

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER MAY, 2010

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)
ADDITIONAL QUESTIONS OF YOUR CHOICE.

(2) MARKS FOR QUESTIONS OR PARTS
THEREOF ARE INDICATED IN BRACKETS

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QUESTION 1

The provisional sentence procedure is generally referred to as an extra ordinary and summary procedure. This liquid summons procedure has been fulfils a useful role in commerce and contributes to the fact that the payment of an amount owing to the Creditor is not delayed by the mere wilful action of the debtor. It provides a creditor with a remedy without having to resort to the more cumbersome, more expensive and frequently protracted illiquid summons proceedings

(a) Discuss the advantages of the provisional sentence procedure in light of the above statement. [15 marks]

(b) What are the requirements for obtaining a provisional sentence [10 marks]

TOTAL: [25 marks]

QUESTION 2

Before any litigant brings legal proceedings to a Court of Law, a critical decision must be made. The decision is that if there is a choice between an action and application procedure, then the test is whether there is any foresee ability of a real dispute of fact which may arise which cannot be resolved without oral evidence being required?

If the answer turns on the affirmative, then an action procedure must be adopted.

(a) Describe the three (3) different circumstances under which a dispute of fact may arise in an application proceeding. [15 marks]

(b) What are the possible procedures that a Court may adopt in a case where a dispute of fact (5) have arisen in the Course of an application proceeding? [10 marks]

[TOTAL: 25 MARKS]

QUESTION 3

The provisions of Section 30 of the Magistrate's Court Act of 1938 deals with counter claims exceeding the jurisdiction of Magistrate's Courts. This section anticipates that it is very much possible that a Defendant may have a counterclaim which exceeds the financial jurisdiction of the Magistrate's Court, and thus provides for a remedy in such situations.

(a) What are the options that a Defendant has if he has a counterclaim which exceeds the financial limit of the Magistrate's Court? [10 marks]

(b) Should the Defendant intend to pursue the matter of his counterclaim further, what is the procedure for doing so? [15 marks]

TOTAL: [25 MARKS]

QUESTION 4

Discuss the different circumstances and/or situations in which the jurisdiction of the Magistrate's Courts in Swaziland is ousted. Reference to the relevant Court rules will attract marks.

[25 marks]

Question 5

(a) What differentiates a plea in abatement from a dilatory plea? [5 marks]

(b) Briefly discuss the four (4) types of pleas in abatement [20 marks]

TOTAL: [25 MARKS]

QUESTION 6

Write brief yet satisfactory detailed notes on the following:

(a) What constitutes a liquid document? [10marks]

(b) What are the two grounds of excepting to a pleading [10 marks]

(c) When can an application to strike out be made? [5 marks]

TOTAL [25 MARKS]