

Compulsory Units Past Papers

LL.B. III



GĦAQDA STUDENTI TAL-LIĠI

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2020/2021

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ABOUT GħSL

Għaqda Studenti Tal-Ligi (The Malta Law Students' Society) is a faculty-based, non-profit organisation at the University of Malta that represents all law students within the Faculty of Laws.

The organisation plays a pivotal role in law students' academic and social life at the University of Malta. The organisation has also been responsible for publishing the prestigious *Id-Dritt*, and the *GħSL Online Law Journal*.

Moreover, GħSL boasts its own Thesis Library, located at the GħSL office in the Faculty of Laws. Additionally, GħSL is the only law organisation responsible for the distribution of authoritative law notes and past papers.

For further queries on this set of notes, as well as any other, please feel free to contact our **Resources Officer** at resources@ghsl.org.



Advice from an Alumna

By Dr Priscilla Mifsud Parker

The law course is a long journey, but one that, if well-travelled, will lead to beautiful destinations. In an industry which is today attracting many young individuals looking to develop their career in law, it is important to stay ON the beaten track and remain focused. It may go without saying that it is of great importance for all students to attain good academic grades, to be dedicated to their work, as well as to be determined in this highly-competitive industry in order to fulfil their dream of becoming lawyers one day. However what is crucial is that as students and later on as professionals we are innovative by being sensitive to the changes around us. These changes might be political, economic, environmental, socio-cultural or others; what is for sure is that they all have an impact on the profession of a lawyer. We are members of a dynamic profession which is very sensitive to its surroundings. The type and 'genre' of advice which is required from us is all affected by what is being experienced by the receivers of this advice.

Work experience is considered as a vital part of the staple diet of any prospective lawyer in order to put into practice and refine the knowledge gained from the theoretical reality of the lecture halls and lawbooks into the skills required for a successful career in law. An internship will not only show future recruiters that you have a genuine interest in pursuing a career in this sector, but that you have the practical knowledge and skills to succeed in your role.

Here are some personal suggestions that I feel helped me during my journey:

1. *Being Ambitious*

A powerful trait in any competitive industry, ambition will help you in your law course, in your career as a lawyer, as well as in your life. Whilst the law course can be quite intimidating and challenging, an ambitious individual who is dedicated to learning new things has the potential to understand and realize long-term goals. Do not view the journey as one whole insurmountable mountain but focus on the next small goal and once achieved move on to the next and goal by goal you will reach your final target point.

In this respect, gaining valuable work experience through an internship is an important step taken by an ambitious young lawyer who wants to attain certain skillsets, and remain a step ahead of his/her peers. By being inquisitive, analytical and humble enough to accept guidance and mentoring one is guaranteed a fruitful experience in a law firm. It is also not only a means to start focusing on the direction of your career and to build upon your chosen path, but will undoubtedly expose you to the international world. This is crucial, as most of the traditional legal sectors have been intertwined with new areas of legislation and all these together now present much more opportunity for intra-jurisdictional work.

2. *Networking*

By engaging with counterparty students abroad and in international fora one gains an insight into another reality and is exposed to different cultures, ways of communicating and is able to bridge



the differences between parties to a mundane discussion which will eventually become a transaction or a major project in professional life.

3. Organisational Skills

Organisation is key in any industry. Good organisation skills always stand out to a recruiter when considering potential applicants. Such skills can be obtained by gaining experience either through organising one's own work, study plan, student events or cultural/philanthropic events.

Going hand-in-hand with this, is having a study plan. By planning your studies ahead, one will have a sufficient amount of time to meet all the demands, while also being able to participate in productive outside activities. Reviewing notes or case briefs before class can also help you follow and participate in class discussions better, whilst following case-law allows you to apply them for specific situations. In view of the amount of material involved summarising and carving out the most crucial points is essential to then build your argument in papers.

4. Taking your own class notes

It is always important to take down your own notes as laws are always evolving and passed-down notes would provide the context but are not ideally used for the detail. Researching the particular topic and comparing Malta's law with that of other jurisdiction gives one a completely different outlook and commenting on these variances in an exam paper, dissertation or assignment would distinguish one student from another. Not to be overlooked are also the consultation papers, commentaries and other official public documents that are issued by local authorities from time to time on different areas of law and industry. Being abreast of what is happening in industry will help putting the particular law or regulation in context.

5. Participation

Participation is a main element of the learning process. Being actively involved during seminars and lectures and participating in legal debate sessions, mock trial competitions and moot courts are essential in order to improve your persuasive and presentation skills. If you find this very difficult (all of us have different characters and traits), then try to focus on participation in other events which will expose you to public speaking starting off in smaller groups in a more familiar environment and trying out new experiences and larger audiences as you go along.

