

UNIVERSITY OF SWAZILAND

220

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2012

TITLE OF PAPER: CIVIL PROCEDURE

COURSE CODE: L401

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: (1) ANSWER QUESTIONS ONE (1) AND FOUR(4) WHICH ARE COMPULSORY AND ANY

OTHER TWO (2) QUESTIONS OF YOUR CHOICE

(2) MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS

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Question 1

In 2001, five local buddies, who all hail from Fairview South in Manzini namely; Gcina, Mthokozisi, Boy, Ndingi and Mhlaba have formed themselves into a body of unincorporated persons with the aim of pursuing business in the poultry industry. Eagles Nest (Pty) Limited became their main supplier for one-day old chicks. Their poultry business quickly flourished and they soon became the talk of the town. By 2004 they were supplying all the county's conglomerates such as Pick n' Pay, Spar, Savemor, Shoprite supermarkets, etc.

By mid-2008, the boys had somehow got a little bit ahead of themselves and were now living in rented residential houses in the top-notch suburbs in the country and each one of them not paying less than E10, 000.00 (Ten Thousand Emalangi) for rental. They were all now being chauffer driven in top of the range German SUVs and sports cars, all on hire-purchase from the local financial institutions, which had no problem advancing them the loan facility since after all the boys were clearly credit worthy.

At the beginning of 2012, the boys were still living in the rented residences and still paying for the cars they were riding. At the same time the boys had become careless about paying their main supplier for chicks, such that by January 2012 they were now in arrears to the tune of E500, 000.00 (Five Hundred Thousand Emalangi) in favour of Eagles Nest.

When they received letters of demand from the latter, they panicked and began to blame one another, their perfect and harmonious relationship began to crumble and the business soon collapsed.

By March 2012 the poultry business was now a subject of history, and Eagles Nest found themselves with a financial deficit of E500, 000.00 (Five Hundred Thousand Emalangi) and they now approach your law firm for legal advice.

Advise Eagles Nest on the following and substantiate your answer with legal authority.

- (a) What form of proceedings should be used to recover their money and why?

[5 marks]

- (b) Against whom should Eagles Nest institute legal action, if any? Explain fully.

[10 marks]

- (c) In the event any judgment is entered in favour of Eagles Nest, how should such judgment be executed?

[10 marks]

TOTAL: [25 Marks]

Question 2

Discuss the four (4) major determinants of civil jurisdiction exercised by the courts in Swaziland.

[25 Marks]

Question 3

Section 16 of the Magistrate's Court Act No. 66 of 1938 (as amended in 1988) is very significant in the context of civil litigation in the Magistrate's Courts. However, the same section has once again been amended thus introducing a new dimension altogether to the previously existing status quo.

- (a) Discuss the effect and import of the recent amendment to this section, if any.

[15 marks]

- (b) What are the two positive results as well as two negative effects that have yielded from this amendment for civil litigation in the Magistrate's Courts?

[10 marks]

TOTAL: [25 Marks]

Question 4

Urgent applications are usually brought on the basis that the relief sought is so urgent that the ordinary provisions of the Court rules in relation to time, notice and service of process cannot be complied with, rather they need to be dispensed with. However, an Applicant may not create urgency by waiting too long to act so that the ordinary rules should be dispensed with.

Discuss the requirements which must be met before relief pursuant to an urgent application may be granted.

[25 marks]

Question 5

Write short notes on the following:

(a) The distinction between Default Judgment and Summary Judgment.

[10 marks]

(b) The distinction between a Claim in Convention and a Claim in Reconvention.

[5 marks]

(c) The distinction between an exception and a special plea.

[10 marks]

TOTAL: [25 Marks]