

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2006**

- TITLE OF PAPER** : **CIVIL PROCEDURE**
- COURSE CODE** : **L401**
- TIME ALLOWED** : **THREE (3) HOURS**
- TOTAL MARKS** : **100**
- INSTRUCTIONS** : **1. ANSWER ALL FOUR (4) 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, question 1 allows you to make a choice.**

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

**MISCELLANEOUS****QUESTION 1 (48 marks)**

Write short notes on **EIGHT** of the following

- (a) the principle of party presentation; (6)
- (b) the adversarial characteristics of the Anglo-American system of civil procedure; (6)
- (c) the lower courts as "creatures of statute"; (6)
- (d) *incola, peregrinus* and citizenship in the context of jurisdiction as exercised by the High Court; (6)
- (e) the significance of the decision of *Le Mesurier v Le Mesurier* (1895 AC 517) in regard to the exercise of divorce jurisdiction; (6)
- (f) the meaning of the phrase "carries on business or is employed" in terms of section 15(a) of the Magistrates' Courts Act of 1938; (6)
- (g) counterclaims exceeding jurisdiction in terms of section 30 of the Magistrates' Courts Act of 1938; (6)
- (h) **three** differences between application and action proceedings; (6)
- (i) the documents that are exchanged in opposed application proceedings in regard to the High Court; (6)
- (j) substituted service in respect of proceedings in the High Court; (6)
- (k) the function of pleadings; (6)
- (l) the three parts of a discovery affidavit with reference to proceedings in the High Court; (6)
- (m) the power of attorney in the magistrates' courts; (6)
- (n) the different grounds on which an exception may be raised by a defendant in regard to the plaintiff's summons issued out of a magistrate's court. (6)

## JURISDICTION

### QUESTION 2 (20 marks)

- (a) C is a businessman domiciled in Zambia. C owns a shopping centre in Mbabane. D is domiciled in Mbabane where she runs a clothing boutique from premises in C's shopping centre. D owes C an amount of E80 000 in arrear rental, which C wishes to claim from D. With these facts in mind, answer the following questions. Give reasons for your answer in each instance.
- (i) On what grounds does the High Court of Swaziland have jurisdiction to hear the matter? (3)
  - (ii) Would your answer to (i) above differ if D was on a three month holiday in Cape Town at the time when C issued the summons against D? (1)
  - (iii) In what respect would your answer to (i) above differ if D is a *peregrinus* of Swaziland but periodically visits Mbabane in order to supervise her business affairs? (4)
  - (iv) In what respect would your answer to (i) above differ if the claim was for the transfer of the shopping centre which D bought from C? (2)
- [10]
- (b) S and T are partners trading under the name of VIP Construction. The business premises of VIP Construction are situated in Manzini. S and T both live in Mbabane. VIP Construction buys bricks from N on account in the amount of E1 600. Despite demand, VIP Construction refuses to settle this account. N wishes to institute proceedings in a magistrate's court against VIP construction for goods sold and delivered. Bearing these facts in mind, answer the questions which follow, giving brief reasons for each answer.
- (i) Will the magistrate's court for Manzini have jurisdiction to hear the action? (2)
  - (ii) On what ground(s) will the magistrate's court for Mbabane have jurisdiction to hear the action? (3)
  - (iii) Will any magistrate's court have jurisdiction to hear the action if the claim is for E2 100 and N owes VIP Construction E500? (2)
  - (iv) Will any magistrate's court have jurisdiction to hear the action if N, in the same summons, claims amounts of E1 600, E900 and E600 in respect of bricks delivered to VIP Construction on three different and separate occasions and which VIP Construction refuses to pay despite demand? (3)
- [10]

**PROCEDURE****QUESTION 3 (22 marks)**

Z wishes to obtain a divorce from her husband X by instituting proceedings in the High Court. Merely **state** the correct answer to each of the questions that follow. **You must not give reasons for your answers.**

- (a) What is the nature of the claim? (1)
- (b) What type of summons must Z use to institute the action? (1)
- (c) What form of service is necessary to serve the summons on X who is in Swaziland at a known address? (2)
- (d) What form of service is necessary if X is living overseas at a known address at the time when summons is issued? (1)
- (e) What form of proceedings must Z follow to obtain permission to use the form of service referred to in (d) above? (1)
- (f) What is the first document that X must file if he wishes to oppose the divorce action? (1)
- (g) Is the document stated in (f) above a pleading, a process or a notice? (1)
- (h) What pleading must X use to raise his defence? (2)
- (i) What step must Z take if X files the document referred to in (f) above but fails to file the document referred to in (h) above? (1)
- (j) What further step may Z take if X still fails to respond to the document referred to in (h) above? (2)
- (k) What procedure should a party use if the name of one of the minor children is stated incorrectly in the summons? (1)
- (l) Which party is responsible for using the procedure referred to in (k) above? (1)
- (m) What procedure can Z use if X files a plea that contains vexatious statements about Z? (1)
- (n) What pleading can X use if he has already issued summons in a South African court in which he has instituted divorce proceedings against Z? (2)

- (o) What pleading can Z file if X raises new matter (does not join issue) in his plea? (1)
- (p) What may Z do immediately after pleadings have closed to ensure a speedy allocation of a trial date? (1)
- (q) What proceeding are X and Z compelled to arrange and attend before the trial in order to attempt to shorten the trial? (1)
- (r) What form of cost order will Z request if she is of the opinion that X seriously misconducted himself during the course of proceedings? (1)

## APPEAL AND REVIEW

### QUESTION 4 (10 marks)

- (a) Z institutes proceedings in a magistrate's court against X for damages arising out of breach of contract. The magistrate grants judgment against X. X is dissatisfied with the judgment for reasons that do not appear on the record. On the basis of these facts, answer the following questions.
- (i) Name procedure that X must use. (1)
- (ii) State **two** grounds on which such procedure may be brought. (2)
- (iii) Name the form of proceeding that X must use in order to commence the matter. (1)
- [4]
- (b) Z institutes proceedings in a magistrate's court against X for damages arising out of breach of contract. The magistrate grants judgment against X. X is dissatisfied with the judgment and takes the matter on appeal. On the basis of these facts, answer the following questions.
- (i) To which court must X lodge an appeal? (1)
- (ii) Must X apply for leave to appeal to the court referred to in (i) above? (1)
- (iii) In what manner does the noting of an appeal by X affect the operation and execution of the judgment? (1)
- (iv) What procedure must Z use if he wishes to abandon part of the judgment given in his favour? (2)
- (v) If X is dissatisfied with the judgment of the court referred to (i) above, to which court may X appeal? (1)
- [6]