

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**MAIN EXAMINATION PAPER, MAY 2009**

**TITLE OF PAPER: CIVIL PROCEDURE**

**COURSE CODE: L401**

**TIME ALLOWED: 3 HOURS**

**INSTRUCTIONS:**

- (1) ANSWER QUESTION ONE (1) WHICH IS COMPULSORY AND ANY OTHER THREE (3) QUESTIONS OF YOUR CHOICE.**
- (2) MARKS FOR QUESTIONS OR PARTS THEREOF ARE INDICATED IN BRACKETS**

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

## **QUESTION 1**

Mr T has instituted a claim against Dr Zebb Ayob arising from goods sold and delivered by the former to the latter and at the latter's special instance and request which were worth a meagre E1995.00. This action has been instituted in the Lubombo Magistrate's Court in Siteki.

Dr Ayob has indicated verbally to Mr T that he will not settle Mr T's account unless the latter has paid his E2325.00 which is in respect of professional medical services rendered by Mr Ayob to Mr T's wife in the course of year 2007 in Nelspruit, Republic of South Africa. Mr T is not disputing this claim

- (a) What is the nature of Dr Zebb Ayob claim and what specific legislative enactment deal with it in the context of the Magistrate's Court. (5)
- (b) What other options are open to Dr Ayob to pursue his claim under these circumstances? (10)
- (c) What are the procedures that are pertinent to such above process? (10)

TOTAL: [25 MARKS]

## **QUESTION 2**

- (a) What is the object and purpose of the restitutionary interdict commonly known as *mandament van spolie*? (5)
- (b) What are the most significant and pertinent averments that the Applicant must make in his/ her Founding Affidavit accompanying the application for this remedy?

(10)

- (c) What are the two (2) averments that the Applicant need not make in support of such an application

(10)

TOTAL: [25 MARKS]

### **QUESTION 3**

The Magistrate's Court has personal jurisdiction over any person who resides, carries on business or is employed within the district. This is in accordance with the provisions of Section 15 (a) of the Magistrate's Court Act No- 66 of 1938 (as amended).

Discuss with reference to legal authority, what is meant by these three (3) requirements of personal jurisdiction of the Magistrate's Court.

[25 MARKS]

### **QUESTION 4**

- (a) What is the purpose of pleadings in civil proceedings? (10)
- (b) What are the two most significant things that every pleading should contain? (5)
- (c) What are the five (5) most important rules of pleadings (5)

TOTAL: [25 MARKS]

### **QUESTION 5**

(a) Briefly discuss what is meant by substituted service and edictal citation

(10)

(b) Service of any court process must if possible, be personal (Rule 4 (2) (a) of the High Court rules). However, if personal service is not possible upon an individual how should service of a summons be effected upon that individual.

(15)

TOTAL: [25 MARKS]

### **QUESTION 6**

Write short notes on the following:

(a) List the documents that are likely to be exchanged in opposed application proceedings as well as those in defended action proceedings (15)

(b) The procedure that a court will follow when the rights of other persons may be affected by an order granted *ex parte* (5)

(c) The importance of choosing the court with the proper jurisdiction (5)

TOTAL: [25 MARKS]