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NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B FINAL EXAMINATIONS
L583 – LEGAL ASPECTS OF ECONOMIC DEVELOPMENT

MAY 2017

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

- 1. Answer any FOUR (4) questions**
- 2. All questions carry equal marks**

Question 1

Countries can face a myriad of economic challenges. There are policy and legal interventions that can be implemented by countries in order to address those challenges.

Define each of the following problems and fully describe any **ONE** example of a legal intervention that may be implemented to address that challenge:

- | | |
|--|-------------------|
| (a) Income Inequalities | 5 Marks |
| (b) Low education rates | 5 Marks |
| (c) High population growth rates | 5 Marks |
| (d) Negative population growth | 5 Marks |
| (e) Dominance, dependence and vulnerability in international trade relations | 5 Marks |
| | [25 MARKS] |

Question 2

Deadbeat is a developing country which approached the International Monetary Fund (IMF) for a loan in December 2012 on account of its balance of payment problems. The Executive Board of the IMF approved a loan of SDR 25 million to Deadbeat with conditionalities which included that Deadbeat must curb government spending (fiscal austerity), increase taxes, raise public utility prices and privatise inefficient state-owned enterprises. Deadbeat missed paying the last two installments of the loan when they fell due. However, its government has been

purchasing new luxury vehicles for ministers and has hosted lavish regional sports tournaments. Further, in January 2017, after public outcry over increased taxes and utility prices, the government reduced taxes and prices to the pre-2012 rates.

a) Explain what is meant by balance of payments.

5 Marks

b) With the use of relevant examples, explain the concept of 'conditionality' in IMF lending, and explain the legal basis or the Fund's power to impose conditionalities in its lending.

10 Marks

c) With reference to the IMF Articles of Agreement, advise the IMF on its powers to enforce compliance by Deadbeat.

10 Marks

[25 MARKS]

Question 3

Xa is a foreign investor who decided to invest in one African country in 2015 after the Trade Ministry promised him subsidies and grants to the value of \$10 million for the establishment and operation of a manufacturing firm. He signed an agreement with the Trade Ministry and began operations in 2016 after spending \$3 million of his own capital in starting up the business. Last month his operating license was revoked after the government claimed that only the Ministry of Finance could have approved the conferment of the grants and subsidies. Further, that the Finance Ministry would not approve the deal because only nationals could get such assistance from the government. The government says that it is the right of every state to limit the entry and operation of foreign investment and it quotes

provisions to this effect in the OECD Draft Convention, and in the United Nations General Assembly Resolutions 1803 and Resolution 3281.

(a) Explain whether the incentives that were promised to Xa were fiscal or non-fiscal incentives.

5 Marks

(b) With the use of relevant decided cases advise Xa on the principles of international investment law which are applicable to his dispute with the government as well as the most appropriate dispute resolution method to resolve the dispute with the government.

20 Marks

[25 MARKS]

Question 4

The World Trade Organization (WTO) is a forum for international cooperation on trade and trade-related measures. Like any organization, it is underpinned by certain principles in order to function effectively.

Critically discuss the chief principle underpinning the WTO with reference to the relevant articles and case law.

[25 MARKS]

Question 5

Enchancia is a member of the WTO and is a producer of cow milk. The country wants to amend its tax laws on milk and proposes to take the measures as reflected in (a), (b) and (c) below.

With the aid of decided cases and relevant articles, advise Enchancia on the compatibility of each of these measures with its obligations under GATT 1994.

- a. Milk is now divided into different categories with different tax rates. As a result of the tax, the prices on the market are as follows:

Cow milk: E6 per litre

Goat milk: E7 per litre

Soya milk: E15 per litre

10 Marks

- b. Introduce legislation which would make it unlawful for any place of business to sell imported milk unless signs indicating that the institution sells foreign milk are displayed in the place of business;

5 Marks

- c. Place an import ban on all imported milk from its neighbour, Arendale, due to a sudden increase in severe allergic reactions to milk among large sections of Enchancia's population.

10 Marks

[25 MARKS]

Question 6

Mercedes, Toyota, Maserati, Mazda and Ferrari are states desirous of forming a free trade area (FTA) called the MTMMF and intend to notify the WTO after negotiations.

a. You are called to advise these countries on the conditions for the establishment of a compliant free trade area under the WTO. **2 Marks**

b. The members of MTMMF have sought to negotiate and agree on rules of origin for imports from non-member countries circulating within the free trade area. What are rules of origin and what is their significance in an FTA?

3 Marks

c. Countries such as Toyota and Mazda are least developed and have brought it to the attention of other countries that due to different stages of development of the member countries, the possible surge of imports will harm their domestic industries. To this end, Toyota and Mazda are reluctant to commit themselves to the FTA.

Advice the members of the MTMMF on the steps to take that will ease the fears of Toyota and Mazda while geared at meeting the requirements of a free trade area.

5 Marks

d. The business community in Mazda had been complaining to the government about the circulation of foreign products from neighbouring countries. The community calls on the government to negotiate higher tariffs than it had been imposing in their original tariff schedule under the WTO in these new free trade area, to allow the domestic industry to flourish. You are called to advise the government on the following:

- i. Can Mazda impose higher tariffs on imports from MTMMF? **4 Marks**
- ii. What are the implications of the membership to MTMMF? **4 Marks**
- e. Ferrari has an advanced agricultural sector, producing meat, coffee and sugar for export. While Maserati have some agricultural activities, only 20% of their agricultural produce is exported. In order to maximize exports, the government of Maserati has introduced a scheme that will financially assist the agricultural industry to grow so that their exports compete in the world market. Ferrari has complained that consequent to the scheme, its agricultural exports have suffered serious prejudice in that Maserati's scheme has increased the world market share of Maserati's agricultural produce which it did not have in the past 3 years.
- i. What steps must be taken to justify Ferrari's complaint? **3 Marks**
- ii. Are there any remedies available to Ferrari and how are they applied? **4 Marks**

[25 MARKS]