

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2007

TITLE OF PAPER : TRIAL PRACTICE

COURSE CODE : L602/L403

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS.

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Course Code: L602/L403 (M) 2004

TRIAL PRACTICE SUPPLEMENTARY EXAMINATION 2007

L403/602

ANSWER ANY FOUR QUESTIONS

QUESTION ONE

You are an attorney in the law firm P.M. Fakudze and Company, representing Ned bank Swaziland. Recently, you issued a simple summons against a debtor, Robert Dlamini in respect of a sum of E 80,000-00 being an amount lent and advanced to the debtor. The relief sought in the summons is:

- i. Payment of the sum of E80, 000-00;
- ii. Interest thereof at the rate of 13% per annum;
- iii. Costs of suit;
- iv. Further and /or alternative relief

The attorney for the debtor has since served you with a Notice of Intention to Defend, but your client is certain that the debtor cannot possibly deny liability for his indebtedness.

- a. What application would you move in the High Court of Swaziland, in order for your client to get speedy relief? (3 marks)
- b. What pleading would you annex to the application you stated in (a) above? (3 marks)
- c. Using your own facts, draft the pleading you stated in (b) above. (19 marks)

[Total: 25 marks]

QUESTION TWO

Sibusiso Dlomo instructs you that on the 6th March 2007 he was assaulted by members of the Swaziland Royal Police at Mbabane. Your client sustained injuries and instructs you to institute legal proceedings against the Defendant to recover damages.

- a). Who is the Defendant in the matter and why? (4 marks)
- b). What preliminary step would you take before instituting legal proceedings against the Defendant and why? (4 marks)
- c). Using your own facts, draft the Particulars of Claim you would serve on the Defendant. (17 marks)

[Total: 25 marks]

QUESTION THREE

- a) Sated the rules relating to pleading in a case based on contract. (4 marks)
- b) Under what circumstances may a party take exception to a pleading? (4 marks)
- c) Distinguish between a simple summons and a combined summons. (4 marks)

d). Write short note on the following:

- | | |
|---------------------------|-----------|
| i. Interpleader Notice; | (4 marks) |
| ii. Default Judgement; | (4 marks) |
| iii. Pre-trial Conference | (5 marks) |

[Total: 25 marks]

QUESTION FOUR

a). With particular reference to its importance, discuss the concept of discovery in civil litigation and the procedure for making discovery in terms of the High court Rules, 1954, as amended. (10 marks)

b). Your client Themba Thwala instructs you to make an application in the High Court for the release of his motor vehicle which was confiscated by the Royal Swaziland Police, in Mbabane, on suspicion that it is a stolen vehicle.

Using your own fact, draft the pleading that you annex to the Notice of Motion you would serve on the Respondent. (15 marks)

[Total: 25 marks]

QUESTION FIVE

Using your own facts, draft charges in respect of the following crimes:

- | | |
|---|------------|
| a). Murder; | (5 marks) |
| b). Culpable Homicide arising from a road traffic accident; | (10 marks) |
| c). Robbery; | (5 marks) |
| d). Housebreaking with intent to steal and theft. | (5 marks) |

[Total: 25 marks]