6. Practice is the key to success

This leads us to our next point – practice. Attaining good grades is undoubtedly an important part of the law course, however, in themselves, they are not enough to show that you have substantial material to succeed. Working within a law firm introduces you to the world of work, and allows you to gain specific industry-related skills which one will only ever be able to learn in a workplace setting.

Work experience can provide you with valuable insight which will help you decide what your career aspirations are and in which areas you would like to further delve into.



THIRD YEAR LAW COMPULSORY UNITS PAST PAPERS

1. Law of Obligations
2. Family Law
3. Nominate Contracts*
4. Selected Topics in International Law
5. Company Law
6. Advanced Company Law
7. EU Internal Law
8. Introduction to Private International Law

*includes Major Contracts and Minor Contracts with were previously a separate study-unit

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate t contact us

academic@ghsl.org



Third Year Law
Compulsory Units Past Papers

LAW of OBLIGATIONS

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. – III YEAR
CVL3014 – LAW OF OBLIGATIONS

MONDAY 1ST FEBRUARY, 2010

9.15 A.M. – 10.15 A.M.

Answer the question by means of an essay.

Explore, with particular reference to Maltese law, the implications of the way pre-contractual liability is legally defined and classified on the kinds of damages that can be awarded.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL3014 – LAW OF OBLIGATIONS

MONDAY 14TH JUNE, 2010

9.15 A.M. – 12.15 P.M.

Answer any THREE Questions. Each question is composed of section (a) and section (b), both of which must be answered. All (a) questions carry a value of 23 marks and all (b) questions carry a value of 10.33 marks.

- 1(a) Comment on the vitality (or lack thereof) of the general clause on delictual responsibility in the Civil Code in the light of other provisions of the Civil Code on damages, our jurisprudence and the likely impact of Act 6 of 2004.¹ Is it correct to say that the relationship between responsibility and damages has been inverted as a result of these developments?
- (b) Describe the facts and analyse the legal principles that emerge from the following case: *Vassallo Joseph Et. vs Vassallo Carmelo Et.* Court of Appeal 13th July, 2001 (simulation)
- 2(a) Is a “breach of a duty imposed by law” always required in order to establish responsibility in delict or quasi-delict and is this requirement always interpreted in the same way? In your answer pay particular attention to cases of abuse of rights and of the management of a dangerous thing.
- (b) Describe the facts and analyse the legal principles that emerge from the following case: *Illmu. U Revmu. Mons. Lorenzo Spiteri D.D vs Emmanuele Buhagiar Et.* Court of Appeal 20th January, 1961 (form of valid private writing)
- 3(a) It is said that when exercising the *actio surrogatoria* the creditor acts *nomine debitoris*. Discuss the implications and consequences of this statement and contrast the legal position of the plaintiff in the *actio surrogatoria* with the legal position of the plaintiff who exercises an action against the debtor after being subrogated to the rights of the creditor. In your answer also indicate the situations where a person who pays the debt of another person is subrogated to the rights of the creditor by operation of law.

¹ Students should note that a knowledge of the proposed amendments to the Civil Code formulated in 2010 is not required in order to answer question 1(a) correctly.

- (b) Describe the facts and analyse the legal principles that emerge from the following case: *Edward Rizzo Ne. vs Lt. Col. Charles E. Dawson Ne.* Court of Appeal 15th May, 1953 (standard clauses)

4(a) "The vice of consent on account of an error of fact is very tightly linked to the attributes, whether objective or subjective, of the thing which constitutes the subject-matter of the contract." Discuss.

- (b) Mrs Smith is complaining that her bracelet, worth more than €2000, was stolen on the last night of her ten days residence at the Golden Conch hotel in Malta. As she was due to leave very early on the next morning and before the opening hour of the hotel's safe deposit facilities, Mrs Smith had on her final evening withdrawn the bracelet from the hotel's safe and placed it in the suitcase in her room, together with the receipt she had received from the hotel. In that receipt it was clearly stated that the hotel disclaimed all liability once the object was not deposited with them any more. It appears that the thief must have had a copy of the key to her room as there was no sign of a forced entry or break-in.

Advise Mrs Smith as to whether and how she can sue the hotel-keeper for compensation. Then advise the hotel management as to whether and how they can legally avoid or limit their liability.

- 5(a) Discuss in detail the nature and requisites of the *actio de in rem verso* in the light of its recent codification, jurisprudence and/or doctrine. In your answer give an opinion as to the relevant period to be taken into account in the liquidation of any amounts due by way of compensation.

