

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

**MAY 2018**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR (4)** questions.
2. All questions carry equal marks.

## QUESTION 1

“An essential element of estoppel is that there must have been a representation of some kind of words or conduct, including acts, omissions or silence...”

*Universal Stores v OK Bazaars Ltd* 1973(4) SA 747 (A), 761 C

Discuss the requirement of representation by the principal as one of the essential principles of estoppel. **[25 MARKS]**

## QUESTION 2

Miss Beauty signed a deed of suretyship in August 2016 with Mejametalana Bank to secure a loan of M20 000.00 issued to her son, Khotso. Clause 1 reads,

The surety undertakes liability as surety and co-principal debtor for repayment on demand of all or any sum of money which the debtor may now or from time to time hereafter owe or be indebted to the bank, its successors or assignees ...whether such indebtedness arises from money already advanced or hereafter to be advanced ...or otherwise howsoever... plus interest, commission, discount commission, legal costs on the Attorney and all other necessary and usual charges and expenses.

Two years later, the son moved to RSA to start a new business. He approached Mejametalana Bank for a personal loan of M65 000.00, without knowledge of Miss Beauty, which was duly granted. The agreed repayment period was three years. The following year, the bank extended an overdraft of M75 000.00 to the son, still without knowledge of Miss Beauty. The son used the money to buy a second hand car from a friend Bonanza. The son's business did not grow as he had anticipated. As a result, he started to default on the repayment of his loans to the bank. After five months of failing to pay, the bank called Miss Beauty and demanded payment in her capacity as surety. Miss Beauty denies any liability to



the bank on the ground that she completed her suretyship obligations and was fully discharged when the outstanding balance on the initial M20 000.00 was paid off.

Advise Miss Beauty on the extent of her liability to the bank, if any, and whether she can raise the defence of prejudice as the basis of her discharge from liability?

**[25 MARKS]**

### **QUESTION 3**

In the case of *Daniels v Cooper* (1880) 1 EDC 174, the seller, Daniels, said to the buyer, Martins, "this is a cash sale...they are my birds until you pay for them."

Discuss the significance of this statement in a contract of sale where delivery is made before payment.

**[25 MARKS]**

### **QUESTION 4**

Keletso purchased second hand scrap trucks from Mosuoe. Keletso intends to dismantle the trucks and use the parts for other purposes. The trucks are located on a fenced area belonging to Mr Peters. The area is completely sealed off by a high fence with electric wire. The only way to gain access into the area is with permission of Mr Peters who lives in Ladybrand and seldom comes to the area. Keletso claims that he became the owner of the scrap trucks when he went to the compound with Mosuoe and he pointed the trucks to him some two months earlier.

Discuss whether delivery of the trucks was effectively done to transfer ownership of the trucks to Keletso.

**[25 MARKS]**

## QUESTION 5

Write short notes on **ANY FIVE (5)** the following:

- |                                     |                |
|-------------------------------------|----------------|
| (a) Undisclosed Principal           | <b>5 Marks</b> |
| (b) <i>Vacuo Possessio</i>          | <b>5 Marks</b> |
| (c) <i>Constitutum Possessorium</i> | <b>5 Marks</b> |
| (d) <i>Voetstoots</i> clause        | <b>5 Marks</b> |
| (e) Excussion                       | <b>5 Marks</b> |
| (f) Power of Attorney               | <b>5 Marks</b> |

**[25 MARKS]**

## QUESTION 6

(a) The decision in *OPM Property Services Ltd v Venner* [2004] ALL ER (D) 110 was that although the Solicitor did not have the requisite authority to bind the respondent, Venner, the latter had however ratified the contract by his initial reaction when he heard the news of the sale of the lodge.

Discuss the doctrine of implied ratification as it applies in the law of agency.

**13 Marks**

(b) Discuss the principles stated in *Neon & Cold Cathode Illuminations (Pty) Ltd v Ephron* 1978 (1) SA 463(A) on the position of a surety and co-principal debtor in relation to the surety's:

- |                 |                |
|-----------------|----------------|
| i) Liability    | <b>3 Marks</b> |
| ii) Capacity    | <b>3 Marks</b> |
| iii) Benefits   | <b>3 Marks</b> |
| iv) Undertaking | <b>3 Marks</b> |

**[25 MARKS]**