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Tswana Law of Contracts.
J Maslangoako.

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Contracts. (indexed)

Gifts. When a man brands a beast for a child, he is giving it to that child, he never takes it back. It is the property of the child given to it as a present. He does not demand payment for it nor does he ask the child to pay him. When the child has grown up to be a man, he has control over it. It may have an increase, the father does not interfere with them and he does not cast a jealous eye on them. It is the duty of this child to give to its maternal uncle a calf of this beast. It means that it is incumbent on the maternal uncle also to give this child a beast. When a child gives its maternal uncle a beast, it means that the child gives him the heads. When a maternal uncle gives a beast to his grandchild, he is cleansing the grandchild so that it may be prosperous. Cattle are not given out as presents, it is only the father or the elder brother who marks a beast for a child and younger brother as a gift. If a person gives a beast to another it means that it will be replaced. He may not have one at the time to replace it with but he will have to find it even if it may take him some time. It is not an easy matter to just give a beast away. We have a praise song which is as follows: "The beast, the god whose nose never dries up, the beast bellows in the village of a tribe we by-pass the village of poor people but we enter the village of people who own cattle. The beast bellows and makes the chief who loves me to hate me." If a person has no cattle, we regard him as a worthless person. We eat nothing from him but he continues to eat the stomachs of slaughtered beasts of other people.

Bowls, weapons, food (kaffir corn) beer and garments:
if a person gives them to another, it does not mean that

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he wants payment, it is help only to one who is suffering. This means that he is helping him out of difficulty so that he may also help others and not demand payment from them. If a person has no kaffir corn he may go to his mother to ask her and if he is given, the mother will not demand payment. He may also ask for kaffir corn in order to bring it back later. In that case it is not a gift for he is expected to return the kaffir corn when he has threshed his. Things which are given away free, are such as these : kaffir beer and porridge. When a man makes garments for his child : skin mats, karosses, dresses, trousers and skins for carrying a child on the back, it does not mean that he will demand payment for them. He is just helping his child. If a person gives an axe to another person, he is not going to demand payment, If the other man says that he is buying it, or if he says to the other , " Get an axe for me and I will thank you," it is then that when he gives it to him he will expect payment for it. If he just asks to be given one, no payment is required. There is another iswana custom, and that is if a person finds something, he reports to the elders and they take it. The person who has found it does not demand payment for it. These people also when they see those who are older than themselves, they report it to them. Those also take it and report it similarly until there is no one who is older. Those will then take it and eat it or keep it for themselves. The older people too, if they find something they report it to the younger ones, the younger ones will then report it to them again. The elders take it and it is then out of the hands of the younger ones. When this thing is reported to the elders, the finder shall not demand payment for it. It is a custom we found in existence. We do not know the reason for it. If a person has killed a wild animal and meets elderly people, he must report it to them. They will take it away from him and he will go away to his home empty handed. He will not be surprised, it is a custom which he

knows, this one of reporting his find. In future a report of this nature will also be made to him by others. When he sees them approaching, even if they are not aware of him, he cannot hide it but he must report his kill to them. Even if his father happens to hear that his son killed an animal, and reported it and handed it over to other men, he will not say a word. The law is his, he knows that a kill or a find is reported to elders, all he will say is, "I have a child indeed, who knows his elders".

Thebe rule.

Barter: Things that are bartered :-

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|-------------|--------------|-----------|
| Kaffir corn | Bowls | Dresses |
| Cattle | Assegais | Karosses |
| Goats | hoes | skin mats |
| Sheep | axes | Hats |
| Fowls | Baskets | mats |
| water pots | Flat baskets | skins |