- (b) John Borg, a thirteen year old boy, was out walking with the Alsatian dog which his parents had given him when the dog ran away and entered a butcher's shop. On being offered some raw meat by Peter Zammit, the butcher, the dog bit him. It then proceeded to run amok, injuring another customer and smashing the window of the butcher's shop before it was finally caught and restrained. John's father had requested John not to take the dog out that day as he suspected that the dog was sick and knew that this made it more irascible. Yet John had ignored this advice.

Advise Peter Zammit, the butcher, who has now recovered completely without any scarring, as to whether and how he can obtain compensation for the damages he suffered. These damages included various medical expenses incurred to heal his wound as well as the loss of profit as he had to keep the shop closed for a week while he was undergoing treatment for nervous shock and the injury to his hand.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL3014 – LAW OF OBLIGATIONS

SATURDAY, 11TH SEPTEMBER, 2010 9.15 A.M. – 12.15 P.M.

Answer any THREE Questions. Each question is composed of section (a) and section (b), both of which must be answered. All (a) questions carry a value of 23 marks and all (b) questions carry a value of 10.33 marks.

- 1 (a) Discuss with reference to local jurisprudence what is understood by *consilium fraudis* as a requirement of the *actio pauliana* and proceed to identify the differences between this action and the *actio simulatoria*.
- (b) Describe the facts and analyse the legal principles that emerge from the following case: *Said vs Testaferrata Bonnici Axiag* (Civil Court, First Hall 16th June 1936) (*actio de in rem verso*)
- 2 (a) 'There is a very fine line between error of fact and fraud as vices of consent.' Compare and contrast, with reference to judgments and doctrine, the salient aspects of each of these two vices of consent, giving also your views on the essential distinctive feature.
- (b) Peter and Mary are unmarried siblings who share a house and happen to be both pigeon-fanciers, keeping separate flocks of pigeons on the roof of their house. Matthew, a farmer who has fields nearby, has sustained significant damage to his crops as the result of the depredations of a flock of pigeons. Matthew knows that Mary bears a grudge against him and suspects that she might have intentionally created a situation which could damage his crops. When he speaks to Peter, however, the latter insists that his pigeons were in any case not the cause of the damage suffered by Matthew.
- Advise Matthew as to the best course of action in the light of the principles which emanate from the Civil Code and local jurisprudence.*
- 3 (a) Articles 1021, 1022 and 1147 of the Civil Code cater for situations where whoever receives that which is not due to him is bound to return it. Evaluate this statement by discussing in detail the elements of *indebiti solutio*, quoting Maltese case law where applicable.

- (b) James, the husband and father of the plaintiffs was employed by Eagle Caterers, the defendant company, as catering manager in a catering establishment run by the defendant. While on the premises of Eagle Caterers in the course of his duties, he was murdered by unknown third parties during an armed robbery. The plaintiffs alleged that Eagle Caterers was liable for damages because it failed to take proper precautions, citing the facts that: (1) there was no alarm system whereby the employees could summon help in the case of an emergency; (2) there was no emergency exit; and (3) there was insufficient lighting.

Advise Eagle Caterers as to the kinds of damages they might have to compensate if the court were to hold them liable for the death of James¹ and as to the legal principles that they could invoke in order to avoid being held liable for his death.

- 4 (a) Compare and contrast the indirect liability of the owner or user of an animal with that of the person having the custody of a minor or of a person of unsound mind. In your review examine the various elements which must be proved to establish liability in each case and state which of these cases in your opinion comes closest to introducing objective liability in our code.
- (b) Describe the facts and analyse the legal principles that emerge from the following case: *Perit Raymond Vassallo vs Anthony Cushieri Et.* (Court of Appeal: 14th November 1996) (*illicit causa*).
- 5 (a) How is liability in tort different from liability in contract and how are cases of overlap between these two kinds of liability addressed?
- (b) Describe the facts and analyse the legal principles that emerge from the following case: *Mark Calleja Urry et. vs Joseph Portelli et.* (Court of Magistrates Gozo – Superior Jurisdiction: 31st July 2008) (penalty clause)

¹ Students should note that knowledge of the proposed amendments to the Civil Code formulated in 2010 is not required in order to answer question 3(b) correctly.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL3014 – LAW OF OBLIGATIONS

MONDAY 31st JANUARY, 2011

9.15 A.M. – 10.15 A.M.

Select one of the following questions and answer it:

1. Give a brief exposition of the will theory as applied in Malta, especially in the light of the legal requirement of consent as an essential element of obligations; to what extent have legislative interventions over the past years affected this theory within the context of contractual validity?

