

Course Code: L401/L405 (S) 2005

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2005

- TITLE OF PAPER** : **CIVIL PROCEDURE**
- COURSE CODE** : **L401/L405**
- TIME ALLOWED** : **THREE (3) HOURS**
- TOTAL MARKS** : **100**
- INSTRUCTIONS** : **1. ANSWER ALL SIX 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 allocated.
 - (c) Although all the questions are compulsory, certain questions do allow you to make a choice. See questions 1, 4(a) and 5(a) in this regard.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

CIVIL PROCEDURE IN CONTEXT**QUESTION 1 (10 marks)**

Write short notes on TWO of the following:

- (a) the differences between civil proceedings and criminal proceedings in regard to their **objectives** and the **onus of proof** in each instance; (5)
- (b) the principles of party presentation; (5)
- (c) litigants in the context of Anglo-American procedure. (5)

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

- (a) Explain the following -
 - (i) the meaning of the term arrest or attachment to found or confirm jurisdiction; (5)
 - (ii) the significance of the decision in *Le Mesurier v Le Mesurier* (1895 AC 517) in regard to the exercise of divorce jurisdiction. (5)
- (b) P is the plaintiff domiciled in Mbabane. D is the defendant and owns a farm situated in Siteki. P and D enter into a contract in Manzini in terms of which D undertakes to deliver 100 head of cattle to P on or before a stipulated date. D fails to deliver the cattle as stipulated. P wishes to institute a claim for damages against D in the Swaziland High Court based on 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 South Africa and the cause of action arose in Lesotho? (5)
 - ii. Will the High Court of Swaziland have jurisdiction to adjudicate P's claim if both P and D are domiciled and resident in South Africa? (5)

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

- (a) Discuss the deduction of an admitted debt in terms of Section 24 of the Magistrates' Court Act of 1938. (5)

- (b) Q is a businessman living in Siteki. While on a business trip to Mbabane, he is involved in a motor collision with R who resides in Manzini. Q contends that the collision was due solely to the negligence of R. Q suffers damages in the amount of E1 800 and wishes to recover these damages from R 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 magistrate's court of Manzini have jurisdiction to hear the action? [2 marks]
 - ii. Will the magistrate's court of Mbabane have jurisdiction to hear the action? [2 marks]
 - iii. Will the magistrate's court of Shiselweni have jurisdiction to hear the action if Q issues summons out of that district and R does not raise any objection in this regard? [2 marks]
 - iv. Would your answer to (iii) differ if Q's claim was for E2 300? [1 mark]
 - v. Will any magistrates' court have jurisdiction to hear the action if Q, in the same summons, claims E1 000 for damages for personal injury sustained during the collision and E1 800 for damages to his motor vehicle. [3 marks]

HIGH COURT PROCEDURE

QUESTION 4 (35 marks)

- (a) Write short notes on **THREE** (3) of the following -
- i. three differences between application and action proceedings; (6)
 - ii. the differences between substituted service and edictal citation; (6)
 - iii. the differences between a debt or liquidated demand and an unliquidated claim; (6)
 - iv. the application to strike out; (6)
 - v. the pre-trial conference; (6)
 - vi. party and party costs. (6)
- [18]

- (b) X issues a summons against Y for damages on the grounds of breach of contract. Y defends the action. With these facts in mind,
- (i) **describe** the **type** of summons that must be issued as well as the form of this summons; (3)
 - (ii) **name** an essential notice that must be given by Y to X; (1)
 - (iii) **set out** the pleadings in convention; (3)
 - (iv) **set out** the pleadings in reconvention; (3)
 - (v) **state three methods** by which either of the parties by responds to an allegation of that in a pleadings; (3)
 - (vi) **name four** instances when pleadings will be considered closed. (4)

MAGISTRATES' COURT PROCEDURE

QUESTION 5 (10 marks)

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

- (a) **five** particulars that must be included in a summons; (5)
- (b) the notice of intention to defend; (5)
- (c) the plea on the merits in the magistrates' courts; (5)
- (d) the powers of a magistrate's court when a dispute of fact arises in opposed application proceedings; (5)
- (e) the judgements that a magistrate's court may make in terms of Section 31 of the Magistrates' Courts Act of 1938. (5)

APPEAL AND REVIEW

QUESTION 5 (10 marks)

Gugu is aggrieved by the judgement given against her in a magistrate's court and wishes to take the matter on appeal. With these facts in mind answer the following questions.

- (a) Must Gugu request leave to appeal to the High Court sitting as a court with civil appellate jurisdiction? [1]
- (b) What information must be stated by a judicial officer when giving reasons for judgement? [3]
- (c) What should Gugu do if after having noted the appeal to the High Court, she feels that she cannot be able to sustain the appeal against a particular part of the judgement concerned? [3]
- (d) If Gugu is aggrieved by the judgement given by the High Court sitting as a court exercising civil appellate jurisdiction, may Gugu as of right lodge an appeal to the Court of Appeal? [10]