

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

DEPARTMENT OF LAW

SUPPLEMENTARY JULY, 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) List the three (3) types of summons that a plaintiff can file to advance its claim in action proceedings.

[3]

- (b) What factors guide a claimant on the appropriate summons to file in each case.

[5]

- c) Whose duty is it to serve?

- i) Magistrates' Court summons
- ii) High Court summons

[5]

- d) At what time are summons to be served?

[3]

- e) What document must be filed by the official who has served summons on the defendant?

[1]

f) What must be stated in the said document?

[3]

g) List five (5) documents that can be a basis for a claim filed by way of Provisional Sentence Summons.

[2]

h) What options are available to a defendant who has been served with Provisional Sentence Summons?

[3]

[Total: 25 marks]

QUESTION 2

a) What step may be taken by a defendant who has been served with summons?

[2]

b) What steps may be taken by a defendant who has filed and served a Notice to Defend?

[4]

c) What step may be taken by a plaintiff where the defendant has filed a Notice to Defend but has failed to file a plea within the time prescribed by the Rules of Court?

[2]

d) What is the effect of the failure by a defendant to deliver a plea within the time specified in the Rules?

[2]

e) What is the difference between a:-

i) Dilatory Plea and

[2]

ii) Plea in abatement

[2]

f) What is an exception?

[2]

g) What are the grounds for an exception?

[9]

[Total: 25 marks]

QUESTION 3

- a) Define an application for Summary Judgment.
[3]
- b) At what stage is the application for Summary Judgment to be filed?
[2]
- c) What allegations must be set out in the application for Summary Judgment?
[4]
- d) List the two instances where a Court will not grant Summary Judgment.
[4]
- e) What is a Default Judgment?
[4]
- f) List the two (2) instances where Default Judgment may be applied for and granted.
[4]

- g) Who may apply for Default Judgment in each of the instances in question f) hereinabove?

[4]

[Total: 25 marks]

QUESTION 4

You accept instructions from PUTCO INVESTMENTS (PTY) LTD to claim E50,000 for damages to its motor vehicle number SD 309 ML.

The damage arises out of a collision which occurred at or near the traffic lights at kaKhoza in the Manzini region on the 15th December 2009 between SD 309 ML and SD 430 AN owned by CARGO CARRIERS (PTY) LTD.

At the time of the collision, SD 430 AN was driven by DLABHA DLADLA within the nature and scope of his employment with CARGO CARRIERS (PTY) LTD.

The sole cause of the accident was the negligent driving of DLABHA DLADLA who failed to stop at the junction when compelled by a stop sign to do so.

- a) Draft Particulars of Claim.

[20]

b) What type of summons will you issue?

[3]

c) What steps will you take after preparing the summons?

[2]

QUESTION 5

a) What are the two fundamental forms of procedure adopted for instituting a claim in the High Court?

[4]

b) Indicate the basic difference between the said two procedures.

[12]

c) Give examples of instances where the use of action proceedings is mandatory.

[4]

d) Give examples of relief that has to be prayed for by way of motion.

[5]

[Total: 25 marks]

QUESTION 6

a) What is meant by 'service of process'?

[5]

b) Write notes on the following:-

i) manner of service

[5]

ii) normal service

[5]

iii) substituted service

[5]

iv) edictal citation

[5]

[Total: 25 marks]

QUESTION 7

a) What is a pleading?

[2]

b) What are the functions of pleadings?

[6]

c) List the types of affidavits that accompany a Notice of Application.

[6]

d) What is the difference between Combined and Simple Summons.

[5]

e) Discuss nature purpose and content of a letter of demand.

[6]

[Total: 25 marks]