INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of EIGHT (8) pages. Please ensure that you have them all.
3. Answer ALL questions. Please answer each section in a separate answer booklet.
4. Keep answers BRIEF and TO THE POINT.
Question 1

1. Rosie who lives in Pinetown (KZN D) enters into a contract in Port Elizabeth (EC PE) with Cider who lives in Claremont (WC CT) in terms of which Rosie purchases a farm situated in Rosetta (KZN P) for the sum of R 2 million. Rosie also agrees to purchase all the cattle on the farm for an amount of R 500 000.

Rosie duly made payment of R 1 million as a deposit on the farm. The amount of R 500 000 has been paid for the cattle. In terms of the deed of sale the balance of the purchase price of R 1 million is to be paid out of the proceeds of a bond to be registered over another property belonging to Rosie. The property to be bonded is situated in Sandton (SG J) and the agreement provides for the bond to be registered prior to or simultaneously with the transfer of the Rosetta property into Rosie’s name.

Rosie breaches the contract in Sandton where she refuses to sign the necessary documents for the purposes of registering the bond. As a result, Cider refuses to deliver the cattle to Rosie. Rosie has subsequently ascertained that the cattle have now been moved to a farm in Clarens (FS B).

1.1 Which court (s) would have jurisdiction to hear an application by the seller for an order compelling the buyer to sign the bond documents.

(2 marks)

1.2 Which court (s) would have jurisdiction to hear an action instituted by the seller for payment of damages.

(6 marks)

1.3 Which court (s) will have jurisdiction to hear an application by the purchaser for an order compelling the seller to deliver the cattle.

(2 marks)

You must cite the relevant jurisdictional principle if you do not, you will not be awarded any marks for your answer.

(Total Marks for Q1: 10 Marks)
Question 2

Sipho is the owner of a farm in Howick. Edison Power approaches Sipho to register a right of way over his farm in favour of them. Sipho refuses to register a right of way over his farm. The value of the right of way to Edison Power is R 700 000 and the right of way will diminish the value of Sipho’s farm by R 250 000. Which court should Edison Power approach to acquire the necessary relief? Motivate your answer.

(2 marks)

Question 3

Peter Pan and Queen Bee were involved in a motor vehicle collision in Pietermaritzburg. The collision took place on the 15 July 2016 at the intersection of West and East Street. Peter Pan alleges that the accident was caused due to the sole negligence of Queen Bee. Peter Pan wants to sue Queen Bee for damages in the amount of R 75 000. Peter Pan is uncertain which court(s) will have jurisdiction in the matter. You are given the following information: Peter Pan resides in Howick and works in Richards Bay, whereas Queen Bee lives in Greytown and works in Durban.

Identify the court(s) that will have jurisdiction in the matter. Motivate your answer fully.

(6 marks)

Question 4

Queen Nandi wants to enter into a contract with Cool Air Air-conditioning for the supply and installation of air conditioners in the amount of R 750 000. Both parties have requested that you draft the contract and make provision for the Pietermaritzburg District Magistrate’s Court to hear the matter in the event of a breach of contract. Cool Air Air-conditioning has its principal place of business in Gauteng and Queen Nandi resides in Durban.

4.1 Discuss whether a clause to this effect would, be valid. Motivate your answer fully.
4.2 Draft a valid clause incorporating the parties’ intention.

(5 marks)
Question 5

Aster institutes a claim against Pansy for the amount of R 350 000 arising out of a breach of contract in the Regional Magistrate’s Court. Pansy defends the matter and institutes a counter-claim against Aster for R 420 000. Advise Aster which court will have jurisdiction to hear the matter. Motivate your answer fully.

(2 marks)

Question 6

Lindiwe purchased stationery to the value of R 13 750 on the 15 September 2016. The suppliers, Pens & Pencils, have failed to make delivery to date. Advise Lindiwe of the most cost effective way of obtaining delivery.

