

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER DECEMBER 2015

TITLE OF PAPER : **CIVIL PROCEDURE**

COURSE CODE : **DL 032**

TIME ALLOWED : **THREE (3) HOURS**

MARKS : **100**

INSTRUCTIONS : **(a) ANSWER ANY FOUR (4) QUESTIONS.**
(b) ADDITIONAL MARKS WILL BE GIVEN FOR
USE OF CASE-LAW AND RULES OF COURT
WHERE APPROPRIATE

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QUESTION 1

Write short notes on what the following mean:

- a) The maxim *Audi Alteram Partem*. [5 Marks]
- b) *Locus standi in judicio*. [5 Marks]
- c) The two types of summons [5 Marks]
- d) *Incola* and *Peregrinus* [5 Marks]
- e) Magistrate Courts jurisdiction in respect of causes of action [5 Marks]

Total Marks [25 Marks]

QUESTION 2

- a) What is the procedure where a dispute of fact arises in civil procedure? Explain with the support of case law. [5 Marks]
- b) List three matters that are placed, or excluded, from the jurisdiction of a Magistrates' Court. [5 Marks]
- c) What are pleadings and their function. [5 Marks]
- d) *Onus of proof* in proceedings [5 Marks]
- e) Explain what are the differences between action proceedings and application proceedings? [5 Marks]

Total Marks [25 Marks]

QUESTION 3

- a) Distinguish between Substantive Law and Procedural or Adjectival law and state what questions are sought to be answered by each one of them. [5 Marks]
- b) Give examples of Substantive and Procedural law. [5 Marks]
- c) i. What do you understand when it is said a court has inherent jurisdiction? [5 Marks]
- ii. Which court in Swaziland has inherent jurisdiction and where does it derive it from? [5 Marks]
- d) Explain “Rules of Pleading” pertaining to a contract and matrimonial matters [5 Marks]

Total Marks [25 Marks]

QUESTION FOUR

- (a) Identify and discuss with the help of case law the requirements to fulfill or exercise jurisdiction [5 Marks]
- (b) What are pleadings? [5 Marks]
- (c) Write three functions served by pleadings (Make reference to cases) [5 Marks]
- (d) Explain *Prima Facie* evidence [5 Marks]
- (e) Explain doctrine of **Effectiveness** and doctrine of **Submission** [5 Marks]

Total Marks [25 Marks]

QUESTION FIVE

In the 2005 Constitution, there is a section that deals with the jurisdiction or the jurisdictional authority of the High Court of Swaziland. Set out or list the jurisdiction that is provided for the High Court. Do not set out the jurisdiction excluded from the High Court.

Total Marks [25 Marks]