

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B FINAL EXAMINATIONS**  
**L385 – SPECIAL CONTRACTS**

**MAY 2017**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR** questions.
2. All questions carry equal marks.

**QUESTION 1**

Potso, a commercial farmer at Liphiring purchased a second hand tractor from his friend Moru's brother, Tefo, for M55 000.00. Tefo had used the tractor for two years before deciding to sell it. On the day of concluding the sale, the parties met and Potso briefly inspected the tractor before agreeing to pay the stated price. The parties agreed that Potso would make payment and take delivery of the tractor two weeks later.

After taking delivery of the tractor, Potso decided to use the tractor on one of his fields and on two occasions when driving the tractor he discovered that it did not match the normal speed of the same kind of tractors. After consulting Pule, a local mechanic on the matter, Pule advised Potso that the tractor needed some mechanical repairs in order for it to meet the expected speed and the correct purchase price for the tractor should have been at most M35 000.00. Other than the mechanical fault causing reduced speed, no other faults could be identified and the tractor could perform the normal expected functions. Potso is disappointed with the reduced speed of the tractor but satisfied with the overall condition of the tractor. Tefo has informed Potso that he did not conduct any mechanical tests on the tractor before deciding to sell it and was therefore not aware that the tractor needed some repairs. Potso has come to you for legal advice on the possibility of suing Tefo for selling him a faulty tractor.

Advise Potso on the prospects of success in an action against Tefo and any suitable remedy or remedies available to him.

**[25 MARKS]**

## QUESTION 2

The court in *Commissioner of Customs & Excise v Randles Bros & Hudson 1914 AD 369: @ 398-399* stated that,

“...ownership of movable property does not in our law pass by the making of a contract....”

Discuss the above statement with reference to decided cases. **[25 MARKS]**

## QUESTION 3

Write short notes on the following:

- |  |         |
|--|---------|
| i) <i>Nemo dat quat non habet</i> rule             | 5 Marks |
| ii) Power of Attorney                              | 5 Marks |
| iii) Named principal                               | 5 Marks |
| iv) Novation as a factor for discharge of a surety | 5 Marks |
| v) Attornment                                      | 5 Marks |

**[25 MARKS]**

## QUESTION 4

Discuss the obligations of a surety and co-principal debtor in terms of the following: liability, undertaking, capacity and benefits as a surety.

**[25 MARKS]**

## QUESTION 5

Tsebang, an owner of a supermarket in Mafeteng, purchased 200 boxes of potato chips from Naleli Whosalers in Maseru. The parties agreed on the price of M250 per box and delivery to be made after three days. On the day of delivery, Bataung,



the driver of Naleli Wholesalers, handed over the invoice to Tsebang who disputed the price stated therein. Bataung informed Tsebang that he was instructed to verbally inform him that the prices had actually increased and the price given him earlier was the previous year's price. Tsebang refused to take delivery of the goods and claims Naleli's Wholesalers is in breach of contract.

Is Tsebang correct in his assertion that Naleli Wholesalers is in breach of contract?

**[25 MARKS]**

### **QUESTION 6**

"Suretyship is an accessory contract by which a person (the surety) undertakes to the creditor of another (*principal debtor*), primarily that the principal debtor, who remains bound will perform his obligation to the creditor and secondarily, that if and so far as the principal debtor fails to do so, he, the surety will perform it or failing that, indemnify the creditor."

Forsyth C.F. & Pretorius J.T., *Caney's Law of Suretyship in South Africa*, 5<sup>th</sup> Ed, Juta & Co, Cape Town, 2002.

Discuss the validity of the above statement.

**[25 MARKS]**