

**UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**MAIN EXAMINATION PAPER, MAY 2010**

**TITLE OF PAPER : TRIAL PRACTICE**

**COURSE CODE : L403**

**TIME ALLOWED : 3 HOURS**

**INSTRUCTIONS : (1) ANSWER QUESTIONS ONE (1) AND TWO  
(2) WHICH ARE COMPULSORY AND ANY  
**OTHER ADDITIONAL QUESTION OF YOUR**  
**CHOICE [IN TOTAL ANSWER 3 QUESTIONS]**  
: (2) MARKS FOR QUESTIONS OR PARTS OF  
**A QUESTION ARE SHOWN IN BRACKETS****

**THIS PAPER MAY BE OPENED UNTIL PERMISSION HAS BEEN GRANTED  
BY THE INVILATOR**

## **QUESTION 1**

You are a Professional Assistant at Faeagre, Pius & Associates, a firm of attorneys based in Manzini and you are instructed by Masscash Swaziland (Pty) Limited to recover certain sums of money owed to them by Mini Café Supermarket. Your client, who operates a wholesale business for food and general supplies, has a credit agreement with Mini Café through which the latter purchases stock on credit and is then allowed thirty (30) days to settle their account. Upon each purchase, Mini Café is issued with an invoice for that particular transaction and a monthly invoice will also reflect any arrears still owing, for the previous months, if any. Mini Café has not paid for the last three (3) months, and the arrears now have escalated to E21, 500.00 (Twenty One Thousand Five Hundred Emalangeni). Three (3) different invoices were duly issued to Mini Café by your client for the months in question, namely: for January (E7, 000.00), February (E7, 000.00) and March (E7, 500.00) respectively. At the end of March, a monthly invoice reflecting the total arrears was also issued by your client. Masscash has now instructed you to recover the amount owing by Mini Café.

You have caused Simple Summons to be issued against Mini Café, who has, through their attorneys, served you with a Notice of Intention to Defend. Upon receipt of the latter process, your client has instructed you that they believe that Mini Café has no defence to their claim, but has served the notice solely to delay the proceedings. All these events took place in 2010.

- (a) Using this factual matrix and improvising where necessary, draft the pleading that is required from your client at this stage of the proceedings.

[25 marks]

(b) After serving the pleading in (a) above upon Mini Café or their attorneys, advise your client on the appropriate procedure that the proceedings must now take. Citing authority for this advice will attract good marks.

[5 marks]

(c) Using the same factual matrix and improvising where necessary, draft the pleading necessary for you to implement the legal advice you have given to your client in (b) above.

[20 marks]

TOTAL [50marks]

## **QUESTION 2**

Whilst Bongani Mamba was driving his Corsa Utility van along the King Mswati II Highway on the 24<sup>th</sup> of April 2009, his motor vehicle collided with a vehicle belonging to the Department of Correctional Services, which was driven by Sergeant Mangaliso Dube. It is Bongani's belief that the collision was caused by the sole negligence of Mr. Dube.

His vehicle was extensively damaged and has been declared a write off. The estimated pre-accident value of his motor vehicle was E35 000.00 (Thirty Five Thousand Emalangenani). Bongani has now instructed you to recover, on his behalf, damages in respect of his motor vehicle.

(a) Identify the person(s) to be sued?

[2 marks]

(b) Discuss which proceedings must be used to pursue this claim and what pleading must issue to commence the proceedings?

[3 marks]

(c) Are there any preliminary legal requirements that must be complied with before the above mentioned legal proceedings are instituted? If any, what are they and in terms of which legal authority?

[5 marks]

(d) Using the factual matrix given above and improvising where necessary, draft the pleading that will be necessary to institute these legal proceedings?

[15 marks]

TOTAL: [25 marks]

### **QUESTION 3**

Discuss the rules relating to pleading in a case based on personal injury.

[25 marks]

### **QUESTION 4**

(a) What is the purpose of the discovery stage in civil proceedings?

[5 marks]

(b) What role is played by a Pre-Trial Conference

[5 marks]

(c) Why should witnesses be cross-examined during a civil trial?

[5 marks]

(d) Distinguish between a Notice to Defend and a Notice to Oppose.

[5marks]

(e) After the Respondent has been served with a Notice of Motion, how much *dies* does he have to indicate his opposition and to file his answer respectively?

[5 marks]

TOTAL: 25[marks]