

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

MAY 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.
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QUESTION 1

The essentials of a suretyship agreement are set out by Innes CJ in *Corrans & another v Transvaal Government & Coull's Trustee 19090 TS 605 pg 612* where he said,

The definitions of the old authorities come to this, namely that the undertaking of the surety is accessory to the main contract, the liability of which does not disturb, but is an undertaking that the obligation of the principal debtor will be discharged and if not that the creditor will be indemnified.

Discuss five (5) essential features of suretyship that illustrate the accessory nature of the agreement. **[25 MARKS]**

QUESTION 2

Critically discuss the cases of *Groenwald v Van de Merwe 1917 AD 233* and *Eskom v Rollomatic Engineering (Edms) Bpk 1992 (2) SA 725* to show the two fundamental elements of delivery. **[25 MARKS]**

QUESTION 3

With reference to relevant cases, briefly explain the following statements:

- i) A *voetstoots* clause cannot protect a fraudulent seller. (3 Marks)
- ii) A buyer's right to inspection entitles him to rejection of delivery. (3 Marks)
- iii) '*Caveat emptor*', Let the buyer beware. (3 Marks)
- iv) The surety's two fold undertaking binding him to the creditor. (3 Marks)
- v) To constitute a valid sale, the price of the *merx* must be certain, fixed and serious. (3 Marks)
- vi) The liability of a surety and co-principal debtor ceases to come secondary

to that of the principal debtor. (3 Marks)

vii) The basic obligation of the seller is to protect the buyer in his possession. If he fails, he must restore the price and pay damages suffered. (4 Marks)

viii) The applicable test for presence of latent defects in the *merx*. (3 Marks)

[25 MARKS]

QUESTION 4

Bokang, an owner of a chips factory in Maputsoe entered into an agreement of sale with Lebohang, a local farmer, on the 15th March 2023 in terms of which Bokang was to purchase 300 bags of potatoes for his factory. They agreed on the purchase price of M35 per bag. Bokang paid M4500.00 as a deposit and Lebohang promised to deliver the potatoes the following day. The next morning, Lebohang loaded the bags of potatoes onto his uncovered truck intending to deliver them to Bokang's factory before the end of the day. However, he but forgot to do so due to unexpected incidents at his farm that urgently needed his attention. The potatoes remained in the truck until the 20th March when Lebohang remembered that he had not delivered the potatoes and he hurriedly drove off to Bokang's factory. Lebohang normally keeps the potatoes covered in his store-room for protection. It had rained heavily that week and it was extremely hot. Upon delivery, Bokang inspected 50 bags and found the potatoes to be rotten.

With reference to relevant cases, advise Bokang on his rights against Lebohang.

[25 MARKS]

QUESTION 5

a) Briefly explain whether a valid contract of sale is concluded in each of the following instances?

i) Maneo places an order for 10kg of beef at her local butchery by phone. There is no mention of the price to be paid. 'Maneo buys from the butchery at least twice a week. (3 Marks)

ii) Limpho buys a second hand fridge from AT Repairs. The parties agree on the price and day of delivery. AT Repairs has informed Limpho that the fridge is bought 'as is' without any guarantee. Limpho has not yet paid the price. (3 Marks)

iii) Teboho viewed some cars for sale at LD Dealers. The salesperson believes that Teboho is interested in a blue 2010 Toyota Corolla when in fact he is interested in a blue 2014 Toyota Corolla. (3 Marks)

c) Identify the type of breach in each of the following scenarios and the suitable remedy:

i) Mpho purchased a latently defective fertilizer which is found to be totally useless for the purpose of growing of roses and vegetables. (4 Marks)

ii) Buyer unreasonably delays to make payment for the *merx*. (4 Marks)

iii) Buyer purchased Grade A chicken feed. Seller delivers Grade C of different description. (4 Marks)

d) Tšeli, an Avon salesperson, meets Mosa at Maseru Mall and they talk about new products that Tšeli is selling. Mosa agrees that the products are of good quality. At the end of the discussion, Tšeli asks Mosa which products attracted her most. Mosa identifies the products and says "*Not today my friend*". Two days later, Tšeli delivers the products to Mosa's workplace with a note "*Hope you find the products to your satisfaction. Attached is an invoice.*" Mosa phones Tšeli that she will not be paying for the products and she can come and collect them at any time.

Can Tšeli sue Mosa for payment of the products? (4 Marks)

[25 MARKS]

QUESTION 6

a) Determine whether the surety is liable in each of the following:

i) Bokang agreed to stand as surety for Morero's debts with Post Bank. A few months ago Bokang became insolvent and his estate was sequestrated. (5 Marks)

ii) FY Pty Ltd, an unregistered company, has been trading for two years without a license. It imports goods for sale from Durban to Lesotho. Shorty claims that the company fraudulently sold to him goods valued at M15,000 payable in eight months. Teko agreed to stand as surety for payment of the debt. FY sent a letter of demand to Teko in which it was stated that Shorty had failed to pay for three months. (10 Marks)

b) Briefly discuss the dictum in *ASA Investments v Smit 1980 (1) SA 897* on the position of co-sureties, who have contracted with the creditor separately and independently, with respect to:

i) The right of a co-surety to claim contribution. (5 Marks)

ii) The right of a creditor to claim payment from the co-sureties. (5 Marks)

[25 MARKS]