

Course Code: L407 (M) 2005

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **CLINICAL LEGAL EDUCATION**

COURSE CODE : **L407**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : (1) **ANSWER ANY FOUR (4) QUESTIONS.**
(2) **QUESTIONS CARRY EQUAL MARKS.**
(3) **REFER TO DECIDED CASES AND LITERATURE WHERE APPROPRIATE.**

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1

- (a) Identify any five things you would see on the face of a summons commencing action. [5]
- (b) Write short notes explaining the stages in the course of a trial represented by the following -
- (i) oaths and affirmations
 - (ii) Examination-in-Chief
 - (iii) Cross-examination
 - (iv) Re-examination [20]

[25 MARKS]**QUESTION 2**

Your client is Themba Mdluli who is a Swazi citizen. Themba is married to Thandi Mdluli in community of property and the couple has three children Mandla, Dudu and Nono aged 9, 7 and 5 years respectively. Thandi deserted Themba on 10 July 2000 and went to live in Durban, South Africa. Themba has not heard from Thandi since the latter deserted. Despite numerous attempts Themba has been unable to establish the exact whereabouts of Thandi, but has been reliably informed that Thandi is in fact still resident in the area of Durban. Themba wants to obtain a divorce and allied reliefs from Thandi.

Using your own additional facts, where necessary, draw -

- (a) The affidavit in support of an application for the relief Themba requires from the High Court of Swaziland relating to service of process on Thandi; [13]
- (b) The relief which Themba seeks in the affidavit; [6]
- (c) the relevant Notice of Motion. [6]

[25 MARKS]**QUESTION 3**

“... cross-examination [is] the greatest legal engine ever invented for the discovery of truth. But an engine is only as good as the person at its controls. Properly conducted, cross-examination is the best method for testing the value of human statements. Badly conducted, it can destroy one’s own cause”.

Assuming the above statement to be true, explain your position, indicating the strategy or strategies the cross-examiner should adopt to achieve the desired outcome.

[25 MARKS]**QUESTION 4**

Sipho and Nana have been seeing each other, for the last two years. This affair has included acts of sexual intercourse on divers occasions, the last being in July, 2004. Nana has become pregnant

and given birth to a daughter in February 2005. Before the encounter of July 2004 Siphon and Nana had intercourse in March and again on 12 October 2004. Nevertheless the two had met in April and May 2004 but without intercourse because, as Siphon alleges, Nana had taken to too much drinking in the company of other male acquaintances. Joy does not seem to have been born prematurely. Siphon, however, denies paternity whilst Nana thinks that Siphon is the father and that Siphon should own up and pay monthly maintenance for the child.

- (a) Nana has instructed you to demand from Siphon payment of maintenance for Joy at the rate of E100,00 per month. Draw the necessary affidavit only. [12]
- (b) Siphon has consulted you on the matter of paternity. Prepare a legal opinion on the chances of Siphon being successful in his denial of paternity. [13]

[25 MARKS]

QUESTION 5

- (a) Identify and briefly describe any five (4) qualities desirable for a person to be a good trial lawyer. [25 MARKS]

OR

- (b) Identify and briefly describe any five (5) ethical duties of a trial lawyer. [25 MARKS]

QUESTION 6

On 29 December 2004, whilst driving past the homestead of Shongwe at Fairview North, Manzini, Dlamini ran over Shongwe's bull terrier which died on the spot. At that time Shongwe who was idling nearby and witnessed the incident, picked up a stone and in a feat of anger hit out at Dlamini who was still behind the steering wheel and the windscreen of his recently acquired Toyota Hilux was smashed badly. Dlamini, however, was not hit by the stone. Shongwe charged that Dlamini killed the dog deliberately as he never slowed down when he must have seen the dog approaching the vehicle from Shongwe's yard. Dlamini denied responsibility and argued that the dog approached his path at a speed which made collision inevitable. Whilst regretting the incident, which was also observed by three other persons standing by, Dlamini thinks that Shongwe should pay for the malicious damage of his windscreen valued at E1,500.00.

- (a) Prepare the relevant summons for the amount demanded by Dlamini; [15]
 - (b) Prepare an indictment against Shongwe for the damage caused to Dlamini's vehicle. [10]
- [25 MARKS]

(You may add your own facts where necessary)