 2. Discuss the requisites to establish the liability of the hotel-keeper towards the guest for (i) any damage to or destruction or loss of property brought to the hotel by the guest, and (ii) any personal injury suffered by the guest while staying at the hotel. In your answer you should assess the juridical nature of the action or actions available at law to the guest to recover such damages.
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UNIVERSITY OF MALTA
FACULTY OF LAW
LL.B. III & LL.D. QUAL. YEAR
JUNE 2011
CVL3014 – LAW OF OBLIGATIONS

MONDAY, 13TH JUNE 2011

09.15AM – 12.15PM

Answer any **THREE** questions. Each question is composed of section (a) and section (b), both of which must be answered. All (a) questions carry a value of 23 marks and all (b) questions carry a value of 10.33 marks.

1(a) Discuss, with particular reference to local jurisprudence, the concept and effects of an action based on simulation, and distinguish this action from the one intended for the rescission of the contract.

(b) Describe the facts and analyse the principles of law that emerge from the following case:

“Lucchesi vs Sultana” Court of Appeal 3rd December, 2004 (*causa*)

2(a) “Persons capable of contracting may not set up the nullity of the contract on the ground of the disability of those with whom they have contracted” (Section 973 of the Civil Code). Discuss the effects of this provision of the law in the context of the capacity of persons to contract. Reference must be made to the most recent court decisions on the subject.

(b) Describe the facts and analyse the principles of law that emerge from the following case:

“Camilleri vs Pisani nomine ” First Hall Civil Court 13th November, 1995 (exemption clause)

3(a) The system adopted for compensating delictual or quasi-delictual damages is due for an overhaul if and when Bill 78 of 2011 amending the Civil Code comes into force. Outline the main innovations to be introduced by this Bill to the current system, giving your opinion as to whether they will comply with the principle that the damage caused must be fully compensated (*restitutio in integrum*).

(b) Describe the facts and analyse the principles of law that emerge from the following case:

“Agius vs Galea” First Hall Civil Court 12th April, 1996 (*servigi*)

4(a) Do you think that courts of law in Malta are free to apply the principle *rebus sic stantibus* when it comes to requests for the enforcement of contracts? Give reasons for your answer with reference to court judgments on the subject.

(b) Alexander Mifsud is seventeen years old. He is very eager to start driving. Two weeks before his eighteenth birthday his parents Sean and Sabrina Mifsud, buy him a flashy motorcycle. They tell him that he may only drive the motor cycle when he obtains his driving licence after his eighteenth birthday. However they immediately give him the keys of the motor cycle which is left parked in their garage. Sean also quickly shows Alexander how to ride the motor cycle in the drive-in. Three days before his eighteenth birthday, Sean and Sabrina go shopping. Alexander cannot resist the temptation and decides to go for a ride round the block with his new motorcycle. He loses control and hits Rita Ellul, a pedestrian. Rita's injuries are not serious but she is advised to remain in hospital under observation for 3 days. Rita does not want to remain in Mater Dei hospital where she can get free treatment but decides to go to a private hospital. While in the private hospital Rita contracts MRSA, a serious infection caused by bacteria in hospitals. She suffers serious complications as a result of this infection. She remains with a permanent disability which is a direct consequence of the MRSA. Rita also receives a hospital bill for €8,000. Rita would like to claim damages. Advise Rita on the liability, if any, of Alexander, Sean and Sabrina Mifsud and of any possible defences which may be raised against her claim for compensation by defendant Ellul. Do not comment on the quantification of damages.

5(a) Evaluate the requirement of a "breach of a duty imposed by law" as a prerequisite for delictual or quasi-delictual liability. In your answer examine particularly: (a) the interaction between this requirement and the general principle that fault is the basis of such liability; and (b) whether a violation of human rights can constitute a breach of a duty imposed by law?

(b) Mario Dalli is a contractor operating in the building industry. He has contracted with Alan Farrugia to complete the construction and finishing of a house by 15 June 2011, in default of which it is agreed by the parties that Mario Dalli will be liable to the payment of a penalty of €1,500 per day for the mere delay. On 1 June 2011 one of the truck drivers of Mario Dalli who is responsible for the transport of materials to the site of Alan

Farrugia calls sick. Mario Dalli is under extreme pressure and instructs his gardener, Tonio Zammit, to take over the duties of the truck driver. Tonio Zammit has a licence to drive car but he has never driven a truck. He fails to manoeuvre the truck correctly and dashes into the external wall of the house of David Mallia causing extensive damage. The truck was carrying the tiles which were supposed to be used in the house of Alan Farrugia and most of them are broken. New tiles need to be ordered from abroad. As a result, the house will not be finished by 15 June 2011 but will only be completed on 30 July 2011. Briefly discuss the basis of the liability, if any, owed by Mario Dalli and Tonio Zammit respectively, towards Alan Farrugia and David Mallia. Do not comment on the quantification of damages but deal only with the issue of responsibility.

