

University of Swaziland – Institute of Distance Education

IDE – DL 032 – Civil Procedure

2017//2018 Examination (Main) Paper

Instructions

1. Answer ANY 5 questions. Please note the marks allocation per question so that you will be able to understand the amount of time you should spend on each question. Total marks are 100.
2. Where you are required to make reference to legislation, you need to be specific about the statute and the section. The reference to the section should also be related.

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Question 1

1. Differentiate between costs payable by client to his attorney and party to party costs. [10 marks]
2. What is your understanding of the term and process applicable in respect to a writ of execution? [5 marks]
3. In respect to judgments, describe the *Factum praestatum*. [5 marks]

Question 2

1. How is a default judgment different from a summary judgment? State relevant court rules to illustrate your understanding. [5 marks]
2. The High Court Rules provide for circumstances where a judgment may be rescinded. What are these circumstances? [8 marks]
3. ANSWER either A or B:
 - a. In the Trial stage there are sequential examinations of witnesses. As an attorney, would you describe for a lay person how the examinations of witnesses are directed. [7 marks]
 - b. In terms of Rule 37, where judgments by confession are provided for, there are requirements that have to be met to obtain such judgments. Describe them briefly. [7 marks]

Question 3

Draft a Combined summons for the following facts. Where necessary the facts may be added on to make sense and make the combined summons relatable to real life circumstance. You are drafting these combined summons as an attorney having been instructed by your client. Ensure to include the required details for address and spaces for signatures where required. The facts are as follows:

1. Sizwe is a 2nd year student at the University of Swaziland.
2. He was enrolled to study the LLB course under the Social Science Programme.
3. He is 22 years old.

4. In 2016 he was repeating the Roman Law course because he had failed it in 2015. This is shown in his results as issued by the University.
5. In July 2017 he was informed by the Registrar that he would, for the academic year 2017, have to repeat the Customary Law course, as that was the actual course failed in 2015 and the course that should have been repeated in 2016, not the Roman law.
6. Sizwe has further been informed that he will be cut off, indefinitely, from the running for a Government Scholarship, mainly because, as per the interpretation of the scholarship board of the letter from the Registrar of the University, Sizwe had failed 2 years in a row.
7. Sizwe is a son of the Member of Parliament for the Ludzeludze constituency. He does not require to be accommodated on campus.
8. Sizwe therefore wants to sue the university as he feels he has suffered damages. He instructs you.

[20 marks]

Question 4

Briefly describe the concepts below

1. Magistrate court jurisdiction in respect to persons [10 marks]
2. Service of notice in the High Court [10 marks]

Question 5

Power of attorney, capacity (*Locus Standi*) and Jurisdiction are preliminary aspects of Civil Procedure. You are required, using necessary reference to specific Rules of Court, describe each concept and how it is essential in Civil procedure. Do not exceed 2 pages. [20 marks]

Question 6

In application proceeding, a dispute of fact is the determining fact for the choice of such proceedings. Describe the following types of processes in application proceeding

1. *Ex Parte* application
2. Interlocutory application
3. *Rule nisi*
4. Urgent application

[20 marks]

Question 7

As much as possible, describe the pre-trial stage. Your discussion should include the following;

1. Request for further particulars. When and why are they required?
2. The pre-trial conference. What is it made to achieve?
3. Discovery of documents. Why are they necessary?
4. Inspection, specification and production of documents.
5. Set down for trial.

[20 marks]

END