

CIP2601 (489172)
CIP201G (476636)

May/June 2011

GENERAL PRINCIPLES OF CIVIL PROCEDURE

Duration 2 Hours

100 Marks

EXAMINERS
FIRSTPROF OS SIBANDA
PROF E HURTER
PROF JA FARIS

PROF F CASSIM

SECOND

THIS EXAMINATION QUESTION PAPER CONSISTS OF SEVEN (7) PAGES PLUS INSTRUCTIONS FOR THE COMPLETION OF A MARK READING SHEET

This examination paper remains the property of the University of South Africa and may not be removed from the examination room

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 PAGE SECTION B CONSISTS OF QUESTIONS THAT REQUIRE WRITTEN ANSWERS (COUNTING 70 MARKS) 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 Sections 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 a separate page to answer the questions in Section A
- 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 a page according to the number of the statement For example, if you decide statement 2 of Question 1 is the most accurate, you write down option [2] on the particular page 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**

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

Indicate the most accurate statement

- (1) In the Anglo-American system of procedure, a judge must issue summons on behalf of the plaintiff
- (2) The judge is never active in the Anglo-American system of civil procedure
- (3) The principle of bilaterality is based on the assumption that the truth will emerge if, in an adversarial relationship with each other, the litigants present opposing versions of the same case
- (4) Every citizen is able to afford litigation because court time and court administration are paid for by the state

QUESTION 2

Indicate the most accurate statement:

- (1) The rules of court are a means in themselves rather than an end to the means
- (2) The procedure of the High Courts is regulated only by the provisions of the Supreme Court Act 59 of 1959
- (3) The Uniform Rules of Court are a common set of procedural rules that only regulate proceedings conducted in the High Courts
- (4) The Rules Board may make rules for the Constitutional Court

QUESTION 3

Indicate the most accurate statement

- (1) The plaintiff may issue a summons against the respondent.
- (2) If the accused is found guilty, he/she is liable to the complainant for damages.
- (3) In an instance where the accused raises a probable defence, the court must find the accused not guilty
- (4) A magistrate's court has discretion in regard to its own procedure

[TURN OVER]

QUESTION 4

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 12 000 imposed by the Small Claims Courts Act, 1984
- (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) A letter of demand is the first document in small claims court proceedings

QUESTION 5

Indicate the statement which is the closest to correct

- (1) Arbitration is an Alternative Dispute Resolution (ADR) process that has much in common with litigation, including guaranteeing procedural rights of litigants
- (2) When we refer to the reform of civil procedural law, we are in fact merely referring to certain proposed cosmetic changes
- (3) Both negotiation and arbitration are not processes because both lack the formalities and the technical procedure of litigation
- (4) A hybrid process of ADR is constituted when two or more elements of primary processes are combined

QUESTION 6

Indicate the statement which is the closest to correct

- (1) An *incola* of a particular High Court is a person who is domiciled or resident in that court's area of jurisdiction, and who must be a South African citizen
- (2) The *forum rei sitae* will exercise jurisdiction over immovable property only following the attachment thereof.
- (3) On the basis of the *actor sequitur forum rei* rule, a High Court may not exercise jurisdiction unless the defendant is domiciled or resident within its area of jurisdiction
- (4) 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

[TURN OVER]

QUESTION 7

Indicate the statement which is closest to correct.

According to the case of *Veneta Mineria Spa v Carolina Colliers (Pty) Ltd* 1978 (4) SA 883 (A), a submission to the jurisdiction of a High Court occurs when

- (1) both parties to the action are foreign *peregrini* and the cause of action has occurred outside the court's area of jurisdiction,
- (2) both parties to the action are *incolae* of the court concerned,
- (3) the plaintiff is an *incola* of the court concerned and the defendant is an *incola* of another South African Court, the cause of action has occurred outside the court's area of jurisdiction,
- (4) the plaintiff is a local *peregrinus* and the defendant is a foreign *peregrinus* and the cause of action has occurred within the court's area of jurisdiction

QUESTION 8

Indicate the statement which is the closest to correct

A High Court may exercise jurisdiction *ad fundandam jurisdictionem* if

- (1) Both the plaintiff and the defendant are *peregrini* of the court concerned and attachment has taken place.
- (2) The defendant is a *peregrinus* of the court concerned but an *incola* of the Republic, provided that attachment has taken place
- (3) Attachment has taken place in an instance where the defendant is a *peregrinus* of the court concerned and of the whole Republic, irrespective of whether the plaintiff is an *incola* or *peregrinus* of the court concerned, provided that the cause of action has arisen within the court's area of jurisdiction
- (4) The plaintiff is an *incola* of the court concerned, and the defendant is a *peregrinus* of the Republic, in an instance where the cause of action arose outside the area of jurisdiction of the court concerned, provided that attachment has taken place

[TURN OVER]

QUESTION 9

Indicate the statement which is the closest to correct

- (1) A counterclaim that exceeds the jurisdiction of a **district** magistrate's court must be instituted in a High Court having jurisdiction before the plaintiff's claim is heard in the magistrate's court.
- (2) Cumulative jurisdiction is when different claims between the same parties and which are based on different causes of action are contained in one summons
- (3) A lack of jurisdiction, either in terms of sections 28, 29 or 46 of the Magistrates' Courts Act 32 of 1944 can always be rectified by consent to jurisdiction in terms of section 45 of the Magistrates' Courts Act 32 of 1944
- (4) Section 39 is used in cases where the plaintiff's claim exceeds the quantitative jurisdiction of the **district** magistrates' courts and the defendant files a counterclaim. The effect of this is that the counterclaim is automatically deducted from the amount claimed to bring the claim within the quantitative jurisdiction limit

QUESTION 10

Indicate the statement which is the most accurate

- (1) The Supreme Court of Appeal is competent to hear only non-constitutional matters
- (2) Only the Constitutional Court may adjudicate on any alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution of 1996
- (3) 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
- (4) 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 X 10)

[30]

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

- (a) Briefly discuss how the function of a South African judge differs from that of a continental judge (6)
- (b) State any four (4) aspects of process and procedure in terms of which the Rules Board is competent to make rules or amend or repeal them in terms of section 6 of the Rules Board for Courts of Law Act 107 of 1985 (4)

[10]

