



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW401/ L401

TITLE OF PAPER: CIVIL PROCEDURE

TIME ALLOWED: 3 HOURS

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## Instructions

1. This paper consists of four (4) pages other than this cover page.
2. All questions are compulsory.
3. Answer all four questions in a chronological order.

## Special Requirements

None

## Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT turn examination paper over until instructed to do so.**

## QUESTION 1

Maluju Oil (Pty) Limited is a private company registered and incorporated in terms of the company laws of the Republic of South Africa having its principal place of business in Fourways, South Africa. The company deals in the production and supply of fuel and oil products. Maluju Oil supplies its products to most countries in the SADC region. Oil Drill (Pty) Limited is another private company registered and incorporated in terms of the company laws of the Kingdom of Eswatini having its principal place of business at 1<sup>st</sup> Street in the Matsapha Industrial Site. Oil Drill buys its products which it sells locally from Maluju Oil.

On or about March 2, 2019 the Chief Executive Officers of the two companies held a meeting at the Hilton Hotel in Mbabane and signed a product supply contract in terms of which Maluju Oil was to supply Oil Drill with fuel and oil products in five trenches between the period of April and August 2019. The total contract price for this deal was the sum of E1, 250 000 (One Million Two Hundred and Fifty Thousand Emalangeneni) at E250 000.00 (Two Hundred and Fifty Thousand Emalangeneni) per trench.

As part of the contract it was agreed between the parties that in the event there are any legal disputes which emanate directly from this contract, only a Magistrate's court shall be vested with jurisdiction notwithstanding the amount involved.

Oil Drill paid the full contract price to Maluju Oil on or about March 20, 2019. Maluju Oil timeously delivered all the first four trenches of the contract. The delivery was made at Oil Drill's principal place of business in Matsapha. The last and final delivery in respect of the fifth trench was due for delivery on or before August 31, 2019. It is now November 2019 Maluju has still not made the last delivery. Notwithstanding all efforts made by Oil Drill's CEO to pursue this matter, nothing has yielded any positive results.

Mr. Dalinjebo Manyama who is the CEO of Oil Drill has decided that the only solution to this matter is to institute legal proceedings against Maluju Oil for the recovery of the outstanding funds.

He has approached you for legal advice. Advise him accordingly. Your advice must inter alia take into account considerations of the appropriate forum and the relevant principles of civil procedure at play in cases of this nature. **[25 marks]**

### **QUESTION 2**

Henry Kapungu a Zambian national came to the Kingdom of Eswatini in 2007 and got married by way of civil rites to former Miss Eswatini Nozipho Shabangu in a lavish wedding ceremony which was attended by royalty and many other celebrated guests held at the Convention Centre in Ezulwini in March 29, 2007. After the wedding the couple lived in Thembelihle Township in Mbabane pursuant to which in 2010 they left for Pretoria in South Africa where they have remained to date.

The couple's marital relationship has taken a severe strain since 2016 to the point that Nozipho has deserted the matrimonial in Pretoria. She now lives in a rented flat in Johannesburg where she is also employed as a Accountant in a financial institution.

Their problems emanate from a host of problems amongst which is Henry allowing a number of his family members coming to live with the couple in their home in Pretoria and some infidelity issues.

Nozipho has resolved that the solution to this impasse is to get a divorce. She has approached your law firm for legal advice. Provide her with legal advice with respect to the substantive and procedural

You are the Magistrate assigned to listen to the legal arguments and ultimately decide this matter. Discuss the relevant principles of civil procedure which are at play here and decide the case. **[25 marks]**

#### **QUESTION 4**

Write short notes on the following:-

(i) Under what circumstances is it appropriate to use action and/or motion proceedings? **[5 marks]**

(ii) What is the difference between a plea and an answering affidavit? **[5 marks]**

(iii) Distinguish between a declaration and particulars of claim in action proceedings. **[5 marks]**

(iv) What is security for costs? **[5 marks]**

(v) Briefly discuss the difference between a judgement by default and summary judgement. **[5 marks]**

**Total: [25 marks]**

**Total attainable marks:[100]**