

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2015

TITLE OF PAPER: CIVIL PROCEDURE

COURSE CODE: 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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GRANTED BY THE INVIGILATOR

QUESTION 1

Madevu Mkhabela is an adult old man approaching his sixties. He operates a trucking business trading as Madevu Transport based in Big Bend in the Lubombo district. The trucking business of Madevu was sub-contracted by Kukhanya (Pty) Limited, a roads construction company whose founding office is situated at Ntabamhloshana area in the Manzini district. Ntabamhloshana is also doubles up as the residential area of Mr. Peter Ngwenya, who is the founder and Managing Director of Kukhanya (Pty) Limited.

The sub-contract transaction between Kukhanya and Madevu entailed that the latter would provide five(5) of his trucks with their drivers to Kukhanya for the purpose of loading, ferrying and dumping gravel at a designated dumping site. The gravel is excavated from road construction earthworks in respect of a roads tender project Kukhanya is working on and is presently under construction between Nhlangano and the Gege Border Post in the Shiselweni district. The sub-contract transaction was concluded in June 2015 at the Kukhanya construction site office in Nhlangano which is responsible for overseeing and supervising the construction of this road.

The parties also invoked the provisions of section 28 of Act No.66 of 1938. The Company has its administration offices in Moneni in the Manzini district. Among the issues, the terms of the contract provided that Kukhanya will pay a monthly retainer of E180 000.00 (One Hundred and Eighty Thousand Emalangen) to Madevu in respect of his services. Madevu has not been paid for the month of August and it is now September 30, 2015. When making enquiries, he is taken back and forth. He is now terribly annoyed and his creditors are on his heels because he has also failed to meet his financial obligations for the month of August.

Advise Madevu accordingly as to against whom, in which Court and on what basis should he institute legal proceedings to recover his money. Substantiate your legal advice with factual pointers as sourced from the matrix and legal reasoning from your knowledge of civil procedure.

[25 marks]

QUESTION 2

Henry Lupupa is an adult male Swazi of Zakhele in Manzini within the Manzini region. He is the registered owner of a Toyota Hilux Legend 45 4.5L Diesel LDV, whose registration details are TSD 770 AL. He bought this motor vehicle as brand new from Leites Motors at the beginning of 2015. He has been driving and using this motor vehicle since then to attend to his business and personal errands. His wife Mrs. Lynette Lupupa with whom they are married in community of property also regularly drives the motor vehicle. Henry is a very busy man and also enjoys a high profile job at Swaziland Water Services Corporation in Ezulwini. His job requires that he often travels to destinations abroad, both in Africa and other parts of the world for training and to take part in water related workshops and conferences. Wherever he is travelling he leaves the car with his wife.

On the 2nd October 2015 around midnight, while Henry was away in China to attend an internal conference on biodiversity, Mzungu Lupupa (Henry's 21 year old son), who was desperate of transport to get him to a night-long party at Ezulwini secretly stole the car keys from his mother's handbag and sneaked out of the house and put the car on the neutral gear, pushed it out of the garage, the main gate and eventually drove off to the party. At the party and as expected, he met his friends and was constantly showing off 'his wheels' to them and to the beautiful young girls who were in attendance. This kind of conduct and the

overwhelming attention he was receiving from his gang and the girls, got Mrico Vilane, a well known bully and socialite who was at the party green with envy and terribly annoyed. On the next trip that Mzungu made to the car, Mrico followed him and demanded that he gives him the keys to the car.

Mzungu who was now trembling with fear and completely traumatized, tried to tell Mrico that the car was not his but belonged to his father; the bully would hear none of it. Perhaps to save his own life and an ego that was already severely dented, Mzungu reluctantly and in tears, retrieved the car keys from the back pocket of his jeans and gave them to Mrico. The latter, drove away in the car and left Mzungu and his friends completely stunned and in total disbelief.

Henry returned home on the following day to be confronted with the sad news regarding his motor vehicle. He is livid and desperately wants his car back before it is lost or extensively damaged by the bully. He has approached you and seeks your substantiated legal opinion on the following issues:

- a) Against whom should legal action be taken in this matter, if any? And by whom? [5 minutes]
- b) What form of proceedings must be adopted by the litigant and in which Court? [5 minutes]
- c) The nature of the relief that must be sought in this matter together with the specific requirements that must be established to obtain such relief. [15 minutes]

Total:[25 marks]

QUESTION 3

(a) Discuss the requirements for obtaining an interdict in civil proceedings.

[20 marks]

(b) List five (5) types of applications commonly used in motion proceedings.

[5 marks]

Total:[25 marks]

QUESTION 4

Discuss the differences between action and motion proceedings?

[25 marks]

Total Possible Marks:[100]