

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER : LAW OF CONTRACT

COURSE CODE : L 206

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER ANY FOUR (4) QUESTIONS. MARKS ARE INDICATED AT THE END OF EACH QUESTION.**
- 2. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY.**

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

On 1st January Nhleko writes to Nxumalo offering to sell his car to Nxumalo for E3000.00. On 2nd January Nxumalo writes a letter rejecting the offer and posts it at 7 a.m.. Later the same day he writes another letter stating that he has changed his mind, that he accepts the offer; and consequently that Nhleko should ignore the contents of his earlier letter of rejection. He posts this letter at 9. p.m. Nxumalo's second letter reaches Nhleko on 3rd January, the first letter reaches Nhleko on 4th January.

Discuss the legal position concerning all the issues in the above transactions. [25 MARKS]

QUESTION 3

Without his guardian's consent, Dumisa, a minor aged 19 years, signed a contract in terms of which he bought a motor cycle on hire - purchase from Zakhele. Zakhele would not have entered into the contract but was induced to enter into it by Dumisa's fraudulent representation that he was a major.

After paying the first four instalments, Dumisa could not afford to pay the fifth and following instalments of the purchase price. Zakhele has now claimed the motor cycle retaining the money already paid. Lukhele, Dumisa's father now wants to sue Zakhele for the return of the money.

Making reference to decided cases, discuss all the issues in the above transactions, giving all possible arguments that both parties might bring forward. [25 MARKS]

QUESTION 4

Dlamini, aged eighty-seven and bedridden, owned a chicken feed business in Mbabane which was operated by his son with whom he lived. The son wanted the feed business as his own and on several occasions threatened to kill the father unless the latter transferred it to him. Finally, at a time when the father was in great pain, they signed an agreement which had been prepared by the son and which required the father to transfer the feed business to the son in return for the later's promise to support and care for his father during the rest of his life. Shortly, thereafter, the father brought an action to have the transfer set aside on the grounds of:

1. Duress
2. Undue influence
3. Fraud and
4. Incapacity

At the trial the father testified that he had never taken his son's threats seriously, that he had an opportunity to discuss the agreement with a lawyer who had been brought to his bedside by his son to witness the signing, that he was treated as well after the agreement was signed as before, and that his principal reason for signing the agreement was to "stop the quarrelling".

Identify all the defences and evaluate each one of them separately. [25 MARKS]

QUESTION 5

Beauty Masilela and Mahlinza, owner of Kwaluseni Dry Cleaners (Pty) Ltd, conduct negotiations by telephone with a view to concluding a contract in respect of the cleaning of Beauty's expensive wedding dress. When Beauty enquires about the terms, Mahlinza says: "I can't tell you that on the phone. You visit the shop and you will find my terms clearly written on a blackboard." At the shop Beauty finds the blackboard and the terms including a clause excluding liability for damage however caused. In the absence of the owner, an assistant explains to Beauty: "You notice that the message on the board is couched in the widest possible terms as a precaution. In practice, however, non-acceptance of liability is restricted to only certain specified risks including damage to beads and buttons."

Beauty hands over her dress for cleaning. Two days later, the dress is indelibly stained. Kwaluseni Dry Cleaners (Pty) Ltd, relying on the exemption clause, repudiates liability. Advise Beauty Masilela.

[25 MARKS]