

Course Code: L401/L405 (M) 2005

UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
FINAL EXAMINATION PAPER, MAY 2005

- TITLE OF PAPER** : **CIVIL PROCEDURE**
- COURSE CODE** : **L401/L405**
- TIME ALLOWED** : **THREE (3) HOURS**
- TOTAL MARKS** : **100**
- INSTRUCTIONS** : 1. **ANSWER ALL SIX (6) QUESTIONS.**
- (a) **Ensure that you give reasons for each answer when instructed to do so. A mere YES/NO will earn no marks if instructed to discuss or provide reasons for your answer.**
  - (b) **Please ensure that the time you devote to each answer is proportionate to the marks allotted.**
  - (c) **Although all the questions are compulsory, certain questions do allow you make a choice. See questions 1, 4(a) and 5(a) in this regard.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR**

**QUESTION 1** (10 marks)

Write short notes on TWO (2) of the following -

- (a) the relationship between substantive law and adjective law, which should include an example; (5)
- (b) the principle of party prosecution; (5)
- (c) the adjudicatory process as it is applied in the Anglo-American system of procedure. (5)

**HIGH COURT JURISDICTION****QUESTION 2** (20 marks)

- (a) Explain the following -
  - (i) the doctrine of effectiveness; (5)
  - (ii) the significance of the common domicile of the parties as it applies to divorce jurisdiction. (5)
- (b) P is the plaintiff who is domiciled in Zimbabwe. D is the defendant and owns a factory situated in Siteki. P and D enter into a contract in Manzini in terms of which D undertakes to deliver a diamond as stipulated. P wishes to institute a claim for damages against D in the Swaziland High Court based on D's breach of the contract. With this basic information in mind answer the following questions, giving reasons for each answer.
  - (i) Will the High Court have jurisdiction to adjudicate P's claim if D is domiciled and resident in Siteki? (3)
  - (ii) Will it be possible for P to issue summons against D out of the High Court of Swaziland if D is domiciled in Swaziland but resident in Mozambique? (2)
  - (iii) Will the High Court of Swaziland have jurisdiction to adjudicate P's claim if D is domiciled and resident in South Africa? (5)

**MAGISTRATES' COURT JURISDICTION****QUESTION 3** (15 marks)

- (a) Explain the significance of the decision in *Mohamed & Son v Mohamed* 1959 2 SA 688 (T) in regard to the splitting of claims. (5)
- (b) Zweli is a businessman living in Siteki while Vusi resides in Manzini. Zweli concludes a contract with Vusi under which Vusi undertakes to deliver farming equipment to Zweli in

- (c) Siteki on or before 20 July. Despite constant demands, Vusi fails to deliver the farming equipment on or after the due date. Zweli suffers damages in the amount of E1600 and wishes to recover these damages from Vusi in a magistrate's court action.

Bearing these facts in mind, answer the questions which follow, giving brief reasons for each answer.

- (i) Will the Manzini magistrate's court have jurisdiction to hear the action? (2)
- (ii) Will the Mbabane magistrate's court have jurisdiction to hear the action? (2)
- (iii) Will any Magistrate's court have jurisdiction to hear the action if the claim is for E2 200 and Zweli owes Vusi E300? (3)
- (iv) Will any magistrate's court have jurisdiction to hear the action if Zweli claims specific performance without the alternative for damages? (3)

## HIGH COURT PROCEDURE

### QUESTION 4 (35 marks)

- (a) Write short notes on THREE (3) of the following -
- (i) the difference between application and action proceedings; (6)
- (ii) the circumstances in which a dispute of fact arises; (6)
- (iii) the general rules of pleading; (6)
- (iv) the grounds for summary judgement AND when this procedure is applied; (6)
- (v) three methods of presenting evidence before the trial court, other than oral evidence; (6)
- (vi) attorney and client costs. (6)
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- (b) Z wishes to obtain damages from X for breach of contract. State the correct answer to each of the questions that follow. **You must not give reasons for your answers.**
- (v) What type of summons must Z use to institute the action? (1)
- (vi) What form of service is necessary to serve the summons on X who is at an unknown address in Swaziland? (1)
- (vii) What form of service is necessary if X is living overseas at a known address at the time when the summons is issued? (1)
- (viii) What form of proceedings must Z follow to obtain permission to use the form of service referred to in (iii) above? (2)
- (ix) What is the first document that X must file if he wishes to indicate that he will oppose the action? (1)
- (x) What step must X take if X files the document referred to in (v) above but fails to file a plea? (1)

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- (xi) What further step may Z take if X still fails to respond to the document referred to in (vi) above? (1)
- (xii) What procedure should a party use if Z's name is spelt incorrectly in the plea? (1)
- (xiii) Which party is responsible for using the procedure referred to in (viii) above? (1)
- (xiv) What pleading may X file if one of Z's pleading does not disclose a cause of action? (1)
- (xv) What procedure can Z use if X files a plea that contains vexatious statements about Z? (1)
- (xvi) What pleading can X use if he has already issued summons in another court in which he has instituted proceedings against Z? (2)
- (xvii) What pleading can X file if X raises new allegations of fact in his plea? (1)
- (xviii) What pleading can X use if he also suffered damages arising from the negligent conduct of Z? (1)
- (xix) What pleading may X use to respond to X's pleading stated in (xiv) above? (1)

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**MAGISTRATES' COURT PROCEDURE****QUESTION 5** (10 marks)

Write short notes on TWO (2) of the following -

- (a) Security for costs that a plaintiff may be required to provide in terms of the Magistrate's Court Rules Order XXXIV rule 9; (5)
- (b) When default judgement may be granted in a magistrate's court as well as the procedure that must be used; (5)
- (c) the exception that may be raised to a summons by the defendant; (5)
- (d) the claims in respect of which summary judgement may be granted in a magistrate's court; (5)
- (e) absolution of the instance at the close of the defendant's case. (5)

**APPEAL AND REVIEW****QUESTION 6** (10 marks)

Answer the following questions:

- (a) Explain the meaning of the term "review"; (2)
- (b) Describe two distinctions between appeal and review; (4)
- (c) Explain abandonment of judgement in the magistrate's court. (4)

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[TOTAL: 100 marks]