

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L583 – LEGAL ASPECTS OF ECONOMIC DEVELOPMENT

MAY 2018

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS

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

QUESTION ONE

Mr Van Breda is a citizen of Namibia. He was born in that country in 1968, and obtained his Bachelor of Science in Agriculture degree from the University of Namibia in 1991. In 1992, he moved to South Africa to operate and manage a farm that his parents bought him in the Free State Province. During his stay in the Free State, he fell in love with Ms Malan, to whom he got married in 1995. In 2000, he qualified for a South African citizenship by virtue of being married to a citizen of that country for a period of five years. It is common cause, however, that he did not apply for a South African citizenship, and continued to be identified as a Namibian citizen by the South African Department of Home Affairs. In 2001, he got divorced from Ms Malan, and subsequently moved to Zimbabwe to operate and manage a livestock farm in the outskirts of Bulawayo.

In 2005, the Parliament of Zimbabwe passed the *Indigenisation and Economic Empowerment Act*, which authorised the expropriation of all land owned or occupied by whites without compensation. The same statute provided in section 25 that “[n]o person whose ownership, possession or occupation of land is disturbed by the performance of any act authorised by this law shall have any recourse in the courts of law.” Mr Van Breda’s farm was amongst those which were seized, and subsequently allocated to the natives of Zimbabwe by the Ministry of Lands and Rural Resettlement in 2005.

Mr Van Breda desires to have the matter resolved amicably, particularly through the process of diplomatic protection. He comes to your office seeking legal advice on the following issues:

- (a) What does the remedy of diplomatic protection (in investment disputes) entail?

5 Marks

- (b) What are the advantages and disadvantages of diplomatic protection as a remedy in investment disputes? **5 Marks**
- (c) As between South Africa and Namibia, which country has *loco standi* to initiate the process of diplomatic protection on his behalf? **5 Marks**
- (d) After his farm was seized, Mr Van Breda wrote a letter to the Namibian Ministry of International Relations and Cooperation requesting the government of Namibia to intervene on his behalf. Although he has not yet received a formal reply, he has been informed by a close friend of his who works in the aforesaid Ministry that the government of Namibia has resolved against intervention in the dispute as that would taint its relations with Zimbabwe. Mr Van Breda wants to know whether, in customary international law, he can compel the government of Namibia to intervene on his behalf. **5 Marks**
- (e) Explain to Mr Van Breda the relevance of section 25 of the *Indigenisation and Economic Empowerment Act* to the remedy of diplomatic protection. **5 Marks**

[25 MARKS]

QUESTION TWO

Briefly discuss the concept of unlawful expropriation, and a legal remedy that is commonly given by courts of law to a foreign investor whose property has been unlawfully expropriated by the host state. **[25 MARKS]**

QUESTION THREE

Identify and discuss in detail the type of economic integration that arises in the following scenarios:

(a) The United States of America passes the *African Growth & Opportunity Act* 2000, which provides that specific goods produced in selected Sub-Saharan states shall enter the US quota and duty free. **5 Marks**

(b) Lesotho, South Africa, Botswana and Swaziland agree to use a single currency. **5 Marks**

(c) South Africa, Zimbabwe and Botswana agree to eliminate tariffs and quotas on imports produced in their territories. Their agreement does not, however, regulate the imposition of tariffs and quotas on imports produced in states that are not part of the agreement. **5 Marks**

(d) South Africa, Zimbabwe and Botswana agree to eliminate tariffs and quotas on imports produced in their territories. Their agreement furthermore stipulates that they shall also remove all barriers to the free movement of factors of production. **5 Marks**

(e) Botswana, Lesotho, Namibia, South Africa and Swaziland agree to eliminate tariffs and quotas on imports produced in their territories. Their agreement provides furthermore that they shall adopt a single external policy. **5 Marks**

[25 MARKS]

QUESTION FOUR

In 1994, the Kingdom of Lesotho concluded a Bilateral Investment Treaty with the People's Republic of China. Shortly thereafter, Lesotho witnessed an increase in the number of Chinese investors. One of these investors was Mr Lee,

who came to Lesotho in 1996 to setup a chain store that sells clothing items. These stores were all located in the city of Maseru.

In 1998, Lesotho held national elections that saw the re-election of then ruling party into power. The leader of opposition rejected the election results on allegations of vote rigging. A day after the announcement of the results, he held a press conference to inform the media that he did not accept the results, and that he was planning to institute an action to challenge them. It is common cause that his application was dismissed by the Constitutional Court for lack of merit. Frustrated with the dismissal of his application, and the swearing in of the Prime Minister, he held political rallies around the country at which he reportedly informed his supporters that, "because we have been denied justice, we shall burn Maseru to make our point." He also made similar statements on national television and radio. Meanwhile, the government dismissed these statements as the last kicks of a dying horse.

In September 1998, the supporters of the opposition leader looted shops and stores in Maseru, and burned down a lot of buildings. One of the stores that were looted and burned belonged to Mr Lee, who reportedly lost an estimated M5 500 000 as a result. Mr Lee wants to sue the government of Lesotho on the basis that it failed to afford him full protection and security as required by the Bilateral Investment Treaty signed with China.

Critically discuss whether Lesotho failed to afford Mr Lee full protection and security.

[25 MARKS]

QUESTION FIVE

From the Washington Consensus, select and discuss possible economic/social benefits and setbacks of two policies that are commonly imposed as conditions of lending by the Bretton Woods Institutions. **[25 MARKS]**

QUESTION SIX

Briefly explain the following concepts:

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|------------------------------------|----------------|
| (a) Countervailing duties | 5 Marks |
| (b) Anti-Dumping duties | 5 Marks |
| (c) Non-commercial risk insurance | 5 Marks |
| (d) Foreign Direct Investment | 5 Marks |
| (e) Most Favoured Nation Treatment | 5 Marks |

[25 MARKS]