

**UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

MAIN EXAMINATION PAPER, MAY 2019

TITLE OF PAPER: LEGAL DRAFTING

COURSE CODE: LAW 208

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

- 1) ANSWER QUESTION 1 (ONE), WHICH IS COMPULSORY, AND ANY THREE OTHER QUESTIONS OF YOUR CHOICE. THE TOTAL NUMBER OF QUESTIONS TO BE ANSWERED IS 4 (FOUR).
- 2) IN HOW YOUR ANSWER, THE CORRECT USAGE OF GRAMMAR, CONTENT, ORGANIZATION, COHERENCE, CLARITY OF EXPRESSION, ABILITY, SOUNDNESS OF ANALYSIS AND REASONING WILL BE FACTORED IN THE GRADING CRITERIA.
- 3) WRITE LEGIBLY, AND BEGIN A NEW QUESTION ON A NEW PAGE.
- 4) EACH QUESTION CARRIES A TOTAL MARK OF 25.

DO NOT BE OPEN THE QUESTION PAPER UNTIL PERMISSION HAS BEEN GIVEN BY THE CHIEF INVIGILATOR.

QUESTION ONE [COMPULSORY]

Zapiro Sekhukhune purchased a farm in some remote part of Mbabane. He has been experiencing constant trespassing or encroachment into it by members of the adjoining Swazi nation land community, namely Jahalembutfo Dlamini, Mfeneziyamthoba Ngwenya and Ngangaye Nkabinde. They also bring with them their livestock for grazing. His engagements with the trespassers, through their traditional authority structures, have been to no avail. He has now determined that the matter be taken to court for an order restraining them from encroaching his property. He approaches his attorney and gives him the instructions to move an application to the High Court of eSwatini.

Draft a notice of application, together with a founding affidavit, ensuring that these two documents comply with the formats required.

[25 marks]

QUESTION TWO

Fully define what the following are:

- a) Pleadings. [6 marks]
- b) Office memorandum. [6 marks]
- c) An affidavit. [6 marks]
- d) Heads of argument. [7 marks]

[Total marks:25]

QUESTION THREE

An accusation is perennially made that lawyers are not good writers. For the large part, they are accused of using difficult and inaccessible language that is difficult for most 'ordinary' people to understand. In this regard, consider for a moment how a witness is confused by the way the language of a lawyer is used in the courtroom:

Lawyer: Now witness, is your appearance here this morning pursuant to the subpoena forwarded through your solicitors?

Witness: No. This is how I always dress when I go to work.

Interrogate the accusation that the statement makes, and discuss how the complication of language and writing by lawyers can be made much easier to understand.

[25 marks]

QUESTION FOUR

In the drafting of an office memorandum, after the introductory section or heading, identify the five components/sections that are to be followed and state what is to be provided in each one of them.

[25 marks]

QUESTION FIVE

It is said that in legal drafting resort may/can be had to precedents.

- a) In the context of legal, state what a precedent is? **[5 marks]**
- b) What are the advantages of using a precedent in legal drafting? **[10 marks]**
- c) What precautions should a drafter have in mind when using a precedent? **[10 marks]**

[Total marks: 25]

END OF QUESTION PAPER.