

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2018

TITLE OF PAPER: CIVIL PROCEDURE

COURSE CODE: LAW401 / 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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QUESTION 1

Nampombe Kapungu of Tanzanian descent and a naturalized Swazi is married to Zwelibanzi Masilela. They got married in Nhlangano in 2014 in accordance with civil rites and out of community of property. The couple then established their matrimonial home in Siteki in the Lubombo region. They have been living there for the past three (3 ½) years. The couple is commuting to Mbabane for work. They are employed at First National Bank Limited and Eswatini Revenue Authority respectively.

The couple's marital relationship has in the recent past taken a strain and they are experiencing irreconcilable differences to the point that they have finally made a decision that the solution lies in the termination of the marriage.

Zwelibanzi has approached your law firm for legal advice. Advise him with respect to the substantive and procedural requirements at play which he must consider before embarking on any intended legal action. Your advice pertaining to the procedural considerations must address the relevant law and forum. **[25 marks]**

QUESTION 2

On or about the 25th August 2018 at about 1245 hours at or near Murray Camp along the Northern Distributor public road, a Nissan Panel Van registered CSD 659 DM driven by Sicelo Gamedze, an adult male Swazi of Fairview North collided head on with a VW Golf 5 sedan registered KSD 774 AM which was driven by Nelson Magaia, an adult male of Mozambican origin of Ngwane Park.

The VW Golf 5 was coming from the Manzini City direction towards Fairview North while the Nissan Panel Van was coming from the Fairview North direction going towards the Manzini City direction. Information gathered from witnesses at the scene was that the driver of the Nissan Panel Van failed to stop at a stop sign as he ought to have done hence he collided head on with the VW Golf which had a right of way and indicating to take a turn to the right.

Further investigations revealed that the driver of the Nissan Panel Van also failed to apply brakes on time, failed to avoid an accident which a reasonable driver would have been avoided. Prior to the accident the book value and /or market value of the VW Golf stood at E120 000.00 (One Hundred and Twenty Thousand Emalangeni). Post the accident the VW Golf has been declared a write off.

You are required to succinctly and concisely craft the *facta probanda* and *facta probantia* arising from this factual matrix. **[25 marks]**

QUESTION 3

Jacobus Fourie is an adult male of Ermelo in the Republic of South Africa. He is currently employed as a heavy duty mechanic at Illovo Sugar Limited in Big Benq in the Lubombo region. On the 21st of September 2018 (National Elections Day of Eswatini), he travelled to his home town in Ermelo to visit his family. He was driving his ISUZU LDV with registration number DSD 400 AL.

On his way back and on the outskirts of Ermelo, he was involved a car collision with a Ford Ranger with registration SSD 280 BM which was driven by Mangaliso Mamba of Mbabane in the Hhohho region. A police report concluded that the accident was as a result of Mr. Mamba's

negligence. He failed to stop at stop sign on a four way inter-section hence the accident. Mr. Fourie was severely injured and suffered multiple bodily injuries as a result of which he was hospitalized for a number of days.

Pursuant to being discharged from hospital he lodged a claim, inter alia, for personal injury, loss of earnings and medical expenses with the Road Accident Fund (RAF) in the sum of R1 028 250.75. Out of his total claim, the RAF has paid Mr. Fourie damages in the sum of R1 000 000.00 which he has accepted.

Mr. Fourie now wants to sue the man who was responsible for causing his injuries, (Mr. Mamba) for the balance of his total claim, namely the sum of R28, 250.75. Advise Mr. Fourie who is your client with respect to which court can exercise jurisdiction over this matter and in doing so clearly explain what jurisdictional considerations did you take into account. **[25 marks]**

QUESTION 4

(a) Briefly discuss the different kinds of interdicts. **[9 marks]**

(b) What are the requirements that an Applicant must establish in an application for an interdict generally? **[10 marks]**

(c) State the key and pertinent averments that an Applicant for a spoliation order must make in his/her founding affidavit without which the application would dismally fail. **[6 marks]**

Total: [25 marks]

Total possible marks:[100]