

UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
DEPARTMENT OF LAW  
IDE DIPLOMA IN LAW  
SUPPLEMENTARY EXAMINATION, JULY, 2019.

TITLE: CIVIL PROCEDURE

COURSE CODE: **DL032**

TIME ALLOWED: THREE (3) HOURS.

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. The reference to any Section should be related to the response.
3. There are instructions specific to each question; please note and adhere to them.

**TOTAL MARKS: 100**

THIS PAPER SHOULD NOT BE OPENED UNTILL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

## Question 1

- (a) 'Costs payable by the client to his/her attorney are commonly referred to as 'attorney and client' costs. The liability of the client to pay costs to his/her attorneys arises from the contractual relationship between them and is wholly unrelated to the outcome of the legal proceedings in which he/she may have been involved.' With the understanding what attorney and client costs are, differentiate them from party and party costs. [15 Marks]
- (b) In determining the costs payable to by each party at the end of a trial, what is the role of the Taxing Master of the High Court? [5 marks]

## Question 2

Briefly describe the concepts below

1. Magistrate court jurisdiction in respect to persons [7 marks]
2. Service of notice in the High Court [7 marks]
3. Power of attorney. [3 marks]
4. Capacity (*locus standi*) [3 marks]

## Question 3

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

1. Ex Parte application [5 marks]
2. Interlocutory application [5 marks]
3. *Rule nisi* [5 marks]

4. Urgent application [5 marks]

[20 marks]

#### **Question 4**

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.

Your response should not exceed 2 pages.

[20 marks]

#### **Question 5**

1. Define and discuss the sources of the law of civil procedure [10 marks]
2. How is civil procedure different from criminal procedure? [10 marks]

#### **Question 6**

Once a case has been concluded, ordinarily it may not be opened. There are however circumstances under which a closed case may be open. Discuss the court's considerations in deciding whether or not to open a closed case. [20 marks]

## **Question 7**

Describe the main features of a summons

**[10 marks]**

Describe the various affidavits in an application proceeding

**[10 marks]**