

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER DECEMBER 2016

TITLE OF PAPER : **CIVIL PROCEDURE**

COURSE CODE : **DL 032**

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

MARKS : **100**

INSTRUCTIONS : **(a) ANSWER ANY FOUR (4) QUESTIONS.**
(b) QUESTION 6 IS A COMPULSORY QUESTION.
(c) 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) *dominus litis*. [5 Marks]
- e) Magistrate Courts jurisdiction in respect of causes of action. [5 Marks]

Total [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) Explain the function of pleadings. [5 Marks]
- d) Discuss the *Onus of proof* in civil proceedings. [5 Marks]
- e) Explain what are the differences between action proceedings and application proceedings? [5 Marks]

Total [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 the rules of pleading pertaining to a contract and matrimonial matters. [5 Marks]

Total [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 referring to case law. [5 Marks]

(d) Explain *Ex-parte Applications*. [5 Marks]

(e) Explain the doctrine of **Effectiveness** and the doctrine of **Submission** [5 Marks]

Total [25 Marks]

QUESTION FIVE

(A) Explain the following:

(i) Edictal Citation [4 Marks]

(ii) Substituted Service [3 Marks]

(iii) Normal Service [3 Marks]

(B) Explain the concept of service of process. [5 Marks]

(C) Draw a distinction between an appeal and a review. [5 Marks]

(D) When are review proceedings the proper course to follow? [5 Marks]

Total [25 Marks]

QUESTION 6

A, a Portuguese national and B, a Mozambican national, are two adult bachelor and spinster who, per adventure, meet at the Wimpy Restaurant at the Riverstone Mall-Manzini. At love-at-first-site, the two start dating. From this relationship, and on 24th December, 2008 the two get married out of community of property, with ante-nuptial contract excluding A's marital power, at the Cathedral Church in Manzini, in the Manzini region where both are resident and operate their respective businesses.

Prior to their marriage, on December 15th, 2008, B took out a loan of E50, 000-00 (fifty thousand Emalangeni) from FICORP Financial Services (hereinafter called F.F.S.) in Matsapa to enable her to meet her wedding costs. To this end she signed a written loan agreement with the owner and sole proprietor of F.F.S., the terms whereof were that she repays this loan in 36 monthly installments at the rate of 9% per annum starting from January 2008 and the last installment was due and payable by 31st December, 2011.

For the first three months after this loan B had not paid even a single installment. She then received a letter from F.F.S. reminding her of her contractual obligations, to which she wrote and signed a letter in which she acknowledged her indebtedness to F.F.S. She also undertook to pay her debts by post-dated cheques. She then drew and signed out 36 post-dated cheques in favour of Fincorp Financial Services. The first six of those post-dated cheques could not be honoured by the Bank as all of them were written RID (meaning Refer to Drawer)

Two and a half years into their marriage B discovers that her husband A has fathered a child outside their marriage, who, at the time of such discovery, was six months old. For this B approaches your law Firm for instructions to institute divorce proceedings against her husband.

(A) Explain the form of proceedings by which FINCORP Financial Services may seek and obtain relief from B. **[10 Marks]**

(B) Explain about the court before which the relief in (A) above may be sought. **[2 Marks]**

(C) Your law Firm assigns you B's file:

(i) In which Court will you institute the divorce proceedings and why? **[5 Marks]**

(ii) By what form of proceedings will you institute the divorce and why? **[5 Marks]**

(iii) By what manner of service should A know of the divorce proceedings instituted against him? **[3 Marks].**

Total Marks [25 Marks]

END
