

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 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.**

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MISCELLANEOUS**QUESTION 1 (48 marks)**

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

- (a) the principle of party prosecution; (6)
- (b) litigants in the context of the adversarial system of litigation; (6)
- (c) the doctrine of effectiveness; (6)
- (d) *ratione rei gestae*; (6)
- (e) the *forum rei sitae* as it is applied in regard to the exercise of jurisdiction in the High Court; (6)
- (f) the decision in *Winters v Winters* 1970-1976 SLR 49 in regard to the exercise of divorce jurisdiction; (6)
- (g) the meaning of the phrase "specific performance of an act without an alternative for damages" in terms of section 29(d) of the Magistrates' Courts Act of 1938; (6)
- (h) the decision in *Mohamed & Son v Mohamed* 1959 2 SA 688 (T) in regard to the splitting of claims in magistrates' courts; (6)
- (i) the meaning of the term "dispute of fact"; (6)
- (j) the instances in which an *ex parte* application may be brought; (6)
- (k) **three** methods in regard to the normal service of a summons; (6)
- (l) the methods by means of which evidence may be placed before a trial court; (6)
- (m) the issue of summons in magistrates' courts; (6)
- (n) the types of judgments that may be given in terms of section 31 of the Magistrate's Courts Act of 1938. (6)

JURISDICTION

QUESTION 2 (20 marks)

- (a) D is domiciled in Namibia but owns fixed property in Manzini. D enters into a export contract in Johannesburg with S who is domiciled in Mbabane. D fails to perform the contract and S suffers damages in the amount of E100 000. 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? (4)
 - (ii) Would your answer to (i) above differ if the contract was concluded in Mbabane and S is an *incola* of a South African court? (4)
 - (iii) On what grounds would the High Court of Swaziland have jurisdiction to hear the matter if, on the same facts, D was an *incola* of Swaziland? (2)
- [10]
- (b) Vusi, who lives in Siteki, buys electronic equipment from Dudu, who lives in Manzini. The contract is concluded in Mbabane and the equipment must be delivered to a warehouse in Siteki. Vusi pays Dudu E1 800 for the equipment, but Dudu, despite demand, refuses to deliver the equipment to Siteki. Bearing these facts in mind, answer the questions which follow, in each instance giving brief reasons for your answers.
- (i) Will the magistrate's court situated in Manzini have jurisdiction to hear the action instituted by Vusi against Dudu? (2)
 - (ii) Will the magistrate's court situated in either Mbabane or Siteki have jurisdiction to hear the action instituted by Vusi against Dudu? (3)
 - (iii) Will the magistrate's court situated in Siteki have jurisdiction to hear the action if Dudu raises no objection in this regard? (2)
 - (iv) Will any magistrate's court have jurisdiction if the claim is for E2 200 and Vusi owes Dudu E400? (3)
- [10]

PROCEDURE

QUESTION 3 (22 marks)

Z wishes to claim arrear rental from 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 must be used if X resides at a known address within Swaziland? (1)
- (d) What should X do if she acknowledges that part of the claim is due and owing and wishes to settle this part of the claim immediately? (2)
- (e) What is the first document that X must file if he wishes to oppose the action? (1)
- (f) What procedure should Y use if X does not respond to the summons within the period stated in the *dies induciae* by means of the document referred to in (e) above? (1)
- (g) Should Y deliver a notice of bar to X before Y can apply for the procedure stated in (f) above? (1)
- (h) What procedure should Y use if X files the document referred to in (e) above within the period stated in the *dies induciae* but does so merely to delay the action? (1)
- (i) What document must X use to show cause that the procedure referred to in (h) above should be set aside? (1)
- (j) If the procedure referred to in (h) above is set aside, what pleading must Y file? (1)
- (k) What procedure should be used if X's name is spelt incorrectly in the pleading referred to in (j) above? (1)
- (l) Which party is responsible for using the procedure referred to in (k) above? (1)
- (m) What procedure can X use if Z avers in the pleading referred to in (j) above that X is insolvent which is definitely not true? (1)
- (n) Does the procedure referred to in (m) above affect the whole or only part of the pleading referred to in (j) above? (1)
- (o) What pleading should X file in order to raise the objection that Y has failed in the pleading referred to in (j) above, to aver that the rental is due and owing? (1)
- (p) If X had filed a special plea instead of the pleading referred to in (m) above, what procedure may S use to rectify the situation (2)
- (q) When may S use the procedure referred to in (p) above? (2)

- (r) What may Z do immediately after pleadings have closed to ensure a speedy allocation of a trial date? (1)
- (s) If judgment is given in favour of Z, what form of cost order will the court grant if X has not seriously misconducted himself during the course of proceedings? (1)

APPEAL AND REVIEW

QUESTION 4 (10 marks)

- (a) Explain the meaning of the term "review". (3)
- (b) State the grounds for reviewing the proceedings of any lower court. (4)
- (c) Name the procedure that is used to commence review proceedings. (1)
- (d) Explain the effect of noting an appeal in regard to the execution of the original judgment. (2)