (A) at 200B-C;
Bocimar NV v Kotor Overseas Shipping Ltd 1994 (2) SA 563 (A) at 587B-F.

Approach to disputes of fact in applications for final relief:

Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635D.

3. **Ex parte applications**

See the section under the corresponding heading in ethics:

Schlesinger v Schlesinger 1979 (4) SA 342 (W);
Mahomed NO & others v NDPP 2002 (4) SA 366 (W) at 373B-374B.

4. **Urgent applications**

Rule 6(12):

Luna Meubel Vervaardigers (Edms) Bpk v Makin 1977 (4) SA 135 (W);
IL & B Marcow Caterers (Pty) Ltd v Greatermans SA; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd 1981 (4) SA 108 (C) at 113E-114B;
Gallagher v Norman's Transport Lines 1992 (3) SA 500 (W) at 502D – 504C; and

Cape Killarney Property Investments (Pty) Ltd v Mahamba 2000 (2) SA 67 (C) paras 6 and 20.

5. **General provisions**

Service generally	Rule 4
Pupils should know the essential requirements and procedure involved in applications for substituted service	Rule 4(2)
Proceedings against firms, etc.	Rule 14
Change of parties	Rule 15
Failure to deliver pleadings - barring	Rule 26
Extension of time periods	Rule 27
Amendments	Rule 28
Irregular proceedings	Rule 30
Non-compliance with Rules	Rule 30A
Withdrawal of proceedings	Rule 41
Security for costs	Rule 47
Authentication of documents	Rule 63
Claims for interest	Sections 1, 2, 2A and 4 of the Prescribed Rate of Interest Act, 55 of 1975

SPECIFIC PROCEDURES AND REMEDIES

6. **Edictal citation**

Rule 5;
Rule 63.

7. **Provisional sentence**

Rule 8;
Twee Jonge Gezellen (Pty) Ltd and Another v Land & Agricultural Bank of SA t/a The Land Bank & another 2011 (3) SA 1 (CC);
Rich v Lagerwey 1974 (4) SA 748 (A);

Allied Holdings v Myerson 1948 (2) SA 961;

Wollach v Barclays National Bank 1983 (2) SA 543 (A);

Rhooode Construction v Provincial Administration Cape 1976 (4) SA 925 (C);

Sadler v Nebraska (Pty) Ltd 1980 (4) SA 718 (W) at 721A-G.

8. **Default judgment / Judgment by confession**

Rule 31;

Rule 26;

and see paras 15 and 20 below.

Havenqa v Parker 1993 (3) SA 724 (T).

9. **Summary judgment**

Rule 32;

Breitenbach v Fiat (SA) (Pty) Ltd 1976 (2) SA 226 (T);

Louis Joss Motors (Pty) Ltd v Riholm 1971 (3) SA 452 (T);

Fischereigesellschaft v African Frozen Products 1967 (4) SA 105 (C).

10. **“Rule 43” procedures**

Rule 43;

Du Preez v Du Preez 2009 (6) SA 28 (T) paras 3—6

11. **Reviews**

Rule 53.

Sections 3, 5, 6, 7 and 8 of the Promotion of Administrative Justice Act, 3 of 2000.

12. **De lunatic inquirendo, curators ad litem, ad personam and bonis**

Rule 57.

13. **Insolvency procedures**

Pupils are required to know:

(a) The essential requirements; and

- (b) The procedures involved in the following applications:
 sequestration;
 surrender;
 rehabilitation;
 liquidation;
 business rescue.

14. **Interdicts and mandamenten van spolie**

See, in general, LAWSA Vol 11 paragraphs 302-344

Interim interdicts:

Setlogelo v Setlogelo 1914 AD 221;

Webster v Mitchell 1948 (1) SA 1186;

Stern & Rushkin N.O. v Appleson 1951 (3) SA 800 (W) at 812-813;

Gool v Minister of Justice 1955 (2) SA 682 (C);

Olympia Passenger Service v Ramlagan 1957 (2) SA 382 (D);

UCD Bank Ltd v Seacat Leasing and Finance Co (Pty) Ltd 1979 (4) SA 682 (T) at 688ff;

Airoadexpress (Pty) Ltd v Chairman Local Road Transportation Board,

Durban 1986 (2) SA 663 (A);

Safcor v National Transport Commission 1982 (3) SA 654 (A) at 674H-676H.

Pupils are particularly required to understand clearly the distinctions between:

- (a) applications for final relief;
 (b) applications for interim relief;
 (c) rules *nisi*; and
 (d) orders operating as interim interdicts,

and to be able to draft appropriate prayers and draft orders illustrating same.

15. **Rescission and variation of orders and judgments - Rule 31(2)(b), 42(1)(a) and (c) and common law**

Rule 31;

Rule 42;

Louis Joss Motors (Pty) Ltd v Riholm 1971 (3) SA 452 (T);

Hardroad (Pty) Ltd v Oribi Motors 1977 (2) SA 576 (W);

De Wet and Others v Western Bank Ltd 1979 (2) SA 1031 (A);

Groenewald v Gracia (Edms) Bpk 1985 (3) SA 968 (T).

Pupils are particularly required to understand clearly the differences between applications in terms of Rule 31, Rule 42 and the common law.

16. **Applications for Anton Piller orders**

LAWSA Vol 11, paras 328-334

Shoba v OC Temporary Police Camp, Wagendrift Dam 1995 (4) SA 1 (A) at 15G-18D

Hall & another v Heyns & others 1991 (1) SA 381 (C)

17. **Interpleaders**

Rule 58.

18. **Raising of constitutional points: amicus curiae**

Rule 16A;

Phillips v SA Reserve Bank 2013 (6) SA 450; 2012 [2] All SA 532 (SCA).

19. **Costs: fundamental rules and exceptions thereto**

LAWSA Vol 3, paras 769-794;

DPP (KZN) v Henry & others [2008] JOL 21802 (SCA).

20. **National Credit Act**

National Credit Act sections 65, 86, 88, 129 and 130;

Collett v First Rand Bank 2011 (3) SA 585 (SCA);

Nedbank v National Credit Regulator 2011 [4] All SA 131 (SCA);

Rossouw v First Rand Bank [2011 All SA 56 (SCA);

Sebola v Standard Bank 2012 (5) SA 142 (CC);

Kubyana v Standard Bank 2014 (3) SA 56 (CC).