

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B EXAMINATION

LAW OF CONTRACT II (L2302)

MAY 2023

100 MARKS

TIME: 3 HOURS

INSTRUCTIONS:

1. You are required to answer **FOUR (4)** of the **SIX (6)** questions.
 2. Number your answers correspondingly to the question.
 3. Cheating is not allowed.
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QUESTION 1

Define a contract, and with the use of relevant practical or case law examples, explain the various component requirements that make a contract valid and enforceable by law.

[25 MARKS]

QUESTION 2

- a) When a contract is not valid, it is either void or voidable. Give an analytical distinction between void and voidable contracts. (15 Marks)
- b) Contractual capacity denotes the decisional fitness of a person to enter into a legally binding and enforceable contract. Discuss the exception to this rule at common law, with respect to contracts entered into by:
 - i. Persons with mental incapacity. (5 Marks)
 - ii. Intoxicated persons. (5 Marks)

[25 MARKS]

QUESTION 3

Swagger Boutique has over the years grown popular in Lesotho for selling the most en-vogue urban culture youth fashion wears. In the last couple of years, their business has been dwindling as a result of many youths turning over to online shopping platforms to purchase similar brands at relatively cheaper costs. As a marketing strategy, Swagger Boutique put up a discount sales advert for their main shop in Maseru for a two months period from 1 March to 30 April 2023. The advert reads as follows:

“Two for Three Discount: Every item at our shop in Maseru is on discount sale. For any two items of the same brand purchased, the third item is free. The discount offer is valid only while stocks last”.

Attracted by the offer, Puleng visits the Swagger Boutique shop in Maseru on 15 April 2023 and purchases two pairs of Pretty Gal hoodies at the price of M1000 each. She then asked to be given the free hoody as per the advertised discount offer. She was told the discount offer did not apply to the Pretty Gal hoodies for the reason that the hoodies were a new brand that had just arrived. Puleng feels very strongly that there is a breach of contract but is unsure about what to do. She approaches your law firm for legal advice.

Advise Puleng on the possible cause of action to take against Swagger Boutique, what claim she may be entitled to at common law and also whether she is entitled to any other equitable remedy.

[25 MARKS]

QUESTION 4

The courts will not enforce contracts that involve the commission of a legal wrong, contracts that are contrary to public policy or contracts that promote immorality.

To what extent do you agree or disagree with this statement?

[25 MARKS]

QUESTION 5

a) Briefly discuss the position of the court in the following cases:

- i. *Frost v Knight* [1872] LR 7 Exch 111 relating to implied anticipatory breach (2 Marks)
- ii. *White & Carter (Councils) Ltd v McGregor* [1962] UKHL 5 relating to the effects of a breach of contract (2 Marks)
- iii. *Patel v Ali* [1984] 1 All ER 978 relating to specific performance of contractual obligation. (2 Marks)

- iv. *Krell v Henry* [1903] 3 B&S 826 relating to discharge of contract by frustration (non-occurrence of event). (2 Marks)
 - v. *Chandler v Webster* [1904] 1 kb 493 relating to the doctrine of discharge of contract by frustration (destruction of the subject matter of the contract). (2 Marks)
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- b) What are the legal implications of a valid contract and of an invalid contract? (5 Marks)
 - c) Give a comprehensible explanation on how contractual obligations may be discharged by agreement. (5 Marks)
 - d) In the award of compensation for breach of contract, briefly explain how damages are different from remedies. (5 Marks)

[25 MARKS]

QUESTION 6

A contract may be vitiated and its validity impaired for several reasons, including for: vagueness, illegality, mistake, duress and undue influence as well as misrepresentation. Contracts that are void for vagueness, illegality and duress are as a matter of general rule at common law, considered void *ab initio* (null and of no effect). Contracts that are void for mistake, undue influence and misrepresentation are often only voidable (partially void) and in this instance, equip the innocent party with the choice to either void the contract or to uphold it. Making allusion to hypothetical or case law examples of contracts that are void for mistake, undue influence and misrepresentation, describe how innocent parties may exercise the choice of voiding or upholding the contract.

[25 MARKS]