

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2012

TITLE OF PAPER: TRIAL PRACTICE

COURSE CODE: L403

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

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

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

Question 1

Siboniso Kunene is a highly envied personality in the rural and poverty stricken area of Mkhitsini in the Shiselweni region. He is a celebrated socialite, trendy dresser, has class and changes cars like sneakers. In contrast with his lifestyle and most interesting is the fact that he is from humble beginnings, his entire family with an unquestionable strong rural background and he has never been employed in his life nor does he have an open and legitimate business.

Comprehending his lifestyle by one privy to his background and the Nhlangoane police is a vexing and daunting task, which to date still is a perennial evolving area of wonder and investigation amongst his fellow community members and the police.

At the largest-ever gathering of the Police Criminal Investigation Department and Interpol, at the annual Universal Periodic Review Summit held at the Police Headquarters in Mbabane in October 2011, Kunene's name was short-listed for serious and vigorous investigation to ascertain the backbone of his lifestyle which, to everyone, appears incomparably incommensurate to his means. At the Summit and in closing, the head of the Nhlangoane Criminal Investigation Department, Superintendent Raymond Matimela had this to say;

"We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of criminality, to which a majority of them are currently subjected. We are committed to making the right to

freedom a reality for everyone and to freeing the entire Swazi nation and the world at large from criminality.”

On or about February 2012, at or near Nhlangano area and at or about 2230hours, whilst driving the latest Golf VI 2.0L GTI bearing South African registration numbers, the Nhlangano Police, consequent to a tip-off through the 999 toll-free emergency line, opened fire on the car Kunene was driving, suspecting that it was stolen from South Africa and smuggled into Swaziland. The car was shot at seven times before it overturned and became a right-off.

Kunene was seriously injured and hospitalised at the Hlathikhulu Government Hospital for about a month before being referred to the famous and reputable Rob Ferreira Hospital in Nelspruit in the Mbombela Province in South Africa where he recuperated and two (2) bullets were extracted from his body, one from the scapula and the other from the pelvis.

When interviewed by the Times of Swaziland journalists whilst at the Hlathikhulu Government Hospital, Kunene said he had made a left turn from the Hluthi-Nhlangano road travelling along the bushy King Sobhuza II Memorial Health Centre when he suddenly saw a vehicle behind him signalling him to stop by flicking its lights. In fear for his life and under the impression that these were thugs and since there were no indications whatsoever that these were police as they were using a private car with no sirens; he accelerated until he was shot at before he lost control of the car which subsequently overturned.

It later transpired that the car belonged to Kunene's South Africa based friend, one Keith Cele, whom he had gone to drop off at the Mahamba border gate just an hour before this sorely unfortunate incident occurred. It transpired, further, that the car was known to the police since it was once detained at the Nhlngano Police Station for three (3) days after its owner, the said Cele was arrested, charged and convicted for drinking and driving under the influence of alcohol.

Kunene, who is now permanently on a wheel chair after recuperating from the injuries he sustained and any of his other rights which may have been trampled upon, has instructed you as a person lettered in law to, for and on his behalf, vindicate his infringed rights at the best of your capabilities.

With the slightest possible improvising of facts where necessary:

- a) To obtain relief for your Client, execute the first step against the relevant party(ies) as envisaged in law, and ensure to expose all the pertinent requirements.

[15 marks]

- b) Assuming that your efforts to resolve this matter under (a) above have been rendered futile, draft the relevant court process that would have the effect of taking this matter forward.

[30 marks]

TOTAL:[50 marks]

Question 2

Sizwe Fakudze, a thirty-six year old economist and successful business man, has been attending counselling sessions with a well renowned psychiatrist at Medi-Sun Clinic in the Ezulwini Valley. While the psychiatrist, Dr Lizella Smith, remains optimistic that Sizwe's condition will improve just like all her patients and eventually get cured, Sizwe's case proves to be difficult as the recovery has been painfully slow. For the past eight months, the doctor has been seeing Sizwe twice a week for the treatment of post-traumatic stress but he has not gone past the first stage of his five-stages treatment plan. By this time, normally, even the slow to recover patients would be on the third stage.

