

QUESTION 5

Simelane and Mphisa are neighbouring property owners. Simelane's land often gets flooded during heavy rains. She has consequently erected structures on her land which would divert the flow of rain water from her land onto at Mpisa's land. Mpisa has now started experiencing flooding on her land as a result of Simelane's interference with the natural flow of water.

Can she successfully sue Simelane? Make reference to decided cases. (25 marks)

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2018

TITLE OF PAPER : SALE, HIRE PURCHASE & SURETYSHIP

COURSE CODE : LAW 305

MARKS ALLOCATED: 100 MARKS

INSTRUCTIONS : 1. THIS PAPER CONSISTS OF SIX (6) QUESTIONS.
2. ANSWER ANY FOUR (4) QUESTIONS.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GIVEN BY THE INVIGILATOR

QUESTION ONE

Swazibank gave a loan of E100, 000 to Mandla of UNISWA. Phiri, Mnisi and Siphso were co-sureties for the debt, while Futhi was co-surety and co-principal debtor.

When Mandla failed to pay, the bank proceeded to sue Futhi, who responded by raising the benefits of excussion and division. The bank is, however, keen on pursuing the action against Futhi for the whole amount because it knows she is the richest of the co-sureties.

- (a) Referring to authority, advise the bank fully as to its rights against each of the co-sureties (including Futhi).

[15 marks]

- (b) If Futhi were made to pay, what would be her rights against the bank, Mandla and the other co-sureties?

[10 marks]

[25 marks]

QUESTION TWO

Zulu sold several heads of cattle to Matt, it being agreed that the animals were being bought on behalf of a company which Matt was promoting. It was agreed that the animals would be transferred immediately upon the conclusion of the sale, but that the price would be paid by the company once it was incorporated.

The cattle were duly delivered. When the company had been incorporated, it approved the sale by a resolution of the directors. A few days later, the company discovered that the cattle belonged to Dan, who had not authorised the sale. However, Dan was not interested in the animals but in their value, and he expressed an intention to sue Zulu for such value. The company then refused to pay the price to Zulu and tendered the animals, contending that it could not acquire ownership of the *res aliena* and, secondly, that the sale was in any case void since it was entered into when Matt could not represent the company - which was then non-existent.

Fully consider the validity of the company's contentions.

[25 marks]

QUESTION THREE

With reference to hire purchase agreements, critically discuss section 20 of the Consumer Credit Act No. 7 of 2016.

[25 marks]

QUESTION FOUR

One of the essential obligations of a seller in a contract of sale is the duty to deliver the subject matter to the buyer. In so doing, the seller does not undertake to make the buyer the owner of the thing sold but undertakes only to give him free possession (*vacua possession*). The seller may effect delivery of the thing sold to the buyer in one of two ways; actual and constructive delivery. Discuss the different types of constructive delivery, sometimes referred to as fictitious delivery, giving examples where possible.

[25 marks]

QUESTION FIVE

Matse saw a Toyota Lucida in Al Quim's showroom in Manzini, and was immediately attracted by its silver-grey colour. Pita, the dealer he found there, told him it was a "good little bus" and that he "would have no trouble with it". Pita gave Matse the relevant forms, which the latter filled in and signed. He then paid E3, 000 being the first of sixteen monthly instalments. He, however, paid no deposit, for Pita said that was unnecessary. Thereafter, Matse drove off excitedly.

Pita passed the forms on to Stannic Bank, who, however, as the sellers, decided they did not want to do business with Matse. They immediately wrote back to Pita indicating this position, but Pita only received the letter a fortnight later.

In the meantime, a day after he took the car, Matse had an accident due to the car's faulty steering mechanism. Matse approached Pita after recovering from his wounds. The latter said to him, "Your contract was with Stannic Bank.. in any case, you must return the car urgently because they do not wish to do business with you".

Assuming the Consumer Credit Act No. 7 of 2016 applies, advice Matse fully as to his rights and remedies.

[25 marks]

QUESTION SIX

Briefly discuss the following:

- (a) The difference between implied agency and agency by estoppel,
[6 marks]
 - (b) The difference between *constitutum possessorum* and *tradition brevi manu*,
[6 marks]
 - (c) The rights of a creditor against a surety and a co-principal debtor,
[6 marks]
 - (d) The difference between a guarantee and a suretyship.
[7 marks]
- [25 marks]