

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER,
YEAR: 2016/2017**

DEGREE LEVEL : BACHELOR OF LAWS YEAR 2
EXAMINER : SD. MAVUNDLA
TITLE OF PAPER : THE LAW OF CONTRACT
COURSE CODE : L 206
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS :

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

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

QUESTION 1

Ndlovu offers to sell Nxumalo his farm for E100, 000.00. Further he offers Nxumalo to keep this offer open for a period of three months. Thwala approaches Ndlovu and offers to purchase the farm for E200, 000.00. Ndlovu accepts and Thwala takes occupation of the farm. All this is going on before the expiry of the three months. A week later before the expiry of the three months, Nxumalo approaches Ndlovu with acceptance of the offer only to find out that Ndlovu has already sold the farm to Thwala.

Discuss all the issues brought out by this problem, AND make reference to relevant case law.

[25 MARKS]

QUESTION 2

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. 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.

Discuss, giving all possible arguments that both parties might bring forward AND make reference to relevant case law.

[25 MARKS]

QUESTION 3

Khumalo, a cotton farmer from the Lubombo region approached John Deere in order to buy a tractor for his farming activities. He explains to the salesman that he needs a tractor that will withstand the rough and strong ground of the Lubombo. The salesman Dlamini, promptly points out one tractor and assured Khumalo that:

“this one is made specifically for rough and strong terrain, it will serve you for many a year without giving you any trouble.”

On the strength of this assurance, Khumalo buys the tractor. However, he is only able to use the tractor for two weeks before it completely breaks down and he is told that repairs would cost him about a third of the price for the tractor.

Advise Khumalo AND make reference to relevant case law.

[25 MARKS]

QUESTION 4

After several days of negotiations, Siphso wrote to Linda:

"Will pay you E3, 000 if you will install new plumbing in my house at Fairview according to the specifications I have sent to you. I must have your reply by November 30th."

Linda replied by a letter that Siphso received on November 5th:

"Will not effect plumbing job for less than E4, 000."

On November 20th, Linda wrote to Siphso:

"Have changed my mind, I will do the job for E3, 000. Unless I hear from you to the contrary; I will begin work on December 5th."

Siphso received this letter on November 22nd but did not reply to it. Linda, without Siphso's knowledge began the work on December 5th.

Discuss the legal position regarding both Siphso and Linda AND make reference to relevant case law.

[25 MARKS]

QUESTION 5

(a) Discuss the approach of the Courts towards agreements in restraint of trade. [10 MARKS]

(b) Maputo shipbuilders Ltd. employed Smith as a designer of fast patrol boats. He built up a great knowledge of this type of work and boats designed by him were bought by the United States, French and British navies. When he was made chief designer in 2006 he signed a contract providing that in the event of his terminating his employment with Maputo he would not for the next seven (7) years take up employment with another shipbuilder anywhere in the

world. In 2009 Smith had a dispute with Maputo Shipbuilders and was summarily dismissed. In 2010 he set up a business specializing in the building of speedboats.

Maputo Shipbuilders Ltd. wishes to proceed against Smith on a breach of a restraint of trade agreement. Advise them of their legal position AND make reference to relevant case law.

[15 MARKS]

[25 MARKS]