When a man sells goods, he goes out to the people with them so that the buyers may see them. If he sells karosses, he must on entering a village in which he is a stranger, take out one and give it to the chief so that the chief of this village may allow him to sell, and so that if he meets with difficulty, he must be known to the chief already, and so that he may be able to go to the kgotla if a case is brought against him. The chief will also inform the people that there is a person in the village who is hawking goods and that they should buy from him. If he just enters the village and starts offering goods for sale without reporting to the chief that he has goods which he is hawking, the chief of this village can make a case against him and even take away the goods he is offering for sale. If he has reported himself, the buyers will go to where he is to buy what he has. If a man is selling a beast, he informs other people to spread the news to those who want to buy a beast. If there are, they will go to the owner of the beast. Sometimes if a person is unlucky, he is, on entering a village in order to sell his goods, driven away by the chief if the chief does not want him to sell. If the chief does not allow this man to sell his goods in his village, this man will pass on to other villages to hawk there where he may get permission to do so. If a person buys something and is not satisfied with it, he argues with the seller until both come to an agreement on the price. Things like water pots and baskets, if a person wants to buy them, he must first put kaffir corn in them and it is then that he

can take them. The water pot and basket have no fixed price, one can come to gauge the price by putting kaffir corn in them. The owner can then know that he has had a good sale and that he has not cheated himself or the buyer. By so doing, the people have no complaint. The price of other goods fluctuates, such as cattle, kaffir corn and fowls. Things like goats, sheep, water pots and baskets do not change. Their price is one. There is no gift given to thank the seller. When you finish buying, you give nothing to thank with.

Buying goods on credit is allowed, if a person wants something and has nothing to buy it with. The seller gives him credit on the understanding that he will make good when he is able. It is very seldom to find a seller who gives the buyer credit making a condition that if he does not pay, he will take away something from him. This means that we trust one another, if you sell on credit, you hope that the buyer will pay. If he has nothing to pay with, he will make every effort to pay. Sometimes a man buys a beast before it is calved in the hope that one day it will be calved. It does not matter how long it takes before it is calved. He knows that one day his calf will be calved. It is not often that you find a person selling something without getting witnesses. He gets witnesses so that if he happens to die, they should know that that person had bought something from so and so on credit so that in future if that person denies he should call witnesses to come and give testimony in front of the public that it is true, that man sold something to that man on credit and he promised to pay. The people will only accept the testimony of the witnesses.

Ranoko Lintoe.

Breach of agreement. An agreement is sometimes broken before it is fulfilled. If a person had made an agreement with another on a transaction and later the one finds that he cannot carry it through, he just tells him that he is no longer able to go on with the transaction or "I am no longer in a position to buy that thing from you". The other man will have nothing to say. It is not often that you find people breaking an agreement they had made on a sale between them. If the sale has gone through, it is finished, the one who complains will have to see how to go through it. But if the people on selling something to each other, the one happened not to have seen what the other had, it is then that he has reason if he is not satisfied on seeing it, to take his back. This happens very often. If a man buys a beast from another person, without having seen it, the owner tells him how big it is, and if the person who has bought it finds it not as big as it has been described, he leaves it if he does not want it. Sometimes he looks for another one in the place of the one that is pointed out. If they do not agree, he then takes what belongs to him and they part, it is not often that you find people after having sold something to each other, the other one breaking an agreement.

Ditlhake Tsoeu.

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| <u>Loans.</u> kaffir corn | these are the things which people lend |
| oxen and cows | one another. If a person does not possess |
| axe | one of these, he borrows it from the |
| hoe | other. Even if he is going to use it for |
| sheep | some time, it does not matter. He can |
| assegai | use it until such time as the owner shall |
| Goats | need it before the owner needs it the |
| Bowls. | borrower may continue to use it. But |
| | there is a difference where kaffir corn |

is concerned. Sometimes a man asks another person for kaffir corn to return it when he has threshed his. If he is given in a basket, he will also give back a basket full the same quantity as he was given. If he is given three baskets, he will return three just according to the quantity he was given. People do not often lend kaffir corn to each other, they buy it and if a person has nothing to buy it with, he borrows with the intention of returning it when he has threshed his. This is to help the owner of the kaffir corn when he has some work, This means that he is working for them in the meantime because he has nothing to offer, he comes with empty hands.

Things like axes and hoes, if a person has borrowed them, he pays nothing on returning them, he just thanks by word of mouth. If he has lost one of them, he is bound to refund in the manner that will be specified by the owner. If the owner does not say that it must be paid for, the person who has lost it does not pay for it. But if the owner says it must be paid for, he must do so under any costs. With cattle, only oxen are borrowed, the cows are not borrowed. A man borrows oxen to help himself when he has work to do, he is not expected to pay when he finishes his work, he just thanks the owner by word of mouth. Cows are not borrowed, they are put in the care of others so that those who look after them should share the milk. He works with them while he is trying to get his own at the same time. Goats and sheep are also taken away and placed in the care of other people. The person who receives them is to keep them and herd them for the owner who will one day take them back if he thinks that they are not properly cared for. Those which die are taken to the owner together with their skins. If a beast dies, the person in whose care they are, skins it and cuts off the shoulder and he also takes out the stomach.

