

UNIVERSITY OF SWAZILAND

203

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2014

TITLE OF PAPER: TRIAL PRACTICE

COURSE CODE: L403

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

- (1) ANSWER ALL FOUR (4) QUESTIONS**
- (2) MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS**

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Question 1

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Muzi Mvulane is the owner of a certain farm described as Portion 18 of Farm 1006 situate at Mahips in the Manzini region. In his farm there is a grazing area which he has reserved for his livestock. Gcina Mhlanga is the owner of a herd of 300 Nguni cattle which he keeps in a neighboring farm being Portion 19 of Farm 1006. He also own 600 Angora goats.

On April 15, 2013 Thabiso Mavuso, Mhlanga's herdman went into Mvulane's farm to drive out a bull from his herd which had escaped to mate with Mvulane's cows. In so doing he unfortunately forgot to close Mvulane's gate behind him. It being a hot day, he found some shade under a tree as he watched over the livestock and suddenly fell asleep. Part of his herd went into Mvulane's farm and the cattle feasted on the latter's maize fields and caused him losses which in total amount to E150, 000.00.

Mvulane has on numerous attempts demanded payment from Mhlanga. The latter refused to pay and he contends that it was not his fault but that of his herdman.

Mvulane has approached you to assist him recover his losses. Draft the necessary pleading(s).

[25 marks]

Question 2

Discuss the requirements for pleading in the following circumstances:

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(a) Where the party relies upon a breach of contract.

[15 marks]

(b) Where a party suing for divorce has been guilty of adultery.

[10 marks]

Total: [25 marks]

Question 3

(a) Discuss the difference between a special plea and an exception.

[10 marks]

(b) Discuss the grounds upon which an exception may be raised in action proceedings.

[15 marks]

Total: [25 marks]

Question 4

Assuming you are dealing with defended action proceedings in the High Court in a claim for damages, carefully map out the required and imperative court processes and stages which must be exchanged, gone through and/or issued by the court from the commencement of the action up to execution of whatever judgement or Order of the court which may be issued. Assume further that no interlocutory interventions become necessary.

[25 marks]