

**UNIVERSITY OF SWAZILAND**

**DEPARTMENT OF LAW**

**FINAL EXAMINATION PAPER 2007**

<b><u>TITLE OF PAPER</u></b>	<b>CIVIL PROCEDURE</b>
<b><u>COURSE CODE</u></b>	<b>L401</b>
<b><u>TIME ALLOWED</u></b>	<b>THREE (3) HOURS</b>
<b><u>TOTAL MARKS</u></b>	<b>100</b>

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

**PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THIS EXAMINATION PAPER.**

**Answer all FOUR 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.

**This paper consists of 5 pages.**

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**MISCELLANEOUS****QUESTION 1 (50 marks)**

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

- (a) the relationship between substantive law and adjective law; (5)
- (b) compulsion as an element of civil proceedings; (5)
- (c) the characteristics of the inquisitorial system of civil procedure; (5)
- (d) apart from a revision of the rules of court, the three methods that may be used for the reform/civil procedure; (5)
- (e) the meaning of the term "jurisdiction"; (5)
- (f) the phrase *forum rei sitae*; (5)
- (g) the common domicile of the parties in regard to the exercise of divorce jurisdiction; (5)
- (h) the meaning of the phrase "cause of action arose wholly within the district" in terms of section 15(d) of the Magistrates' Courts Act of 1938; (5)
- (i) mandatory interdicts granted in terms of section 17 of the Magistrates' Courts Act of 1938; (5)
- (j) the rule *nisi* as it applies in respect of *ex parte* applications; (5)
- (k) the meaning of the expression "debt or liquidated demand"; (5)
- (l) the notice of bar; (5)
- (m) the issue of summons in magistrates' courts; (5)
- (n) the types of judgments that may be given in terms of section 31 of the Magistrate's Courts Act of 1938. (5)

**[TURN OVER]**

## JURISDICTION

### QUESTION 2 (20 marks)

- (a) P is the plaintiff. D is the defendant, who owns a farm situated in Siteki. P and D enter into a contract in terms of which D is obliged 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 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 P is domiciled in Manzini, D is domiciled and resident in South Africa and the contract was concluded in Lesotho. (4)
  - (ii) Will the High Court have jurisdiction to adjudicate P's claim if both P and D are domiciled and resident in South Africa and the contract was concluded in Mbabane? (4)
  - (iii) On what grounds would the High Court have jurisdiction to hear the matter if, on the same facts, D was an *incola* of Swaziland? (2)
- [10]
- (b) V lives and works in Manzini. While in Mbabane, V is involved in a motor collision with W, who lives in Siteki. W wishes to claim damages from V, alleging that the motor collision was due solely to the negligence on the part of V. With these facts in mind, answer the following questions.
- (i) Will the Manzini magistrate's court be competent to exercise jurisdiction? (2)
  - (ii) Will the Mbabane magistrate's court be competent to exercise jurisdiction? (2)
  - (iii) Will the Siteki magistrate's court be competent to exercise jurisdiction if V raises no objection in this regard and W's claim is less than E2 000? (3)
  - (iv) Should W's claim be in the amount of R2 500, may the Siteki magistrate's court exercise jurisdiction if W and V consent to jurisdiction? (3)
- [10]

## PROCEDURE

### QUESTION 3 (20 marks)

Z wishes to claim damages from X by instituting proceedings in the High Court in respect of a claim for defamation. 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 an unknown address within Swaziland? (1)
- (d) What is the first document that X must file if he wishes to oppose the action? (1)
- (e) What pleading must X use in order to raise his defence? (1)
- (f) What step may Z take if X fails to file the pleading identified in (e) above? (1)
- (g) What procedure should a party use if X's name is spelt incorrectly in the pleading identified in (f) above? (1)
- (h) Which party is responsible for using the procedure identified in (g) above – the plaintiff or the defendant? (1)
- (i) What pleading must X file if he/she has a claim against Z, arising from the same facts of the case? (1)
- (j) What pleading must Z file if, in the pleading identified in (e) above, X admits that the defamatory statement was made but in avoidance raises truth and public interest as a ground for justification? (1)
- (k) What pleading may X use if Z fails to aver in his/her particulars of claim that X had the intention to defame? (1)
- (l) Does the procedure referred to in (k) above affect the whole or only part of Z's particulars of claim? (1)
- (m) What pleading may X use if the High Court does not have jurisdiction to hear the matter? (2)
- (n) What procedure can Z use if X avers in the pleading referred to in (e) above that Z is "a greedy and dishonest politician"? (1)
- (o) Does the procedure referred to in (m) above affect the whole or only part of the pleading referred to in (e) above? (1)
- (p) What procedure may either of the parties use in order to ascertain from the other party what documents are in existence that might be relevant to the action? (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 process may either X or Z use in to compel a witness to attend the trial? (1)
- (s) If judgment is granted in favour of Z, name the order for costs that is normally awarded. (1)

#### **APPEAL AND REVIEW**

##### **QUESTION 4 (10 marks)**

- (a) Name the grounds for reviewing the proceedings of any lower court. (4)
- (b) Name the procedure that is used to commence review proceedings. (1)
- (c) If a party is dissatisfied with a judgment given in a magistrate's court, name the court in which that party must lodge an appeal. (1)
- (d) State the information that must be contained in the notice of appeal addressed to the court identified in (c) above. (2)
- (e) Explain the effect of noting an appeal in regard to the execution of the original judgment given in a magistrate's court. (2)