

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2007

TITLE OF PAPER : TRIAL PRACTICE

COURSE CODE : L602/L403

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER QUESTIONS ONE AND ANY THREE OTHER QUESTIONS.

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TRIAL PRACTICE MAIN EXAMINATION 2007

ANSWER QUESTION ONE AND ANY THREE OTHER QUESTIONS

QUESTION ONE (COMPULSORY)

Part A

You are an attorney in the law firm Mwanza & Associates and are instructed by one Senzo Patrick Dlamini that on the 6th March 2007 his motor vehicle collided with a vehicle belonging to the Royal Swaziland Police, driven by Constable Zakhele Fakudze, who was pursuing an alleged robber. Your client further instructs you that the collision was caused by the sole negligence of the said police officer and that his vehicle was extensively damaged and cannot be repaired. Further, he instructs you to institute legal proceedings and recover damages in respect of his vehicle.

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

Part B

You are an attorney in the law firm Mazibuko & Associates and represent Plaintiff in an action. Plaintiff, a security company entered into a written contract on the 31st December 2005 with Defendant, a supermarket carrying on business at Matsapha. The Plaintiff was to provide security services to Defendant's premises for a sum of E 4,500-00 per month, beginning in January 2006. Plaintiff performed her part of the contract from January 2006 to December 2006. Defendant paid only for the months of January to April. Plaintiff has instructed you to claim the amount owing by Defendant. You have issued simple summons against the Defendant, who has since served you with a Notice of Intention to Defend. Upon receipt of the Notice of Intention to Defend, your client's representative instructs you that he believes Defendant has no defence to the action, but has served the Notice solely to delay the proceedings.

- a). Inventing the necessary particulars, draft the pleading that is required from your client at this stage of the proceedings. (13 marks)
- b). Advise your client on the procedure to follow in order to get speedy relief in the High Court of Swaziland. (1 mark)
- c). Inventing the necessary particulars, draft the pleading you would serve on the Defendant in line with the procedure you stated in (b) above. (6 marks)

[Total: 40 marks]

QUESTION TWO

Your client Menzi Petros Dlamini instructs you to make an application in the High Court of Swaziland for the release of his motor vehicle which was confiscated by the Royal Swaziland Police in Mbabane, on suspicion that it was stolen. Inventing the necessary particulars, draft the pleading that you would serve on the Respondent.

(20 marks)

QUESTION THREE

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. Your client Muzi Peter Sangweni 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, 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 advice to client. (12 marks)

[Total: 20 marks]

QUESTION FOUR

a). Describe the rules relating to pleading where the cause of action is personal injury. (10 marks)

b). Distinguish between a simple summons and a combined summons. (4 marks)

c). What averments must be stated in an affidavit in support of an Interpleader Notice? (3 marks)

d). 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 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). House breaking with intention to steal and theft; (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]