Hindering Sizwe's recovery process is that he still cannot fathom himself why his 'perfect' wife would go out of her way to spite him while he brags about his choice of wife amongst his associates. Sizwe was certain that he had taken his time in scouting for the 'perfect' wife as approved by his dear mother. He even took the time to look for a person from humble beginnings, a person who still valued tradition and respected the status of a man as the head of the house. He made sure that he went back to his mother's home area, Ntontozi, to get that 'perfect' wife who would be unto him, like his mother was to his father. His mother always knew her place, adored her husband but also supported him in the family business. In this respect, the milling business the Fakudze's owned, Emantolo Mills, grew in leaps and bounds and had ten branches by the time Sizwe's

parents died in a car accident in 2007. Sizwe, being the only child and heir, was determined to let the legacy of his parents live on. As of today, Sizwe has developed a brand for their products and is one of the suppliers of mealie meal products in the country now with over twenty mills in different parts of the country.

Sizwe was also determined to love his wife as the queen of his heart. This he did successfully. When Sizwe proposed a courtship relationship to Mantfombi Fakudze (nee Dlamini) in 1999, he had just started out at Swazi Bank as a teller and Mantfombi had just completed high school. True to his words, to show her nothing but love, Sizwe helped her upgrade her results to secure a space at the University of Swaziland (UNISWA). By 2001, Mantfombi enrolled at UNISWA as a Bachelor of Humanities student. As the years progressed, Sizwe's career was also flourishing and so were the businesses. He had landed himself a job at the Central Bank of Swaziland as a Business Analyst.

No doubt Sizwe was doing financially well. When students staged their protests and class boycotts for allowances, Mantfombi was not bothered at all. She received her monthly in-contact from her bank notifying her of the huge monthly allowances which Sizwe had deposited in her account. She drove to school in sleek cars, her electronic gadgets were the latest, her clothes trendy and so were her hairstyles. Mantfombi turned most ladies green with envy because of her lifestyle.

In 2005, the darlings got wed in a spectacular spring garden wedding at Summer Field Botanical Gardens. Their wedding started out as a blissful fairy tale. In 2007, Sizwe was promoted to Chief Business Analyst and his job put a strain on their marriage. He was now a globe-trotter, attending meetings and conferences. In the little time that he was home, he had to attend to his inherited business. Between 2007 and 2009, Mantfombi had suffered 3 miscarriages because of the stress of being a lonely woman.

In 2010, Mantfombi decided to give into the advances of Muzi Masuku, Sizwe's long-time friend, who promised to keep their affair covert and make Mantfombi happy. Indeed, while Sizwe was busy raking in money for the family, Muzi did a good job secretly keeping Mantfombi happy. Their affair continued until 14 February 2011 when cupid shot Sizwe unexpectedly, went home unannounced. To his wonderful bemusement, the mood was conveniently set in the house. All he had to do was to locate his wife in the many rooms of their mansion at Dalrich, a suburb in upper class Mbabane. His short search yielded to an unpleasant discovery, the two 'love-birds', Muzi and Mantfombi, were intertwined in the cosy-lit private bathroom in the master bedroom.

Devastated and dejected, Sizwe collapsed. He had not seen this coming; his 'perfect' wife had disappointed him. Sizwe felt that he had failed as a loving husband and provider. But most of all, he did not understand what he did wrong. Not a day did he not attend to the needs of his wife, when

he could. To him, the woman was an unappreciative harlot who did not deserve to share in his successes and he wanted nothing to do with her.

Sizwe immediately instituted action proceedings for divorce, which the wife defended. To date, they are still battling in court for the divorce. Mantfombi had not done well in UNISWA as she failed a course in her final year which she never repeated but was least bothered because she enjoyed being a house wife. After all, it paid more than the government paid a professional teacher. However, when Sizwe cut all her finances and blocked her accounts, she was left to fend for herself and went back to her parental home. Her status has diminished considerably. She is struggling to make ends meet and Muzi is nowhere to be seen.

Mantfombi approached your law firm and her case was assigned to you *pro bono*. You have, so far, been helping her defend the pending divorce proceedings at the Magistrate's Court in Manzini. But you also believe that as the marriage still subsists, she is entitled to maintenance from her husband. In formulating the necessary facts, draft the Court process to pursue her case in this regard.

TOTAL: [25 marks]

Question 3

Discuss the requirements for pleading in the following circumstances:

- a) Where the party relies upon a breach of contract.

[15 marks]

- b) Where a party suing for divorce has been guilty of adultery.

[10 marks]

TOTAL: [25 marks]