

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**EXAMINATION PAPER: MAY 2006**

**TITLE OF PAPER** : **LAW OF CONTRACT**

**COURSE CODE** : **L206**

**TIME ALLOWED** : **3 HOURS**

**MARKS ALLOCATED** : **100 MARKS**

**INSTRUCTIONS** : **ANSWER ALL FIVE QUESTIONS**

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

**QUESTION 1****ANSWER ANY TWO OF THE FOLLOWING QUESTIONS (a) - (c).**

- (a) Bongani has lost his favourite dog, Butch. He places an advertisement in the local newspaper, offering E500 to anyone who returns the dog to him in a healthy condition. Vusi, by chance, finds the dog in a mealie field and phones the number engraved on a little tag affixed to Butch's collar. Bongani's mother answers and gladly furnishes their address, whereupon Vusi delivers the dog to Bongani. Bongani profusely thanks Vusi but remains silent as to the reward. A week later Vusi reads an old newspaper and, to his pleasant surprise, sees the advertisement. When he approaches Bongani to collect the E500, the latter refuses to pay. Advise Vusi as to his legal position. (10)
- (b) A orally offers to sell his car to B for the amount of E10 000, saying in the process: "You must accept this offer before 11:00 tomorrow." B returns to A's home the following day at 10:00, but does not find A home. Because B is in a hurry, he leaves and at 10:15 sends a telegram to A from the nearby post-office, accepting A's offer. A returns home at 10:30 and when he has not heard anything from B at 11:00, he sells the car to his neighbour, C, for the same amount. The telegram from B is delivered at A's home at 15:00. Discuss whether B has any claim against A. (10)
- (c) D gives an oral option to P to purchase D's farm for E1.5 million. Before the period of this option expires, P approaches D and curtly informs him: "I hereby exercise my option to buy your property." However, D replies that he has received a written offer to purchase the same farm from X, for the amount of E2 million and continues: "You must be out of your mind to think that I shall accept your offer! I am definitely going to accept X's offer." Advise P as to his legal position. (10)

**[20]****QUESTION 2****ANSWER ANY ONE OF THE FOLLOWING QUESTIONS (a) - (b).**

- (a) When checking into the Royal Swazi Sun hotel, Mr Dlamini is asked by the desk clerk to sign the hotel register. Being in a hurry, Mr Dlamini simply signs the register and speeds off to the recreation area. During the course of the evening a hotel employee who went into Mr Dlamini's room to check the air conditioning, forgets to lock the door. On his return to the room, Mr Dlamini finds that all his luggage has been stolen. When he later demands compensation from the hotel management, he is told that he has waived all his rights to any claim on this account, by signing the register which contains a disclaimer in favour of the hotel. Mr Dlamini contends that as he has not read the fine print (a fact that he can prove), he is not bound by the terms reflected on the register. Advise Southern Sun Hotels as to their position if Mr Dlamini should decide to claim damages on the basis of the employee's negligence. In addition, furnish a general discussion of the problem involved by referring to case law. (20)
- (b) Gladys knows that Bongani is selling liquor, without a licence, to members of the public. Gladys threatens to report Bongani to the authorities, unless he sells his car to her at a price well below its market value. As Bongani is terrified of being sent to jail, he complies with her

demand and sells the car to her at the low price. You are later consulted by Bongani. Inform him of any remedies that he may have. (20)

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### QUESTION 3

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS (a) - (c)

- (a) Patrick who is critically ill is often visited by Pastor Shongwe. During the course of a visit Pastor Shongwe advises the very religious Patrick as follows: "My son, I think you must transfer your two farms to me, so that I can look after your family well after you have passed away." After Patrick has whispered his consent, the good pastor arranges with Mr Simelane, a lawyer, to prepare the documentation to enable Patrick to donate the farms to him. Patrick finally signs all these forms (he is fully aware of what he is doing) and then slips into unconsciousness. After transfer of these properties have been effected to Pastor Shongwe, he transfers one farm to his eldest son, John. A year later Patrick recovers and, as he soon realises that the pastor has no intention of applying the farms to the advantage of his own family, as was promised, he approaches you to enquire whether he cannot have his farms back. Advise Patrick on his legal position in respect of both farms. (10)
- (b) Confidence trickster Emma forges a map and brings the rich Peter under the impression that she has a farm, Riverside, to sell him at a very fair price. She points to the map and says to him: "Here are the boundaries, see for yourself: 2 000 hectares at only E2 million!" He immediately affixes his signature to a deed of sale and forthwith pays a cash deposit of E100 000. It later transpires that Riverside does not exist at all. Discuss the consequences of this type of juristic act, by referring to the common-law writers. Also dispense advice to Peter as to the best course of action to be taken against Emma. (10)
- (c) Lucky says to Siphon: "If our soccer team loses against your team, I shall pay you E1 000." Subsequently Lucky's team loses. Can Siphon now claim E1 000 from Lucky?" Pay specific attention to the general rule applicable in such a case, as well as to the position between the parties. (10)

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### QUESTION 4

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS (a) - (c).

- (a) Explain the nature and operation of a stipulation for the benefit of a third party (*pactum in favorem tertii*). In addition, explain in which branch of the law of Swaziland this type of juristic act can fulfill a very useful role. (10)
- (b) Explain the difference between the *essentialia*, *naturalia* and *incidentalia* of a contract; employ examples to augment your explanation. (10)
- (c) Explain the difference between alternative, facultative and generic obligations; employ examples to augment your explanation. (10)

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**QUESTION 5****ANSWER ANY ONE OF THE FOLLOWING QUESTIONS (a) - (b).**

- (a) Sibusiso buys a car from John and they agree that John will deliver the car on the following day at 10:00. However, John only arrives with the car a week later. Discuss the form of breach of contract that presents itself here in detail. (20)
- (b) (i) Evaluate the following statement made by a second-year law student: "A basic principle of our Roman-Dutch law of contract is that agreements must be honoured - *pacta sunt servanda*; therefore a court of law will always be willing to grant an order for specific performance against a party who breaches a contract." (10)
- (ii) Explain the circumstances which may give rise to the *exceptio non adimpleti contractus* and then evaluate the impact of the South African judgment in *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 1 SA 391 (A) on modern Roman-Dutch law in this context. (10)

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