

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL B FINAL EXAMINATIONS

L4301 – THE LAW OF CIVIL PROCEDURE 1

JANUARY 2024

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. Answer any **FOUR (4)** questions.
2. Begin each answer on a new page.
3. Ensure that you have written your student number on the answer sheet.

QUESTION 1

‘Melaeli recently instructed attorney ‘Muelli under a power of attorney to institute an action against Moferefere for damages arising out of a defamatory article published of and concerning ‘Melaeli, by Moferefere, in a local newspaper. ‘Melaeli and ‘Muelli have had differences about how to proceed with ‘Melaeli’s case. ‘Muelli is desirous of withdrawing from the case but is unsure of whether he would be acting properly to terminate his mandate on account of the differences on strategy.

Advise him elaborating on different ways in which authority granted under a power of attorney may terminate.

[25 MARKS]

QUESTION 2

Molisana, a herdsman from City Mafefs, Roma, was recently severely assaulted by his employer, Morui, following the theft of Morui’s goats while they were being looked after by Molisana. Molisana is now wheelchair bound and unable to use any of his limbs as a result of the beating he received at the hands of Morui. Molisana would like to recover damages arising from his assault by Morui, but he is destitute and cannot afford to instruct a lawyer.

Molisana learned from his son doing law at the National University of Lesotho (NUL) that the High Court rules provide for a procedure for assisting destitute people to secure legal representation “at no cost to them.”

Explain that procedure in detail to Molisana.

[25 MARKS]

QUESTION 3

Briefly explain the following terms:

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|-----|--|----------------|
| (a) | A certificate of <i>probabilis causa</i> . | 5 Marks |
| (b) | Joinder of convenience. | 5 Marks |
| (c) | An alien enemy. | 5 Marks |
| (d) | Consolidation of actions. | 5 Marks |
| (e) | <i>Actor sequitur forum rei</i> . | 5 Marks |

[25 MARKS]

QUESTION 4

(a) Al Jihad, a Palestinian born and bred in Jabalia Refugee Camp in Gaza, met Malotomane at the Cop 28 Conference held in Dubai, UAE, from 30 November to 12 December, 2023. The two parties agreed to establish a partnership to run a business to catch and export Lesotho's highly sought after trout fish. Al Jihad transferred M10 million into Malotomane's bank account. The money was to be used by Malotomane once he got back to Lesotho, to set up the partnership's business. To Al Jihad's disappointment, Malotomane disappeared without any trace and did not take or return Al Jihad's phone calls.

Al Jihad ultimately came to Lesotho in January, 2024 to recover his money from Malotomane. Al Jihad found that Malotomane had used the money meant for the fishing business, to buy himself immovable property. Al Jihad wants the property attached so as to found jurisdiction over the case he intends instituting against

Malotomane to recover his money. Al Jihad is, however, unsure whether he can successfully have that property attached.

Advise Al Jihad on his prospects of success in the contemplated application for attachment of Malotomane's property.

[25 MARKS]

QUESTION 5

Khutsana, a 16-year-old double orphan from Mangopeng, Roma, inherited a flock of sheep from his parents who perished in a deadly car accident on 31 December, 2023. Rangoane, Khutsana's paternal uncle, took the sheep from Khutsana promising to look after them and "to protect them from thieves and wolves." Khutsana is concerned that Rangoane is selling and slaughtering the sheep as he pleases and without consulting him. Khutsana wants to sue Rangoane so as to get back his sheep, but Rangoane insists that he has Khutsana's best interests at heart and that Khutsana is misguided to think that he may sue him. Rangoane has told Khutsana that only he, Rangoane, has the right to institute any case in court relating to Khutsana's inheritance. This has left Khutsana quite distraught as he feels that if what Rangoane says is correct, then there is no way of rescuing his sheep from Rangoane's clutches.

Advise Khutsana on whether he may sue Rangoane and if so, what needs to be done to enable him to sue.

[25 MARKS]

QUESTION 6

Moithuti, a former National University of Lesotho (NUL) student who recently obtained a first-class pass for his LL B degree, visited the High Court to “see lawyers in action”. He set in on an argument in a constitutional case. He found the case to be raising important constitutional issues concerning a citizen’s right to litigate in the public interest. Moithuti was, however, disappointed with the manner in which counsel for the applicant in the matter presented his argument. He felt that the points raised by counsel were valid but Moithuti was totally unimpressed by counsel’s failure to direct the court’s attention to a wealth of authorities on the subject. Fortunately, the court adjourned while the applicant’s counsel was still on his feet and before the respondent’s counsel could address the court.

Moithuti was very happy with the adjournment as it gave him the opportunity to prepare an application for intervention as *amicus curiae*.

Advise Moithuti on the requirements for intervention as *amicus curiae* and whether Moithuti’s contemplated intervention has any prospects of success.

[25 MARKS]