

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JANUARY 2019

TITLE OF PAPER : LAW OF CONTRACT

COURSE CODE : LAW 203

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.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR TO DO SO.

QUESTION 1

Dlamini had a very successful Supermarket business at Matsapha. In 2016 he sold the business to Hlanze. One of the terms of their contract of sale was to the effect that Dlamini would not open a similar business within a radius of 10 miles from the sold business for a period of 20 years.

Dlamini opened a similar business in Siteki but to his dismay found that he was hardly making a profit since he was failing to attract customers.

In 2018, February, he opened a Supermarket within 3 miles of his old business in Matsapha, arguing that he has a right to make a living and a right to freedom of trade.

Is he right? Illustrate your answer with decided cases. (25 marks)

QUESTION 2

Thulani a second year law student at UNISWA had his room broken into by thieves, who stole his computer, hi-fi system, cds and some clothes. He put up a notice on the student's notice board stating that a reward of E1 000.00 would be paid to any person giving information to the police that led to the arrest of the thieves and recovery of his stolen items. Bongani gave the required information, but at the time he did so he was unaware of this notice. Later when Bongani had heard from a friend he claimed the E1 000.00 reward from Thulani. Thulani refused to pay, advise Bongani supporting your answer with decided cases.

QUESTION 3

Simelane, an insurance agent, working for one of South Africa's largest and well known insurance companies approaches Fakudze in Swaziland with the aim of selling Fakudze a retirement annuity.

Simelane, having explained all the benefits of the policy, convinces Fakudze who signs the contract and a stop order, instructing his bank to deduct E500 every month and to transmit it to the insurance company in South Africa. Fakudze is informed in the policy document which he received a month later that at the age of 55, when he retires, the policy will be worth E5 million.

A fact which was known to Simelane but not to Fakudze and which Simelane did not disclose to Fakudze was that at the time the laws of Swaziland prohibited foreign insurance companies from entering into insurance contracts with locals.

Having paid for five years Fakudze is told by the insurance company that his contract is void and that there are no benefits he will get under it. Further, that since the contract is a complete nullity he cannot even claim the premiums already paid by him.

Discuss Fakudze's position in law.

(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 latter's promise to support and care for his father during the rest of the 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 this 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".

Assess and explain, evaluating each of the defences separately.

(25 marks)

QUESTION 5

Fakudze wrote to Simelane to sell him his BMX motorbike. The letter of offer Fakudze posted on the 18th May and it was received by Simelane on the 24th May. Simelane accepted this offer and posted his letter of acceptance on the morning of the 26th May. On the same day at 2.00 p.m. Fakudze had changed his mind about selling his bike and posted a letter revoking his offer. This letter got to Simelane on the 30th of May.

Discuss. Illustrate your answer with authorities.

(25 marks)