[TURN OVER]

ALTERNATIVE DISPUTE RESOLUTION

QUESTION 2

- (a) Explain the differences between a consensual process and a command process (5)
- (b) State and explain the three stages of Arb/Med (5)

[10]

JURISDICTION OF THE SUPERIOR COURTS

QUESTION 3

- (a) X is an *incola* of the KwaZulu-Natal High Court, Durban 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. Give full reasons for your answers
- (i) May Z issue summons against X out of the KwaZulu-Natal High Court, Durban? (2)
- (ii) If Z does decide to issue summons out of the KwaZulu-Natal High Court, Durban, would it be possible to serve the summons on X in Cape Town? (2)
- (b) S enters into a contract of sale with T, whereby S purchases T's immovable 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 on the property (3)
- (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 (1)
- (c) R wishes to apply for an order for attachment *ad fundandam jurisdictionem* Discuss whether a High Court would grant such an order if both the plaintiff and defendant are *peregrini* of the Republic (4)

[12]

QUESTION 4

J and T are married to each other and are domiciled in Lesotho After having been married to each other for a period of 8 years, J wishes to divorce his wife, T. At the time of the institution of divorce proceedings, J had been living in Pretoria for ten months

With these facts in mind, answer the following questions Give full reasons for your answers

- (a) Why will the North Gauteng High Court, Pretoria, have jurisdiction to hear the action for divorce? (3)
- (b) Explain why the North Gauteng High Court, Pretoria, would retain its jurisdiction over the matter if T is domiciled in Pretoria and J, at the time of the break-up of the marriage, immigrated to Botswana where he lives permanently (3)

[TURN OVER]

- (c) Does **J** have any choice between instituting divorce proceedings in a High Court or in regional Magistrates' Court? (2)
[8]

JURISDICTION OF THE LOWER COURTS

QUESTION 5

V lives and works in Pretoria. In addition, **V** also owns a holiday home in Bulawayo, Zimbabwe. While in Pietermaritzburg, **V** is involved in a motor collision with **W**, who lives in Benoni. **W** wishes to claim damages from **V**, alleging that the motor collision was due solely to negligence on the part of **V**.

With these facts in mind, answer the following questions. Give full reasons for each answer.

- (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 Pietermaritzburg be competent to exercise jurisdiction? (2)
- (c) Will any district magistrate's court be competent to exercise jurisdiction if **W**'s claim is in the amount of R170 000 and **W** owes **V** an admitted debt of R90 000? (2)
- (d) Determine whether a district or a regional magistrate's court will 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? (4)
- (e) On the same dispute, **V** alleges that the motor collision was due solely to negligence on the part of **W**, and wishes to institute a counterclaim for the amount R400 000 for damages suffered. Discuss **V**'s options. (4)
- (f) If **W** enters into a contract with **P** to repair his motor vehicle and **P** fails to do so for a period of four months, will the district or the regional magistrate's court be competent to grant an order to force **P** to repair the motor vehicle? (4)
- (g) May **W** apply to the court for *arrest tanquam suspectus de fuga*, in case **V**, a judgment debtor, intends immigrating to Zimbabwe? (2)
[20]

QUESTION 6

Answer ALL the following questions

- (a) State four (4) matters that fall within the jurisdiction of a regional magistrate's court in terms of section 46 of the Magistrates' Courts Act, 1944. (4)
- (b) Describe the automatic rent interdict in terms of section 31 of the Magistrates' Court Act, 1944. (6)
[10]

TOTAL MARKS: [100]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT eg PSY100-K
STUDIE-EENHEID by PSY100 X

--	--	--	--	--	--	--	--	--

PAPER NUMBER
VRAESTELNOMMER

STUDENT NUMBER
STUDENTENOMMER

--	--	--	--	--	--	--	--	--

c0) c0) c0) c0) c0) c0) c0) c0) c0)
c1) c1) c1) c1) c1) c1) c1) c1) c1)
c2) c2) c2) c2) c2) c2) c2) c2) c2)
c3) c3) c3) c3) c3) c3) c3) c3) c3)
c4) c4) c4) c4) c4) c4) c4) c4) c4)
c5) c5) c5) c5) c5) c5) c5) c5) c5)
c6) c6) c6) c6) c6) c6) c6) c6) c6)
c7) c7) c7) c7) c7) c7) c7) c7) c7)
c8) c8) c8) c8) c8) c8) c8) c8) c8)
c9) c9) c9) c9) c9) c9) c9) c9) c9)

INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BY PRETORIA)

UNIQUE PAPER NO
UNIEKE VRAESTEL NR

--	--	--	--	--	--	--	--	--

c0) c0) c0) c0) c0) c0) c0) c0) c0)
c1) c1) c1) c1) c1) c1) c1) c1) c1)
c2) c2) c2) c2) c2) c2) c2) c2) c2)
c3) c3) c3) c3) c3) c3) c3) c3) c3)
c4) c4) c4) c4) c4) c4) c4) c4) c4)
c5) c5) c5) c5) c5) c5) c5) c5) c5)
c6) c6) c6) c6) c6) c6) c6) c6) c6)
c7) c7) c7) c7) c7) c7) c7) c7) c7)
c8) c8) c8) c8) c8) c8) c8) c8) c8)
c9) c9) c9) c9) c9) c9) c9) c9) c9)

For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- 2 MARK LIKE THIS ➡
- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- 4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
- 5 CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
- 6 CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- 7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- 8 DO NOT FOLD