These remain with him. The whole carcass of the beast together with the skin is taken to its owner. If the owner of the cattle is a long distance away, the person in charge of them takes the skins to him as proof that they are dead. The person in whose care the cattle are placed, is always thanked by the owner when he takes them away. Even if he is not taking them away, he gives him one beast to thank him with. The reason for this gift is to encourage him while he is looking after them with the knowledge that he has his own amongst them. But cattle which are put in the care of another man are useless because the owner can take them away at any time he desires. He does so when he sees that they are thriving, and also when he suspects that the person in whose care they are placed is good for nothing. He can take them away even without warning the person who is looking after them. That is why there is a saying which is as follows; "Child, you who are milking cattle put in the care of your parents by another person, when you milk, keep an eye on the road to see if their owner is coming". Things which are never borrowed, are karosses and skin mats. If a person needs them for himself, the best thing is to buy them, or go to his brothers to ask for help. If he does not do that, he must buy them from those who have them or from those who sell them. Besides that, sheep skins from which karosses are made, are scarce. That is why karosses cannot be borrowed, and the only way to get them is to buy them.

Jacob Ngole.

Cattle: Cattle are not put in the care of a person unknown to their owner. If you put your cattle in the care of someone, it means you know him, you cannot just give him your cattle if you do not know him. Cattle are put in the care of a younger brother, elder brother of a person or grandchild. This means that one is helping one's own relative so that he may not suffer,

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and so that his children should get a supply of milk and be able to herd cattle. Children are in need of milk of course and they are fond of herding. If they have no cattle to milk, they feel very much embarrassed and their father suffers because he has nothing to help himself with. That is why he has to go out to look for cattle that could be placed in his charge, even if it be goats or sheep, whatever he may get from his relatives. They are people who may sympathise with him and let him have them. It does not mean that if they are put in his care, they belong to him, but he has the right to work with them. If there are oxen among them, he has the right to inspect those oxen. He has however no right to sell or slaughter these cattle. The owners are the only people who have that right, as far as that is concerned, he stands aloof and has nothing to say but to look on to see what is being done.

Sello Robô.

Lands. Fields are borrowed. If a person has no field, he goes to his brother to ask him to lend him a reaped garden if he has one. If a person has a son who is getting married and who has not yet had his own field, his mother will lend him one of hers so that he may plough it. Very often, fields are lent out to relatives and to people who are known to each other. This is to help each other. A man cannot lend a person a field who is unknown to him, who is not a member of his family. Even if he has fields. When people lend each other fields, the chief has no say over those fields, the control is in the owner and her husband. If husband and wife agree between themselves to lend their **field** to another man, they do so without going to the chief or headman. They even fix time for him for ploughing it. They might say we shall take our field after two years. Even if they have fixed no time for him, they just send a message to him that after harvest, we shall take our field back.

He will say nothing because they helped him as far as they could. Things like money, an axe a plough, are borrowed, no payment is required for them. The borrower takes the thing back after using it and only says thank you to the owner.

Maphare Kobedi.

Service. Many people work for others. They plough for them in order to be paid with kafir corn or goats and sheep. Some herd cattle for others and those thank them with marking calves or sheep and goats for them. If the person who is employed does not do his work properly, the employer if he likes, dismisses him because he is good for nothing. He then looks for another person who will work in the proper way. The employee who is dismissed is not paid his wages because his service was unsatisfactory. If a person herds cattle for another man, he gets a witness so that in future there should be no dispute. There are many people who build houses nowadays. They were scarce formerly. Each person builds for himself. Today many people who build houses are paid a very high price, like a beast. If a person puts a roof on the house for another man he is paid a beast for his work. But if a person ploughs a field for another man, he is paid a sheep or a goat. A beast would be too much for ploughing. Native people have no work for which they can employ many labourers. They just do the work for themselves.

Melato Khukhoane.