

UNIVERSITY OF SWAZILAND

202.

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2011

TITLE OF PAPER : CIVIL PROCEDURE

COURSE CODE : L401

TIME ALLOWED : 3 HOURS

INSTRUCTIONS

(1) ANSWER QUESTIONS ONE (1) AND TWO  
(2) WHICH ARE COMPULSORY AND ANY OTHER  
TWO (2) QUESTIONS OF YOUR CHOICE

(2) MARKS FOR QUESTIONS OR PARTS OF  
A QUESTION ARE SHOWN IN BRACKETS

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

### **QUESTION 1**

203

Action proceedings effectively begin immediately the Defendant has been served with the Court process instituting the action. Moreover, unlike in motion proceedings, there is no way an action proceeding can be brought before a Court unless the Defendant has been served with the relevant Court process. By and large, the foregoing demonstrates the significance of service of Court process in civil litigation.

Discuss the possible different ways through which service of Court process may be effected upon a natural person. Support your answer with authority.

**[25 Marks]**

### **QUESTION 2**

Rule 18 sub rule (10) of the High Court Rules requires "A" Plaintiff suing for damages to set them out in such a manner as will enable the Defendant reasonably to assess the quantum thereof. The rule goes on to state that provided that a Plaintiff suing for damages for personal injury shall specify the date of birth, the nature and extent of the injuries, and the nature and effects and duration of the disability alleged to give rise to such damages.

According to this rule damages for personal injuries must be separated into four (4) heads of damages and the Plaintiff must state separately what is claimed under each heading.

Discuss the four (4) separate heads of damages for personal injuries, stating what each head constitutes and how damages must be proved under each head.

**[35 Marks]**

**QUESTION 3**

204

In an action for a final divorce, the Plaintiff's Particulars of Claim *inter alia* reads as follows:-

*"8. The marriage between the parties has irretrievably broken down and there are no reasonable prospects of restoration to a normal marriage relationship for the following reasons:-*

- 8.1 Defendant has without any justification whatsoever, continuously and persistently told the Plaintiff that his mother was a witch;*
- 8.2 Defendant has on numerous occasions accused Plaintiff of being married to his own mother. That Plaintiff was as such a polygamist;*
- 8.3 Defendant abuses Plaintiff verbally and uses vulgar language towards Plaintiff;*
- 8.4 Defendant has on diverse occasions deserted the Plaintiff and would only return at her own time when it suites her;*
- 8.5 The parties have been extensively counselled but the situation keeps getting worse".*

- (a) From the above factual allegations, does there appear any legal flaw(s)? If so, how can it (they) be remedied?

[2 ½ marks]

- (b) What would be your basis for invoking the legal remedy referred to in (a) above, if any? <sup>205</sup>

[15 marks]

- (c) What rule regulates the remedy in (a) above, in the High Court Rules?

[2 ½ marks]

**TOTAL: [20 Marks]**

#### **QUESTION 4**

Discuss the different procedures that a Deputy Sheriff must comply with whenever he is commanded by process of the court to go and execute a Writ of Execution against movables of a Defendant against whom judgement has been entered. Refer to the relevant Court rules in your answer.

[20 Marks]

#### **QUESTION 5**

Write short notes on the following:

- (i) The elements of a liquid document;
- (ii) Against which pleading may further particulars be sought?
- (iii) The phrase that " Magistrate's Courts are a creature of statute";
- (iv) The common law principle of *actors sequitur forum rei*;
- (v) The purpose of a pre-trial conference in civil proceedings.

[4 marks each]

**TOTAL: [20 Marks]**