BELANGRIK

- 1 GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
- 2 MERK AS VOLG ➡
- 3 KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
- 4 VUL U STUDENTENOMMER VAN LINKS NA REGS IN
- 5 KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
- 6 KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
- 7 MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
- 8 MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1	c1) c2) c3) c4) c5)
2	c1) c2) c3) c4) c5)
3	c1) c2) c3) c4) c5)
4	c1) c2) c3) c4) c5)
5	c1) c2) c3) c4) c5)
6	c1) c2) c3) c4) c5)
7	c1) c2) c3) c4) c5)
8	c1) c2) c3) c4) c5)
9	c1) c2) c3) c4) c5)
10	c1) c2) c3) c4) c5)
11	c1) c2) c3) c4) c5)
12	c1) c2) c3) c4) c5)
13	c1) c2) c3) c4) c5)
14	c1) c2) c3) c4) c5)
15	c1) c2) c3) c4) c5)
16	c1) c2) c3) c4) c5)
17	c1) c2) c3) c4) c5)
18	c1) c2) c3) c4) c5)
19	c1) c2) c3) c4) c5)
20	c1) c2) c3) c4) c5)
21	c1) c2) c3) c4) c5)
22	c1) c2) c3) c4) c5)
23	c1) c2) c3) c4) c5)
24	c1) c2) c3) c4) c5)
25	c1) c2) c3) c4) c5)
26	c1) c2) c3) c4) c5)
27	c1) c2) c3) c4) c5)
28	c1) c2) c3) c4) c5)
29	c1) c2) c3) c4) c5)
30	c1) c2) c3) c4) c5)
31	c1) c2) c3) c4) c5)
32	c1) c2) c3) c4) c5)
33	c1) c2) c3) c4) c5)
34	c1) c2) c3) c4) c5)
35	c1) c2) c3) c4) c5)

36	c1) c2) c3) c4) c5)
37	c1) c2) c3) c4) c5)
38	c1) c2) c3) c4) c5)
39	c1) c2) c3) c4) c5)
40	c1) c2) c3) c4) c5)
41	c1) c2) c3) c4) c5)
42	c1) c2) c3) c4) c5)
43	c1) c2) c3) c4) c5)
44	c1) c2) c3) c4) c5)
45	c1) c2) c3) c4) c5)
46	c1) c2) c3) c4) c5)
47	c1) c2) c3) c4) c5)
48	c1) c2) c3) c4) c5)
49	c1) c2) c3) c4) c5)
50	c1) c2) c3) c4) c5)
51	c1) c2) c3) c4) c5)
52	c1) c2) c3) c4) c5)
53	c1) c2) c3) c4) c5)
54	c1) c2) c3) c4) c5)
55	c1) c2) c3) c4) c5)
56	c1) c2) c3) c4) c5)
57	c1) c2) c3) c4) c5)
58	c1) c2) c3) c4) c5)
59	c1) c2) c3) c4) c5)
60	c1) c2) c3) c4) c5)
61	c1) c2) c3) c4) c5)
62	c1) c2) c3) c4) c5)
63	c1) c2) c3) c4) c5)
64	c1) c2) c3) c4) c5)
65	c1) c2) c3) c4) c5)
66	c1) c2) c3) c4) c5)
67	c1) c2) c3) c4) c5)
68	c1) c2) c3) c4) c5)
69	c1) c2) c3) c4) c5)
70	c1) c2) c3) c4) c5)

71	c1) c2) c3) c4) c5)
72	c1) c2) c3) c4) c5)
73	c1) c2) c3) c4) c5)
74	c1) c2) c3) c4) c5)
75	c1) c2) c3) c4) c5)
76	c1) c2) c3) c4) c5)
77	c1) c2) c3) c4) c5)
78	c1) c2) c3) c4) c5)
79	c1) c2) c3) c4) c5)
80	c1) c2) c3) c4) c5)
81	c1) c2) c3) c4) c5)
82	c1) c2) c3) c4) c5)
83	c1) c2) c3) c4) c5)
84	c1) c2) c3) c4) c5)
85	c1) c2) c3) c4) c5)
86	c1) c2) c3) c4) c5)
87	c1) c2) c3) c4) c5)
88	c1) c2) c3) c4) c5)
89	c1) c2) c3) c4) c5)
90	c1) c2) c3) c4) c5)
91	c1) c2) c3) c4) c5)
92	c1) c2) c3) c4) c5)
93	c1) c2) c3) c4) c5)
94	c1) c2) c3) c4) c5)
95	c1) c2) c3) c4) c5)
96	c1) c2) c3) c4) c5)
97	c1) c2) c3) c4) c5)
98	c1) c2) c3) c4) c5)
99	c1) c2) c3) c4) c5)
100	c1) c2) c3) c4) c5)
101	c1) c2) c3) c4) c5)
102	c1) c2) c3) c4) c5)
103	c1) c2) c3) c4) c5)
104	c1) c2) c3) c4) c5)
105	c1) c2) c3) c4) c5)

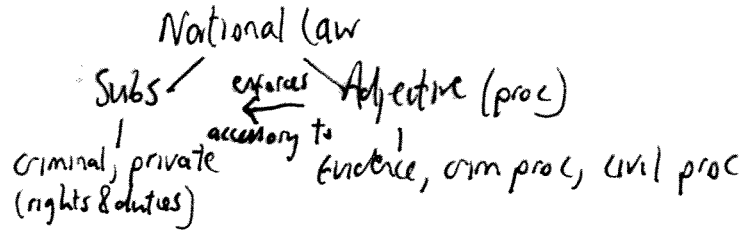
106	c1) c2) c3) c4) c5)
107	c1) c2) c3) c4) c5)
108	c1) c2) c3) c4) c5)
109	c1) c2) c3) c4) c5)
110	c1) c2) c3) c4) c5)
111	c1) c2) c3) c4) c5)
112	c1) c2) c3) c4) c5)
113	c1) c2) c3) c4) c5)
114	c1) c2) c3) c4) c5)
115	c1) c2) c3) c4) c5)
116	c1) c2) c3) c4) c5)
117	c1) c2) c3) c4) c5)
118	c1) c2) c3) c4) c5)
119	c1) c2) c3) c4) c5)
120	c1) c2) c3) c4) c5)
121	c1) c2) c3) c4) c5)
122	c1) c2) c3) c4) c5)
123	c1) c2) c3) c4) c5)
124	c1) c2) c3) c4) c5)
125	c1) c2) c3) c4) c5)
126	c1) c2) c3) c4) c5)
127	c1) c2) c3) c4) c5)
128	c1) c2) c3) c4) c5)
129	c1) c2) c3) c4) c5)
130	c1) c2) c3) c4) c5)
131	c1) c2) c3) c4) c5)
132	c1) c2) c3) c4) c5)
133	c1) c2) c3) c4) c5)
134	c1) c2) c3) c4) c5)
135	c1) c2) c3) c4) c5)
136	c1) c2) c3) c4) c5)
137	c1) c2) c3) c4) c5)
138	c1) c2) c3) c4) c5)
139	c1) c2) c3) c4) c5)
140	c1) c2) c3) c4) c5)

Specimen only

PART I Intro

①

Su 1 Subst & Adject law



Su 2 Enforcing law

	<u>Civil</u>	<u>Crim</u>
Parties	Plaintiff vs Defendant, ^{1,2} opp & resp	State/Prv Compl v Accused
Subject	Dispute 2 legal subjects, claim	Alleged transgression
Objectives	liability to compensate	Guilt
Order	voluntary for both (default judgment)	compelled
Proof	Bal of Prob Court intervenes only on applic (min standards)	Beyond Reasonable Doubt

Su 3 Inherent Jurisdiction

CC } superior mag
SCA } lower
HC }
SCC }
Cust courts }
other }

→ All powers from statute, dependent
→ may do nothing not permitted by law

- Inherent jurisd from C.L.

