

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATIONS, MAY 2005

TITLE OF PAPER : **LAW OF CONTRACT**
COURSE CODE : **L 206**
TIME ALLOWED : **THREE (3) HOURS**
INSTRUCTIONS : **ANSWER ANY FOUR (4) QUESTIONS.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED
BY THE INVIGILATOR**

QUESTION 1

Jele operated a grocery store in Siteki which sold to the consumers in the surrounding areas. He sold the business to Masuku and agreed, as part of the deal, not to engage in the grocery business in Siteki for five (5) years. Two (2) years later, Jele opened in Siteki a new grocery store in competition with Masuku. Masuku has sued to obtain an interdict against Jele.

Will the interdict be granted? Provide a reasoned answer.

[25 marks]

QUESTION 2

Simelane, an insurance agent, working for one of South Africa's largest and well known insurance companies approaches Fakudze in Swaziland with the aim of selling Fakudze a retirement annuity.

Simelane, having explained all the benefits of the policy, convinces Fakudze who signs the contract and a stop order, instructing his bank to deduct E500 every month and to transmit it to the insurance company in South Africa. Fakudze is informed in the policy document which he received a month later that at the age of 55, when he retires, the policy will be worth E5 million.

A fact which was known to Simelane but not to Fakudze and which Simelane did not disclose to Fakudze was that at the time the laws of Swaziland prohibited foreign insurance companies from entering into insurance contracts with locals.

Having paid for five years Fakudze is told by the insurance company that his contract is void and that there are no benefits he will get under it. Further, that since the contract is a complete nullity he cannot even claim the premiums already paid by him.

Discuss Fakudze's position in law..

[25 marks]

QUESTION 3

Maziya, a milk dealer, is considering bringing an action to recover approximately E1000,00 as the agreed and reasonable value of milk sold and delivered to Gama, who is also a milk dealer. Gama admits the sale and delivery of the milk, the quantity thereof, and the failure to pay but as an affirmative defence he alleges that Maziya was not licensed as a milk dealer in accordance with the Agriculture and Markets Law, during the period when Maziya sold the milk to him. The lack of licence is admitted in the reply by Maziya.

Advise Maziya.

[25 marks]

QUESTION 4

In December 2004 Nombulelo, a novelist, went on a cruise on the Swazi Maiden a luxury ship. On the inside page of her cruise ticket in very small print it was stated that the shipping company accepted no liability whatsoever for any loss of life or personal injury suffered by passengers on their ships.

In the course of the cruise, Nombulelo suffered a broken leg and a broken arm due to the first officer's negligence. As a result, Nombulelo was unable to complete the writing of a novel she had planned to write.

On her return from the cruise in January 2005, she hired a car from Zwane Car Hire Services to carry her luggage to her house. The actual contract was handed to her for signature after the luggage was already in the car and she did not notice that Zwane Car Hire stated in the contract that they would accept no responsibility for loss or damage to property. There is also a notice to this effect in the car itself. On the journey, two suitcases full of her clothes were lost.

Advise Nombulelo.

[25 marks]

QUESTION 5

Eagles Nest is the biggest producer and supplier of eggs in the state of UNISWA. On the 1st of January 2005 it entered into a contract with Spar Supermarket, the terms of which were:

- (1) That Eagles Nest would sell 1000 trays of eggs.
- (2) That Spar Supermarket would pay the purchase price of E5000.00 for the trays of eggs before delivery either by cash or back guaranteed cheque.
- (3) That delivery should be on or before January 5th.

Spar Supermarket paid the purchase price on the 2nd of January 2005.

On the evening of the 2nd January 2005 Eagles Nest was flooded by storm water due to a freak hailstorm which destroyed the processing building where the eggs are processed and kept prior to delivery. All the eggs were destroyed during the storm.

Spar supermarket, the biggest supermarket chain in the state of UNISWA is considering suing Eagles Nest.

Discuss all the legal issues brought out by this case, illustrating with decided cases whether or not Spar Supermarket has any chance of success.

[25 marks]