

**CIP201G**

( 488411)

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**GENERAL PRINCIPLES OF CIVIL PROCEDURE  
(CIVIL PROCEDURE 201)**

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

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SECOND

THIS PAPER CONSISTS OF 8 PAGES PLUS INSTRUCTIONS ON THE COMPLETION OF THE MARK READING SHEET

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THE QUESTIONS IN THIS PAPER COUNT A HUNDRED MARKS THIS PAPER CONSISTS OF TWO SECTIONS SECTION A CONSISTS OF MULTIPLE CHOICE QUESTIONS (COUNTING 30 MARKS) AND MUST BE ANSWERED ON A SEPARATE MARK READING SHEET SECTION B CONSISTS OF QUESTIONS THAT REQUIRE WRITTEN ANSWERS (COUNTING 70 MARKS) AND MUST BE ANSWERED IN THE EXAMINATION ANSWER BOOK ANSWER ALL THE SECTIONS

PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THE EXAMINATION PAPER

- 1 Answer ALL TEN questions in Section A and ALL FOUR questions in Section B
- 2 In Section B ensure that you give full reasons for each answer A mere Yes/No will earn no marks
- 3 Ensure that the time you devote to each question is proportionate to the marks allotted for the question
- 4 Please use the mark reading sheet which has been issued with your examination answer book to answer the questions in Section A Read the instructions in connection with the use of the mark reading sheet carefully Failure to do so may result in the computer being unable to read your answers Please ensure that the completed mark reading sheet is handed in with your answer book
- 5 Ten questions (marked 1 – 10) follow under Section A Each question consists of four statements Some statements are accurate and some are inaccurate, some of the statements are correct and some are incorrect You have to decide which of the statements are most accurate or correct or incorrect and indicate it on the mark reading sheet according to the number of the statement For example, if you decide statement 2 of Question 1 is the most accurate, you mark option [2] on the mark reading sheet next to Question 1
- 6 **PLEASE ALSO WRITE DOWN YOUR ANSWERS FOR SECTION A (QUESTIONS 1-10) IN YOUR ANSWER BOOK THIS IS TO ENSURE THAT WE HAVE A COPY OF YOUR ANSWERS SHOULD THE MARK-READING SHEET BE MISPLACED OR LOST**

**[TURN OVER]**

**SECTION A MULTIPLE-CHOICE QUESTIONS****QUESTION 1**

Peter and Saki are involved in a motor-car collision. Saki drives through a red traffic light whilst intoxicated. Peter sustains damages in the amount of R120 000 in respect of his motor vehicle and his medical costs amount to R100 000. Peter alleges that his damages are due solely to Saki's negligence.

Indicate the statement which is the most accurate.

- (1) Peter may institute either civil or criminal proceedings.
- (2) If Peter laid criminal charges, he would be called the plaintiff/applicant and Saki would be known as the defendant/respondent.
- (3) Peter is compelled by the state to institute civil proceedings against Saki.
- (4) In civil proceedings between Peter and Saki, the court may interfere in the manner in which they conduct proceedings.

**QUESTION 2**

Indicate the statement which is the most accurate.

- (1) The three primary ADR processes are litigation, arbitration and mediation.
- (2) Arbitration permits the disputants more control over the process than in the case of litigation.
- (3) Facilitation, final-offer arbitration and arb/med are all derivative ADR processes.
- (4) ADR processes are formal and involuntary.

**QUESTION 3**

Indicate the statement which is the most accurate.

- (1) In Continental civil procedure, the judicial officer is only actively involved during the trial stage of the proceedings.
- (2) In Anglo-American civil procedure, the judge is never active during the pre-trial stage of the proceedings.
- (3) Orality is a dominant characteristic of Anglo-American civil procedure.
- (4) The principle of bilaterality means in theory and in practice that both litigants have a fair and balanced opportunity to present their respective claims or defences.