- Discretion of own proc - may do anything not forbidden by law

Su 4 Sources of Civil Proc law

stat: HC - Supreme Court Act. MC - Magistrates' Court Act. Small Claims Courts Act

rules of court - 1965 - uniform proceedings in HC

- 1985 - Rules Board for Court Act - power to make rules for SCA & HC

- President of CC @ Chief Justice may make rules for CC

- Minister of Justice makes rules for Small Claims Court

- Delegated legislation = binding statutory force

- means to amend, to facilitate inexpensive & efficient

- competent court may condone non-compliance if substantial injustice.

common law - HC - portion is a Roman Dutch writer & English law

5.5 Civil Procedure in context

- SA civil proc is part of Anglo American civil proc = adversarial (except Small Claims)
- Continental = inquisitorial (inquiry controlled & conducted by judicial officer)

- Adversarial Procedure

- litigation is private, contest, parties responsible for gathering & presenting info
- Pre-trial: exchange of pleadings, date, prepare
- Judicial officer passive during pre-trial & trial except upon motion.

- Both litigants, independently initiate & prosecute claims & investigate & gather info.

Bilaterality: fair & balanced opportunities. Truth emerges between 2 biased views

Party Prosecution: competence of priv indiv. Infringed has choice to commence

- defendant may consent to judgment / defend / ignore
- Private dispute @ interference from court, except for min standards

Party Presentation - competence of priv indiv to investigate, formulate issues in dispute, etc.

- litigant has control of contest. determine issues, define boundaries
- litigant is master of own rights & takes responsibility

- Role of Court

- Passive except Small Claims Court. Restricted to evidence, decision on arguments.
- No involvement in pre-trial except by request. Investigate & decisions separated.
- Current more towards judicial activism, not all clear-cut & definite
- legal reps take partisan stance

Criticism

- Financial inequality of litigants, rivalry & competition = dishonesty & tactics
 - No reconciliation, rather accentuates & heightens conflict. Adjudication, not rehab.
 - human problem reshaped to fit system. Compliance by coercion
 - Private issues in public hearing
 - technical & formal proceedings = delay. Costs are high (court is free)
- => revision continual, inc jurisd of lower courts, exclude spec disputes (labor), other para

PART II ADR

3

- Depth, extent & scope is generally uses variety of informal processes to R D industry

- Primary processes negotiation, mediation, arbitration.

- ADR processes are:

- informal (compared to litigation. No strict procedure/technicalities)

- flexible (to suit needs)

- voluntary (except when in court system)

- consensual (outcome thru consent)

- interest based (interests > rights)

- relational (good for relationship going forwards)

- future orientated (re-establishing future relationship)

CONSENSUAL
Neg & med
↓
Priv
int
internal rules
agree or not

Common law
litigation
↓
Public
formal & tech
ext rules
execute enforce

DIFF
VIC

- Litigation opposes, ADR is alternative, broad social purpose, state-sponsored thru courts
public, formal & technical, external rules, command-process

- Primary Processes

- NMA: New meaning in ADR context. Function extended to new "derivative process"
& combination to hybrids.

- Negotiation: Private, voluntary, consensual process seek resolution by agreement

- resolutions & transactions; agree on rules/standards, confidential (except for matter of public interest)

- voluntary & consensus = more co-operation. Not casual:

Stages: ① Orientation: assess each other & issues

② Positioning: gather info & take position

③ Bargaining: issues narrowed, concessions traded

④ Close-out: ends in agreement or failure.

- If not all these stages, might be debate/consultation

- bilateral/opposing views

- Agreement not opposed, non-binding

- Governs future relationship

- ④
- Mediation: Priv, vol, cons parties agree to resolve thru 3rd party (mediator) intervention, who is impartial and accepted.
- popular, in USA included as settlement process. Some statutes prescribe it = no longer voluntary, but process is consensual, no imposed agreement
 - Non-binding, possibly enforced by law of contract
 - Process: Pre-mediation: contact, explanation, arrangements, rules
 - Opening: mediator statement, disputants' statement, med summary
 - middle: explore & test options, negotiate solutions
 - closing: final bargaining, decisions, closing statement
 - 3rd party: Quite limited, controls process (not content/outcome)
 - Neutrality = difficult, but impartial & accepted by both, trusted.

- Arbitration: Disputants voluntarily & jointly ask arbitrator to hear both sides & make award, which disputants undertake in advance to accept
- closer to litigation as a command process, award imposed
 - Arbitration Act - Arb award can be made & enforced on court order
 - Final & binding, arbitrator's competence comes from consent
 - Decision by adjudication, more flexible than lit
 - No precedents, binding only on participants
 - Party control (select arbitrator, rules, issues, arrangements)
 - Issues relating to status of person (matrimonial/insolvency) not allowed.

