INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of EIGHT (8) pages. Please ensure that you have them all.
3. Answer ALL questions. Please answer each section in a separate answer booklet.
4. Time allocation guide: Section A – 30 minutes; Section B – 100 minutes; Section C- 50 minutes.
5. Keep answers BRIEF and TO THE POINT.
6. Abbreviations used in the questions are as follows:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>HC</td>
<td>HIGH COURT (SUPREME COURT)</td>
</tr>
<tr>
<td>SCA</td>
<td>THE SUPREME COURT ACT No. 59 of 1959</td>
</tr>
<tr>
<td>HCR</td>
<td>UNIFORM RULES OF THE HIGH COURT</td>
</tr>
<tr>
<td>MC</td>
<td>MAGISTRATES’ COURT</td>
</tr>
<tr>
<td>RMC</td>
<td>REGIONAL MAGISTRATE’S COURT</td>
</tr>
<tr>
<td>MCA</td>
<td>THE MAGISTRATES’ COURTS ACT No. 32 of 1944</td>
</tr>
<tr>
<td>MCR</td>
<td>MAGISTRATES’ COURTS RULES</td>
</tr>
</tbody>
</table>
SECTION A

Question 1

1. Rosie who lives in Pinetown (KZN D) enters into a contract in Port Elizabeth (EC PE) with Cider who lives in Claremont (WC)CT in terms of which Rosie purchases a farm situated in Rosetta (KZN P) for the sum of R 2 million. Rosie also agrees to purchase all the cattle on the farm for an amount R 500 000.00.

Rosie duly made payment of R 1 million as a deposit on the farm and R 500 000.00 for the cattle. In terms of the deed of sale the balance of the purchase price of R 1 million is to be paid out of the proceeds of a bond to be registered over another property belonging to Rosie. The property to be bonded is situated in Sandton (SG J) and the agreement provides for the bond to be registered prior to or simultaneously with the transfer of the Rosetta property into Rosie’s name.

Rosie breaches the contract in Sandton where she refuses to sign the necessary documents for the purposes of registering the bond. As a result, Cider refuses to deliver the cattle to Rosie. Rosie has subsequently ascertained that the cattle have now been moved to a farm in Clarens (FSB).

1.1 Which court (s) would have jurisdiction to hear an application by the seller for an order compelling the buyer to sign the bond documents.

1.2 Which court (s) would have jurisdiction to hear an action instituted by the seller for payment of damages.

1.3 Which court (s) will have jurisdiction to hear an application by the purchaser for an order compelling the seller to deliver the cattle.

If you do not cite the relevant jurisdictional principle you will not be awarded any marks for your answer.

[16 marks]

Question 2

2. Peter is defamed by Paul on 16 June 2012. The following facts which may or may not be relevant to the question of prescription, are common cause:

2.1 Peter attains the age of majority on 25 August 2012;
2.2 Paul is overseas from 25 July 2012 until 25 October 2012 (exactly 3 months);
2.3 Peter is overseas for exactly 4 months during 2012;
2.4 On 15 October 2013, Peter issues a summons against Paul;
2.5 On 12 December 2013, Paul writes to Peter offering a sum of money in settlement of the debt;

Continued/…
2.6 Peter accepts this offer and receives the first instalment on 5 January 2014; 
2.7 Paul writes to Peter on 15 February 2014 stating that he cannot continue with 
payment of the instalments and that Paul should go ahead and sue him.

REQUIRED: In respect of each of the facts under 2.1 - 2.7 explain what effect that 
particular fact would have on the question of prescription of Peter’s claim. In dealing 
with each fact you must state the date on which Peter’s claim will now prescribe as a 
result of that particular fact, read with any applicable prior fact which may have an effect 
on the date of prescription.

[14 marks]

[TOTAL SEC A: 30 MARKS]

SECTION B

Question 1
Sipho is the owner of a farm in Howick. Edison Power approaches Sipho to register a 
right of way over his farm in favour of them. Sipho refuses to register a right of way 
over his farm. The value of the right of way to Edison Power is about R 700 000 and 
the right of way will diminish the value of the farm by R 150 000. Which court should 
Edison Power approach to acquire the necessary relief? Motivate your answer.

[4 marks]

Question 2
A concluded a contract with B in terms of which B had to build a house for A. In terms 
of the contract A had to pay B the amount of R175 000 for his labour, which amount is 
due upon the completion of the house. When the house was nearly completed A asked 
B to build also a lapa and install a swimming pool and Jacuzzi. A agreed to pay B a 
father R60 000 for the additional work. A has yet to pay B for the initial work (building 
of the house) and informs B that upon completion of the extra work he will pay the full 
amount. 3 months after completion of all the work A has still not paid B. After many 
oral demands, B institutes a civil action against A in a District Magistrates’ Court and 
combines both his claims in one summons. At the trial, A (through his attorney) objects 
to the jurisdiction of the court. According to A the court lacks jurisdiction because the 
amount claimed exceeds the jurisdictional limit of the court. Will A’s objection succeed? 
Motivate your answer fully.

[5 marks]

Continued/…
Question 3

Peter Pan and Queen Bee were involved in a motor vehicle collision in Pietermaritzburg. The collision took place on the 15 July 2014 at the intersection of West and North streets. Peter Pan alleges that the accident was caused due to the sole negligence of Queen Bee. Peter Pan wants to sue Queen for damages in the amount of R 75 000. Peter Pan is uncertain which court(s) will have jurisdiction in the matter. You are given the following information: Peter Pan resides in Howick and works in Richards Bay, whereas Queen Bee lives in Greytown and works in New Hanover.

