

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

DEPARTMENT OF LAW

MAIN EXAMINATION MAY, 2010

TITTLE OF PAPER : CIVIL PROCEDURE
COURSE CODE : DL 032
MARKS : 100
TIME ALLOWED : THREE HOURS
INSTRUCTIONS : (a) ANSWER ANY FOUR (4) QUESTIONS
(b) 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

- a) What discretion does a Court have when a dispute of fact arises during the course of application proceedings?

[15]

- b) Discuss the difference between action proceedings and application proceedings.

[10]

[Total: 25 marks]

QUESTION 2

SIYAYA CONSTRUCTION (PTY) LTD instituted action in the High Court of Swaziland against SIYABUYA (PTY) LTD in which SIYAYA CONSTRUCTION (PTY) LTD claims payment of the sum of E88,222.00 in respect of monies due, owing and payable by SIYABUYA (PTY) LTD arising out of an agreement of contract for the erection of a factory shell on Portion 2010 Matsapa Industrial Sites, in the Region of Manzini, Swaziland. SIYABUYA (PTY) LTD has failed, neglected and/or refused to repay a loan given to it by SIYAYA CONSTRUCTION (PTY) LTD.

The directors of SIYAYA CONSTRUCTION (PTY) LTD have instructed you to recover the sum owed.

a) Write a letter of demand

[14]

b) What type of proceedings will you initiate to claim payment

[2]

c) Will you issue simple or combined summons? Give explanation for your choice of summons.

[2]

d) Under what circumstances will Provisional Sentence Summons be appropriate?

[7]

[Total: 25 marks]

QUESTION 3

a) A litigant who is dissatisfied with ruling or judgment of the substantive Court can approach a high Court on either appeal or review.

i. when does a litigant approach a Court on appeal?

[5]

ii. when does a litigant approach a Court on review?

[5]

iii. Discuss the distinction between an appeal and a review?

[15]

[Total: 25 marks]

QUESTION 4

a) Certain Rules must be complied with in respect of pleadings. Name and discuss five (5) of those Rules. [10]

b) Outline the stages in action proceedings. [5]

c) Outline the stages in application or motion proceedings.

[5]

d) What is a cause of action?

[5]

[Total: 25 marks]

QUESTION 5

MUSA GININDZA obtained judgment at the High Court of Swaziland against LEITES MOTORS (PTY) LTD and delivered a Writ of Execution to the Deputy Sheriff to levy on the assets of LEITES MOTORS (PTY) LTD, the judgment debtor.

The Deputy Sheriff, in execution of the Writ, attempts to attach a vehicle in the possession of MBABANE MOTORS (PTY) LTD in the belief that this vehicle belongs to LEITES MOTORS (PTY) LTD.

The director of MBABANE MOTORS (PTY) LTD resisted and thwarted the execution.

The Deputy Sheriff and the director of MBABANE MOTORS (PTY) LTD engaged in an argument with the Deputy Sheriff causing a spectacle and threatening randomly to attach property in the premises.

The Director of MBABANE MOTORS (PTY) LTD has come to you for legal advice:-

- a) Can execution be levied on the assets of MBABANE MOTORS (PTY) LTD?

[10]

- b) Can the Deputy Sheriff attach the vehicle?

[10]

- c) What legal remedy does MBABANE MOTORS (PTY) LTD have against the judgment creditor and the Deputy Sheriff?

[5]

[Total: 25 marks]

QUESTION 6

The Plaintiff MATOLA CEMENT (PTY) LTD has instructed you to apply for summary judgment on a claim for payment of E354,092.00 (three hundred and fifty four thousand and ninety two Emalangeni) for goods sold and delivered to the defendant INYATSI CONSTRUCTION (PTY) LTD.

The defendant resists the application on the ground that a large part of that sum, E250,000.00 (two hundred and fifty thousand Emalangeni) has already been paid and that it has been agreed, in writing, that the balance would only fall due for payment upon the plaintiff furnishing the defendant its new bank details into which the defendant will deposit the sum. The plaintiff has not done so.

- a) Draft the application for summary judgment; [5]
- b) Include the affidavit supporting the application; [10]
- c) Draft the defendant's affidavit resisting the application for summary judgment; [10]

[Total: 25 marks]

QUESTION 7

In terms of the Rule 6 (25) (a) and (b) of the Rules of the High Court of Swaziland, "the Court or judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner as to the Court or judge may seem fit".

- a) Discuss the two (2) obligations that the said Rule exerts or imposes on any applicant who seeks to bring a matter before Court on an urgent basis.

[10]

- b) Is urgency of a commercial nature, that is, that the applicant may suffer financial loss, a ground for urgency?

[10]

- c) What set of documents will be prepared for filing before the hearing of the applicant?

[5]

[Total: 25 marks]