

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2016

TITLE OF PAPER: CIVIL PROCEDURE

COURSE CODE: 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 renowned law firms 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 installment 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, Nkonzo 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 Nkonzo 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 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

- (a) Discuss the different kinds of interdicts. **[9 marks]**
- (b) What are the requirements that an Applicant must establish in every application for an interdict generally? **[10 marks]**
- (c) State the key and pertinent averments that an Applicant for a spoliation order must make in his/her founding affidavit without which the application would dismally fail. **[6 marks]**

Total:[25 marks]

QUESTION 3

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.

Total:[25 marks]

QUESTION 4

In action proceedings and in the course of the pleading stage, certain irregularities or defects may be noted in the pleadings by the attorneys representing either party in the proceedings and there may be a need that such irregularities and/or defects be either corrected, rectified and/or objected to.

Discuss the methods or procedures provided for in the rules of the courts which may be used to cure, object and/or attend to such defects or irregularities in the pleadings. For each and every method or procedure mentioned, explicitly state the purpose and/or objective such method seeks to achieve.

[25 marks]

Total Possible Marks:[100]