

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

239

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 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

Construction Logistics (PTY) Limited is a private company, with its principal place of business in the Matsapha Industrial Site specializing in office partitions and fittings of ceilings in general. On or about 1st February 2012, the company, represented by its Managing Director, Mr Richard Dlamini, entered into a written contract with Swaziland Electricity Company (SEC) in terms of which the former was to do refurbishments, partitions and fit ceilings at the latter's Matsapha Revenue offices. The contract price was agreed at **E215, 000.00 (Two Hundred and Fifteen Thousand Emalangeni)** payable at the completion of the works.

Construction Logistics completed the works by mid-March 2012 and instantly invoiced SEC with the contract price for their services. Construction Logistics did not receive any payment from SEC despite numerous telephonic and written reminders in this regard. On the 1st of April 2012 Construction Logistics instructed your law firm to recover this contract sum from SEC on their behalf. Your office issued a letter of demand to which there was no reply. Subsequently your office issued simple summons to which a Notice of Intention to Defend has been received from the offices of Magagula & Hlophe Attorneys in Mbabane.

Your office and your Client are of the firm belief that SEC has no defence to your Client's claim.

- a) What legal advice should you give to your Client on the way forward from now on to curtail the matter from going into a fully blown trial?

[10 marks]

- b) Draft the necessary court process(es) in line with your legal advice in (a) above.

[40 marks]

TOTAL: [50 marks]

Question 2

Discuss the requirements for amending a pleading in action proceedings in the High Court of Swaziland.

Refer to the pertinent rules of Court.

[25 marks]

Question 3

Mabhunu Mabuza has been married to his wife Nonhle Magagula for the past eleven years, however, their union has endured rocky times in the last two years owing to nothing tangible but simply what can be termed irreconcilable differences, which is threatening to break the marriage apart. Nonetheless, the couple still lives under the same roof and share the same bed.

The irreconcilable differences stem from the manner of speech in which Nonhle addresses Mabhunu as well as the manner in which she conducts herself which Mr Mabuza, as a traditional Swazi feels is very disrespectful and does not accord with his status as the man of the house.

To name just a few; Mr Mabuza alleges that his wife addresses or calls him by his first name instead of his last name, not only when they are alone but even in the midst of other people. He also says that she dresses in pants and skinny and skimpy tops as opposed to skirts and blouses or decent dresses. He alleges also that Nonhle simply pushes his plate of food towards him on the table as a way of serving him his food, instead of putting his plate on a tray and kneel on her knees before him to present the food. Last but not least, he says that Nonhle does not want to go with him to his parental home at Mafutseni in the Manzini region, rather she wants to stay in the couple's rented matrimonial house in Ngwane Park in Manzini.

On these and other similar allegations, Mabhunu has instructed his lawyers, Nzima & Associates to cause summons for divorce to be issued against Nonhle in the Manzini Magistrate's Court. Nonhle approaches your office and instructs you to defend the divorce proceedings.

After serving a Notice of Intention to Defend upon the Plaintiff's attorneys, draft the next appropriate Court process to address the allegations raised by the Plaintiff. Reference to the pertinent rules of Court will attract good marks.

[25 marks]