8/11/2011

LLB III YR

UNIVERSITY OF MALTA
FACULTY OF LAW
LL.B. III
SEPTEMBER 2011
CVL3014 – LAW OF OBLIGATIONS (10% EXAMINATION)

THURSDAY 1ST SEPTEMBER 2011

09.15AM – 10.15AM

Select one of the following questions and answer it:

1. Explore in the light of the codal provisions and the relevant jurisprudence the compensation issues arising when the victim of the delict or quasi-delict dies. If it is enacted, what impact is Bill 78 of 2011 likely to have in this regard?
 2. Francesco Ricci claimed that jurisprudence cannot find any grounds whatsoever to distinguish between the object of the obligation and its *causa*, because in reality they are one and the same thing. Discuss.
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UNIVERSITY OF MALTA
FACULTY OF LAWS

Civil Law – Law of Obligations

LL.B. III Year

12th September, 2011
9.15am – 12.15pm

Answer any THREE Questions.

Each question is composed of section (a) and section (b) both of which must be answered.

(a) questions carry 23 marks and (b) questions carry 10.33 marks

1(a) It is said that for plaintiff to succeed in the *actio de in rem verso*, enrichment must have an unjust character. Discuss with reference to court judgments the validity or otherwise of this statement.

(b) On a very windy day in January, the wall of the back garden of Mr. Zammit collapses. No other wall in the neighbourhood collapses that day though some trees are extensively damaged. Unfortunately, the wall falls on Mr. Aquilina who was seeking refuge from the wind. Mr. Aquilina is taken to hospital. His injuries are serious but would not have killed a healthy man, but due to Mr. Aquilina's pre-existing medical condition, Mr. Aquilina loses his life after three days in hospital. Mr. Aquilina has no wife and no dependants and is inherited by his only brother. Discuss the liability, if any, of Mr. Zammit for the death of Mr. Aquilina and the manner in which the Maltese Courts will quantify the damages claimed by the brother of Mr. Aquilina. If Bill 78 of 2011 is enacted, would the brother of Mr. Aquilina be able to claim damages for *lucrum cessans*?

2(a) Discuss what can form the object of a contract.

(b) Describe the facts and analyse the principles of law that emerge from the following case:

“Gauci Borda vs Borda” Court of Appeal, Inferior Jurisdiction, 7th November, 2008 (“*inadimplendi non est adimplendum*”)

3(a) When and under what circumstances can one enter into contracts in favour of third parties? What are the effects of such a contract?

(b) Describe the facts and analyse the principles of law that emerge from the following case:

“Ciancio vs Buontempo” First Hall Civil Court, 27th July, 1950
(*actio pauliana*)

4(a) Explore the element of imputability as a requirement for delictual or quasi-delictual liability. What are the basic legal principles which regulate liability in cases where the person who unjustly caused the damage is considered a minor, and who may be held responsible to make good for such damage.

(b) Describe the facts and analyse the principles of law that emerge from the following case:

“Parascandalo vs Lanzon” Court of Appeal, 7th April, 1925 (natural obligations)

5(a) Distinguish between contractual and tortious responsibility and discuss the approach of the Maltese Courts where the facts at issue could give rise to a situation of concurrent liability or overlap between liability in contract and in tort. What difference, if any, does it make in practice if liability is classified as contractual or tortious in nature?

(b) Mr and Mrs Mallia take their dog for a short walk around the block. The dog gets agitated as a result of the fireworks of the village feast and manages to get loose from the lead. Soon after Mr and Mrs Mallia learn that the dog attacked Mrs. Cachia, a thirty-eight year old house-wife, who lives down the road. Mrs. Cachia suffers serious injuries consisting in bites on her hands and arms which cause permanent scars. However, six months after the incident, Mrs. Cachia finds a well-paid full time job. Discuss the liability, if any, of Mr and Mrs Mallia and the manner in which the Maltese Courts will quantify the damages claimed by Mrs. Cachia for *lucrum cessans*. If it is enacted, what impact would Bill 78 of 2011 likely have on the damages awardable to Mrs. Cachia?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL3014 – LAW OF OBLIGATIONS

MONDAY 30th JANUARY, 2012

9.15 A.M. – 10.15 A.M.

Select *one* of the following questions and answer it. Each question counts for 100% of the mark:

1) Discuss, with express reference to Maltese cases, the manner in which our Courts have dealt with the issue of an error of fact (within the context of a vice of consent), when such is alleged by a contracting party.