**[TURN OVER]**

**QUESTION 4**

Indicate the statement which is the most accurate

Determine which one of the following situations a High Court will be competent to exercise jurisdiction

- (1) The plaintiff is an *incola* of the court in which the cause of action arose and the defendant is an *incola* of the Republic
- (2) Both parties to the action are *peregrini* and the cause of action arose outside the court's jurisdictional area. The defendant submits to the jurisdiction of this court
- (3) A spouse who is domiciled in the United Kingdom may not independently institute proceedings in a South African High Court in which the other spouse is domiciled
- (4) A contract is concluded between X and Z in Bloemfontein for the sale of property situated in Durban. X may institute proceedings against Z in the Durban High Court for registration of the property in his name

**QUESTION 5**

Indicate the statement which is the most accurate

A High Court may exercise jurisdiction on the basis of an order for attachment *ad confirmandam jurisdictionem* if

- (1) the defendant is a *peregrinus* of the court concerned, the plaintiff is an *incola* of the court concerned and attachment has taken place,
- (2) both the plaintiff and the defendant are *incolae* of the court concerned and attachment has taken place,
- (3) the plaintiff is a *peregrinus* of the court concerned, the defendant is a *peregrinus* of the whole Republic and the cause of action occurred within the area of jurisdiction of the court concerned and attachment has taken place within the jurisdictional area of the court,
- (4) attachment has taken place, the defendant is a *peregrinus* of the Republic and the cause of action took place outside the jurisdictional area of the court concerned

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**QUESTION 6**

Indicate the statement which is the most accurate

- (1) Only the Constitutional Court may adjudicate on any alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution of 1996
- (2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court
- (3) The Supreme Court of Appeal is competent to hear only non-constitutional matters
- (4) A magistrate's court is not competent to adjudicate upon the validity of any legislation but may pronounce upon the validity of the exercise of executive powers by the President

**QUESTION 7**

X, a resident of Bloemfontein, wishes to institute proceedings against Y, a resident of Durban, for an amount of R70 000 being damages sustained to his truck arising from a collision between his vehicle and Y's vehicle which took place in Johannesburg. The collision was solely the result of Y's negligence. Y is the owner of a holiday home in Cape Town and carries on business in Pietermaritzburg.

Indicate the statement which is the most accurate

The following magistrates' courts will have jurisdiction

- (1) only the magistrates' courts of Cape Town, Durban and Pietermaritzburg
- (2) only the magistrates' courts of Durban and Cape Town
- (3) only the magistrates' courts of Durban, Pietermaritzburg and Johannesburg
- (4) only the magistrates' courts of Bloemfontein and Durban

[TURN OVER]

**QUESTION 8**

C and D enter into a contract in Durban in terms of which C has to deliver goods to D's business premises in Bloemfontein. Despite demand C fails to deliver the goods. C lives in Pietermaritzburg and D lives in Johannesburg. D intends issuing summons against C for delivery of the goods.

Indicate the statement which is the most accurate

- (1) only the magistrate's court of Johannesburg will have jurisdiction to hear the matter
- (2) only the magistrates' courts of both Durban and Pietermaritzburg will have jurisdiction to hear the matter
- (3) only the magistrates' courts of Durban, Pietermaritzburg and Bloemfontein will have jurisdiction to hear the matter
- (4) only the magistrate's court of Pietermaritzburg will have jurisdiction to hear the matter

**QUESTION 9**

Indicate the statement which is the most accurate

- (1) A magistrate's court within whose area of jurisdiction a defendant resides, is vested with jurisdiction solely by virtue of the common-law *actor sequitur forum rei* principle
- (2) A claim for delivery of specific movable property without an alternative claim for damages, even though the value of the property does not exceed R 100 000 cannot be instituted in any magistrate's court
- (3) Splitting of claims occurs when more than one claim, each based on a separate cause of action, is contained in a single summons
- (4) The jurisdictional connecting factor *ratione rei sitae* is relevant only in respect of property claims

**QUESTION 10**

Indicate the statement which is the most accurate

- (1) A claim instituted by a registered company in the small claims court may not exceed the quantitative jurisdiction of R 7 000 imposed by the Small Claims Courts Act, 1984 as amended
- (2) In small claims courts, a party is entitled to cross-examine his or her opponent
- (3) A small claims court can hear an action for seduction or breach of promise to marry
- (4) Proceedings in a small claims court must be commenced by letter of demand

(10 x 3)

[30]

