



**UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
LLB (IDE)
SPECIAL RE-SIT EXAMINATION PAPER, AUGUST 2020**

TITLE OF THE PAPER: LAW OF SALE, HIRE-PURCHASE AND SURETYSHIP

COURSE CODE : IDE LAW 305

TIME ALLOCATION: 3 HOURS

MARKS ALLOCATION : 100 MARKS

- 1. This paper has (6) Six questions, each totalling 25 marks.**
- 2. You are required to answer any (4) Four questions of your choice out of the (6) Six questions.**
- 3. This is a closed-book examination, and you are not permitted to take any study materials into the examination room or to consult any such materials when writing the examination.**
- 4. You are requested, in your own interests, to write legibly.**

QUESTION ONE

- a) Salt and Vinegar enter into a contract of sale wherein salt agrees to sell a five bedroom house to Vinegar at a price to be fixed by chips. However, Vinegar refuses to pay for the purchase price as he deems it unfair. Chips, on the other hand, refuses to fix the price. Advise Vinegar on the recourse available to him with reference to case law. (8 marks)
- b) Discuss the common law obligations of the purchaser (12 marks)
- c) Three primary aspects of the contract of sale will always emerge, list and explain same (5 marks)
- (25 marks)**

QUESTION TWO

Nedbank Swaziland Limited loaned and advanced to Siphon the amount of E200'000.00. Thuli, Vusi and Phiwo were co-sureties for the debtor while Samu was co-surety and principal debtor.

When Siphon failed to repay the loan, the bank proceeded to sue Samu, who responded by raising the benefit of excussion and division. The bank however is desirous of instituting the action against Samu for the recovery of the whole amount because it knows that Samu is the richest of the co-sureties.

- a) Referring to authority, advise the bank fully as to its rights against each of the sureties including Samu. (15 marks)
- b) If Samu were made to pay, what would her rights be against the bank, Siphon and the other sureties? (10 marks)
- (25 marks)**

QUESTION THREE

Write short notes on the following:

- a) Distinguish between a sale and a donation? (5 marks)
- b) Discuss what is meant by the words “accessories” and “appurtenances” in a contract of sale. (5 marks)
- c) With reference to case law, discuss the common law principles applicable to the sale of *a res sua*. (5 marks)
- d) Delivery by *Traditio longa manu*, *traditio brevi manu* and *constitutum possessorium*. (5 marks)
- e) Muzi meets Vuyo, who is 16 years of age, and after a few discussions they enter into a credit agreement. It turns out that Muzi does not possess any license to be facilitating any credit agreement. Advise Vuyo if the credit application is valid in terms of the law. (5 marks)

(25 marks)

QUESTION FOUR

- a) Sabelo enters into a credit agreement with OK Furnitures to purchase a washing machine. Three days later he realises he does not need the washing machine anymore and wishes to annul the said agreement. Sabelo has used the machine and it is no longer in its original packaging. OK Furnitures claims that they cannot accept the machine as it has been used. Advise Sabelo. (8 marks)
- b) Discuss the consequences of reckless credit as envisaged by Section 83 of the **Consumer Credit Act No7 of 2016** (17 marks)

(25 marks)

QUESTION FIVE

- a) John sells his farm to Betty. There are 80 old, unmarked human graves on the farm, located on land that will be used for cultivation. John was aware of the existence of the graves at the time of the

conclusion of the contract, but had removed the headstones to conceal their presence. When Betty ploughs the farm to plant crops, she is horrified to find human remains in the fields. She is now unwilling to reside on the farm, because she finds the presence of the graves scary. With reference to case law advise Betty on her rights against John. (10 marks)

- b) Discuss the *aedilitian* remedies available to a purchaser in a contract of sale (15 marks)
(25 marks)

QUESTION SIX

Gcina, the owner of a motor vehicle, concluded an agreement of sale with Thabiso. Delivery of the motor vehicle was to be made two days later against the payment of the purchase price. Later on the same day while Gcina was driving the same car, it was involved in an accident with another car driven by Sidumo and there was no dispute as to the fact that the collision was attributable solely to the negligence of Sidumo.

- a) As a general rule, when does the risk of accidental damage to the thing sold pass on to the buyer? (15 marks)
- b) In line with your answer in the above question, did the risk of accidental damage pass to anyone in the above set of facts? If so, to whom did it pass on to? Who has a right to recover compensation and from whom in this case (15 marks)
(25 marks)