

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION PAPER: JULY 2006**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>LAW OF CONTRACT</b>
<b>COURSE CODE</b>	<b>:</b>	<b>L206</b>
<b>TIME ALLOWED</b>	<b>:</b>	<b>3 HOURS</b>
<b>MARKS ALLOCATED</b>	<b>:</b>	<b>100 MARKS</b>
<b>INSTRUCTIONS</b>	<b>:</b>	<b>ANSWER ALL <u>FIVE</u> QUESTIONS</b>

**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) Lulu sells a freezer to Zandile for E1 500. Zandile pays no deposit as required by law. In terms of their agreement ownership of the freezer shall pass to Zandile on payment of the last of three monthly instalments of E500. Lulu delivers the freezer to Zandile's home on the day of the transaction, where Zandile takes control of it. After Zandile has in fact paid the last instalment, Lulu wants the freezer back because she can get E2 000 for it by selling it to Nomcebo. Lulu is quite prepared to pay back the amount of E1 500 that she has received from Zandile. However, Zandile does not wish to part with the freezer. Lulu now institutes the *rei vindicatio* to claim the freezer back. Discuss the merits of Lulu's claim. (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) Define an option and then critically discuss the requirements and consequences thereof. (10)

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

- (a) The board of directors of X Company mistakenly accepts a tender submitted by Jerry Builders Ltd to effect extensive alterations to one of its buildings, whereas the board in fact intended to accept the tender submitted by Best Builders Ltd. Jerry Builders Ltd immediately starts concluding contracts with subcontractors and purchases materials for the building operation. One month later the board of directors of X Company learn of their mistake and immediately contact you to know whether they are bound by their agreement to Jerry Builders Ltd. Render your opinion by analysing the type of situation presenting itself here, referring extensively to relevant case law. (20)
- (b) Discuss the remedies of our modern Roman-Dutch law for innocent misrepresentation. (20)

**[20]****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." When Patrick nods 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) Gugu works as a hairdresser for Mr Magagula in Manzini. In terms of her contract of employment she is prohibited from opening her own hairdressing studio anywhere in Swaziland for a period of 5 years after having left the employ of Mr Magagula. After a year she quits and wishes to open her own hairdressing salon in Piggs Peak. She seeks your advice as to whether this is possible in view of her contractual undertaking towards Mr Magagula. (10)
- (c) John undertakes to build stables for Sally. They enter into a written agreement to this effect and insert a clause that any variation to their contract shall be in writing. Later they orally agree to a contract price that is E10 000 higher. After completion of his work, Sally tenders the price originally agreed upon in the written contract, but John claims the higher price. Evaluate his chances of succeeding. (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 simple joint liability and joint and several liability in 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, when John arrives with the car at the appointed time and place, Sibusiso is not there. He only phones John two months later, after having returned from abroad. Discuss the form of breach of contract that presents itself here in detail. (20)
- (b) Write an explanatory note on the *exceptio non adimpleti contractus* as a defence against a contractual claim. (20)

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