Identify the court(s) that will have jurisdiction in the matter. Motivate your answer fully.

[6 marks]

Question 4

Queen Nandi is entering into a contract with Cool Air Air-conditioning for the supply and installation of air conditioners in the amount of R 750 000. Both parties have requested that you draft the contract and make provision for the Pietermaritzburg District Magistrate's Court to hear the matter in the event of a breach of contract. Cool Air Air-conditioning has its principal place of business in Gauteng and Queen Nandi resides in Durban. Discuss whether a clause to this effect would be valid. Motivate your answer fully.

[5 marks]

Question 5

Aster institutes a claim against Pansy for the amount of R 350 000 arising out of a breach of contract in the Regional Magistrate's Court. Pansy defends the matter and institutes a counter-claim against Aster for R 420 000. Advise Aster which court will have jurisdiction to hear the matter. Motivate your answer fully.

[4 marks]
Question 6

Thandi signs a contract with Tom to build a garden flat at a total cost of R 212 000. Tom commences with the work and then advises Thandi that he no longer intends to continue with the buildings as he has found a better job. Thandi wants to institute action against Tom for the amount of R 202 000 which she estimates to be the cost of finding another builder to complete the work. Thandi owes Tom R 15 000.00 for the work that he has done.

Advise Thandi how to proceed with action against Tom in the most cost-effective manner.

[4 marks]

Question 7

Cool Air Air-conditioning supplied and installed air conditioning for Queen Nandi. Queen Nandi issued a cheque for the work done but when Cool Air Air-conditioning presented it for payment they were advised that there was no money in the account.

7.1 Advise Cool Air Air-conditioning on the most effective form of legal proceedings that they may use to recover the amount owing.

[4 marks]

7.2 What options does Queen Nandi have should Cool Air Air-conditioning use the form of proceedings you have advised them to use?

[2 marks]

7.3 What are the legal consequences should the court refuse the relief that Cool Air Air-conditioning seeks.

[2 marks]

7.4 Discuss the legal effect should the court grant the relief that Cool Air Air-conditioning seeks.

[4 marks]
Question 8

You act for a defendant in a Magistrate’s Court action. The defendant has handed to you a combined summons. You have entered an Appearance to Defend, on behalf of the defendant and the plaintiff’s attorney then serves an Application for Summary Judgment on you.

8.1 In order for the Summary Judgment application to have been properly brought, the relevant MCR requires that the claim falls within a limited category of claims. List all the claims which fall within this limited category.

[4 marks]

8.2 What options are available to the defendant? List these.

[2 marks]

8.3 The plaintiff is only entitled to make certain allegations in his affidavit in support of the Summary Judgment application. What are these?

[3 marks]

Question 9

Mrs Williams lends her daughter Elizabeth (who lives alone) a television set whilst her daughter’s television is being repaired. During this time the Sheriff of the MC executes a warrant of execution, following default judgment being taken against the daughter for an allegedly unpaid hospital bill. The Sheriff proceeds to attach and remove Mrs Williams’ television set along with other goods belonging to her daughter.

9.1 List the documents that would have been filed with the Clerk of the Magistrate’s Court to obtain default judgment.

[3 marks]

9.2 In note form, set out the procedure to be followed by all relevant parties in Mrs Williams’ attempt to have the television set released from attachment.

[12 marks]
9.3 Assume that Mrs Williams succeeds in having her television set released from the attachment. Her daughter now wishes to have the judgment set aside after finding out that the summons was served by affixing it to the front door of her house, and that in fact the summons related to the debt of another Elizabeth Williams. Service of the summons in this manner was during the period that the daughter was in hospital, and she denies ever having seen it. Set out in note form what the daughter needs to prove as well as the procedure to be followed in attempting to have the judgment set aside.

[5 marks]

**Question 10**

You are representing Cape Town Cable-way (Pty) Ltd which has been sued in the MC. The claim relates to an incident when the cable of the cable-way snapped with the result that the cable-car (being empty at the time) crashed to the ground destroying the plaintiff’s garage. The plaintiff alleges that the cable was too thin, alternatively was not properly maintained. You deny this in the defendant’s plea. Explain the procedure to be followed which would enable you to place before the court the evidence of the engineer who designed the entire cable-way and subsequently undertook regular maintenance checks on the entire system.

[6 marks]

[TOTAL SEC B: 75 MARKS]

**SECTION C**

**Question 1**

Discuss the 3 types of interdicts that can be obtained and the requirements that must be met before an interdict is granted.

[9 marks]

**Question 2**

What matters may be dealt with during a pre-trial conference?

[6 marks]
Question 3

Discuss the circumstances in which the following costs orders will be made:-

3.1 Party and Party Costs; [2 marks]
3.2 Attorney and Client Costs; [2 marks]
3.3 Costs de bonis propriis [2 marks]

Question 4

Discuss the circumstances in which a Defendant may bring an application to take an exception against a pleading that has been filed by the Plaintiff. [4 marks]

Question 5

Discuss the differences between appeals and reviews. [10 marks]

Question 6

One day, while having a drink or two, you tell your roommate that should he ever wish to sell his motorbike he should give you the first option to buy it. He tells you that, unfortunately, he has already sold the motorbike to another student (A) for the amount of R10000. A has yet to pay and your roommate tells you that he has been struggling for months to get the money from him (A). Your roommate does not have the financial means to initiate expensive legal proceedings since he is still only a student. Knowing that you are a law student he asks you whether there is any possible legal remedy available to him. Explain fully the nature of such legal remedy. [10 marks]

[TOTAL SEC C: 45 MARKS]

[TOTAL MARKS FOR PAPER: 150 MARKS]