- Derivative Processes:

- Mediation: Conciliation (more directive approach by conciliator, non-binding recommended)
 Facilitation (where no agreement is needed - creative problem solving)

- Arbitration: Expedited Arbitration / fast-track, waiving evidence rules, short time periods, ad hoc
- Docs-only: (no hearing)
 - Quality arb: (limited, look/sniff/taste (expert gives binding decision))
 - Final Offer Arb: (baseball - arbitrator chooses 1 most reasonable) discretion

Hybrid Processes

- Mini-trial: (lit & neg), trial procedure aimed at negotiated settlement
 : exchange of info \Rightarrow settlement negotiation
 : company disputes, fast, effective & cheaper than litigation
 : Neutral advisor supervises. Both execs should attend & have authority
 : Abbreviated versions of each best-case in limited time to inform execs
 : execs meet privately in good faith to settle
 If no agreement, advisor must give opinion, 2nd exec meet
 If still no, terminate or written offers to mediation

Med/Arb & Arb/Med

- Primary processes linked into 1 then same 3rd ^{single, continuous} intervener who controls both

Med/Arb

- Mediation, if not settled \Rightarrow arbitration = encouragement
 : preparation anticipating arbitration
 con: : Former mediator must apply natural justice to arbitration, now has intimate insight

Arb/Med

- arb \Rightarrow med \Rightarrow if no settlement \Rightarrow award
 arbitration goes to mediation before closing arguments
 mediation committee formed, to assist finding settlement
 binding arbitral award finalised, reflects what agreement should be
 not cons like above, and many pros
 - mediation issues tested in arb before coming to med
 - can influence the process in mediation & negotiate

Critique - positives

- NB that litigation is only 1 method Lit is one of many to choose from
- rights based interests. Private, mutually beneficial, voluntary compliance, focus on future, cost savings
- con - Procedural rights, not on record (appeals), only contractually binding, other expenses

5U7 Small Claims Courts (s 3, 4, 7, 12, 14-16, 22, 26-27, 29, 45-46 SCCA)

- Objectives

- Regulated by Small Claims Court Act 1984. to
 - make admin of justice more accessible
 - forum to settle minor civil disputes
 - remove time consuming, formalistic expensive procedures
 - reduce costs by preventing legal reps
 - consumer orientated
- self-representation by both, simplified pre-trial, commissioner is inquisitorial
- Part of court system, binding judgments, execution by state
- Cons:
 - very low jurisdictional limit (£7000)
 - some exclusions
 - only natural persons may appear commerce
 - appeal prohibited, review allowed.

- Differences with other courts

- No legal rep (minimise costs, pre-trial is informal, rules relaxed, comm modifie)
- Bare essentials of pre-trial formalities
- Adversarial, but with a active assisting commissioner

- Establishment & Nature

- Min of Justice may establish & notify in gazette
- Presiding officer = "commissioner for small claims" is appointed by Minister
- Not a court of record, except for judgment/order
- open court, except in extraordinary circumstances

- Right of appearance

- Only natural persons may appear. Juristic only on dependant (consumer)
- litigant in person, no representation (promote self-rep). Juristic rep by officer (adv)

Jurisdiction

- See Act
- Jurisdiction almost identical to Mag C. Note differences!
- Jurisdictional area of establishment
- Person Jurisdiction identical to Mag C
- Causes Jurisdiction similar to Mag C, but limited to R7000 (excl status, well perf & damage!)
- No jurisdiction by consent of matter outside of jurisd

Institution of actions

- Pretrial: letter of demand, allowing 14 days from receipt to satisfy
 - If not, summons from SCC with time & date
 - Service, by litigants or deputy sheriff (same as letter of demand)
 - No pleadings, but Def may make written statement of defense nature & grounds, lodge with clerk of court & defendant

Procedure & Evidence

- law of evidence doesn't apply. Commissioner has discretion to establish facts
- s 26(3): Establishes inquisitorial system
 - litigant may not question/interrogate other litigant or the witness
 - commissioner inquisitorially establishes facts, may question lit/wit
 - comm may allow lit to question lit/wit

Appeal & Review

- s45: Judgment/order is final, no appeal = criticism. No record = no appeal.
- Review ito: absence of jurisd, comm's interest/bias, gross irregularity

Inquiry into financial position

- Act give speedy execution. Judge obliged to ask judgment debtor if able to comply
 - if unable = enquiry into financial position. After, may order installments
 - diff to Mag C as enquiry is immediate, not after 10 days unsatisfied

PART III: Jurisdiction of Superior Courts

548 "Jurisdiction"

- Must be link/ nexus between court & parties/subject
- SA is almost a federation, with HC serving geographically. largely independent, ⁱⁿ _{the}
- Each HC has original jurisdiction over all cases in a geog area.
- in civil proc is the authority a court has to decide matters litigated before in
= ~~authority to hear & power to enforce~~

549 Structure of Superior Courts (s 167(3)-(7), 168, 169, 173 Constit, ^{s 6(2), 19} ₂₁₍₁₎ SCA Act)

- CC: highest court of appeal, also first instance with some constit issues
- SCA - old appellate div of Supreme Court
- HC - former prov & local divs & various homeland state courts

- Functions

- CC - Jhb. At least 8 judges 4 functions:

- Highest court of appeal in constit matters ^{only court of appeal of state}
- Only court: disputes of state organs, appl by legislature, parlt/pres failed constit duty
- May grant anyone direct access in interest of justice

- SCA - Bloem - Only appeal, never directly. Appeals from various HC's.

- Constit & non-constit matters. Highest final decision in non-constit matt.
- leave to approach is always required.

- HCs - Jurisdiction set out in constit & legislation

- SCA: HC may adjudicate on any cause arising in its area except other prov.
- all persons residing & domiciled

- HC limited geographically only. Common law principles except statutes, otherwise.

S410 Terminology (s1-3 Domicile Act)

- Actio sequitur forum rei - action in defendant's domicile. One accepted rationes jurisdictionis
- Dominus litis - plaintiff as "master of suit" can decide where concurrent jurisdiction
- Incola: domiciled/resident of a court's area. Each HC as a sep entity Citizenship irrelevant
- Peregrinus: not, ~~for~~ foreign or local peregrinus
- Rationes jurisdictionis - links between court & defendant/facts. domicile, residence, property, Facts give rise occurred in area
- Ratione rei gestae contract performed/breached or delict in area = jurisdiction rei gestae
- Ratione domicilii: jurisdiction of defendant's domicile if claim sounds in money
- Ratione situs: Property claims, court where property is situated.

