

**UNIVERSITY OF SWAZILAND**

**INSTITUTE OF DISTANCE EDUCATION**

**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION PAPER, MAY 2009**

**TITLE OF PAPER : LAW OF CONTRACT**  
**COURSE CODE : DL 023**  
**TIME ALLOWED : THREE (3) HOURS**  
**TOTAL MARKS : 100**

**INSTRUCTIONS:**

- 1. ANSWER ANY FOUR (4) QUESTIONS.**
- 2. ALL QUESTIONS CARRY EQUAL MARKS.**

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

### QUESTION 1

Until the two minds are *ad idem* a contract cannot be consummated – do you agree? Discuss.

[25 marks]

### QUESTION 2

Non- performance does not always constitute a breach of contract – do you agree. Discuss the principle of the *exception non – adimpleti contractus*.

[25 marks]

### QUESTION 3

Discuss each of the following:

- (i) Undue influence [5 marks]
- (ii) Fraudulent misrepresentation [5 marks]
- (iii) *In pari delicto potio est condition defendetis* [5 marks]
- (iv) Warranty [5 marks]
- (v) *Error in persona* [5 marks]

[25 marks]

**QUESTION 4**

**Discuss the following concepts.  
Suspensive and resolute conditions**

**[25 marks]**

**QUESTION 5**

**Distinguish between merger, set-off and supervening impossibility of performance.**

**[25 marks]**

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