

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2012

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.**

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

QUESTION 1

Ndabenhle is a civil servant who works for the Ministry of Works in Mbabane. He has been on the government housing list for the past five years. In the meantime he has been staying at the National Housing Board (Mobeni Flats) in Matsapa. On 1st October he was told by his supervisor and also got a correspondence from the Ministry of Housing that he had been allocated a government house in Mbabane. On the 2nd October he moved out of Mobeni flats giving occupancy of his former flat to his brother Hillary who works at the Industrial Site, Matsapa. When the landlord discovers this state of affairs he is not happy and tells Hillary to vacate the flat since he has no legal right to occupy it.

Hillary refuses to vacate the flat arguing that since his brother's lease agreement has four years to it he is entitled to occupy the flat for this duration, further, that since he will not default on rentals there is no valid reason in law for the landlord to evict him.

Advise the landlord making reference to cession, delegation and assignment.

(25 MARKS)

QUESTION 2

Msebenzi alleges that he had been induced to buy from Mciza a herd of 387 head of cattle by fraudulent misrepresentations as to their being disease-free. Before the disease manifested itself seventy-three head had been sold or slaughtered by Msebenzi. Msebenzi now wishes to claim rescission of the contract, tendering against return of the purchase price, the price of the head sold and the value of those slaughtered.

Mciza argues that since Msebenzi cannot make proper restitution he cannot claim for damages.

Discuss and advise Mciza and Msebenzi.

(25 MARKS)

QUESTION 3

Chama entered into a contract of sale of a farm with Kamo. In terms of clause 5 of their contract Chama – the seller, was entitled to rescind if the buyer failed to pay a monthly instalment on due date. When Kamo tendered such an instalment fifteen days after due date Chama refused to accept it and rescinded the contract.

Was Chama within her rights? Discuss making reference to the *lex commissona*.

(25 MARKS)

QUESTION 4

Mlotshwa hears from a friend Sthembile that Sithebe is selling her farm and that the lowest price for the farm is one million Emalangeni. Mlotshwa desirous of buying the

farm immediately sends a letter to Sithebe enquiring if Sithebe is selling the farm and if the price for the farm is one million emalangeneni. Sithebe responds to the first question in the affirmative but says nothing about the second question. Upon receiving this communication from Sithebe Mlotshwa negotiates with his bank for the one million emalangeneni telling himself that he has entered into a contract for the sale of the farm with Sithebe. Sithebe refuses to take the one million emalangeneni tendered by Mlotshwa as the purchase price for the farm saying that there is no contract between her and Mlotshwa.

Discuss.

(25 MARKS)

QUESTION 5

Shaneiz the wife of a prominent cabinet minister buys expensive outfits for herself and her children on credit from Tfwala's boutique. When Tfwala presents the bill for the outfits to the cabinet minister he refuses to pay arguing that he told his wife not to bind his credit.

Advise Tfwala.

(25 MARKS)