

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B SUPPLEMENTARY EXAMINATIONS
L3309 – SPECIAL CONTRACTS I

AUGUST 2023

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. This paper contains six questions. Answer any **FOUR (4)** questions.
 2. All questions carry equal marks.
 3. All answers must be numbered and begin on a new page.
 4. Reference to decided cases is **strongly** encouraged.
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QUESTION 1

Briefly explain the following as they apply in the law of agency:

- a) Undisclosed principal **(5 marks)**
- b) Agent's mandate **(5 marks)**
- c) Implied authority **(5 marks)**
- d) Revocation of authority **(5 marks)**
- e) *Negotiorum gestorum* **(5 marks)**

[25 MARKS]

QUESTION 2

Heher JA in *Phillips v Fieldstone Africa Pty Ltd 2004 (3) SA 465 (SCA)* said,

“...The fullest exposition of the fiduciary nature of the agency relationship in our law remains that of Innes CJ in *Robinson v Randfontein 1921 AD 169*...It is no doubt a reflection of the importance of the principles which it sets out that have stood unchallenged for 80 years and undergone little refinement...”

Discuss the fiduciary nature of the agent's position and the four fiduciary duties that bind the agent. **[25 MARKS]**

QUESTION 3

a) Tebatso is responsible for all cleaning services at Mpilo Hotel in Maseru. He recently purchased cleaning material from Domestic (Pty) Ltd on credit in the name of the hotel. Mr. Bee, the owner of Mpilo Hotel refuses to pay for the products. He argues that he did not give Tebatso permission to make the purchases of cleaning material. His duty is to clean only.

Discuss whether Mr. Bee is correct in his assertion. **(10 marks)**

b) Bonny, a distributor of TuppeGoods products set up a tent at Pionner mall to display some of her products. Bonny's car visibly bears the TuppeGoods name, logo and colours. She also has a name tag with her name and the company name. Discuss whether Bonny is liable to customers for any malfunctions in the products.

(10 marks)

c) Mpho signed a power of attorney for Ts'epo to conduct his affairs while he travelled to London. Explain the nature of Ts'epo's authority.

(5 marks)

[25 MARKS]

QUESTION 4

Poloko is employed as a receptionist at LDK Finances, a financial services company. For the past two years, during peak hours at the office, he has given advice to clients on investment options and received cash payments from clients, for which he issued receipts. He has also given out company cards bearing his name to clients indicating referral to him for investment advice. Busi, the CEO of the company and other members of the management team are fully aware of this and have not taken any steps to demand Poloko to stop. Lichaba, one of the company's clients lost all his pension payout after he acted on the advice given to him by Poloko. Lichaba has approached Busi to inform her that he holds the company responsible for the poor investment advice he received because Poloko acted as the company's agent. Busi denies liability and claims that Poloko is just a receptionist who helps out now and again when all the consultants are fully engaged with clients. She claims that Poloko is personally liable to Poloko for the loss he suffered not the company.

Lichaba has approached you for advice on whether to proceed to sue Poloko on his personal capacity or the company. Advise Lichaba.

[25 MARKS]

QUESTION 5

Without any authority, Liketso sold her mother's car to Susan for M50,000. She later informed her mother, Mosa, about the sale and that the money is deposited into her savings account at Post Bank in Maseru. Mosa is happy about the sale and is of the opinion that Liketso made a good deal on the car.

Discuss whether Mosa is bound by the contract to Susan. **[25 MARKS]**

QUESTION 6

a) Discuss five general requirements for conclusion of a valid hire – purchase agreement as per Section 5(1) and (2) of the Hire Purchase Act, 1974.

(10 Marks)

b) Alina purchased a refrigerator and stove from Prestige Furnishers in Maseru under a hire purchase agreement for M25,000.00. Alina paid the required deposit and the goods were delivered to her home in Leribe. She however failed to pay the monthly instalments of M2,500.00. After five months without payment, Prestige furnishers decided to repossess the items. Prestige furnisher's employees went to Alina's home, repossessed the goods without her knowledge and left a note showing that the items were repossessed. Alina feels the store committed an act of spoliation and has requested you to obtain a court order instructing the store to release the items or to pay her their total value.

Advice Alina on the prospects of success of the application. **(15 marks)**

[25 MARKS]