(5 marks)

(TOTAL SECTION A: 30 MARKS)
SECTION B

Question 7

On 3 July 2016, XYZ University entered into a contract with Electronic Supplies (Pty) Ltd trading as Computer Stores in terms of which the parties agreed that Computer Stores will supply XYZ University with 300 flat screen computers. The agreement was concluded at the business premises of Computer Stores at 21 Boshoff Street, Pietermaritzburg. XYZ University was represented by its Vice-Chancellor and Principal Professor James Adams, and Computers Stores was represented by its Managing Director (MD) Mr King Mkhize. The entire cost of this project was 50 million rand which XYZ undertook to pay in full as soon as the computers were delivered. Computer Stores began delivering the new computers in batches until all 300 computers were delivered by 31 August 2016. However, XYZ University has, despite demand, failed to make payment as per the agreement. Computer Stores then issued and served a summons on XYZ University, which summons was duly served by the Sheriff on 30 October 2016. XYZ University has since filed an appearance to defend.

7.1 Given the legal steps that have already been taken in this matter, advise Computer Stores on the most effective form of legal proceedings they may use to recover the amount owing. Include in your answer a list of claims that may be recovered using this form of legal proceedings.

(6 marks)

7.2 What allegations is Computer Stores, as the plaintiff, required to make in its affidavit in support of the proceedings identified in 7.1 above.

(2 marks)

7.3 What options would be available to XYZ University, the defendant, upon receipt of the papers in support of the proceedings referred to in 7.1 above.

(2 marks)

(TOTAL FOR Q7: 10 MARKS)
Question 8

You are approached by the Head of Legal Services at ABC Bank, an authorised financial services provider, who instructs you to handle a matter on behalf of the Bank. In this matter, ABC Bank wants to recover an amount of R500,000 which is owed by its client, Kevin Abrahams. You then serve Kevin with a demand. Upon receipt of the demand, Kevin informs you that he acknowledges his debt to ABC Bank and subsequently enters into an acknowledgement of debt (AOD). Kevin subsequently fails to abide by the repayment procedure agreed upon in the AOD.

8.1 Would you advise ABC Bank to make use of the Provisional Sentence Procedure to recover the amount owing? Provide reason(s) for your answer.

(4 marks)

8.2 Discuss fully the legal consequences should provisional sentence be refused by the court.

(2 marks)

8.3 In the event that the court grants provisional sentence, would it still be possible for the defendant to enter into the principal case? Discuss fully the steps that the defendant would need to take.

(4 Marks)

(TOTAL FOR Q8: 10 MARKS)
Question 9

Sipho and Katlego have been friends from childhood and they now share a flat in Scottsville, Pietermaritzburg. It transpires that Super Clothing CC has taken default judgment against Sipho for an unpaid clothing account. As a result, the Sheriff approaches Sipho and Katlego’s flat, serves Sipho with a warrant of execution and proceeds to attach and remove property to the value of the judgment debt. Included in the property so attached and removed is a television set belonging to Katlego.

9.1 Set out, in note form, the procedure to be followed by the relevant parties in order to have the television set removed from attachment.

(11 marks)

9.2 Assume that Katlego succeeds in having his television set released from attachment and Sipho now wishes to enter into the principal case and defend the matter. It also comes to light that the default judgment taken by Super Clothing CC against Sipho came after the summons was served by affixing it to the front door of the flat, but was never received by Sipho. Set out, in note form, what Sipho needs to prove and the procedure to be followed in rescinding the judgment.

(5 marks)

(TOTAL MARKS FOR Q9:16 MARKS)
Question 10

Explain what is meant by:
10.1 Party and party costs; and
10.2 Attorney and client costs.

(4 marks)

(TOTAL MARKS FOR Q10: 4 MARKS)

(TOTAL MARKS FOR SECTION B: 40 MARKS)

(TOTAL MARKS FOR PAPER: 70 MARKS)