- Attachment to found/confirm jurisdiction: Money claims of foreign peregrinus (arrest-warrants)
- Claim sounding in money: seeks payment, or payment as an alternative
- Doctrine of effectiveness: ~~no~~ court won't exercise jurisdiction if effective judgment
 - more 100% { SA citizen: compliance by contempt proceedings
 - { Resides outside of SA: attachment to confirm jurisdiction & give control
- Domicile lawful presence @ intention to settle indefinitely
- Reside: more than presence, less than domicile Intention to stay beyond next "home"

S411 Gen Overview of Jurisd Principles

- Diff jurisdictional principles for different types of claim money, prop, status, constit
- Comm law principles apply unless altered by legisl
- Claims sounding in money: - "actor" - plaintiff must instit where def is domiciled
 - principles of ratione rei gestae & foreigners has given other courts jurisdiction
- Claims re property: forum rei sitae is only court, relatively unchanged. All prop
- Matrimonial actions: a altered, now domicile of either party
- Constit actions: interp/prot/enforcement of constit, final decision is CC

↑ Superior courts

5912 Gen Princ of Jurisd of claims sounding in money

- If defendant lives in SA, that court, or court of cause of action will have jurisd
- No defendant in SA may have prop attached for jurisd
- Defendant resident/domiciled outside SA 2 courts: plaintiff domiciled or court of cause of act
 - IF attachment in SA (funds arrested or prop at
- Submission only if def is foreign peregrinus & court of CoA renders all unrec

13 Claims sounding in money where defendant is in SA of court (s19(1), 28(1) SCA Act)

- Def is in SA of concerned court: ratione domicilii, based on actor sequitur forum rei
 - Court has jurisdiction over def who is in SA, plaintiff & cause doesn't matter
 - def must be dom/res at time action is instil (summons issued/served)
 - doesn't need phys presence/residence, just domicile
 - if dom in one, and resident in another, both have jurisd of rat domicil
- Def is peregrinus of court, but in SA of another SA court = local peregrinus of court
 - only jurisd if cause of action arose in area (facts which give rise) = ratione rei geste
 - plaintiff is irrelevant, but defendant must be local (not foreign) peregrinus
 - contract concluded/breached/performance effected (jurisdiction ratione contractus)
 - delict committed in area (jurisdiction delicti commissi)
 - No attachment if domiciled/resident in SA

14 Claims sounding in money where Def is foreign peregrinus (s19(1), 26(1) SCA Act)

- Def is foreign peregrinus & plaintiff is in SA of court + attachment of def's prop = attch ad fundam
 - order for attachment funds jurisd, cause of action's area is irrelevant
 - order is only permissible if plaintiff is in SA & def is foreign peregrinus
- Def is foreign peregrinus & cause of action arose in area + attachment = att ad compromissum jurisd
 - Attachment confirms imperfect jurisdiction other part of jurisd from ratione rei geste
 - Claim must just be money-based. Ratione contractus = many actions = possibly many courts & jurisd
 - + Submission possible
 - confirms jurisdiction
- Attachment to fund/confirm jurisd may happen in SA (outside jurisd area). Precedes main action
- Plaintiff nation - some cases can sue in another country

↓ Money claims ↑ superior courts

(1)

su 15 Submission vests jurisdiction (not 100% clear)

- Only money claims, since property/status jurisdiction usually grants a court excl jurisdiction
- Persons who may submit
 - Never incola def as court is already vested with jurisdiction *ratione domicilii*
 - Def local peregrinus - Despite submission, a trad ground of jurisdiction is still needed
 - Courts refused jurisdiction by submission. Cause of action & incola are
 - Def foreign peregrinus, plaintiff incola of court Court held a trad ground of jurisdiction still needed
 - plaintiff incola, def foreign peregrinus + attachment = jurisdiction
 - Foreign peregrinus can't avoid attachment by submission.
 - Submission only if cause of action are.
 - Def foreign peregrinus, plaintiff local/foreign peregrinus:
 - cause of action + attachment to confirm jurisdiction needed but
 - if foreign def submits to jurisdiction before attachment order, attachment will be unnecessary
 - only instance where submission to jurisdiction can take place.
- mutual consent or def's unilateral action. usually in writing
- If disputed, plaintiff must prove def's behaviour shows he submitted

Sub

sub Jurisdiction of property claims

- many claims sounding in money regard property, but these are order of spec. identifiable prop
eg. delivery of a specific item, or order of
- gen comm law: forum rei sitae (area of prop) has jurisd, often exclusive.

- Immovable prop

- Situated court has excl jurisdiction in actions:
 - to determine title, to transfer, to partition, real-right dispute, where possession is claimed, where rescission of a contract for transfer is claimed
- def is irrelevant

- Movable prop

- Court in wh's area the movable prop is situated in actions:
 - to determine title, for delivery, where a real right is at issue.
- exclusivity is debatable as items can be removed with under owner (possessor contra)
 - ∴ court of owner/possessor (forum domicilii) should also have jurisd on judgment can be enforced anywhere in SA.
- forum rei sitae will always have jurisd, forum domicilii is unclear

SH17 Matrimonial Jurisd (s2 Divorce Act, s11 "cont" & "divorce action" Div Act, s1-3 Dom Act)

- Jurisd of status issues not on effectiveness (like \$ claims) but on recognition in other countries
- Basic comm law - Court of common domicile (problem as = husband's) & geog restric of HC

Divorce - Dom Act ⇒ dependent domicile abolished. Married woman has independent domicile
 ⇒ dom & residence are separate. Domicile/residence of either spouse gives area court jur

- Div Act decides if a spec HC has jurisd ⇒ independent dom/residence of H or W
 ⇒ either is ordinarily resident in area in SA 1+ years

- Even if either spouse is res/dom outside SA. (Foreign plaintiff allowed)

Nullity & annulment

- Outside the scope of "divorce action", so Div Act doesn't apply.
- Action for nullity of "void" marriage doesn't alter status, as it is a declaratory order
 - no marriage ever existed
 - jurisd forum loci celebrationis (where "marriage" was acted) or from either domicile at time of nullity.
- Action for dissolution of "voidable" marriage does change status, back to orig positions
 - comm. law applied (comm domicile) or independent dom

su 18 Constitutional Jurisdiction (s 167(3-7), 168(2), 169, 172(2))

- CC

- CC hears only matters involving intep, prot or enforcement of constit
- CC decides what it can hear,
- CC has excl jurisd on certain matters, and concurrent jurisd in others.
- excl jurisd 167(4) disputes between state organs at nat/prov level re constit powers, status, p
- constit of parliamentary/provincial bills
- If president/parliament has failed a constit duty
certification of provincial constitution.
- Majority issues fall outside of these, so CC is rarely 1st instance, usually approach HC, then appeal to CC. CC is the court of final instance
- HC/SCA may declare Act of parliament invalid, but CC must confirm before fo
- CC can give leave in interest of justice to approach CC direct etc.

