

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B – SUPPLEMENTARY EXAMINATIONS
L3310 – SPECIAL CONTRACTS II

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.
-

QUESTION 1

Explain the test of usefulness of the merx and by reference to relevant cases, show its practical application. **[25 MARKS]**

QUESTION 2

B is interested in purchasing a new house at Lihlabeng suburb. He is referred to Manka Properties (Pty) Ltd by his friend, Tefo, who highly recommends the company for its excellent service. T, an employee of Manka Properties, is instructed by the manager to go with B to view one of the houses for sale at Lihlabeng. Upon arrival at the house, T handed over the keys to the house to B for him to inspect the house. B thoroughly inspected the kitchen, lounge area and one of the bedrooms. He immediately declared that he was satisfied with the rooms and proceeded to view the garden and outside area. He noticed holes in the fence which he pointed out to T to repair. T agreed.

B moved into the house two weeks later with his family. He was shocked to notice extensive water damage in the bathroom ceiling with one side almost collapsing. Cracks are also visible on the bedroom walls. He is advised that the repairs would cost at least M35,000.00. He is furious and claims Manka Properties committed fraud on him by not informing him of the defects in the house and for not advising him to view the rest of the rooms.

He demands Manka Properties to effect the repairs immediately or refund him the amount required for the repairs. He approaches you for advice. Advise him on the extent of the seller's liability for the repairs, if any. **[25 MARKS]**

QUESTION 3

Discuss the seller's duty to deliver the merx. In your answer, include the five forms of delivery as they apply under Roman – Dutch law. **[25 MARKS]**

QUESTION 4

Moshe agreed to undertake liability as surety and co-principal debtor for a loan of M60,000 taken by his friend, Potso, at Nedbank. The loan is payable for a period of two years.

Advise Moshe on his rights and the rights of the creditor in the event that:

- a) Nedbank wishes to recover payment of the loan. **(5 Marks)**
- b) The benefits available to him as a surety. **(10 Marks)**
- c) If S stands as ordinary surety for half the amount of the loan, can Moshe demand division and contribution? **(10 Marks)**

[25 MARKS]

QUESTION 5

With reference to examples where relevant, explain the concept of security and discuss the distinction between personal security and real security.

[25 MARKS]

QUESTION 6

Briefly explain the following:

- a) Lien. **(5 Marks)**
- b) *Actio quanti minoris*. **(5 Marks)**
- c) Mora. **(5 Marks)**
- d) Principal obligation. **(5 Marks)**
- e) Implied warranty against eviction. **(5 Marks)**

[25 MARKS]