



**UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF LAWS/DIPLOMA IN LAW
FINAL EXAMINATION PAPER NOVEMBER 2019**

COURSE NAME: LAW OF CONTRACT

COURSE CODE: IDE LAW203

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS

- 1. QUESTION ONE (1) IS COMPULSORY**
- 2. ANSWER ANY OTHER THREE (3) QUESTIONS**
- 3. MARKS ARE INDICATED AT THE END OF EACH QUESTION**
- 4. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY.**

THIS PAPER SHOULD NOT BE OPENED UNTILL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION 1 (COMPULSORY)

Calakaliboli wants to sell his house and advertises it in the local newspaper at E370,000, giving his telephone number. Mshefane sees the advertisement and rings Calakaliboli and makes an appointment to see the house. Mshefane likes the house but cannot agree a price with Calakaliboli, his highest offer being E367,000, while Calakaliboli insists on E370,000. On the following Monday Mshefane receives a letter from Calakaliboli offering him the house for E368,500 and saying that Mshefane can have until noon on Friday to think about it. On Wednesday evening Mshefane meets his brother Macumbacaleke in their local. Macumbacaleke tells him that Calakaliboli's son-in-law bought the house earlier that day for E367,000. Mshefane goes straight home and writes a letter to Calakaliboli, accepting his offer to sell at E368,500. He posts the letter immediately and Calakaliboli receives it on Thursday morning, but replies by return saying *"You are too late. I have sold the house to my son-in-law."*

Identify the legal issues and advise Mshefane.

(25 marks)

QUESTION 2

Nomcebo and Sipho have been married in community of property for over 15 years. The couple was blessed with three (3) beautiful children. They live at their marital home in Ngwane Park. A few months ago Nomcebo discovered that Sipho committed adultery and has a child a one year old child in his extra marital affair. Upon discovery, Nomcebo filed for a divorce at the High Court. On being served with Court papers, Sipho decided to enter into a contract with his cousin for the sale the marital home at Ngwane Park. Nomcebo discovers that Sipho is secretly selling their marital home.

Nomcebo comes to you for a legal opinion on the matter, advise her with reference to case law.

(25 marks)

QUESTION 3

With the aid of decided cases, briefly discuss the following concepts in the law of contract:

- (a) Supervening impossibility (5 marks)
- (b) Undue influence (5 marks)
- (c) Obligation (natural and civil) (5 marks)
- (d) *caveat subscriptor* (5 marks)
- (e) Tacit emancipation (5 marks)

QUESTION 4

In law of contract, terms have been classified into two (2) categories, Roman- Dutch classification and modern law classification.

With the aid of decided cases and examples, discuss the terms as follows:

- (a) Roman Dutch Classification (10 marks)
- (b) Modern law classification (15 marks)

QUESTION 5

Hlakaniphile offers to sell her bicycle to Nonceba. She tells Nonceba that it is two years old and has hardly been used. Nonceba asks if she can go for a ride on it but Hlakaniphile refuses, afraid that Nonceba might ride away on it. Hlakaniphile tells her, "You don't need to worry. The bike is fast, comfortable and reliable." Nonceba points out that the tyres are worn and Hlakaniphile assures her that, if she decides to buy the bicycle, she will replace them. She also tells Nonceba that, although there is no front light, there is no law requiring bicycles to have front lights in the

dark. This is incorrect. Nonceba spends the rest of the day checking on bicycle prices and that evening accepts Hlakaniphile's offer telling her that at E75.00 the bicycle is by far the best value that she has seen. Nonceba finds the bicycle uncomfortable from the start. The day after buying it she also realises that Hlakaniphile has not replaced the worn tyres. Three weeks later Nonceba finds out that the bicycle is five years old (although there is no evidence that Hlakaniphile knew this) and belonged to Johane before Hlakaniphile. Six months later Nonceba is involved in an accident on the bicycle and finds out from a bicycle repairer that the frame (which was not damaged in the accident) has been welded together from two different bicycles, so that the bicycle is unsafe and not worth repairing.

Discuss the legal issues and advise both parties.

(25 marks)

*****GOOD LUCK*****