2) Mario Borg is a contractor operating in the building industry. He has been contracted by Alan Farrugia to complete the construction of a restaurant by 15 January 2012. On 2 January 2012 one of the workers of Mario Borg calls sick. Mario Borg is under extreme pressure and instructs his gardener, Tonio Zammit, to take over the duties of the said worker. Tonio Zammit is the 16 year old son of Hector and Assunta Zammit. He works part-time with Mario Borg to finance his studies. While on site Tonio Zammit mishandles some dangerous machinery and causes serious injury to Matthew Ciantar, aged 38, a full-time employee of Mario Borg. Matthew Ciantar dies as a result of the injury and is inherited by his mother and father. Matthew Ciantar had been financially supporting his partner Maria Abdilla and her minor son Conrad Abdilla who are now facing financial difficulties. As a result of the incident, the works in the restaurant are also delayed and since the restaurant is not be completed by 15 January 2012, Alan Farrugia also loses three months of business.

(i) Who may be held liable to pay the damages arising from the death of Matthew Ciantar? In your answer indicate clearly the nature and basis of such liability. [40 marks]

(ii) Who, from among Matthew Ciantar's heirs and dependants may claim damages arising from his death? Would your answer be the same if Bill 78 of 2011 were in force? [30 marks]

(iii) Who may be held liable for the damage suffered by Alan Farrugia? In your answer indicate clearly the nature and basis of such liability. [30 marks]

UNIVERSITY OF MALTA
FACULTY OF LAWS

Civil Law – Law of Obligations

LL.B. III Year

4th June, 2012
9.15am – 12.15pm

Answer any THREE Questions.

Each question is composed of section (a) and section (b) both of which must be answered.

Please note that (a) questions carry 23 marks and (b) questions carry 10.33 marks

FOR THE ATTENTION OF STUDENTS: When discussing the (b) questions, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

1. (a) Discuss what is involved in a defence (to an action for breach of contract) based on *rebus sic stantibus*, and one based on *force majeure*. What are the main differences between these two defences.

(b) Mr X is a guest in a hotel belonging to Company Y. Mr. X decides to make use of a safety deposit box operated by the management of the hotel. The safety deposit box may only be opened by means of two keys: a master key which is kept by the hotel management and another key which is given to the guest. Before going out Mr. X puts a sealed envelope in the safety deposit box. Mr. X decides not to keep the key of the safety deposit key in his possession but gives it to the receptionist together with the key of his room. On his return to the hotel, Mr. X alleges that he had put an expensive watch in the sealed envelope and that somebody had stolen his watch from the safety deposit box. Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

2. (a) Richard Azarnia has observed that traditionally: “the central tenet of French tort law is the concept of (subjective) fault”. Is this also true for Maltese tort law?

(b) A engaged a Legal Procurator to assist him in a case he had before the Magistrates’ Court. When the case was decided, the Legal Procurator sent him a bill for his services which A paid in full. A subsequently realised that he had been charged and had paid more than what was due, because, by law, a Legal Procurator is not entitled to full fees, as claimed, but only to one-third of the fee which would have been due to the Lawyer. A wants to recover the difference, which sum the Legal Procurator refuses to hand over. Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

3. (a) When and under what circumstances can the so-called defence *inadimplendi non est adimplendum* be raised in an action for breach of contract. What is the conceptual basis of this plea.

(b) A gave by title of lease a house he owned to B. B delayed in taking possession of the house, and after signing the lease agreement with B, A proceeded to sign another lease agreement, relative to the same house, with C, who, on being given the keys to the house, proceeded to immediately move in. When, after a few days, B decided to move into his newly rented house, he found C in possession who refused to leave the premises. Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar factual scenario arose.

4. (a) To what extent are moral damage and damage to health as such (*danno biologico*) compensable under our law of tort? What would be the impact of the enactment and implementation of Bill 78 of 2011 on the compensation of these damages?

(b) A has made a loan to B of Euros 50,000, which B had to return within 5 years. B did not pay back the loan within the agreed period, and so, A sued to recover the amount lent. B raised as a first plea the nullity of the loan transaction, citing the fact that A

often lent monies to third parties, but did not have a licence from the proper authorities to act as a money-lender on a regular basis. Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

5. (a) (i) Explain the notion of novation; (ii) show how the Civil Code excludes novation in certain specific situations; and (iii) explain the effect when there is a novation between the creditor and one of the joint and several creditors.

(b) Mrs. A is resident at the Modern Imperial Hotel with her minor son Master A. Mr. B, who is the owner of the hotel, had engaged Company C to install a gas water heater in the bathroom of the hotel room occupied by Mrs. A and her son. The bathroom has no ventilator. The actual installation of the gas heater is carried out by Mr. D who is a plumber employed with Company C. Master A goes to have a bath and dies asphyxiated due to carbon monoxide poisoning. It results that the water heater did not have a flue which is necessary to ensure that poisonous gases are eliminated where the room is not adequately ventilated as in this case.

