

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B FINAL EXAMINATIONS**  
**L595 - INSOLVENCY LAW**

**MAY 2017**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR** questions.
2. All questions carry equal marks.

## QUESTION 1

Sello purchased from Lesotho Plant Hire some machinery for his farming business in 2016 on hire purchase. The machinery was valued at M65,000.00 and the amount was to be paid over a period of two years in monthly instalments. Eight months later, Sello's estate was sequestrated at the instance of another creditor, Botleng Farming (Pty) Ltd. Tebatso was appointed as the trustee of the estate. Lesotho Plant Hire intends to repossess the machinery from Sello's estate and has written a letter to that effect to Tebatso. Lesotho Plant Hire argues that it is entitled to return of the machinery because ownership remained on it until payment of the last instalment. Potso, the Director of Lesotho Plant Hire, has come to you for advice on the prospects of Lesotho Plant Hire recovering the machinery.

Advise Potso.

**[25 MARKS]**

## QUESTION 2

Write short notes on any FIVE of the following:

- |    |                             |         |
|----|-----------------------------|---------|
| a) | <i>Concursus creditorum</i> | 5 Marks |
| b) | Proof of claims             | 5 Marks |
| c) | Rehabilitation              | 5 Marks |
| d) | Liquidation account         | 5 Marks |
| e) | Free residue                | 5 Marks |
| f) | Notice of surrender         | 5 Marks |
| g) | Offer of composition        | 5 Marks |
| h) | Counting of votes in value  | 5 Marks |

**[25 MARKS]**

**QUESTION 3**

a) The Insolvency Proclamation, 1957 provides for the manner of distribution of proceeds of assets of the insolvent estate to claims of creditors of the estate, who have proved their claims, in their order of preference.

Outline the order of preference to show how the proceeds are applied to satisfy the claims of the respective groups of creditors.

**15 Marks**

b) Discuss the significance of the second meeting of creditors in the administration of an insolvent estate.

**10 Marks**

**[25 MARKS]**

**QUESTION 4**

Dan's estate was sequestrated on 10<sup>th</sup> March 2017 after two of his creditors jointly applied for compulsory sequestration. Shorts, Dan's brother, are renowned for his skill and expertise in administering insolvent estates. Dan is confident that Shorts is the best person to administer his insolvent estate and wishes to have him appointed as the trustee. Dan discusses the matter with his wife and Shorts and together they agree that Shorts will manage the insolvent estate. Dan is excited that his brother, whom he trusts, will administer the estate. As a friend of Dan, he normally comes to you for legal advice. Dan informs you of their agreement to have Shorts as the trustee of the estate.

Discuss the prospects of Shorts being appointed as a trustee of Dan's estate.

**[25 MARKS]**



## QUESTION 5

a) Atang, an unsecured creditor of Hlokang discovers that Hlokang's estate had recently been sequestrated. A trustee for the estate is not yet appointed. Atang comes to you for advice on the options available to him. He is considering suing Hlokang for full payment or to insist that Hlokang should give him one of his properties in lieu of payment.

i) Discuss the viability of these options.

**10 Marks**

ii) What is the position if the insolvent Hlokang agrees to give Atang one of his properties?

**5 Marks**

b) Before sequestration of his estate, Morena purchased a certain quantity of goods from Bob. Morena had five creditors that he was struggling to pay. One of the creditors, Sello, applied for compulsory sequestration of Morena's estate and a sequestration order was granted. Tšepang is the trustee of the estate. Bob was in London when the first and second meeting were published and held.

Advise Bob on how he can recover his claim.

**10 Marks**

**[25 MARKS]**

## QUESTION 6

Innes CJ in *Walker v Syfret NO 1911 AD 141 @ 166* said,

“The object of the Insolvency Act is to ensure a due distribution of assets among creditors in the order of their preference....the sequestration order crystallizes the insolvent's position; the hand of the law is laid upon the

estate, and at once the rights of the general body of creditors have to be taken into consideration. No transaction can thereafter be entered into with regard to the estate matters by the single creditor to the prejudice of the general body. The claim of each creditor must be dealt with as it existed at the issue of the order.”

- a) Discuss fully the immediate effects of a sequestration order on the property of the insolvent. **10 Marks**

- b) Outline the applicable procedure pertaining to movable property of the estate from the time of grant of a sequestration order. **15 Marks**

**[25 MARKS]**