

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

MAY 2019

MARKS: 100

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TIME: 3 HOURS

INSTRUCTIONS:

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

Puleng and Agnes are friends and colleagues at Mafeteng Cosmetics Pty Ltd. Puleng agreed to sell her double door fridge which she had used for only one year to Agnes for M3,500.00. Puleng had been keeping the fridge at her mother's house in Hlotse. Agnes was so excited that she rushed to Maluti Bank during her lunch break to withdraw money from her savings account and paid for the fridge. Puleng promised to deliver the fridge to Agnes over the weekend when she went to her mother's house. When Puleng arrived home, she discovered that her mother sold and delivered the fridge to Tlohang for M6,000.00. Puleng's mother had been keeping the money for her. Puleng has approached Tlohang for return of the fridge but Tlohang insists that the fridge belongs to him because he paid for it and it is already in his possession.

Discuss ownership of the fridge and the remedies available to the parties.

- invest gold v yys
- weck amalgamated v

[25 MARKS]

QUESTION 2

a) Nthako, an owner of a bottle store in Roma, placed an order to buy eight dozen bottles of a renowned Maluti Wine from Roma Beverages, stockists of liquor and soft drinks. Nthako was given the total cost of the wine but before the wine was selected from stock and delivered to him, the storeroom of Roma Beverages was completely burnt down.

Advise Nthako on whether he has to pay for the wine.

10 Marks

b) Discuss the reasonably incidental rule as it applies in the law of agency.

15 Marks

[25 MARKS]

fitwell clothing v Quorsh

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QUESTION 3

Write short notes on each of the following:

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|----|---|---------|
| a) | <i>Caveat emptor</i> | 5 Marks |
| b) | Benefit of <i>excussion</i> | 5 Marks |
| c) | Named principal <i>Handwritten: Kinkula v Muller & books up</i> | 5 Marks |
| d) | Implied warranty of authority | 5 Marks |
| e) | <i>Vacuo possessio</i> | 5 Marks |

[25 MARKS]

QUESTION 4

The court in *Maritime Motors (Pty) Ltd v Von Steiger* 2001(3) SA 584 as restated in *Molise v Commander of LDF & Another* CIV/T/134/2000 para 39 stated that,

Traditionally, the term *negotiorum gestor* was originally used to describe the person who acts on behalf of another and solely for the latter's benefit in circumstances of urgency knowing that he had no such authority to act. There was and could be no question of any relationship arising between the parties by consent. In other words, *negotiorum gestor* has no consent of the person who benefits from his unauthorized act.

Discuss the above statement with reference to decided cases to show instances of necessity that justify creation of *negotiorum gestor*.

[25 MARKS]

QUESTION 5

Mahloko's company, Bacha Khoebong (Pty) Ltd was awarded a tender by the Ministry of Works for construction of drainage systems within the inner city of Maseru. Mahloko approached HBS Bank Ltd, for a loan of M100 000.00 in order

for him to carry out the work. On 21 February 2016, Mocha undertook liability as surety and co-principal debtor for repayment of the loan. Clause 3 of the deed of suretyship reads:

the surety herein binds himself for repayment of all or any sum or sums 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.

The same day, Mahloko's father, Butleng signed the same deed of suretyship. Three months later, Potso, signed a different deed of suretyship as ordinary surety for the same loan advanced to Bacha Khoebong with a limited liability of M30 000.00. Mocha and Butleng are unaware of Potso's liability as a surety. Potso is however aware of the existence of the other two sureties.

Bacha Khoebong defaulted in its payments to HSB Bank Ltd after one year. HSB Bank Ltd has made a demand for payment of the outstanding M97 000.00 from Potso. Potso has approached you for legal advice on the following:

- i) Whether he is liable to pay the balance even though FNB Ltd has not yet demanded payment from Bacha Khoebong. **4 Marks**
- ii) Whether he is liable to pay the balance in full or only one third of the balance considering that there are two other sureties. **4 Marks**
- iii) The difference between his liability as ordinary surety to that of Mocha and Butleng. **4 Marks**
- iv) Whether there are any rights that Butleng can exercise before and after payment of the full balance. **4 Marks**

Exclusion of
division of action
contribution &
defences available to the P

Boshaft v propinquit eleven
Koope v Van Staaten

contribution
co-surety

Erren v Panvra 90

v) Whether he has a right to demand contribution from the other two sureties who are not aware of his existence. **4 Marks**

vi) What will be the effect on his liability and that of Butleng if HSB Bank voluntarily decides to release Mocha. **5 Marks**

[25 MARKS]

QUESTION 6

Millet LJ in *Bristol & West Building Society v Mothew* [1998] Ch 1 at 18/ [1996] 4 ALL ER 698 said the following:

A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single minded loyalty of his fiduciary. The core liability has many facets... that are the defining characteristics of the fiduciary

Discuss the fiduciary duties of the agent that arise out of the contract of agency. Include remedies available to the principal for breach of these duties.

Mutton v Tamar

S v Gundy

VOUD v Gisset - manager

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[25 MARKS]