

CIP201G

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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 7 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**

Indicate the statement that is the closest to correct

- (1) The South African High Courts are creatures of statute because they are *subject* to the provisions of the Supreme Court Act of 1959
- (2) The Uniform Rules of Court are a common set of rules that uniformly regulate the conduct of proceedings of all High Courts
- (3) Since the rules exist for the courts, a court cannot condone a litigant's non-compliance with its rules
- (4) The Minister of Justice and the Rules Board may make rules relating to the manner in which the Constitutional Court may be engaged (3)

QUESTION 2

Indicate the statement that is the closest to correct

- (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) By comparison to Continental civil procedure, 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 (3)

QUESTION 3

Indicate the statement that is the closest to correct

- (1) Mediation, conciliation and facilitation are all derivative ADR processes
- (2) The arbitration of matrimonial disputes is prohibited
- (3) Both negotiation and mediation are not processes because both lack the formalities and the technical procedure of litigation
- (4) In the arb/med process the parties try to resolve their differences first through mediation, failing which they resort to arbitration in terms of which a decision will be imposed on them (3)

[TURN OVER]

QUESTION 4

Indicate the statement that is the closest to correct

- (1) A juristic person may only commence proceedings in a small claims court when represented by a duly nominated director or other natural person
- (2) A small claims court is not competent to grant an interdict
- (3) The small claims courts have quasi-judicial powers which, unlike the magistrates' courts, enables the commissioner to play an active role in the proceedings
- (4) In small claims courts, a party is entitled to cross-examine his or her opponent (3)

QUESTION 5

Indicate the statement that is the closest to correct

- (1) The Roman-law rule *actor sequitur forum rei* means that the plaintiff must institute action against the defendant in the High Court within whose area of jurisdiction the defendant is a citizen
- (2) The *ratione rei gestae* applies when a court, in whose area of jurisdiction property or a person is situated/resident, has exclusive jurisdiction over that property or person
- (3) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action
- (4) On the basis of the *ratione domicilii*, a High Court may not exercise jurisdiction unless the defendant is physically present within its area of jurisdiction (3)

QUESTION 6

Indicate the statement that is the closest to correct

- (1) Although South Africa is a unitary state, the jurisdiction of High Courts is limited territorially to matters that arise within their area of jurisdiction and persons resident within that area
- (2) The Supreme Court of Appeal is the highest court of appeal in respect of all causes
- (3) Both the Constitutional Court and the Supreme Court of Appeal are competent to decide on disputes between organs of state at the national and provincial level
- (4) Unlike the Supreme Court of Appeal, the Constitutional Court can never be approached directly (3)

[TURN OVER]

QUESTION 7

Indicate the statement that is the closest to correct

A division of the High Court can exercise jurisdiction *ad confirmandam iurisdictionem* if

- (1) both the plaintiff and the defendant are *peregrini* of the court in question and attachment has taken place,
- (2) the defendant is a *peregrinus* of the court in question and the plaintiff is an *incola* of the Republic, provided attachment has taken place,
- (3) both plaintiff and the defendant are *peregrini* of the court and the entire Republic, attachment has taken place, and the cause of action occurred within the area of jurisdiction of the court in question,
- (4) the plaintiff is an *incola* of the court, the defendant is a *peregrinus* of the court and the entire Republic, the cause of action has taken place outside the area of jurisdiction of the court in question, and attachment has taken place (3)

QUESTION 8

Indicate the statement that is the closest to correct

- (1) A court may exercise divorce jurisdiction only if both or either of the parties are/is domiciled in the Republic on the date on which the action is instituted
- (2) A court may exercise divorce jurisdiction only if both or either of the parties are/is resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the institution of the action
- (3) A court may exercise divorce jurisdiction if both or either of the parties are/is domiciled in the its area of jurisdiction on the date on which the action is instituted or the parties are/is ordinarily resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the institution of the action
- (4) A court may exercise divorce jurisdiction if both or either of the parties are/is domiciled in the Republic on the date on which the action is instituted and the parties are/is resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of less than one year immediately prior to the institution of the marriage (3)

[TURN OVER]

QUESTION 9

Indicate the statement that is the closest to correct

- (1) A magistrate's court may exercise jurisdiction over the person of a defendant if the defendant is domiciled within its area of jurisdiction
- (2) A plaintiff may claim two amounts, namely R90 000 and R 80 000, in the same summons, even if the joint amount of the claims exceeds the magistrates' courts jurisdiction under section 29, provided that the parties are the same and provided that each claim is based on a separate cause of action
- (3) A magistrate's court would not be competent to exercise jurisdiction if the cause of action did not arise wholly within its district but there is compliance with the provisions of sections 29 and 46, and the defendant raises not objection
- (4) A claim for the delivery of specific movable property without an alternative claim for damages, even though the claim does not exceed R100 000, cannot be instituted in any magistrate's court because it is a claim for specific performance (3)

