

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER: CIVIL PROCEDURE

COURSE CODE: L401

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

- (1) ANSWER QUESTION ONE (1) WHICH IS COMPULSORY AND ANY OTHER TWO (2) QUESTIONS OF YOUR CHOICE**
- (2) MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS**

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

QUESTION 1

(a) Explain what is meant by *locus standi in judicio*.

[5 marks]

(b) Before an entity can have *locus standi in judicio*, it must first satisfy a number of legal requirements. Discuss them in detail with reference to relevant decided cases.

[20 marks]

Total [25 marks]

QUESTION 2

Discuss the different situations and/ or circumstances in which the jurisdiction of the Magistrates' courts in Swaziland is ousted.

[25 marks]

QUESTION 3

Q issues summons against R for damages based on breach of contract. F defends the action.

With these facts in mind answer the following questions giving reasons for each answer.

(i) Should Q issue a simple or combined summons and why? [5 marks]

(ii) Name the document R must use to indicate to Q that he wishes to defend the action. [5 marks]

(iii) What pleading must R use to raise his defence? [5 marks]

- (iv) Name the pleading that R may file simultaneously with the pleading mentioned in (iii), if he also has a claim against Q. [5 marks]
- (v) How should R respond if the contract states that, if any dispute arises between the parties, both parties must submit to arbitration? [5 marks]

Total [25 marks]

QUESTION 4

You are representing the defendant in the following civil matters. Give full reasons for the procedure that you would advise in the following circumstances:

- (i) The plaintiff's summons in an action for the return of a motor vehicle sold under a written hire- purchase agreement does not allege a breach of contract. No copy of the agreement is attached to the summons. [10 marks]
- (ii) The Deputy Sheriff has attached the Defendant's motor vehicle which is still subject to a lease agreement which the defendant has with Wesbank. [10 marks]
- (iii) The summons were served on the defendant's ten year old son. [5 marks]

Total [25marks]

QUESTION 5

- (a) What requirements does an applicant need to satisfy in an application to found or confirm jurisdiction? [15 marks]
- (b) What factors may result in the discharge of the attachment or arrest? [10 marks]
- Total [25 marks]

QUESTION 6

Discuss the following common law principles relating to jurisdiction.

- (a) The doctrine of submission. [5 marks]
- (b) The doctrine of effectiveness [5 marks]
- (c) *Actors sequitur forum rei* [5 marks]
- (d) *Ratione contractus* [5 marks]
- (e) *Ratione rei sitae* [5 marks]

Total [25 marks]