

CML4607F
Law for Engineers
Week 1: The SA legal system
Scenario involving Lee

Facts:

Lee, on behalf of the employer (based in Cape Town), purchased equipment from an online supplier (head office in Gauteng).

When the goods arrived, not only was the wrong amount delivered but several of the goods were damaged. Lee calculates that to rectify the situation will cost R50 000. When Lee contacted the online supplier, she was told to check the Terms & Conditions which had been agreed to when the order was placed. In terms of the Ts & Cs, the supplier takes no responsibility for goods damaged in transit, and any possible claims must be brought in Gauteng.

Lee needs to find out what the law says about this situation and to understand the process and steps that need to be taken to remedy the loss.

Answer the following questions:

1. Into what legal category does the claim fall? (4)
2. Which law or laws apply? (4)
3. Which court, tribunal or body has jurisdiction? (7)

Suggested answer:

1. The legal category into which Lee's claim falls refers to the cause of action (1). Put differently, it asks what the legal basis is for the claim. The cause of action in this case arose out of a contract (1) because Lee concluded a contract on behalf of the employer when she placed an order for the delivery of equipment (1). The supplier delivered

damaged and the incorrect amount of equipment which means there is a breach of contract by the supplier (1).

(4)

2. NOTE: YOU ARE NOT EXPECTED TO KNOW THE DETAILS OF THE CONSUMER PROTECTION ACT OR ANY OTHER SPECIALISED LEGISLATION WHICH HAS NOT BEEN COVERED WITH YOU DURING LECTURES, IN THE SLIDES OR NOTES.

There is legislation applicable to Lee's scenario and it is the Consumer Protection Act 68 of 2008 (CPA). The relevant provisions are as follows: section 19 sets out consumers' rights with respect to delivery of goods or supply of service, section 20 determines that consumers have certain rights to return damaged/faulty/incorrect goods and section 48 determines that unfair, unreasonable or unjust contract terms are disallowed.

However, for purposes of your answer, you may assume that there is no legislation in place that governs the issue. Lee (or the company's lawyer) will need to look at the **common law** (1) to determine which legal principles apply (1). This may be ascertained through judicial precedent (ie binding court decisions). The **Constitution** (1) may also need to be consulted should Lee (or the company's lawyer) believe that the common law principles are inconsistent with constitutional provisions or rights (1).

*Note: If there is legislation in place, and there is a conflict between the common law principle and legislation, the legislation will prevail. Therefore, while the above answer reflects the default position, this may be altered by applicable legislation.

(4)

3. In terms of the default position, the district Magistrate's court (1) would have jurisdiction to hear the matter, as it has a monetary jurisdiction (1) of between R0 and R200 000 (1). The matter would have to be brought to court in Gauteng (1), as the general principle is that the plaintiff must institute proceedings in the defendant's place of residence/domicile (1) or where the principal place of business is (1). This may be altered by agreement between the parties (1).

(7)

TOTAL: 15