QUESTION 10

Indicate the statement that is the closest to correct

C and D enter into a contract in Durban in terms of which C must deliver goods to the value of R70 000 to D's 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 the delivery of goods with an alternative claim for damages

- (1) Only the magistrate's court for the district of Johannesburg will have jurisdiction to hear the matter
- (2) Only the magistrate's court for the district of Durban will have jurisdiction to hear the matter
- (3) Only the magistrate's court for the district of Pietermaritzburg will have jurisdiction to hear the matter
- (4) Only the magistrate's court for the district of Bloemfontein will have jurisdiction to hear the matter (3)

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SECTION B

GENERAL PRINCIPLES

QUESTION 1

- (a) Discuss the relationship between the *actor sequitur forum rei* rule and the *ratione domicilii* (4)
- (b) Briefly describe any three areas of South African civil procedure that you believe are in need of reform (6)
[10]

ALTERNATIVE MODELS OF DISPUTE RESOLUTION

QUESTION 2

- (a) Name the four (4) stages that characterise negotiation as a process (4)
- (b) Discuss the similarities and differences between the processes of arbitration and litigation (6)
[10]

JURISDICTION OF THE SUPERIOR COURTS

QUESTION 3

- (a) Q wishes to claim damages from Y on the grounds of breach of contract. Y owns a valuable commercial property situated in Cape Town. With these facts in mind, answer the following questions
- (i) If Y is domiciled in Johannesburg, will the South Gauteng High Court (Johannesburg High Court) be competent to exercise jurisdiction? (3)
- (ii) Would your answer to (i) above differ if at the time of the institution of the action, Y is temporarily resident in Durban? (3)
- (iii) In relation to your answer to (ii) above, explain whether the provisions of section 26(1) of the Supreme Court Act of 1959 would apply (2)
- (iv) Will the North Gauteng High Court (Pretoria High Court) be competent to exercise jurisdiction if Y is a *peregrinus* of the whole Republic, Q is domiciled in Pretoria and the contract was concluded in Zambia? (5)
- (v) Will the Durban High Court be competent to exercise jurisdiction if both Y and Q are *peregrini* of the whole Republic and the contract was concluded in its area of jurisdiction? (5)
- (vi) In relation to your answer to (v) above, explain whether the provisions of section 19(1)(c) of the Supreme Court Act of 1959 would apply (3)
[22]

[TURN OVER]

- (b) **H** and **W** are married to each other. They are both domiciled in Lesotho. **H**, the husband, is sent by his employer to manage a contract that his company has undertaken to perform in South Africa. For the purposes of his employment, **H** resides in Johannesburg. **W**, the wife, remains in Lesotho. While living in Johannesburg, **H** decides to divorce **W**. With these facts in mind answer the following questions:
- (i) May **H** institute proceedings in the South Gauteng High Court (Johannesburg High Court) if he is not domiciled in its area of jurisdiction? (3)
 - (ii) May **W** institute proceedings in the South Gauteng High Court (Johannesburg High Court) if she is neither domiciled nor resident in its area of jurisdiction? (2)
 - (iii) Will your answer to (i) above differ if **H** institutes proceedings only after having been resident in Johannesburg for 11 months? (2)
 - (iv) Does the term "divorce action" as defined in section 1(1) of the Divorce Act of 1979 include application *pendente lite* for access to minor children born from the marriage? (1)
- [8]**

JURISDICTION OF THE LOWER COURTS

QUESTION 4

P lives and works in Pretoria. In addition, **P** also owns a holiday home in Durban. **Timberland** is a registered company that does business as a furniture retailer in Pietermaritzburg. **Timberland** sold furniture to **P** to the value of R120 000 under a credit agreement. The agreement was concluded in Johannesburg. **P** falls behind with his installments, which are payable in Pretoria. **Timberland** wishes to institute proceedings against **P** to recover the outstanding amount of R90 000. With these facts in mind, answer the following questions:

- (a) Will the magistrate's court for the district of Pretoria be competent to exercise jurisdiction? (2)
- (b) Will the magistrate's court for the district of Johannesburg be competent to exercise jurisdiction? (3)
- (c) Will the magistrate's court for the district of Johannesburg be competent to exercise jurisdiction if **Timberland** issued summons out of this court and **P** raised no objection? (4)
- (d) Will the magistrate's court for the district of Pietermaritzburg be competent to exercise jurisdiction? (1)
- (e) Will the magistrate's court for the district of Durban be competent to exercise jurisdiction? (2)
- (f) Will any magistrate's court be competent to exercise jurisdiction if **Timberland's** claim is in the amount of R110 000 and **Timberland** owes **P** an admitted debt of R20 000? (4)
- (g) If **Timberland's** claim against **P** is R7 000, would it be possible for **Timberland** to institute proceedings in a small claims court? (2)
- (h) Would a small claims court be competent to exercise jurisdiction if **Timberland** and **P** consented to jurisdiction in respect of **Timberland's** claim for R8 000? (2)

[20]

TOTAL [100]