Discuss the relevant legal principles relative to the issue of liability of Mr. B, Company C and Mr. D (including the legal principles applicable where more than one person is responsible for the damage) as expressed in the relevant judgment of the Maltese Courts where a similar factual scenario arose. Do not deal with the issue of quantification of damages.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL3014 – LAW OF OBLIGATIONS (10%)

WEDNESDAY 5TH SEPTEMBER, 2012

9.15 – 10.15 A.M.

ANSWER ONE OF THE FOLLOWING QUESTIONS:

- 1) In your opinion does Bill 78 of 2011 adequately cater for the compensation of what are known as ‘moral damages’ and also of ‘*danno biologico*’?

 - 2) Discuss the form of a private-writing, taking into account what local jurisprudence has held to be the main requirements. Furthermore, Maltese law requires a private-writing for the validity of certain contracts: do the Maltese courts give any effect to an oral expression of such contracts?"
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UNIVERSITY OF MALTA
FACULTY OF LAWS

Civil Law – Law of Obligations

LL.B. III Year

7th September, 2012

9.15am – 12.15pm

Answer any THREE Questions.

Each question is composed of section (a) and section (b) both of which must be answered.

Please note that (a) questions carry 23 marks and (b) questions carry 10.33 marks

FOR THE ATTENTION OF STUDENTS: When discussing the (b) questions, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

1. (a) Discuss the principles of *negotiorum gestio* and the effects which flow from an action based on this quasi-contract.

(b) Master M, a twelve year old boy, was riding his horse in the street. The horse had been given to him by his father Mr. M as a gift. For some reason the horse got agitated, it escaped and hit a vehicle. The vehicle was damaged and the horse died on the spot. There was no negligence on the part of the driver of the vehicle. The vehicle was insured under a comprehensive insurance policy, and after being subrogated into the rights of the owner of the vehicle, the insurance company instituted an action for damages against Mr. M as representative of the minor child Master M.

Discuss the relevant legal principles arising from this factual situation as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose with particular attention to whether Master M could be held liable for the damages sustained by the vehicle.

2. (a) Section 993 of the Civil Code states that contracts are to be carried out in good faith. To what extent have Maltese Courts adopted this rule to apply also to the pre-contractual stage of negotiations.

(b) Miss A, a seventeen year old girl, is killed in a traffic accident while being a passenger in a two-seater pick up vehicle driven by Mr. X. It results that Mr. X drove the car negligently with excessive speed. It also results that at the moment of the accident Miss A was seated on the lap of her friend Miss Y on the front passenger seat of the vehicle and was not wearing a seatbelt. Miss A is not married and she has no children. She was living at home with her parents Mr. B and Mrs. B and her two sisters Miss C and Miss D. Miss A was employed with the minimum wage and did not contribute to the expenses of the household. Miss A dies intestate and is inherited by her parents and sisters. Discuss the relevant legal principles arising from this factual situation as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose. You are to pay attention to the issues concerning both liability and the quantification of damages, together with the date from when legal interest on the amount of damages awarded by the court begins to run.

3. (a) To what extent can one argue that passive solidarity is an institute totally in favour of the creditor of the obligation.

(b) A had a garage in Kalkara, the roof of which was damaged as a result of construction works carried out by B on property he had adjacent to the garage of A. B promised to repair the damage to the roof of A's garage and to pay compensation for the duration of the time during which A could not use his garage, that is, until the repairs to the roof were completed. After the lapse of some time, when the roof was still not repaired, A sued B to recover the compensation agreed upon as due up to the date of filing of the suit. B raised a plea in the sense that he should not pay compensation as he alleged he could not repair the roof of A's garage as A did not, as was agreed beforehand, grant him access to his garage, necessary for him to repair the roof. Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

4. (a) Tort law and Human Rights have been described as 'brothers in arms'. Examine the validity of this statement from the standpoint of: (a) the relationship between a finding that a human rights violation has

occurred and the elements of liability in tort and: (b) the relationship between the remedies for a human rights violation and damages in tort.

(b) A bought a Peugeot 106 from B second hand after being told that the vehicle had been on the road for only two years. A subsequently discovered that the vehicle had, in fact, been on the road for the past four years and this after examining the *logbook* of the car a few months after the sale. A sought to annul the sale in question claiming that his consent was vitiated.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

5. (a) Distinguish responsibility in tort from: (1) contractual responsibility, and (2) criminal liability. What are the practical implications of making such distinctions?