- SCA

- May decide appeals in any matter, incl constitutional. No further appeal for non-constit
- No appeal from HC @ leave from "appeal" court. Courts themselves decide.
- If appeal is constit+non-constit - first to SCA
- If appeal is purely constit - normally first to SCA. Possible to ask CC direct if interest of just

- HCs

- HC may hear all constit matters except for CC exclusive ones above
- If HC finds par/prov legisl or conduct of prez is unconstit, must be confirmed by CC before effect
- may grant temp relf until confirm (same on SCA)

- MCs

- Constit doesn't give constit jurisd, but legisl might give
- MC can't pronounce on validity of law (legisl & CC). Can't pronounce on Prez conduct
- must assume that above laws/conduct are valid if brought up, then appeal

PART IV Jurisdiction of Mag Courts

(14)

5/19 General Intro

- HC jurisd is inherent & CL based. Anything if not expressly excluded.
- MC created by statute, can only do what is statutorily permitted.
- HC geographically limited, no general prohibitions.
- MC: Can this action ever be in MC? Is amount too big? In which MC?

Provisions Governing Jurisd

46 nature
29 amount
28 persons

- s 46 & 29 MCA: 46 claims which are excluded. 29: Max amount
- then more on to which MC is correct. s 28 deals with jurisd of persons.

Re all MCs: may grant interdicts, interdicts peculiar to MC, may decide on matters out of jurisd to determine a matter it may hear, how dependent can transfer to HC, and can it pronounce validity of any legist.?

Jurisd limit of MCs: how to reduce the amount claimed to fall within jurisd limit, can't split claim, more than 1 amount where each is less, how parties can consent when higher than limit, what if counterclaim is higher.

Mag Court - no common law principles (actos/ratio) as statute

5420 Limitations on nature of claim (s 46 MCA)

- MC, unlike HC, are restricted to nature of cause of action
- parties cannot consent to confer jurisd.

46(1) - MC can't grant divorce as it effects status.

- No jurisd in separating ponds of community of prop (can hear out of court)
- may sometimes be authorised by other legis (eg grant consent when spouse unreal with

46(2a) - No jurisd where validity/interp of will is in question

- can hear action resulting from provisions

No jurisd where.

46(2b) - Mental status is affected. So can't declare insane or incapable of managing

- may appoint curator for a person already declared insane

46(2c): No jurisd if specific perf or alternative of damages exc: ^{or consented} trans prop < 100,000 rendering account < 100,000

- Spec perf is of a contractual oblig
- claim for contractual payment is not spec performance in the section (unlike strict liability) ^{Speaking:}
- = claim sounding in money (from contract or not) can never be spec perf
- ∴ this section applies only to spec perf of a contract. HC must order spec perf
- courts (& HC) are reluctant to grant spec perf if (impossible, contra, difficult to enforce, damages)

46(2)(i): MC has jurisd to grant statement of account

46(2)(ii): deliv/transf or improp prop less than 2000 or consent if over

46(2)(d): No jurisd when seeking degree of perpetual silence. (inst to litigate within time) (if not instituted, may never be instituted) as limited legal assistance.

s21 limitations on amount of claim (s29 MCA)

- Actions allowed in MC, but not allowed if exceeding
- Can consent to MC if amount is greater than s29, not if causes in excd by s46

except. on spec perf s29

- s29 "actions" is wide = all proceedings. MC shall have jurisd:
→ 29(1)a: deliv/trans im/mov prop less than £100,000 Actual market value ^{must} ~~have~~ prove

→ 29(1)b: actions of ejectment, right of occupation less than £100,000.

- action of ejectment is not spec perf.
- "£100,000 clear value to occupier" is difficult - residential = rental of similar places
business = cost of similar profit/amount of profit.

→ 29(1)c: determining right of way (s46 provisions excluded), so no limit, jurisd of any ^{right} _{of} way.

→ 29(1)d: action from liquidator/mortgage bond this is where debtor admits debt. ^{only amount owing less than £100,000}

s29(1)e: action from any credit agrmt. (installment sale)

- plaintiff seeks ① recovery of prop or ② payment of money owed (each payment = sep claim)
- value at claim < £100,000 → each outstanding payment > £100,000

s29(1)f: actions from Matr Prop Act value > 100,000. 1 of exception to s46(1).

- spouse asks for consent from MC where other spouse cons or refuses to

s29(1) fA: actions from Close Corp Act incl appl for liquidation

- MC's only insolvency appl. All others → HC

s29(1) g: other actions which value > 100,000.

- relevant for alternative claims Value of prop & alt claim > 100,000

s29(2): action includes claim in reconvention (= counterclaim) also subject to these limits.

s22 Jurisdiction re persons (s 28, 30 bis Mag C Act, Rule 57 1-3, 5, 7 Mag Court Rule

- link between person & spec mag court. limited by stat
- s 28 "persons" means dependent def situation gives jurisd. list is exhaustive

- s 28 MC has jurisdiction:

s 28 (1) a: resides, comes ^{own} on business, ^{degree of person} employed in district
- date of service of summons is key.

s 28 (1) b: partnership @ business premises or member residing

- pship not juristic entity, partners sued jointly. inconsistent in Comm Law.

s 28 (1) c: any person in any proceeding "incidental" to an action, or proceeding instituted by himself

- CL assumption that plaintiff submits to jurisd re counterclaim doesn't apply to MC
- many, but not all counterclaims are incidental (same facts)
- if not incidental (diff facts) & plaintiff doesn't object, court will have

s 28 (1) d: any person if cause of action arose wholly @ in district

- HC needs ^{ratione rei gestae} partial causal. Mag Court Act needs CoA to arise wholly
- MC contract action: concluded & breached in area. entire set of facts
 - ▲ facts probanda (at issue) - damage, cause, harm
 - ▲ facts probantia (facts relevant to facts at issue) - owner, reasonable costs
- if doubt, use sections above (ie resides or employed)
- summons must state that CoA arose wholly @ in area

s 28 (1) e: any party to interpleader proceedings: possessor bring & claiming owners

s 28 (1) f: any defendant who appears & doesn't object. Submission = jurisdiction. Failure to object.

s 28 (1) g: any who owns immov prop in area & action regards that prop or its mortgages

- s 28 (2): state included on person/def.

