

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, NOVEMBER 2013

TITLE OF PAPER: CIVIL PROCEDURE

COURSE CODE: L401

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: (1) ANSWER ALL FOUR (4) QUESTIONS

(2) MARKS FOR QUESTIONS OR PARTS THEREOF  
ARE INDICATED IN BRACKETS

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GRANTED BY THE INVIGILATOR

## QUESTION 1

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Nolindo Sangweni who hails from Dvokolwako has been married by way of the complete separation marital regime to Zakhe Tsambokhulu of Malindza for exactly 11 (eleven) years from the date of this exam. The couple's matrimonial home was established by consensus under the Lozitha chiefdom. The marriage between the parties still subsists.

By profession Nolindo is a teacher and has always worked at Salesian High School since graduating from the University of Swaziland-Luyengo campus. On the other hand, Zakhe works for Du Van Construction, a company with its principal place of business situated in the Matsapha industrial site. As a result of the nature of the business of Zakhe's employers, he constantly travels all around the country and abroad to do work in the different sites where Du Van has secured tenders.

Three children have been born of the marriage, namely, Lwandle, Zizwe and Fisiwe, aged between 6, 4 and 2 years old respectively. Lwandle is doing Grade 1 at Green Blossoms Primary School in Manzini and her siblings are still too young to start going to school.

In 2005 Zakhe was tasked by his employer to oversee and supervise a construction project of the Komati Basin, generally known as the Maguga Dam around Pigg's Peak. The construction of the dam took nearly five years to complete. As a result of the distance between Lozitha and Pigg's Peak, it became apparent that Zakhe had to move to Pigg's Peak and would only come home on some selected weekends and on month end. This became the trend between 2005 and 2009. When the dam was eventually completed in 2009 Zakhe was expected to return home to stay with his family. While he did return home, he however told his wife that he has since been assigned at his workplace to monitor the progress of the dam which requires him to spend every other week in Pigg's Peak.

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Nolindo was clearly displeased with those news but she had no choice as she could not tell him to stop working for Du Van because the company was paying him well hence the family was enjoying a middle class lifestyle. So Zakhe would be home every other week and the other time he would be in Pigg's Peak.

In 2012 Nolindo learnt that her husband has a child named Lizwe born between himself and a certain Makaziwe Phiri of Pigg's Peak who was then two years old. She further learnt that in fact Makaziwe and her child are living in Zakhe's company house in Pigg's Peak and that they live together with him when he is there and that they have always lived together since Zakhe started working in Pigg's Peak. She has done her own investigations and has confirmed the allegations being made about her husband as being true.

At the beginning of March 2013, which is when she completed her investigations, she then confronted Zakhe with the allegations. He flatly denied any truth about them and simply dismissed the issue. During her investigations Nolindo even took still and motion pictures of Zakhe, Makaziwe and Lizwe sitting under the shade of a tree at the company house in Pigg's Peak cuddling up and in a jolly mood as any loving couple would do. She also has information regarding the registration of Lizwe's birth. Since the confrontation, Zakhe has never returned home.

You are required to succinctly and concisely craft the *facta probanda* and *facta probantia* arising from this case.

[40 Marks]

## QUESTION 2

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Since the advent of the Constitution Act No.1 of 2005, our legal jurisprudence as a country has been constantly and rapidly shifting from the old and sometimes out-dated notions of the common law and moving towards an era of realism and the uplifting of human rights. One of the cases that has done that is the case of *Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane & Attorney General: High Court Case No.470/2013A*.

Discuss how this case has not only enriched our jurisprudence but also shifted from the so-called out-dated notions of the common law to realistic and practical issues as they obtain on the ground.

[25 Marks]

## QUESTION 3

(i) There is a very thin line between an exception and a special plea. Briefly discuss the 3 (three) differences between the two?

[15 marks]

(ii) What are the grounds for excepting to a pleading?

[6 marks]

(iii) Briefly discuss 3 (three) examples of dilatory special pleas?

[9 marks]

**TOTAL: [30 Marks]**

**QUESTION 4**

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Rule 30 applications can be very embarrassing especially to the party being served with such an application. Discuss the procedure for instituting this application taking into account issues pertaining to time frames, notices and the powers of the court dealing with such an application in each given case.

**[25 marks]**

**Total Possible Marks: [120]**