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**SECTION B****QUESTION 1****GENERAL PRINCIPLES**

- (a) Explain why a magistrate's court is referred to as a "creature of statute"? (2)
- (b) Explain the circumstances in which a judge under the adversarial system of procedure may be involved with process and pleadings (3)
- (c) Discuss party presentation in the context of adversarial proceedings (5)
- [10]**

**QUESTION 2****ALTERNATIVE DISPUTE RESOLUTION**

- (a) Define the term "arbitration" (2)
- (b) Explain why negotiation is a process (6)
- (c) State two differences between mediation and conciliation (2)
- [10]**

**QUESTION 3****JURISDICTION OF THE SUPERIOR COURTS**

- (a) X is a foreign politician who visits South Africa to deliver a series of lectures. X is domiciled in the United Kingdom and owns a holiday home in Cape Town. While giving a public lecture in Pretoria, X makes defamatory statements about Y, a local politician, who lives in Johannesburg. Y wishes to institute proceedings against X for damages on the grounds of defamation. In relation to the given facts, answer the following questions, giving reasons for each answer.
- (i) May Y institute proceedings against X in the Johannesburg High Court? (4)
- (ii) May Y institute proceedings against X in the Pretoria High Court? (4)
- (iii) May Y apply for an order in the Johannesburg High Court for the jurisdictional attachment of X's property situated in Cape Town? (4)
- (iv) If Y decides to institute action in the Pretoria High Court and X wants to avoid having his property attached, may X submit to the jurisdiction of this court? (4)
- (v) If on the same facts, X is now domiciled in Cape Town. May Y institute action in the Pretoria High Court to have X's property attached? (4)
- [20]**

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- (b) Q and R are married to each other. They are both domiciled in Durban for five years. Q, the husband, deserts R and becomes domiciled in Johannesburg. R, the wife, remains in Durban and wishes to divorce Q. Bearing these facts in mind, answer the following questions, giving reasons for your answers.
- (i) Briefly set out the provisions of section 1(1) of the Domicile Act, 1992 as they apply to the domicile of a married woman. (2)
  - (ii) May R institute divorce proceedings against Q in the area of jurisdiction of the Johannesburg High Court? (4)
  - (iii) May R commence divorce proceedings if she is domiciled in London but had from the time of her marriage to Q been resident in Durban? (2)
- [8]  
[28]

#### QUESTION 4

#### JURISDICTION OF THE LOWER COURTS

- (a) Thabo and Johannes enter into a contract in terms of which Johannes undertakes to develop specialist software for Thabo's business that is situated in Johannesburg. Johannes lives in Pretoria and he owns immovable property in Roodepoort. The contract is concluded in Johannesburg where Thabo carries on business. The software malfunctions at Thabo's business premises. As a result, Thabo suffers damages in the amount of R90 000. With regard to these facts, answer the following questions, giving reasons for each answer.
- (i) Does the magistrate's court for the district of Pretoria have jurisdiction? (2)
  - (ii) Does the magistrate's court for the district of Johannesburg have jurisdiction? (2)
  - (iii) Does the magistrate's court for the district of Roodepoort have jurisdiction? (2)
  - (iv) May Thabo institute proceedings in any magistrate's court if his claim for damages was in the amount of R 140 000, and Thabo admits that he owes Johannes an amount of R40 000? (2)
  - (v) Thabo wants to sue Johannes for an amount of R 30 000 for *iniuria*, because he alleges that Johannes swore at him when he went to see Johannes about the defective software. May Thabo institute a claim for *iniuria* in the same summons in which the amount of R90 000 is claimed? (3)
- [11]

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(b) Answer **ALL** the following questions

- (i) **Name** five matters that fall beyond the jurisdiction of a magistrate's court in terms of s 46 of the Magistrates' Courts Act of 1944 (5)
- (ii) Explain briefly what steps a defendant should take if he feels that a matter is too complicated to be decided by a magistrate's court (3)
- (iii) Discuss briefly whether a magistrate's court may determine whether an arrest in terms of section 30 of the Magistrates' Courts Act of 1944 is unconstitutional because it infringes a person's right to freedom of movement (3)

[11]

[22]

**TOTAL [100]**