

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER

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

Nozipho Vilakati is involved in a motor vehicle collision. His car is damaged. Consequently he addresses a letter of demand to the driver of the other vehicle in which he claims the fair and reasonable cost of repairing his vehicle:

- 1.1 Is the claim in question a liquid claim or an illiquid claim?
- 1.2 From which date would Nozipho be able to claim interest on his claim?
- 1.3 What rate of interest would apply?
- 1.4 Assuming that the driver of the other vehicle was a police officer acting within the course and scope of his employment.
 - (a) To whom must such a demand be directed?
 - (b) When must the demand be made?
 - (c) Would delivery of the letter of demand interrupt the running of prescription? (15)

Answer to the above questions must be supported by reasons and authority.

Question 2

Mr. Nicholas Greenwald, a resident and domiciliary of Australia, is a member of Transparency International. Transparency International is a multinational organization dedicated to combating corruption and promoting clean Government.

In May 2012, Mr. Greenwald was invited to attend a prevention of corruption seminar in Ezulwini. During his stay in Ezulwini, Joy FM a

private radio station based in Manzini invited him to be interviewed (on radio) to highlight some of Swaziland's governance challenges. During the interview he made derogatory comments about your client Mr. Nhlanhla Zwane. Your client is the Minister of Home Affairs, whose portfolio includes immigration, and a Member of Parliament for the Manzini North *Inkhundla*. During the interview Greenwald accused your client of taking bribes from foreign nationals in exchange for granting them Swazi citizenship and using his illicit gains to buy votes from the electorate. Your client is deeply upset by this personal attack and wants to sue Mr. Greenwald for defamation.

Your client is of the opinion that given his standing in Swaziland's high-society, he should be able to claim E 40, 000-00 in damages. He institutes you to institute action proceedings for defamation.

With reference to the principles that govern jurisdiction state the court in which your client would have to initiate proceedings. (25)

Question 3

3.1 Define the following terms/concepts:

- (a) An exception. (2)
- (b) Combined summons. (2)
- (c) Return of service. (2)
- (d) What is an *ex parte* application? (2)
- (e) What is an Anton Piller order? (2)

3.2 The High Court and the Magistrates' Court are empowered to rescind a default judgment where a party can show "good cause". Discuss with reference to case law, what is meant by "good cause". (10)

3.3 When would one issue a provisional sentence summons? (5)

3.4 The provisional sentence procedure is a hybrid procedure for it contains elements of both action and application proceedings. Discuss (10)

Question 4

Nhlanhla Dlamini is a resident of Ecaleni in the Lubombo District, under Chief Ncumisa Hlophe. Nhlanhla has repeatedly refused to heed his chief's summons to attend community meetings at the chief's residence. Tired of what he regards as Nhlanhla's disobedience, the chief and his *libandla* decide an appropriate penalty for this act of insolence, is a fine of 3 cattle. The chief dispatches a group of men who enter Nhlanhla's kraal and seize the 3 cattle. Nhlanhla approaches your firm and instructs you to move an application for the *mandament van spolie* against the chief.

Draft the notice of motion and founding affidavit to the application for the relief that Nhlanhla wants. (25)