- s 30 bis Court may order attachment of person/prop to confirm/confirm judgment against person who resides out of SA, for action in district, for matter of rel +

- widely worded, MC ability greater than HC's. Should be read in light of HC
- ∴ plaintiff must be resident in district. §
- ∴ To confirm judgment, whole CoA must have arisen within limits.

- Procedure for obtaining order for arrest/attachment

- Ex parte application (no notice to respond). If warn notified, might try prevent
- After order, respondent may approach to alter. All details in affidavit.

5423 Other provisions determining Mag Court jurisdiction (s 170 Constitution, s 30-32, 37, 50, 110 Mag C Act)

- s30 - MC may grant interdicts
- s31, 32 - interdicts peculiar to MC
- s37 - to determine a MC matter, it may decide on matters outside its jurisdiction
- s50 - how a defendant can transfer to HC if not happy with MC

- s30 - Interdicts

- "Mag C has jurisdiction to grant certain orders which might otherwise be available in terms of s46 (no spec perf @ alt damages). Mag grant interdicts, attachment orders, mandamentum van spolie & arrests tanquam suspectum de fugiendo
- must still comply s28 & 29 (monetary & person limits)

- Interdicts

- court order to perform / not a specific act (not = prohibitory, to = mandatory)
- final or temp (perm vs temp)
- mandatory could be spec performance (no alt for damages)
- courts => MC may grant mandatory interdicts as long as not orders ad factum praestantiam ito contra oblig?
- diff to assess financial value. If doesn't appear otherwise & defendant doesn't dispute

- Mandamentum van spolie

- restitutionary interdicts, forcing someone to return prop unlawfully taken
- applicant need not be owner or have any claim. Value limit applies
- to prevent taking law into own hands. Restore possession before merits
- allowed as not ito contract oblig, s46 not concerned with temp extraordinary remedy

- Arrests tanquam suspectum de fugiendo

- if debtor owes creditor, Cr needs judgment before enforcing. Or debtor flees
- may arrest / give security

- Attachments

- Applicant must show it likely that respondent will dispose
- creditor attaches goods sold & present asset but is

- s31832: Rent interdicts

- As soon as lessee falls behind, landlord gets tacit hypothec over all household effects on that prop
- If these are removed, = no hypothec

- Automatic rent interdict

- ~~As soon as lessee falls behind, landlord gets tacit hypothec over household effects~~
- Ordinary interdict may be used to prohibit removal of household effects
- Mag C Act created simpler and cheaper one
- When summons is issued for arrear rental, plaintiff may include notice prohibiting removal = automatic interdict, until order dealing with goods has been made
- addressed to defendant & anyone who is aware

- Attachment of property in security of rent

- Automatic rent interdicts only valid for people aware
- s32 provides for attachment order to supplement & secure enough for what is owed
- Lord must apply with arrear rent due, written demand 7 days or belief of plan to remove
 - also provide security for costs, damages & expenses
- Order may apply to set aside or consent to auction or plead & trial.

- s37: Incidental Jurisdiction

- Question arises (which is outside jurisdiction / jurisdictional matter) - may not order, but may make a finding. (May inquire into ownership of fixed prop on a rates claim, or divorce)
- If relief is within jurisdiction, what it considers/finds doesn't matter

- s50: Removal to HC

- Party feels matter is too complex. Plaintiff always free to (only fear is higher HC cost order)
- If it's the Def, he is summoned to plaintiff's court. Def must apply to summons court:
 - o Amt claim > £3000, objects to MC, notice given to def, judges & others & furnish security
- if complies, MC is stayed. Then transfer to HC or issue fresh summons

5424 Provs affective claims outside jurisd limits

- 529 - financial limitations, affected by:
 - 538 & 39: how to reduce claim.
 - 545 - consent financial/persons
 - 540 - prohibiting splits
 - 543 more than one amount, total exceeds, 547 - counterclaim exceeds provd.

- 538: Abandonment of claim

- claim > 100,000, but wants MC because of costs being lower May abandon part
- good idea if difficult to ~~open~~ ^{any time / even during trial}
- details in summons / document, cont will find on whole amount, only order to 100,000
- plaintiff will receive lesser: amount proved vs 100,000 @ better. ^{should full set off abandoned amount}
- counterclaim is deducted from awarded, not amount before counterclaim.

after 4
not allow

may use
book

- 539: Deduction of admitted debt

- Def has claim vs plaintiff. def would counterclaim (= 2 sep actions combined).
- If plaintiff wishes to claim more than limit & knows of possible counterclaim
- can admit & deduct. Def can counterclaim for higher amount (doesn't need to prove admitted)
- unlike 538, cont deduct admitted from full amt not provd
- plaintiff will receive amt proved less amount admitted. Always lose admitted amt

- 545 - Consent

- Gives parties ability to consent despite 528 or 29, but not 46. Both must agree
- ① Jurisd over person, but beyond financial ^{persons financial} written consent any time, even before action
- ② No jurisd over defendant or amount: specifically to proceedings
- ③ Financial jurisd, but not over person: specifically to proceedings instit or about to be valid if for any mag court, not a spec one. ^{matters}

- 543 - Cumulative Jurisdiction

- 2 claims on diff causes of action, 1 summons, same jurisd as if each was separate
- if confirmation of interest / interest + damage, same case, will treat each sep & except

- 540 - Splitting claims

- Deft. ought to abate. Claims splitting must be diff causes of action
- Regarding every fact necessary to be proved.

- 567 - Counterclaim exceeding jurisdiction

2 alternative for defendant @ counterclaim exceeding jurisd:

- ① Abandon its 538 to bring within
- ② Have counterclaim decided by HC before plaintiff's claim.

- Def must ask if claim exceeds jurisd, persuade a reasonable prospect of judgment. If successful, orders plaintiff's case to be stayed for reasonable period, def can instil HC action.
- Plaintiff may instil orig mc claim as a HC counterclaim