

University of Swaziland
Institute of Distance Education
Department of Law

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Supplementary Examination – July 2012

Title of Paper	:	CIVIL PROCEDURE
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

Question One

Kung Fu, a 35-year-old Chinese National had been dating Lalile Mavuka, a Swazi female adult aged 31 years for six months when, on December 24, 2009 they got married in community of property. The marriage was solemnized at around 10 am before a marriage officer in a private ceremony held at the Shiselweni Regional Administration Offices, after which there was a marriage reception picnic held at Mahamba Gorge where their families and friends joined them for a finger lunch. After the reception the two love birds drove to Maguga Lodge for the honey moon.

Prior to their marriage Lalile took out a E35,000.00 loan from Blue Financial Services in Matsapa to be able to meet her wedding costs, including a E20,000.00 wedding gown she bought on credit from Maphindi's Bridal Boutique in Manzini, where she paid E10,000.00 deposit upfront. She agreed to settle the balance in 2 equal monthly instalments of E5, 000.00.

Lalile obtained her wedding gown on December22, 2009, by which date she also paid the E10, 000.00 deposit, making the first instalment of the balance due and payable by end of January, at the latest, in terms of their oral agreement.

On June 6, 2011 Lalile read a story in the Times of Swaziland in which it was reported that a Zheng Yong Chinese supervisor tests 99.99% positive for paternity of a child for whose maintenance he was sued before the High Court of Swaziland. When she visited the High Court Registrar's office to enquire who the said Chinese supervisor is she established, to her shock and surprise, that it was Kung Fu, her husband. In that TOS article the child was reported to be 5 months old. Even the court record confirmed that fact.

All this time Lalile had not paid even a single instalment of her balance at Maphindi's Bridal Boutique. So that, two days after this shocking news she received a summons issued through the Manzini Magistrate's court in which Maphindi's Bridal Boutique sues her for the balance owing on her wedding gown.

Soon after receiving this court process Lalile approaches her twin brother Lele Mavuka, who graduated in LL.B in 2003 and, for all this time, has been practising with the law firm Bavuke Balele Attorneys @ Law, whose offices are at Town Council Building, Skonkwane Road, Nhlanguano. Soon after establishing that her sister does not repudiate liability Lele advised Lalile to sign and file with the court her consent to judgement, so as to avoid judgement costs.

Q1

- (A) Does Lalile have *locus standi in judicio* in respect to Maphindi's claim? Explain your answer (2)
- (B) If your answer to (A) above is NO, state four (4) exceptional circumstances in which Lalile could have *locus standi in judicio* (4)
- (C) Other than Maphindi suing out a simple summons against Lalile, she could have also issued a Demand. Draw out such Demand. (10)
- (D) Lalile approaches her twin brother Lele and instructs him to institute divorce proceedings against Kung Fu.
- (i) What authority would Lele require to carry out Lalile's instructions? (2)
- (ii) Draw out the Power of Attorney by which Lele can prosecute the divorce (15)
- (iii) Discuss the proper form of proceedings and the proper process by which to initiate and prosecute the divorce? (5)
- (iv) Articulate the manner of service by which Kung should be informed of the divorce proceedings against him? (2)

(40 total marks)

SECTION B

Question Two

- (A) Outline the difference between criminal Procedure and Civil Procedure (10)
- (B) Set out any three (3) sources of Civil Procedure (3)
- (C) What is meant by the term *locus standi in judicio*? (2)
- (D) Identify any five (5) people who lack *locus standi in judicio*. (5)

(20 total marks)

Question Three

- (A) Give two instances where a dispute of fact may arise (4)
- (B) Outline three options that a court may follow when a dispute of fact arises (6)
- (C) Identify and discuss the two main forms of proceedings (10)

(20 total marks)

Question Four

- (A) List three types of affidavit (3)
- (B) Identify four different types of application (4)
- (C) Explain three exceptional circumstances where Ex Parte applications will be used. (9)
- (D) Explain two features that distinguish an Application from a Petition (4)

(20 total marks)

Question Five

Briefly explain the following:

- (A) Further Particulars (4)
- (B) Exception/Excepting (4)

- (C) Application to strike out (4)
- (D) Amendment to Pleadings (4)
- (E) Offer to settle (4)

(20 total marks)

Question Six

- (A) Articulate the exceptions to the rule that a married woman whose husband's marital power has not been excluded by ante-nuptial contract has no *locus standi in judicio*. (10)
- (B) Discuss the requirements for *locus standi in judicio* (10)

(20 total marks)