

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B FINAL EXAMINATIONS**  
**L481: LAW OF CIVIL PROCEDURE**

**MAY 2017**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR (4)** of the six (6) questions.
2. Write neatly and legibly.
3. Where there is a need to make corrections or alterations, simply ~~strike through~~ with the single line.
4. Legal authorities, wherever applicable, must be used.
5. Any legal authority used or cited should be underlined.

### Question 1

Critically discuss the view that, regard being had to the Canadian Supreme Court's jurisprudence on *locus standi in judicio* in constitutional cases such as *Canada v Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 SCR 524, the Lesotho High Court and Court of Appeal's approach to this important procedural constitutional principle is not only pedantic but also has serious consequences on the rule of law, constitutionalism and constitutional justice.

**[25 MARKS]**

### Question 2

When dealing with the pleadings and the purpose thereof in *Frazers (Lesotho) Ltd v Hata-Butle (Pty) Ltd* LAC (1995-1999) 698, the Court of Appeal warned against one party directing the attention of the other party to one issue and then attempt to canvass the other at the trial.

- (a) State the purpose of pleadings in civil proceedings.

**4 Marks**

- (b) Discuss the general principles governing pleadings in civil proceedings

**18 Marks**

- (c) Apart from giving the warning, highlight the Court of Appeal's reaction in circumstances where a party, during the hearing, attempts to canvass a point which she had not raised or alleged in the pleadings.

**3 Marks**

**[25 MARKS]**

### Question 3

In *CGM Industrial (Pty) Ltd v Adelfang Computing (Pty) Ltd* LAC (2007-2008) 463, paragraph [12], the Court of Appeal stated that:



“There is confusion on the record before us with regard to whether the first application for rescission was brought under the provisions of High Court Rule 45 (1) or under the common law. Either is permissible, although different considerations apply to each.”

With the aid of decided cases, critically discuss the difference between rescission under Rule 45(1) of the *High Court Rules* 1980 and rescission under the common law.

[25 MARKS]

#### Question 4

*Ho Chang Ho (Pty) Ltd* is an external company – a body corporate incorporated outside Lesotho – originally incorporated in Shanghai, People’s Republic of China, and is registered under the *Companies Act* 2011 as such. In terms of its Articles of Incorporation, its registered head office is “15A Floor Marine Tower, No.1 Pu Dong Avenue, Shanghai” and its principal business office in Lesotho (which also serves as its registered office address) is “Block C, Level 5, Office No.211, LNDC, Maseru.”

*Ho Chang Ho (Pty) Ltd* has a branch at Khomo-Lia-Oela, Qacha’s Nek, Lesotho. Mr Thabo Thabo had, in terms of a written agreement with the Manager of the Company, Mr Le Leng, on behalf of the Company, provided technical support to the Company’s wireless connectivity for a contractual price of M150,000.00. The Company failed to pay Mr Thabo who subsequently filed a claim of M150,000.00 in the Lesotho High Court. The Company objects to the jurisdiction of the High Court and alleges that only Shanghai High Court has jurisdiction in the matter.

With the aid of decided cases and other legal authorities, critically discuss residence of *Ho Chang Ho (Pty) Ltd* as the ground for jurisdiction and state which court has jurisdiction to determine the above matter.

[25 MARKS]

#### Question 5

Rule 29 of the *High Court Rules* 1980 allows a party to the civil proceedings to take an exception against another party’s pleading on three (3) grounds.

- (a) What purpose does an exception serve in civil proceedings?

**4 Marks**

- (b) Briefly discuss the three (3) grounds of exception provided under Rule 29.

**15 Marks**

- (c) With the aid of relevant examples, state the difference between an exception and a special plea.

**6 Marks**

**[25 MARKS]**

### **Question 6**

Give brief notes on **any FIVE (5)** of the following:

- (a) Condonation for late filing of rescission application under Rule 27 of the *High Court Rules* 1980.

**5 Marks**

- (b) The essential allegations in an *anton piller* order application.

**5 Marks**

- (c) Raising points of law without filing answering affidavit in the merits in terms of Rule 8(10)(c) of the *High Court Rules* 1980.

**5 Marks**

- (d) The principle of full disclosure in *ex parte* applications.

**5 Marks**

- (e) The difference between correcting incorrect citation of a party and substitution of a party.

**5 Marks**

- (f) *Universitas personarum*.

**5 Marks**

- (g) The rule against new matter being raised in replying affidavit.

**5 Marks**

**[25 MARKS]**

**\*\*\*\*END\*\*\*\***