

NATIONAL UNIVERSITY OF LESOTHO

LL.B EXAMINATIONS

L595: INSOLVENCY LAW

May 2023

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS

1. Answer any **FOUR (4)** questions.
 2. **ALL** questions carry equal marks.
 3. Answer clearly and refer to relevant authorities wherever possible.
 4. Allocate 45 Minutes to each question.
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Question 1

Critically discuss **five (5)** consequential effects that befall a personal insolvent estate after a liquidation order has been granted in terms of the *Insolvency Act 9* of 2022.

[25 MARKS]

Question 2

When a party applies to court for a compulsory liquidation order, there are certain requirements that are provided for in the *Insolvency Act 9* of 2022 that must be complied with before a court can grant a liquidation order.

Discuss **five (5)** requirements that ought to be met.

[25 MARKS]

Question 3

The advantage to creditors' requirement is the decisive factor regarding whose estate will be sequestrated and whose will not.

Critically discuss the constitutionality of the advantage to creditors in context of the Lesotho Constitution and the new *Insolvency Act 9* of 2022.

[25 MARKS]

Question 4

Briefly explain the following:

- a) *Concursus creditorium*
- b) Free residue

5 Marks

c) Attrition in business rescue

5 Marks

d) Creditors meetings

5 Marks

e) Rehabilitation

5 Marks

5 Marks

[25 MARKS]

Question 5

David and Co, is a company duly registered in terms of the laws of Lesotho. The company had its first meeting on the 10th May 2023, and after looking at the financial statements of the company, the shareholders noted evidently that the company has fallen into financial difficulties. The shareholders and directors invite you to advise them on the possible options that are provided for under the *Insolvency Act 9 of 2022*. It is noticeably clear that the shareholders seek the company not to cease to exist. You advised David Co to apply for business rescue under the *Insolvency Act*.

Since business rescue is still novel in Lesotho, David Co asked you to write a legal opinion to them and explain what exactly business rescue entails.

[25 MARKS]

Question 6

The repealed Proclamation of 1957 did not provide employees to be recognised under preferred creditors when the trustee/liquidator distributed the debtor's assets.

Under the new Insolvency Act 9 of 2022, discuss the hierarchy and ranking of creditors' claims when the trustee distributes the debtor's realised assets.

[25 MARKS]

The End