

UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
LLB LEVEL 2
FINAL EXAMINATION PAPER, MAY 2019

COURSE NAME : LAW OF CONTRACT
COURSE CODE : IDE LAW204
TIME ALLOWED : THREE (3) HOURS

- INSTRUCTIONS
1. QUESTION ONE IS COMPULSORY
 2. ANSWER ANY OTHER THREE (3) QUESTIONS
 2. MARKS ARE INDICATED AT THE END OF EACH QUESTION
 3. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY.

THIS PAPER IS NO TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

GOOD LUCK

QUESTION 1 (COMPULSORY)

Gabriel Couto a construction company based in Matsapha is awarded a tender by the Eswatini Gov for the construction of the Sicunusa Public Road. The project is scheduled to be completed on or about the 26th February 2019. Due to the magnitude of the work, Gabriel Couto subcontracts Polezwa Civils a reputable civils engineering company for the construction of sideways and pavers on the 25km road. Polezwa agreed to complete the works by the 26th February since it is one of the expert companies in civils. It is further agreed as follows between the parties:

- Before commencement of work, Polezwa was to be paid E50,000.00 as advance payment.
- The total amount of work subcontracted to Polezwa was E250,000.00
- Upon completion of the work done, Polezwa shall submit a certificate of completion for endorsement by the Senior Quantity Surveyor who shall certify the due amount.
- Before processing of payment as certified by the Senior QS, a plus certificate from the Project Manager shall be submitted to the Accountant authoring her to release payment.

Subsequent to the signing of the contract, Polezwa started work on the pavers and sideways. However, on completion, a report is submitted by the Senior QS that the work is sub-standard and the project manager as well submits a negative report for the work done by Polezwa.

With reference to case law advise both parties on legal issues that may arise from the given set of facts.

(25 marks)

QUESTION 2

With the aid of decided cases discuss the difference between *mora creditoris* and *mora debitoris* highlighting the requirements, consequences and remedies applicable to each.

(25 marks)

QUESTION 3

X enters into a contract with Y for the sale of shares. Y pays for the shares and a day before the shares are due for transfer, X informs Y that he will not be transferring the shares to Y. With reference to case law discuss the legal issues arising from the given set of facts.

(25 marks).

QUESTION 4

A contract can be terminated in a number of ways. With reference to case law, discuss.

(25 marks)

QUESTION 5

With reference to other relevant case law, discuss the important principle established in the Appellate Division case of *Haynes v Kingwilliamstown Municipality* 1951(2) SA 31 (AD) 371 at 378H.

(25 marks)