

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2009

TITLE OF PAPER : **CIVIL PROCEDURE**

COURSE CODE : **DL 032**

MARKS : **100**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **1. ANSWER ANY FOUR (4) QUESTIONS**

(a) Additional marks will be given for use of case-law where appropriate.

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

QUESTION 1

Write short notes on ALL of the following:-

- i) the difference between application and action proceeding. (5 marks)
- ii) the circumstances in which a dispute of fact arises; (5 marks)
- iii) the grounds for Summary Judgement and when this procedure applies; (5 marks)
- iv) three (3) methods of presenting evidence, other than oral evidence; (5 marks)
- v) attorney and client costs. (5 marks)

[TOTAL: 25 MARKS]

QUESTION 2

Zola wishes to recover damages from Xola for breach of contract. Answer each of the questions that follow. You must not give your reasons for your answers.

- (i) What type of proceedings must Zola issue to institute the claim; (2 marks)
- (ii) What form of service is necessary to serve the process on Xola who is at an unknown address in Swaziland?; (2 marks)
- (iii) What form of service is necessary if Xola is living overseas at an unknown address at the time when the action is instituted?; (2 marks)
- (iv) What is the first document that Xola must file if he wishes to indicate that he will oppose the action?; (2 marks)
- (v) What further step may Zola take if Xola files the document referred to in iv) here in above?; (2 marks)
- (vi) What step may Zola take if Xola fails to indicate that he will oppose the action?;(2 marks)
- (vii) What step may Zola take if Xola indicates that he will oppose the action but fails to file a plea?; (2 marks)
- (viii) What pleading may Xola file if Zola's plea does not disclose a cause of action?; (2 marks)
- (ix) What procedure can Zola use if Xola files a plea that contains vexations statements about Zodwa? (2 marks)
- (x) What pleading can Xola use if he also suffered damages attributable to the negligence of Zodwa. (2 marks)

QUESTION 3

Write short notes on ALL of the following:-

- (i) ~~Security for costs that a plaintiff may be required to provide in terms of the Magistrates Court Rules Order xxxiv Rule 9;~~ (5 marks)
 - (ii) when may default judgement be granted in a Magistrate Court and what procedure must be used?; (5 marks)
 - (iii) the exception that may be raised to a summons by the defendant. (5 marks)
 - (iv) the claims in respect of which summary judgement may be granted in a Magistrates Court; (5 marks)
 - (v) 'absolution from the instance' at the close of the defendant's case. (5 marks)
- [TOTAL: 25 MARKS]**

QUESTION 4

- (a) Define the meaning of the term "review"; (5 marks)
 - (b) Define the meaning of the term "appeal"; (5 marks)
 - (c) Describe the difference between the terms 'appeal' and 'review'; (5 marks)
 - (d) Is it necessary to request leave to appeal to the High court against a judgement of a magistrates court? (5 marks)
 - (e) If aggrieved by the judgement of their High Court may an appeal to the Court of Appeal be lodged as of right?; (5 marks)
- [25 MARKS]**

QUESTION 5

Write short notes on ALL the following;

- (a) Five (5) particulars that must be included in a summons; (5 marks)
- (b) the differences between a debt or liquidated demand and an unliquidated demand (5 marks)
- (c) the difference between 'substituted service' and 'edictal citation'. (5 marks)

- (d) the Pre-Trial conference; (5 marks)
- (e) party and party costs. (5 marks)

[TOTAL: 25 MARKS]

QUESTION 6

- (a) Explain the following:
- i) the meaning of the term 'arrest or attachment to found or confirm jurisdiction; (5 marks)
 - ii) the meaning of the term 'arrest suspectus de fuga'. (5 marks)
- (b) A motor vehicle collision occurs between Musa's car SD 274 UL and Mandla's car SD 396 WE on the 5th February 2009 at Malagwane along the Manzini-Mbabane highway. Musa contends that the cause of the collision was the sole negligence of Mandla and wishes to recover damages to his motor vehicle only cost of repairs being quoted at E2,000.00 (Two thousand Emalangeni)
- (i) Draft the particulars of claim on behalf of Musa; (10 marks)
 - (ii) Which court will have jurisdiction to entertain the claim; (2 marks)
 - (iii) Will any Magistrates court have jurisdiction to hear the action if Musa, in the same summons, claims E1,000.00 damages for personal injury sustained during the collision? (3 marks)