

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION PAPER, JULY 2016**

**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 1

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.

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

Whilst Themba Makhanya was driving his VW Golf Sedan along the MR3 Highway on April 2, 2011, his motor vehicle collided with another belonging to the Umbutfo Swaziland Defence Force, which was driven by Captain Thembinkosi Mngometulu.

His vehicle was extensively damaged and was declared a write off. The estimated pre-accident value of his motor vehicle was E105, 000.00 (One Hundred and Five Thousand Emalangeni). Themba has now instructed you to recover, on his behalf, damages in respect of his motor vehicle.

- (a) Identify the party (ies) against whom legal action must be taken? [2 marks]
- (b) Discuss which proceedings must be used to pursue this claim and what pleading must issue to commence the proceedings? [3 marks]
- (c) Are there any preliminary legal requirements that must be complied with before the above mentioned legal proceedings are instituted? If any, what are they and in terms of which legal authority? [10 marks]
- (d) Using the factual matrix given above and improvising where necessary, draft the pleading that will be necessary to institute these legal proceedings? [15 marks]

**Total: [30 marks]**

### QUESTION 3

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 in the sum of E24 000.00 (Twenty Four Thousand Emamalangeni). 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 a valid 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]**

**Possible obtainable total: [100 marks]**