

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, DECEMBER 2012

Title of Paper : Civil Procedure

Course Code : L 401

Time Allowed : 3 hours

Instructions : Answer all questions

Marks for a question or part of a question are shown in brackets

This paper may not be opened until permission has been granted by the invigilator.

QUESTION 1

Bongani Magagula and Kwanele Hadzebe are married to each other in community of property and profit and loss. On 6 September 2010 Kwanele was admitted to the Mankayane Government Hospital to give birth to the couple's seventh child. On the same day Kwanele concluded a contract with the hospital to perform a tubal ligation on her in order to render her sterile. The operation was to be performed, on 7 September 2010, during the course of a caesarian section for the birth of the seventh child.

The tubal ligation was not performed. On 6 September 2011 Kwanele gave birth to another child. On 4 September 2012 Bongani and Kwanele engage your services and instruct you to institute proceedings for damages, for the cost of maintaining the eighth child, discomfort and pain and suffering and loss of amenities of life suffered by Kwanele; against the Hospital for its failure to perform the sterilization operation.

(A) Write a letter of demand on behalf of your clients. (10)

(B) With reference to the Limitation of Legal Proceedings Against Government Act, 1972 and judicial precedent advise your clients on their prospects of success. (15)

Question 2

(A) State 2 justifications for enacting Statutes of Limitation. (2)

- (B) Write brief notes on the jurisdiction of Magistrates' Courts in constitutional matters. (4)
- (C) What is the distinction between an *incola* and a *peregrinus*? (4)
- (D) What is attachment to found jurisdiction and attachment to confirm jurisdiction? (4)
- (E) What is *locus standi in iudicio*? (2)
- (F) What does direct and substantial interest mean? (3)
- (G) Draft allegations in which you would cite:
- (i) a minor below the age of 7; (2)
 - (ii) a minor above the age of 7; (2)
 - (iii) a *universitas*; (2)
 - (iv) a firm; (2)
 - (v) a partnership; (2)
 - (vi) a private company; (2)
 - (vii) a trust; and (2)
 - (viii) the Swaziland Government. (2)
- (H) In what circumstances may a party issue a third party notice? (4)
- (I) What does *domicilium citandi et executandi* mean? (2)
- (J) Define the concepts of substituted service and edictal citation (2)

Question 3

- (A) Explain the *Plascon-Evans* rule. (4)
- (B) What requirements does a party need to satisfy before an application can be enrolled on an urgent basis? (3)
- (C) Name the requirements for a final interdict. (4)
- (D) In what circumstances would a party sue out a simple summons? (2)

(E) What is the distinction between an exception and a special plea? (5)

(F) For which claims can a plaintiff apply for summary judgment? (4)

(G) What is the distinction between an order and a ruling? (5)

(H) What purpose does discovery serve in civil proceedings? (5)

(I) Name two (2) ways in which a genuine dispute of fact may arise in motion proceedings

(4)

(J) What are the options at the disposal of the High Court where a material dispute of fact arises in application proceedings? (4)

Question 4

Ngabisa Nkambule is the property manager of Tip-Top Properties (Pty) Ltd (hereinafter referred to as "Tip-Top"), a company whose business is the leasing of residential and office space. On 1 January 2012 Tip-Top leased a flat in Fairview, Manzini to a certain Mr. Sabelo Matsebula. Mr. Matsebula failed to pay his rental for three months. Ngabisa sent Mr. Matsebula a letter demanding payment, and when he failed to respond, she sent him a letter cancelling the contract. However, Matsebula failed to vacate the premises and hence remains in occupation of the premises. Tip-Top approaches your firm to institute *action* proceedings for eviction against Matsebula in the *Magistrates' Court*.

Draft particulars of claim, including the heading, on behalf of Tip-Top. You may make up your own facts (25)

- (E) What is the distinction between an exception and a special plea? (4)
- (F) For which claims can a plaintiff apply for summary judgment? (4)
- (G) What is the distinction between an order and a ruling? (5)
- (H) What purpose does discovery serve in civil proceedings? (5)
- (I) Name two (2) ways in which a genuine dispute of fact may arise in motion proceedings
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