

**UNIVERSITY OF SWAZILAND**

**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 One**

The parties in the attached deed of sale marked **Annexure "A"** entered into the agreement in accordance with the terms and conditions contained therein. By 30 March 2013, the Purchaser had in total paid in 'drips and draps' the sum of E25,000.00 inclusive of the deposit. In line with the agreement, on 1 May 2013 the Seller invoked the specific and pertinent provisions in the agreement and repossessed the subject-matter from the Purchaser. On 2 May 2013, the Purchaser instructed you to get him the appropriate relief, if any. Draft the necessary court process.

**Your answer must not exceed seven (7) pages.**

(40 Marks)

### **Question Two**

Professor Sandisiwe Manana has been a lecturer in the Faculty of Education of the University of Swaziland for the past 30 years teaching African languages and literature. She has been sitting in various boards within the university's structures and is presently a member of the University Council. Recently, on 28 March 2013, during an African languages lecture, she saw Talatona Sikhondze having a little chat with Thobani Langwenya and immediately in her venerable language and in a very mean tone told Talatona that ***"wena ke uwekugcina ngci kwekutsi ngesikhatsi sema kufundza ungabe unakana nemadvodza kantsi umubi njengami nje. Wena indvodza yakho ngunati tindcwadzi longatinaki nyalo. Kodvwa utsembe kwekutsi noma ungafeyila utawuchubeka nalokutsengisa lapha entasi emvakwaka Tommy Kirk ebusuku"***.

Literally translated to mean **"you are the very last person to be concentrating on men during a lecture considering that you are as ugly as myself. Your husband is these books that you are not taking seriously. Perhaps your hope is that even if you fail you will continue selling at night behind Tommy Kirk's Shopping complex"**.

Talatona's father Mr Mkhombe Sikhondze who is a very outspoken and influential member of the Swazi National Council and a staunch traditionalist has instructed you to sue the lecturer on his behalf.

Draft the necessary pleading to execute his instructions. **Your answer must not exceed three (3) handwritten pages.**

(30 marks)

### **Question Three**

You are an attorney in the law firm Mavuso & Company. Your client, Swaziland Building Society instituted legal proceedings against the Defendant, Melusi Senzo Manana for money lent and advanced to him. The said Defendant has served you with a Notice of Intention to Defend as well as a plea. When perusing through the plea, you fail to ascertain the defence.

- a. Advise your client on the procedure to take under the circumstances, citing relevant authority.

(5 marks)

- b. Inventing the necessary particulars, draft the court process that you would serve on the Defendant. **Your answer must not exceed five (5) pages.**

(20 marks)

- c. Assuming the Defendant had failed to serve your client with the plea within the time he was required to do so, what procedure would you advise your client to follow and why? Remember to cite the relevant authority.

(5 marks)

**Total: [30 Marks]**

**Annexure "A"**

**DEED OF SALE**

1. This agreement is made and entered into by and between:

**a. Mrs. Fortunate Nontokoza Ashers**

(ID No 7603131100046)

P.O. Box 4983

Manzini

(Hereinafter referred to as '**the Seller**') of the one part

and

**b. Mr Mandla Sibusiso Matsebula**

(ID No 6804196100290)

P.O. Box 1306

Manzini

(Hereinafter referred to as '**the Purchaser**')

2. **MERX**: Motor Vehicle: TOYOTA DYNA BUS

Model : 2004

Reg.No. : SD711KS

Engine No. : JO5CD24538

Chassis No. : JHFYE207604000192

Weight : 3660

Horse Power: 110

Passengers : 30

### **3. TERMS AND CONDITIONS OF SALE**

The sale shall be subject to the following terms and conditions:-

- a. The purchase price of the motor vehicle in 2 above shall be E100,000.00 (One Hundred Thousand Emalangeni Only)
- b. The two parties acknowledge that the Purchaser has made a Non-refundable deposit payment of E10,000 (Ten Thousand Emalangeni only) immediately upon signing of this agreement directly to the seller.
- c. The parties acknowledge and agree that the outstanding balance of E90,000 (Ninety Thousand Emalangeni) from (a) above shall be payable to The Pesco Services (Pty) Limited account No. 140070486001 at Standard Bank, Manzini Branch.
- d. The parties agree that the outstanding balance in (c) shall be paid in nine equal monthly instalments of E10,000 (Ten Thousand Emalangeni only) commencing from September 30, 2012.

### **4. OBLIGATIONS OF THE PURCHASER**

- a. Subsequent monthly payments of E10,000.00 shall be deposited by the Purchaser as directed by the Seller in 3(c) until the outstanding balance payable to the Seller by the Purchaser as in 3(c) shall have been fully settled within the agreed period.
- b. The Purchaser understands that from the date of signature of this Deed of Sale the Seller is relieved from any obligations as pertains insurance and repair/service charges of the motor vehicle.

- c. The Purchaser commits himself to carry out the obligation in 4(a) to completion on behalf of the Seller.
- d. The motor vehicle is sold as is and without any warranties whatsoever.
- e. The Purchaser shall take possession of the motor vehicle upon paying the Seller the first instalment as in clause 3(c) above.
- f. The Purchaser indemnifies the Seller from all risks and losses that he may incur upon taking possession of the vehicle as in 4(e).
- g. The Purchaser shall be liable on demand to pay all charges and costs in respect to car inspection, stamp duty or any other costs pertaining to the transfer of ownership of the vehicle within Swaziland as may be stipulated under the laws of Swaziland.
- h. Upon signing of this Deed of Sale, should the Purchaser fail to, or refuse to make good any of the obligations as stipulated above, within the duration of time stated, the purchaser shall forfeit all the monies including deposit already paid to the Seller, and immediately return the motor vehicle to the possession of the Seller without prejudice or pre-conditions.

## **5. OBLIGATIONS OF THE SELLER**

- a. The Seller shall undertake to assist, perform, produce and execute any further steps necessary and/or documentations necessary, when called upon, within reasonable period of time, in order to give full force and effect to this Deed of Sale.
- b. The Seller undertakes to act in good faith to provide the necessary documentations and conclude the transfer of ownership of the motor vehicle to the Purchaser upon full settlement of the purchase price by the Purchaser as in 3(c).
- c. Should the Purchaser breach any part of this agreement, the Seller shall swiftly take possession of the motor vehicle from the Purchaser without prejudice.

**6. DOMICILIUM**

- a. For the purposes of this Agreement, the Seller chooses *domicilium citandi et executandi* as in 1(a) above.
- b. For the purposes of this Agreement the Purchaser chooses *domicilium citandi et executandi* as in 1(b) above.

THUS SIGNED IN MANZINI ON THIS 4<sup>th</sup> DAY OF AUGUST 2012

(A) Signed For: THE SELLER:

....fna.....

In the presence of:

...Joseph Ashers....

(Witness) .

.....Businessman.....

(Occupation)

(B) Signed For: THE PURCHASER:

.....msm.....

In the Presence of:

...mandla mabila.....

(Witness)

....Businessman.....

(Occupation)