

University of Swaziland
Institute of Distance Education
Department of Law

Main Examination – December 2011

Title of Paper	:	CIVIL PROCÉDURE
Course	:	DL 032
Marks	:	100
Time Allowed	:	Three (3) Hours

Instructions :

- (A)** The Paper Contains Two Sections: A and B
- (B)** Answer ALL Questions in Section A
- (C)** Answer any three (3) Questions in Section B
- (D)** Additional marks will be given for use of case-law, where appropriate.

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

SECTION A

NB: ANSWER ALL QUESTIONS FROM THIS SECTION

Question One

A, a Portuguese national and B, a Mozambican national, are two adult bachelor and spinster who, per adventure, meet at the Wimpy Restaurant at the Riverstone Mall - Manzini. At love-at-first-site the two start dating. From this relationship, and on-24th December, 2008 the two get married out of community of property, with ante-nuptial contract excluding A's marital power, at the Cathedral Church in Manzini, in the Manzini region where both are resident and operate their respective businesses.

Prior to their marriage, on December 15th, 2008, B took out a loan of E50, 000-00 (fifty thousand Emalangeni) from Blue Financial Services (hereinafter called B.F.S.) in Matsapa to enable her to meet her wedding costs. To this end she signed a written loan agreement with the owner and sole proprietor of B.F.S., the terms whereof were that she repays this loan in 36 monthly installments at the rate of 9% per annum starting from January 2008 and the last installment was due and payable by 31st December, 2011.

For the first three months after this loan B had not paid even a single installment. She then received a letter from B.F.S. reminding her of her contractual obligations, to which she wrote and signed a letter in which she acknowledged her indebtedness to B.F.S. She also undertook to pay her debts by post-dated cheques. She then drew and signed out 36 post-dated cheques in favour of Blue Financial Services. The first six of those post-dated cheques could not be honoured by the Bank as all of them were written R/D (meaning Refer to Drawer)

Two and a half years into their marriage B discovers that her husband A has fathered a child outside their marriage, who, at the time of such discovery, was six months old. For this B approaches your Law Firm for instructions to institute divorce proceedings against her husband.

Q1

- (A) Explain the form of proceedings by which Blue Financial Services may seek and obtain relief from B. (5)
- (B) Explain about the court before which the relief in (A) above may be sought. (3)
- (C) Your Law Firm assigns you B's file.
- (i) In which Court will you institute the divorce proceedings and why? (5)
 - (ii) By what form of proceedings will you institute the divorce and why? (5)
 - (iii) By what manner of service should A know of the divorce proceedings instituted against him? (2)
- (D) Draw a letter of demand in respect of Blue Financial Services' claim against B. (10)
- (E) Rule 35 of the High Court Rules makes provision for Discovery, Inspection and Production of Documents and Tape Recordings:
- (i) Identify the documents which may be a subject of Discovery in the above case scenario. (6)
 - (ii) What benefit will such Discovery serve? (4)
- (40 total marks)

SECTION B

NB: ANSWER ANY THREE QUESTIONS FROM THIS SECTION

Question Two

(A) Discuss the following:

- (i) Demand (5)
- (ii) *Locus standi in judicio* (5)
- (iii) Representation and Power of Attorney (5)

(B) List any five (5) factors that affect a person's status to have *locus standi in judicio*

(5)

(20 total marks)

Question Three

(A) Discuss the concept of jurisdiction (10)

(B) Explain the jurisdiction of the following:

- (i) HIGH COURT (4)
- (ii) MAGISTRATE'S COURT (6)

(20 total marks)

Question Four

Draw a distinction between the following:

(A) Application Proceedings and Action Proceedings (10)

(B) Appeals and Reviews (10)

(20 total marks)

Question Five

- (A) Identify and discuss any three (3) interjections possible in civil litigation (9)
 - (B) What are pleadings? (2)
 - (C) Write three functions served by pleadings (9)
- (20 total marks)

Question Six

- (A) Explain the following:
 - (i) Edictal Citation (2)
 - (ii) Substituted Service (2)
 - (iii) Normal Service (2)
 - (B) Explain the concept of service of process *vis-a-vis* the *audi alterum partem* rule? (2)
 - (C) Write two benefits of Discovery of Documents (4)
 - (D) List Four (4) main ways by which evidence is secured (8)
- (20 total marks)