

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER 2007

<u>TITLE OF PAPER</u>	CIVIL PROCEDURE
<u>COURSE CODE</u>	L401
<u>TIME ALLOWED</u>	THREE (3) HOURS
<u>TOTAL MARKS</u>	100

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THIS EXAMINATION PAPER.

Answer all FOUR questions.

- (a) Ensure that you give reasons for each answer when instructed to do so. A mere YES/NO will earn no marks if instructed to discuss or provide reasons for your answer.
- (b) Please ensure that the time you devote to each answer is proportionate to the marks allotted.
- (c) Although all the questions are compulsory, question 1 allows you to make a choice.

This paper consists of 5 pages.

MISCELLANEOUS
QUESTION 1 (50 marks)

Write short notes on **TEN** of the following

- (a) the principle of party presentation; (5)
- (b) a critical defect of the adversarial system in regard to litigants; (5)
- (c) the relationship between the *actor sequitur forum rei* rule and the *ratione domicilii*; (5)
- (d) the meaning of the term "reside" (5)
- (e) the procedural issues concerning arrest or attachment; (5)
- (f) the actions relating to fixed property in respect of which a court has exclusive jurisdiction; (5)
- (g) the decision in *Winters v Winters* 1970-1976 SLR 49 in regard to the exercise of divorce jurisdiction; (5)
- (h) the meaning of the phrase "any defendant who appears and makes no objection" in section 15(f) of the Magistrates' Courts Act of 1938; (5)
- (i) the splitting of claims in terms of section 25 of the Magistrates' Courts Act of 1938; (5)
- (j) the three questions that must be answered in order to identify the applicable form of proceedings; (5)
- (k) the documents that are exchanged in application proceedings that are opposed; (5)
- (l) the claims in respect of which an application for summary judgment is founded; (5)
- (m) consent to judgment in the magistrates' courts; (5)
- (n) the nature and grounds for an exception in the magistrates' courts. (5)

JURISDICTION

QUESTION 2 (20 marks)

- (a) D is domiciled in Namibia but owns fixed property in Manzini. D enters into an export contract in Johannesburg with S who is domiciled in Mbabane. D fails to perform the contract and S suffers damages in the amount of E100 000. With these facts in mind, answer the following questions. Give reasons for your answer in each instance.
- (i) On what grounds does the High Court of Swaziland have jurisdiction to hear the matter? (4)
 - (ii) Would your answer to (i) above differ if the contract was concluded in Mbabane and S is an *incola* of a South African court? (4)
 - (iii) On what grounds would the High Court of Swaziland have jurisdiction to hear the matter if, on the same facts, D was an *incola* of Swaziland? (2)
- [10]
- (b) Bongani is a businessman who lives in Siteki. He goes on a business trip to Mbabane where he is involved in a motor collision with Vusi who resides in Manzini. Bongani contends that the collision was due solely on account of the negligence of Vusi. Bongani suffers damages in the amount of E1 800 and wishes to recover these damages from Vusi in a magistrate's court action. Bearing these facts in mind, answer the following questions.
- (i) Will the Manzini magistrate's court have jurisdiction to hear the action? (2)
 - (ii) Will the Mbabane magistrate's court have jurisdiction to hear the action? (2)
 - (iii) Despite the provisions of section 16 that limits the jurisdiction of a magistrate's court to E2 000, will the Manzini or Mbabane magistrates' courts have jurisdiction to hear the action if the claim is for E2 400? (3)
 - (iv) Will any magistrate's court have jurisdiction to the action if Bongani, in the same summons, claims E1 200 for damages arising out of personal injuries sustained during the collision and E1 900 for the cost of repairing the damage to his motor vehicle sustained during the collision? (3)
- [10]

PROCEDURE

QUESTION 3 (20 marks)

X issues a summons against Y for damages on the grounds of breach of contract. Y defends the action. With these facts in mind, answer the following questions.

- (a) **Describe the type of summons that must be issued as well as the form of this summons.** (3)
- (b) **Name the notice that must be given by Y to X indicating that Y wishes to defend the action.** (1)
- (c) **Set out the pleadings in convention;** (3)
- (d) **State three methods by which either of the parties may respond to an allegation of fact in a pleading;** (3)
- (e) **Name the pleading that is used when the other party's pleading does not disclose a cause of action or defence.** (1)
- (f) **Name the pleading that is used by the defendant if the contract states that, if any dispute arises between the parties, both parties must submit to arbitration but instead the plaintiff commences action.** (1)
- (g) **State the instances when pleadings will be considered closed.** (4)
- (h) **Explain what must be set out in a discovery affidavit.** (3)
- (i) **Name the proceeding that both parties are compelled to arrange and attend before the trial in order to attempt to shorten the trial.** (1)

APPEAL AND REVIEW

QUESTION 4 (10 marks)

Gugu is aggrieved by the judgment given against her in a magistrate's court and wishes to take the matter on appeal. With these facts in mind answer the following questions.

- (a) **Must Gugu request leave to appeal to the High Court sitting as a court with civil appellate jurisdiction?** (1)

- (b) What information must be stated by a judicial officer when giving reasons for judgment after the appeal has been noted? (3)
- (c) What procedure should Gugu use, if after having noted the appeal to the High Court, she feels that she is unable to sustain an appeal against a particular part of the judgment concerned? (4)
- (d) Will the original judgment given in a magistrate's court be executed against Gugu pending the appeal? (2)