

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2006

TITLE OF PAPER : TRIAL PRACTICE

COURSE CODE : L602/L403

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER QUESTION ONE (1) AND ANY THREE OTHER QUESTIONS.

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR

QUESTION 1 (COMPULSORY)

- a) Discuss demand, the limitations of time in relation to instituting of legal proceedings against the Government, and the procedure available to a party who fails to comply with the time limits. (15 marks)
- b) You are an attorney and represent Sebenta Security company (Pty) Ltd. Recently you issued a simple summons to Zamokuhle Company (Pty) Ltd., trading as Manikela Supermakert in Manzini, to recover a debt. The cause of action is based on a contract between your client and Defendant, the terms of which are that Plaintiff agreed to provide security services to Defendant's premises with effect from January 2005. Defendant agreed to pay a sum of E4,560.00 per month for the services. Defendant is in arrears in respect of the monthly payments from the month of March to December 2005. Defendant has served you with a Notice of Intention to Defend.
- i) Inventing the necessary particulars, draft the pleading that is required from your client. (20 marks)
- ii) State the procedural step to be taken by Defendant upon being served with the pleading you drafted in (i) above and the time limit within which to take the step, citing relevant authority. (5 marks)

[TOTAL 40 MARKS]

QUESTION 2

The Rules of the High Court provide for a procedure to be followed where a Defendant, who has no bona fide defence to an action, files a Notice of Intention to Defend only for the purpose of delaying proceedings.

- a) State such procedure. (2 marks)
- b) List the claims in respect of which the procedure you stated in (a) above may be followed. (4 marks)
- c) What averments must be stated in an affidavit in support of the procedure you stated in (a) above? (12 marks)
- d) What option is open to a Defendant in respect of the procedure you stated in (a) above? (2 marks)

[TOTAL 20 MARKS]

QUESTION 3

Sizwe Jethro Sibeko has been arrested by the Royal Swaziland Police, Lobamba, and charged with murder. He instructs you to move an Application for Bail.

Inventing the necessary particulars, draft the affidavit you would annex in support of the Application fo Bail. (20 marks)

QUESTION 4

- a) Musa Themba Hlatshwayo has been served with a combined summons. He instructs you to defend the action.
- i. Draft the court process you would file as soon as you receive your client's instructions. (10 marks)
 - ii. State the pleading that is required from your client after delivering the court process you drafted in (i) above, as well as the time limit within which your client is required to deliver the pleading. (4 marks)
- b) State the rules relating to pleading in an action based on contract. (4 marks)
- c) Under what circumstances may a party take exception to a pleading? (2 marks)
- TOTAL : 20 marks)**

QUESTION 5

- a) Distinguish between a simple summons and a combined summons. (4 marks)
- b) What averments must be stated in an affidavit in support of an Interpleader Notice? (6 marks)
- c) what is the general rule relating to examination of witnesses, and the exceptions thereof? (3 marks)
- d) Describe the two procedures for holding a Pre-trial Conference. (4 marks)
- e) What procedure may a Defendant who, at the close of Plaintiff's case, believes that so sufficient case has been made against him? (3 marks)

[TOTAL : 20 Marks]