

**NATIONAL UNIVERSITY OF SCIENCE AND TECNOLOGY**  
**FACULTY OF BUILT ENVIRONMENT**  
**DEPARTMENT OF QUANTITY SURVEYING**  
**PART II FIRST SEMESTER EXAMINATIONS – FEBRUARY 2010**  
**LAW: CONSTRUCTION AND ENGINEERING I – AQS2106**

Time: 3 hours

Total Marks: 100

**INSTRUCTIONS:**

Answer any four questions.

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**QUESTION ONE**

On the insolvency of the Contractor, who can claim ownership of materials that are intended for incorporation into the works? Consider ownership of materials in the context of those on site and those off site: with reference to common law.

(25 marks)

**QUESTION TWO**

- a) Describe and explain general tender documents that may be used in the construction industry. (10 marks)
- b) With reference to case laws, discuss all the legalities that regulate the actions of Employers and Contractors in construction.

(15 marks)

**QUESTION THREE**

- a) A contractor is empowered to sue the Employer for non-payment of value of the work completed. Using relevant clauses from the standard forms of building contract, describe the correct contractual procedures to be followed by the contractor in the event that the client delays paying for the works done that has been certified by the Architect as being due for payment. (15 marks)
- b) What is a liquid document? (2 marks)
- c) How liquid are Engineers/Architects certificates? Support your answer with case law. (8 marks)

#### **QUESTION FOUR**

B T Contractors are faced with imposition of penalties of 30 days at R2000.00 per day. They claim relief on the following basis:-

- i) He believes that he should be granted an extension of time of 7 days due to exceptional rain experienced in December 2009.
- ii) He was issued details late, and claims that this delayed him in completing the works by 10 days (he had presented the Architect with a bar chart of activities at the beginning of the contract)
- iii) He believes that the penalty is excessive, the total contract amount is only R300 000.00.

You are to advise your client on his position (developer). The contract form is the standard forms of building contract, and the daily penalty amount was included in the preliminaries of the Bills of Quantities. (25 marks)

#### **QUESTION FIVE**

- a) Explain Builders liens making mention of some principles which have a significant bearing on actions aimed at preserving, renouncing, waiving or relinquishing a lien. (10 marks)
- b) What are the insurances that a contractor is liable to take in a building contract? (10marks)
- c) What are liquidated and ascertained damages? (5 marks)

#### **QUESTION SIX**

- a) In what circumstances can an arbitration award be set aside by the court according to section 33 (1) of the Arbitration Act 42 of 1965? (12 marks)
- b) Discuss 3 different forms of adjudication. (9 marks)
- c) Discuss the defenses in surety. (4 marks)

**END OF EXAMINATION**