

UNIVERSITY OF SWAZILAND

223

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER JULY 2011

TITLE OF PAPER : **TRIAL PRACTICE**

COURSE CODE : **L 403**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :

- (1) **ANSWER ALL THREE (3) QUESTIONS.**
- (2) **MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

224

The family of the late Mtfombeni Magagula of Malindza has depended on subsistence livestock farming for its livelihood since the 1930's. The late Mtfombeni is survived by his wife Makana, his two sons, Samson and Dingwa and two sisters, Nonhlanhla and Sinqobile. When Mtfombeni died in July in the year 2010, he left a herd of fifty three (53) cattle and over a hundred goats registered under his name, and his wife with the assistance of his sons has been ensuring that the family's source of livelihood is kept afloat. Whenever a need arose the family would sell some of the cattle to meet whatever need they had.

On or about August 2000, Simon Thwala, a neighbor who has his residence just about two kilometers away reported to the Magagulas that during Mtfombeni's lifetime early in March 2010, the deceased showed interest in one of his cross - breed heifers and requested that they swap same for a special semental bullock to which Thwala eventually, but reluctantly, agreed.

The parties, according to Thwala, officially cleared the respective stock (heifer and bullock) to one another through the local veterinary officer during the next dip-tank session after they had concluded the arrangement. Mr Thwala's heifer immediately joined Mtfombeni's kraal, but the bullock did not transfer to Thwala's kraal because Mtfombeni indicated to his neighbor that the bullock was in the middle of mating season, so he requested that he be given at least a month to enable it to complete same and thereafter Thwala could take transfer of same. The one month period agreed on between the parties elapsed just at the end of April 2010, which marked the beginning of the winter season and livestock was being released into free range. So, owing to the fact that if the bullock would have been moved to the Thwala's in winter, it would definitely come back, the parties then agreed to let the bullock remain with the Magagulas till the beginning of summer.

Mtfombeni died in July 2010 just before the commencement of the summer season. Mr Magagula had never related this chain of events to any family member save to tell them that he had bought the heifer from Mr Thwala. On the other hand, Thwala kept his entire family abreast with all the developments. Immediately after the passing on of Mtfombeni, Mr Thwala informed Mrs Magagula and her sons about this matter but they rightfully denied knowledge of the swop of the livestock.

After consistent pleas to the Magagulas to let him have his bullock, in January 2011 Mr Thwala had finally gotten fed up with the whole thing. On the 28th January 2011 at the dip tank during one dipping session, he asked the veterinary officer if he recalled their pact with the deceased pertaining to the livestock in question, and as expected, the officer stated that he was aware of same and that he had documentary evidence to that effect. This happened in the presence of Mrs Magagula's two sons.

On the morning of the next day, whilst the Magagula's cattle were grazing in the nearby public grazing fields, Mr Thwala in the company of his two herd-men identified the bullock and drove it to their herd and that remains the same even to this date.

The Magagulas have come to you for legal assistance. Draft the necessary court papers initiating legal proceedings for an appropriate relief.

[50 Marks]

QUESTION 2

226

Whilst Themba Makhanya was driving his VW Golf Sedan along the MR3 Highway on the 2nd of April 2011, his motor vehicle collided with a vehicle belonging to the Umbutfo Swaziland Defence Force, which was driven by Captain Thembinkosi Mngometulu. It is Themba's belief that the collision was caused by the sole negligence of Mr Mngometulu.

His vehicle was extensively damaged and has been declared a write off. The estimated pre-accident value of his motor vehicle was E105, 000.00 (One Hundred and Five Thousand Emalangenani). Themba has now instructed you to recover, on his behalf, damages in respect of his motor vehicle.

- (a) Identify the party (parties) 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]