

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA 
university
of south africa

CIP101-D

October/November 2005

CIVIL PROCEDURE 101

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

PROF E HURTER
PROF OS SIBANDADR F CASSIM
ADV. TL MABUSELA

SECOND :

EXTERNAL :

PROF JA FARIS
THE HON MR JUSTICE WJ VAN DER MERWE**This paper consists of four pages.****PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THIS EXAMINATION PAPER.****Answer all FIVE questions.**

- (a) Ensure that you give full reasons for each answer. A mere YES/NO or TRUE/FALSE will earn NO marks.
- (b) Please ensure that the time you devote to each question is proportionate to the marks allotted.

GENERAL PRINCIPLES**QUESTION 1**

- (a) By comparison to High Courts, explain the reason for magistrates' courts being described as "creatures of statute". (7)
- (b) Explain the principle of bilaterality. (3)
- [10]

[TURN OVER]

ALTERNATIVE MODELS OF DISPUTE RESOLUTION

QUESTION 2

- 6.2.4(a) "Mediator neutrality seems to be an impossible requirement in a culturally diverse society". Discuss this statement. (6)
 - 6.2.4(b) Although arbitration is classified as a command process, it is accepted as a primary ADR process. Explain this contradiction. (4)
- [10]**

JURISDICTION OF THE SUPERIOR COURTS

QUESTION 3

Answer ALL the following questions.

- 8.3.1 (a) Jurisdiction for the purposes of Civil Procedure may be defined as the competence of a court to issue a warrant of execution. Is this statement true or false? Give reasons for your answer. (6)
- (b) X is an *incola* of the Durban High Court. Z wishes to commence proceedings against X but is not sure what to do since Z discovers that X's employer has sent him to manage a project in Cape Town for three months. With these facts in mind answer the following questions.
 - (i) Can Z issue summons against X out of the Durban High Court? *Yes - from Johannesburg (after service of summons)* (4)
 - (ii) If Z does decide to issue summons out of the Durban High Court, would it be possible to serve the summons on X in Cape Town? *Yes - S 34(1) of SCA (14.3.1)* (2)
- (c) R wishes to apply for an order for attachment *ad fundandam jurisdictionem*. Would a High Court grant such an order in the following circumstances
 - (i) if both the plaintiff and defendant are *peregrini* of the Republic? *No: 14.1* (6)
 - (ii) if the cause of action arose outside the jurisdictional area of the court concerned? *Yes, but only if the plaintiff is domiciled in the court's area and the defendant is a peregrinus of that area of the Republic* (2)
- (d) Briefly explain whether a local *peregrinus* may submit to the jurisdiction of a High Court if the cause of action arose outside the court's area of jurisdiction. (4)

1502 In the absence of one of the traditional grounds of jurisdiction, a *deceus personae* cannot submit to the jurisdiction of a court. It is not he submitted in the form of *amicus* (where he is an *incola*) or in the form of *res gestae* (where cause of action arose) [TURN OVER]

- (e) P and Q are married to each other. They are both domiciled in Bloemfontein. P, the husband, deserts Q and becomes domiciled in Johannesburg. Q, the wife, remains in Bloemfontein and wishes to divorce P. Bearing these facts in mind, answer the following questions
 - (i) Is Q compelled to follow the domicile of her husband and institute proceedings in the area of jurisdiction of the Johannesburg High Court? (8)
 - (ii) Further to (i) above, would it be possible for Q to commence proceedings for divorce if she had been married to P for a period of only five months? (2)
- (f) S enters into a contract of sale with T, whereby S purchases T's property.
 - (i) Discuss the grounds on which a High Court may exercise jurisdiction if S wishes to commence proceedings against T because T is delaying the transfer of the property due to his failure to obtain clearance certificates for the payment of municipal rates and taxes. (8)
 - (ii) Discuss the grounds on which a High Court may exercise jurisdiction if T also wants to institute proceedings against S because S has not, despite demand paid the deposit due and payable under the contract. (4)
- (g) Set out in detail the four functions of the Constitutional Court. (8)
- (h) The Supreme Court of Appeal is the final court of appeal in all matters. Is this statement true or false? Give reasons for your answer. (2)

JURISDICTION OF THE LOWER COURTS

QUESTION 4

V lives in Pretoria and works in Johannesburg. While in Benoni, V is involved in a motor collision with W, who lives in Soweto. W wishes to claim damages from V, alleging that the motor collision was due solely to the negligence on the part of V. With these facts in mind, answer the following questions.

- (a) Would the magistrate's court for the district of Pretoria or Johannesburg be competent to exercise jurisdiction? (4)
- (b) Will any magistrate's court be competent to exercise jurisdiction if W's claim is in the amount of R120 000 and V has a counterclaim against W in the amount of R20 000 based on contributory negligence on the part of W? (4)

Handwritten notes:
 Pretoria - lies
 Johannesburg - work
 in terms of S 29 to R [TURN OVER]
 indebted to V in the amount of R20000

- (c) Will any magistrate's court be competent to exercise jurisdiction if in the same summons W claimed an amount of R70 000 for pain and suffering and R50 000 for medical expenses? *Yes: Yes - jurisdiction* (4)
- (d) If W enters into a contract with X to repair his motor vehicle and X fails to do so for a period of four months, will any magistrate's court be competent to grant an order to force X to return the motor vehicle to W? *Monetary relief only in respect of property taken unlawfully. Order may be granted under s 29(1)(a)* (4) [16]

QUESTION 5

- (a) Discuss fully the meaning of the words "cause of action arose wholly within the district" as they are contained in section 28(1)(d) of the Magistrates' Court Act, 1944, including an example of the manner in which this section is applied. *22.2.4* (8)
- (b) Explain the fundamental differences between small claims courts and other courts. *7.2* (6) [14]

Totaal: [100]