

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L597 - CONVEYANCING AND NOTARIAL PRACTICE

MAY 2018

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. Answer any **FOUR (4)** questions
2. All questions carry equal marks
3. Do not use your name or that of any of your classmates in your answers
4. You may use your calculator where necessary

QUESTION 1

Mobu recently purchased Marekisa's rights and title to immovable property held under lease number 1120-000, situated at Marallaneng. The market value of the property is M200 000.00 but nobody would buy it at that price. Mobu ultimately offered to buy the property for M150 000.00. Marekisa, desperate to pay off an overdue debt he has with Machonisa Bank, accepted Mobu's offer and sold his rights to the property for M150 000.00.

- a) As a conveyancer, draft a deed of transfer on the transaction referred to above. Do not draft any affidavits, declarations, consent or power of attorney.

15 Marks

- b) Which documents have to accompany a deed of transfer other than those set out at (a) above?

2 Marks

- c) Calculate the stamp and transfer duties payable upon transfer of this property.

8 Marks

[25 MARKS]

QUESTION 2

'Muelli drafted a notarial covering bond passed by Poor Man in favour of Makalima Bank. The bond said Poor Man renounced certain legal benefits and exceptions. 'Muelli gave the bond to Poor Man with the advice that Poor Man should consult a lawyer he trusts about the legal implications of the contents of that bond. 'Muelli advised Poor Man further that it is only after he has satisfied himself that he fully understands the contents of the bond that Poor Man may come back to sign the bond if he still wants to proceed with the transaction.

Poor Man approaches you seeking advice as directed by 'Muelli. He is particularly fascinated by the legal benefits and exceptions he is supposed to have renounced.

Briefly explain the legal implications of renouncing the following legal exceptions and benefits which the bond Poor Man handed over to you says he has renounced:

- | | |
|---|-------------------|
| a) <i>Non numeratae pecuniae.</i> | 4 Marks |
| b) <i>Non causa debiti.</i> | 4 Marks |
| c) Revision of accounts, <i>errore calculi</i> and 'no value received'. | 5 Marks |
| d) <i>Beneficium de duobus vel pluribus reis debendi.</i> | 5 Marks |
| e) <i>Beneficium divisionis</i> | 7 Marks |
| | [25 MARKS] |

QUESTION 3

Tlhale Ntlhajana approached the Baji Bank for a loan. The Bank asked Tlhale for some security equivalent in value to the amount of M100 000.00 that he was borrowing from the Bank.

Tlhale handed over to the Bank's lawyer, his lease number 2220-000 in respect of his Nkadula Estates situated at Menateng. The lawyer drew a mortgage bond over Tlhale's property. Before signing the bond, Tlhale asks you for advice on what rights and obligations he and the bank would have over the property if it is mortgaged.

Advise Tlhale.

[25 MARKS]

QUESTION 4

Morosa and 'Mamoroana agreed to marry. They approached the offices of their District Secretary to solemnize their marriage.

Five months into the marriage, Moroa learned that his wealthy diamond dealer uncle had left him a huge fortune. Moroa is, however, fearful that should his marriage to 'Mamoroana not work out and they have to divorce, he might have to lose part of the inheritance from his uncle to 'Mamoroana.

In Moroa's university days, he had friends studying law and he had heard them talk about some contract that couples could sign to keep their estates separate. Moroa accordingly approaches you for advice on the possibility of having a similar contract signed between him and 'Mamoroana, so as to allay his fears relating to the inheritance from his wealthy uncle.

Advise Moroa.

[25 MARKS]

QUESTION 5

- a) Chief Maoto Maoto spent many years of his adult life working in the mines in South Africa. He amassed a sizeable amount of wealth in cattle and sheep before retiring. Upon retiring from the mines he assumed the chieftainship of his area, Ha Maoto, following the death of his father Morena Maoto.

Chief Maoto has an irresponsible son and only child whom he fears will squander his hard earned wealth if he were to leave it to him; and he is seriously thinking about leaving his wealth to his younger brother's more responsible son, Little Maoto. Chief Maoto has always been a meticulous person who pays attention to detail. He accordingly approaches you for advice on whether he qualifies to make a will, and what the essential provisions of a will are.

Advise Chief Maoto accordingly.

12 Marks

b) Briefly explain the following:

- | | | |
|------|---|----------------|
| i) | Succession <i>per stirpes</i> and <i>per capita</i> | 4 Marks |
| ii) | Direct and <i>fideicommissary</i> substitution | 6 Marks |
| iii) | <i>Jus accrescendi</i> | 3 Marks |

[25 MARKS]

QUESTION 6

There are contrasting views on whether parties to an ante-nuptial contract have to personally appear before a Notary Public to execute the contract or whether they may be represented by agents duly authorised under a power of attorney. Critically discuss these contrasting views in the light of the nature of the functions of a Notary Public.

[25 MARKS]