

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2016

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**

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1

Mrs. Josephine Mlotshwa of Big Bend was employed by the Teaching Service Commission and stationed at Salesian High School until the end of December 2010. On or about January 2010 she formally wrote to her employer and applied for an early retirement as she wanted to join her husband who was migrating to South Africa. She was 43 years of age at the time and had served her employer for 18 years.

Pursuant to her application, Mrs. Mlotshwa received a letter from her employer requiring her to submit her birth certificate, marriage certificate and other documents necessary for processing pension benefits for all retiring personnel, being documents necessary for processing her exit package. She duly submitted the aforesaid documents. Subsequent to that she received no further communication from the employer. She neither received any communication turning down her application nor giving her the green light to take her early retirement. However, judging from the documents they had requested her to submit which are relevant for processing her exit package, she presumed that her application for early retirement had been accepted and that her exit package was being processed accordingly. At the end of the 2010 schools calendar year, Mrs. Mlotshwa wound up her business at Salesian and proceeded to her early retirement.

Mrs. Mlotshwa waited for the whole of 2011 expecting to get communication from her employer regarding her exit package and all in vain. In February 2012, she then personally went to the Executive Secretary of her employer to make enquiries. The Executive Secretary gave her an undertaking that she was going to look into the matter and would revert to her and he never did. When she later returned to the office of the Executive Secretary to make a follow up on the matter, the latter informed her that she was not going to receive any exit package because their records reflect that she deserted her work station firstly, because she left without any written authority allowing her to proceed to early retirement. Secondly, she did not qualify for early retirement, since the qualifying age is 45.

Mrs. Mlotshwa contends that if her employer had advised her timeously that her application was unsuccessful she would not have taken the early retirement; rather the conduct of her employer was to the effect that her application had been granted. She is of the firm view that it was her employer's fault that she proceeded to early retirement, that had they advised her accordingly and timeously this state of affairs would not have unfolded the way it eventually did.

As a lawyer of high repute, you have been highly recommended to Mrs. Mlotshwa. Draft the necessary court process to institute proceedings in her favour and seeking the appropriate relief in the courts of Swaziland. [25 marks]

QUESTION 2

Mabhunu Mabuza has been married to his wife Nonhle Magagula for the past eleven years, however, their union has endured rocky times in the last two years owing to nothing tangible but simply what can be termed irreconcilable differences, which is threatening to break the marriage apart. Nonetheless, the couple still lives under the same roof and share the same bed.

The irreconcilable differences stem from the manner of speech in which Nonhle addresses Mabhunu as well as the manner in which she conducts herself which Mr Mabuza, as a traditional Swazi feels is very disrespectful and does not accord with his status as the man of the house.

To name just a few; Mr Mabuza alleges that his wife addresses or calls him by his first name instead of his last name, not only when they are alone but even in the midst of other people. He also says that she dresses in pants and skinny and skimpy tops as opposed to skirts and blouses or decent dresses. He alleges also that Nonhle simply

pushes his plate of food towards him on the table as a way of serving him his food, instead of putting his plate on a tray and kneel on her knees before him to present the food. Last but not least, he says that Nonhle does not want to go with him to his parental home at Mafutseni in the Manzini region, rather she wants to stay in the couple's rented matrimonial house in Ngwane Park in Manzini.

On these and other similar allegations, Mabhunu has instructed his lawyers, Mavhunga & Xaba Associates to cause summons for divorce to be issued against Nonhle in the Manzini Magistrate's Court. Nonhle has approached your office and instructs you to defend the divorce proceedings.

After serving a Notice of Intention to Defend upon the Plaintiff's attorneys, draft the next appropriate Court process to address the allegations raised by the Plaintiff. Reference to the pertinent rules of Court will attract good marks. [25 marks]

QUESTION 3

Discuss the requirements for amending a pleading in action proceedings in the High Court of Swaziland.

Reference to the pertinent rules of the Court is imperative. [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]

Possible obtainable total: [100 marks]