

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**RE-SIT / SUPPLEMENTARY EXAMINATION PAPER, JANUARY 2019**

**TITLE OF PAPER: CIVIL PROCEDURE**

**COURSE CODE: LAW401 / L401**

**TIME ALLOWED: 3 HOURS**

**INSTRUCTIONS:**

- (1) ANSWER ALL FOUR (4) QUESTIONS**
  
- (2) MARKS FOR QUESTIONS OR PARTS  
THEREOF ARE INDICATED IN  
BRACKETS**

**THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN  
GRANTED BY THE INVIGILATOR**

## **QUESTION 1**

Nkozo Hlatshwako is a newly admitted attorney and recently employed as a partner in one of the renown law firm in Mbabane in Swaziland. In June this year, he bought himself the latest Golf 7 R from Alan Hudson Motors in Nelspruit. This car is arguably the hottest thing in the market presently for middle class elite men. In realizing his dream Nkozo was financed by the WesBank a division of First National Bank in the tune of E625, 000.00 and he has been paying a monthly instalment of E10, 000.00 to the bank. His insurance cover for the car was provided by Swaziland Royal Insurance Corporation (SRIC) at a premium of E1, 500.00 per month. At the beginning of September 2016 the actual outstanding balance on the motor vehicle was plus/minus E560, 000.00 inclusive of interest and bank charges.

During the first weekend of September, Nkongo together with three of his buddies went out to attend a house-warming party for one of their colleagues in Bloemfontein. On their way back and whilst in Ermelo, they were involved in an accident which thankfully had no fatalities, save for the Golf 7 R to be a write off. At the time of the accident the book value of the car stood at E400, 000.00. SRIC swiftly sorted out the financier with the book value of the car, which meant that Nkongo remained indebted to the bank in the sum of E160, 000.00 and without a car.

The wreckage of the car which is worth around E60, 000.00 was towed away from the accident scene by a breakdown on the instruction of traffic officers who attended to the accident and remains kept at the wreckage compound of the City Council of Ermelo.

With your vast knowledge of substantive law coupled with your current and sufficient expertise in civil procedure, advise the City Council of Ermelo as to who can rightfully approach the civil courts in Ermelo to claim the wreckage of the Golf 7 R and on what basis? **[25 marks]**

## **QUESTION 2**

Discuss the objective, purpose and requirements of section 23 of the Magistrate's Court Act of 1938 as amended. Further indicate how the Court goes about in handling and deciding a matter brought before it under the provisions of this section.

**[25 marks]**

### **QUESTION 3**

Write short notes on the following:

- (a) Pre-trial conference (5 marks)
- (b) The purpose of discovery, how it is made and the time limits thereof. (5 marks)
- (c) The purpose of cross-examination of a witness during a trial. (5 marks)
- (d) Plea and answering affidavit. (5marks)
- (e) Security for costs. (5 marks)

**Total: [25marks]**

### **QUESTION 4**

- (a) Distinguish between a declaration and particulars of claim in action proceedings. (10 marks)
- (b) Discuss the requirements for pleading in a case where the plaintiff relies upon a breach of contract. (15 marks)

**Total: [25 marks]**

**Total possible marks:[100]**