

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

TITLE OF PAPER : **TRIAL PRACTICE**

COURSE CODE : **L 403/L602**

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

INSTRUCTIONS : **ANSWER QUESTION ONE AND ANY THREE OTHER QUESTIONS.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

A client, Bholoja Fakudze, instructs you that on the 19th April, 2005 at about 22h00, his motor vehicle collided with a vehicle belonging to the Umtfo Swaziland Defence Force, driven by Captain Jerry Dlamini who was transporting soldiers to the King's Birthday celebration at the Somhlolo National Stadium. Your client further instructs you that the collision was caused by the sole negligence of the said Captain, and that his vehicle was extensively damaged and cannot be repaired. Further, he instructs you to recover damages in respect of his vehicle.

- (a) Advise your client on the following:
- i) The person to be sued, citing relevant authority; (3 marks)
 - ii) The type of summons to be issued; and (2 marks)
 - iii) The requirements to be satisfied before legal proceedings can be instituted, citing relevant authority. (5 marks)
- (b) Inventing the necessary particulars, draft the pleading you would serve on the Defendant. (15 marks)
- [Total: 25 marks]

QUESTION 2

You are an Attorney acting for Grace Mazibuko, a leading hawker in Mbabane. The said Mazibuko instructs you to institute legal proceedings against Ntombi Dlamini for a sum of E8,990.00, which is money owing in respect of goods sold and delivered to the said Dlamini on the 1st August 2004. You have since issued a simple summons against the said Dlamini, who has since served you with a Notice of Intention to Defend.

- (a) Inventing the necessary particulars, draft the pleading that is required from your client following service of the said Notice of Intention to Defend. (10 marks)
- (b) Assuming your client, after being served with the notice of Intention to Defend, instructed you that she believed that defendant has to bona fide defence to the proceedings.
- i. What advice would you give your client? (3 marks)
 - ii. Inventing the necessary particulars, draft the pleading that would be required from your client based on her belief. (12 marks)
- [Total: 25 marks]

QUESTION 3

- a) Distinguish between a simple summons and a combined summons. [4 marks]
 - b) Mention the rules relating to pleading in a case based on personal injury. [13 marks]
 - c) What averments must be stated in an affidavit in support of an Interpleader Notice? [6 marks]
 - d) What is required of an applicant in respect of an Interpleader Notice where the claim relates to money? [2 marks]
- [Total: 25 marks]

QUESTION 4

Samukeliso Simelane has been arrested by the Royal Swaziland Police of Lobamba, and charged with murder following a fight between himself and the deceased, Sipho Zwane at a shebeen. He instructs you to move an Application for Bail in the High Court of Swaziland.

Inventing the necessary particulars, draft the affidavit you would annex in support of the Bail Application. [Total: 25 marks]

QUESTION 5

- a) Write short notes on the following:
 - i. Notice of Intention to Oppose; (6 marks)
 - ii. Pretrial Conference. (6 marks)
 - b) State the general rule on examination of witness at a trial and the exceptions thereof. (3 marks)
 - c) Inventing the necessary particulars, draft a charge sheet in respect of each of the following crimes;
 - i. Culpable homicide arising from a road traffic accident; (5 marks)
 - ii. Housebreaking with intent to steal and theft. (5 marks)
- [Total: 25 marks]