

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2017

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

Sizwe Fakudze, a thirty-six year old economist and successful businessman, has been attending counselling sessions with a well renowned psychiatrist at Medi-Sun Clinic in the Ezulwini Valley. While the psychiatrist, Dr Lizella Smith, remains optimistic that Sizwe's condition will improve just like all her patients, Sizwe's case proves to be difficult as the recovery has been painfully slow. For the past eight months, the doctor has been seeing Sizwe twice a week for the treatment of post-traumatic stress but he has not gone past the first stage of his five-stage treatment plan. By this time, normally, even the slow to recover patients would be on the third stage.

Hindering Sizwe's recovery process is that he still cannot fathom himself why his 'perfect' wife would go out of her way to spite him while he brags about his choice of wife amongst his associates. Sizwe was certain that he had taken his time in scouting for the 'perfect' wife as approved by his dear mother. He even took the time to look for a person from humble beginnings, a person who still valued tradition and respected the status of a man as the head of the house. He made sure that he went back to his mother's home area, Ntontozi, to get that 'perfect' wife who would be unto him, like his mother was to his father. His mother always knew her place, adored her husband but also supported him in the family business.

In this respect, the milling business the Fakudze's owned, Emantolo Mills, grew in leaps and bounds and had three branches by the time Sizwe's parents died in a car accident in 2007. Sizwe, being the only child and heir, was determined to let the legacy of his parents live on. As of today, Sizwe has developed a brand for their

products and is one of the suppliers of mealie meal products in the country now with five branches countrywide.

Sizwe was also determined to love his wife as the queen of his heart. This he did successfully. When Sizwe proposed a courtship relationship to Mantfombi Fakudze (nee Dlamini) in 1999, he had just started out at Swazi Bank as a teller and Mantfombi had just completed high school. True to his words, to show her nothing but love, Sizwe helped her upgrade her results to secure a space at the University of Swaziland (UNISWA). By 2001, Mantfombi enrolled at UNISWA as a Bachelor of Humanities student. As the years progressed, Sizwe's career was also flourishing and so were the businesses. He had landed himself a job at the Central Bank of Swaziland as a Business Analyst.

No doubt Sizwe was doing financially well. When students at UNISWA staged their protests and class boycotts for allowances, Mantfombi was not bothered at all. She faithfully received her monthly in-contact from her bank notifying her of the deposit to her FNB account of a staggering E2, 000.00 monthly allowances from Sizwe. She drove to school in sleek cars, her electronic gadgets were the latest, her clothes trendy and so were her hairstyles. Mantfombi turned most ladies green with envy because of her lifestyle.

In 2005, the darlings got wed in a spectacular spring garden wedding at Summer Field Botanical Gardens. Their wedding started out as a blissful fairy tale. Among her colleagues and others, Mantfombi became a revered and envied house wife

particularly because she had a guaranteed E35, 000.00 per month to attend to her personal needs.

In 2007, Sizwe was promoted to Chief Business Analyst and his job put a strain on their marriage. He was now a globe-trotter, attending meetings and conferences across the length and width of the planet. In the little time that he was home, he had to attend to his inherited business and his wife too. Between 2007 and 2009, Mantfombi had suffered 2 miscarriages because of the stress of being a lonely woman.

In 2010, Mantfombi decided to give into the advances of one Muzi Masuku, who ironically was Sizwe's long-time friend. Muzi promised to keep their affair covert and make Mantfombi happy. Indeed, while Sizwe was busy raking in the money for the family, Muzi did a good job secretly keeping Mantfombi happy. Their affair continued until 14 February 2015 when cupid shot Sizwe unexpectedly, came back home unannounced one evening. To his wonderful bemusement, the mood was conveniently set up in the house. All he had to do was to locate his wife in the many rooms of their mansion at Dalriach, a suburb in upper class Mbabane. His short search yielded to an unpleasant discovery, the two 'love-birds', Muzi and Mantfombi, were intertwined in the cosy-lit private bathroom in the master bedroom.

Devastated and dejected, Sizwe collapsed and had to be rushed to hospital. He had not seen this coming; his 'perfect' wife had disappointed him. When he return home from the hospital, Sizwe felt that he had failed as a loving husband and provider.

However, most of all, he did not understand what he did wrong. Not a day did he not attend to the needs of his wife, when he could. To him, the woman was an unappreciative harlot who did not deserve to share in his successes and he wanted nothing to do with her. He can no longer stand to be with her and he sent her packing from the matrimonial home. He wants out of the marriage.

For legal advice and legal action in a superior forum, Sizwe has approached his family attorneys in Mbabane, to wit; Simelane-Mtshali Attorneys who are based at first floor Emlonyeni Building and you have been assigned to execute his instructions. Highlighting the pertinent factual circumstances and legal grounds thereof, draft the relevant pleading. [25 marks]

QUESTION 2

Mantfombi has instructed Sithole-Magagula Attorneys from Manzini to represent her in the proceedings instituted by Sizwe against her in **Question 1** hereinabove. These attorneys are located at Plot 555 Trelawney Park. To date, these proceedings instituted by Sizwe against Mantfombi are far from being finalized. In the meantime Mantfombi has become a shadow of herself and Muzi Masuku is nowhere to be seen. She now stays with her parents in the Ntongozi area.

On or about May 2015 Sizwe ceased paying her monthly allowance and further blocked her credit card. Her status has diminished considerably. As her attorneys of record, Mantfombi has instructed your office to commence interlocutory proceedings which can come to her rescue in the circumstances pending the finalization of the proceedings instituted by Sizwe against her. You have been

assigned with these instructions, draft the relevant court process pertinent relief and grounds thereof. **[25 marks]**

QUESTION 3

- (a) Discuss the nature, purpose and the circumstances under which the High Court may grant judgement by default. As part of this discussion you are required to specify the pertinent rule in this regard. **[15 marks]**
- (b) Narrate the circumstances under which a party to actions proceedings may apply for the grant of the extra-ordinary judgement generally known as summary judgement). Which rules governs this procedure under the High Court rules? **[10 marks]**

Total: [25 marks]

QUESTION 4

- (a) Briefly discuss three (3) types of a special plea in abatement. **[15 marks]**
- (b) What are the grounds for excepting to a pleading in action proceedings? **[10 marks]**

Total:[25 marks]

Possible attainable marks: [100]