

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 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)

Makhosi Jerry Zwane instructs you that on the 16th December, 2005 at about 22 hours he was unlawfully arrested and detained by members of the Royal Swaziland Police at Malkerns Police Station. The said Zwane further instructs you to institute legal proceedings against the Defendant

- a) Advise your client on the requirements to be satisfied before legal proceedings can be instituted, citing relevant authority. (5 marks)
- b) Inventing the necessary particulars, draft the document that you would serve on the Defendant, before you institute legal proceedings. (13 marks)
- c) What type of summons would you serve on the Defendant and why? (2 marks)
- d) Inventing the necessary particulars, draft the pleading you would serve on the Defendant. (20 marks)

[TOTAL 40 MARKS]

QUESTION 2

- A) Your client Menzi Petros Sibiyi is served with a combined summons. According to the Particulars of Claim, the Plaintiff claims for the transfer of immovable property. From the Deed of Sale relied upon, it appears that the Defendant did not sign as seller. Further, the Plaintiff does not allege that the person who signed on behalf of the seller did so as agent for the Defendant with written authority.
 - i. Advise your client on the step to take under the circumstances, citing relevant authority. (2 marks)
 - ii. Inventing the necessary particulars, draft the court process that you would serve on the Plaintiff based on your advise to the client (12 marks)
- B) In terms of the High Court Rules, a party required to make discovery shall do so under oath within twenty-one days of request

What documents and tape recordings must be specified in a Discovery Affidavit?
(6 marks)

[TOTAL 20 MARKS]

QUESTION 3

- a) Describe the procedure that must be followed from the time a Pre-trial Conference is concluded up to the time a matter is set down for hearing (6 marks)
- b) Describe the procedure that must be followed by an Applicant in matrimonial proceedings in terms of Rule 43. (4 marks)

- c). What is an Interpleader Notice, and what is its purpose? (4 marks)
- d). What averments must be stated in an affidavit in support of an Interpleader Notice? (3 marks)
- e). What action is required of an Applicant who delivers an Interpleader Notice, where the subject matter of the dispute is immovable property? (3 marks)

[Total: 20 marks]

QUESTION FOUR

- a). What rules of pleading apply where a party is suing for damages arising from personal injury? (9 marks)
- b). What rules of pleading apply where a party is suing for damages arising from the death of another person? (2 marks)
- c). What pleadings may be delivered together with a plea? (4 marks)
- d). What procedure is followed when a trial is called, the Plaintiff appears and the Defendant does not appear? (5 marks)

[Total: 20 marks]

QUESTION FIVE

- a). 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; (10 marks)
 - ii). Statutory rape. (5 marks)
- b). Mention five essential averments that an accused person must make in an affidavit in support of a Bail Application. (5 marks)

[Total: 20 marks]