

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

THE LAW OF CIVIL PROCEDURE:- L481

SUPPLEMENTARY EXAMINATIONS

AUGUST 2012

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

- 1. Answer any four (4) of the five (5) questions;**
- 2. Write neatly and legibly;**
- 3. Always give reason(s) for your answer;**
- 4. Decided cases, whenever used as authority, MUST be underlined;**
- 5. To correct any errors, simply cancel out with a single line;**

QUESTION 1

Tsepo, a teacher at St James High School, was assaulted by the **Masoba**, a father of one of the Form E students taught by **Tsepo**, at St James High School Mokhotlong. **Tsepo** approached you, a lawyer, whose office is at Butha-Buthe. **Tsepo** tells you he wants to claim M20,000 (Twenty Thousands Maluti) as damages against **Masoba** at Mokhotlong Magistrate Court because it is near his home. **Masoba's** lawyer, in his pleadings, claims that Mokhotlong Magistrate Court has no jurisdiction over the matter.

With the aid of decided cases and other relevant authorities, present the legal argument why you instituted the case at the Mokhotlong Magistrate Court. In your legal argument refer to principles, factors and other considerations you took into account in deciding to lodge the case as you did.

[25 Marks]

QUESTION 2

With the aid of decided cases and other relevant authorities, critically discuss the *legitima persona standi in judicio* of unincorporated association.

[25 Marks]

QUESTION 3

Make brief notes on the following:

- | | |
|---|-----------|
| a. Specific requirements in urgent applications | [5 Marks] |
| b. Return date and the anticipation thereof | [5 Marks] |
| c. Joinder of parties and of causes of action | [5 Marks] |
| d. Affidavits generally | [5 Marks] |
| e. Anton Pillar Orders | [5 Marks] |
| f. Interdicts | [5 Marks] |
| g. Provisional sentence | [5 Marks] |

[25 Marks]

QUESTION 4

Sometime in June 2012, **NKO** lent money **LEOTO**. They approached a seemingly not-so intelligent 4th year student to reduce down the agreement in writing. The document reads:

“I TSAMAEA LEOTO specifically acknowledge to be indebted to LEMINA NKO in the amount of M15,000 which he lent to me, and which will be payable from August 2012 if the cows I put up for auction sale are bought.”

- a. With the aid of decided cases, critically discuss whether this document qualifies as a basis for provisional sentence.

[23 Marks]

- b. **NKO** seeks to institute a provisional sentence at the Maseru Magistrate Court. Is this appropriate?

[2 Marks]

[25 Marks]

QUESTION 5

With the aid of decided cases and relevant authorities, highlight the procedure for summary judgment under our law of civil procedure.

[25 Marks]