(b) Government requested interested individuals to submit designs and plans for the refurbishment of the VIP Lounges at the former airport at Luqa. A submitted such designs, but Government did not accept to perform the works in terms of the designs and plans submitted by A, but instead awarded the contract to another individual. A is seeking compensation from the Government for the expense and time incurred by him in the preparation of his design and plans.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

UNIVERSITY OF MALTA

FACULTY OF LAW

LL.B. III

CVL3014 – LAW OF OBLIGATIONS

Monday, 28th January 2013

9.15AM – 10.15AM

Select one of the following questions and answer it:

1. "It is often difficult to clearly distinguish liability in tort from contractual liability on the one hand and from criminal responsibility on the other. Yet the practical implications of making such distinctions are so important that it is always necessary to make the attempt." Explain and discuss. Feel free to disagree with this statement if you think it is incorrect.

2. When and under what circumstances is it possible for parties to a contract to stipulate in favour of third parties? What are the effects of such a stipulation?"

UNIVERSITY OF MALTA
FACULTY OF LAWS

Civil Law – Law of Obligations

LL.B. III Year

10th June, 2013
9.15am – 12.15pm

Answer any THREE Questions.

Each question is composed of section (a) and section (b) both of which must be answered. *USE A SEPARATE SCRIPT FOR EACH (A) QUESTION AND EACH (B) QUESTION.*

Please note that (a) questions carry 23 marks and (b) questions carry 10.33 marks

FOR THE ATTENTION OF STUDENTS: When discussing the (b) questions, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

1. (a) A has promised to sell a house to B, who, on his part, has promised to sell the same house to C. The latter is eager to buy the house, but cannot enforce his rights as yet, because B has taken no action to enforce his '*konvenju*' with A. In the light of recent jurisprudence on the subject, do you think it is possible for C to institute the *actio surrogatoria* (or the *actio debitor debitoris mei*) as a remedy to his problem? What is the nature of this action?

(b) Carmen is killed in a traffic accident after she accepts a lift in a 'pick up' vehicle. The vehicle may only carry the driver and a passenger, but Carmen and two other passengers squeeze into the vehicle. Carmen sits on the lap of one of the other passengers. The vehicle is not roadworthy and the driver drives negligently with excessive speed, with the consequence that he loses control of the vehicle and crashes into an electricity pole. At the time of her death Carmen is seventeen years old, single and still living with her parents. She was in employment with the minimum wage. She has no children and her heirs are her parents and two sisters.

Explain by reference to the judgment of the Maltese Courts with a similar factual scenario and the relevant provisions of law, how the

Maltese Courts will quantify the damages due after Carmen's death and whether the driver may bring any defence to reduce his liability for the accident.

2. (a) Section 985 of the Civil Code states that things which are prohibited by law cannot form the object of contracts; section 990 of the same Code states that the *causa* of the obligation is invalid if it is prohibited by law. Discuss the relationship between the two provisions and to what extent, if at all, can one say that there is an overlapping of provisions.

(b) Richard is the seventeen year old son of Joseph. One day, in the early hours of the morning, Richard takes the keys of one of his father's cars and goes for a ride. He hits a pedestrian who is jogging on the side of the road. It results from the evidence that Richard was already quite independent at age seventeen, he was already familiar with driving and this was not the first time that he has driven one of his father's vehicles.

Explain by reference to the judgment of the Maltese Courts with a similar factual scenario, and the relevant provisions of law, who may incur liability for this accident, the requisites which must be satisfied for such liability to arise, the burden of proof and the relative prescriptive period. Do not deal with the quantification of damages.

3.(a) What is the relationship between simulation and error of fact; explain the differences between the two in substance and effect.

(b) A suffered damage to his vehicle and deposited the car with the agent to have it repaired. The job should have taken not more than a few weeks, but due to problems the agent faced in getting the necessary parts from the parent company from abroad, the repair job took quite a long time; it took months instead of a few weeks. As A could not remain without a vehicle, he hired a car until his own was repaired. After taking delivery of the repaired vehicle, A sued the agent to be reimbursed for the cost of hiring the car beyond the expected time of a few weeks. The agent defended himself by saying that the delay was not his fault, but the fault of the parent company who took months to send the proper parts. Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

pg 2 of 3

4. (a) The general clause on tort in France empowers the French judge to award compensation for any kind of damage at his discretion. It could be argued that in our Civil Code, the judge's discretion in awarding damages for personal injury is restricted and would be practically eliminated as a result of the coming into force of Bill 78 of 2011. Is this a correct statement and/or a desirable objective?

(b) A has entered into a contract to sell chicks to a co-operative which, on its part, sells the chicks to its members for breeding and fattening; one such member is B. The co-operative did not pay for a particular consignment of chicks which it bought and had, on its part, sold to B. A brought an action for payment against the co-operative and B and is insisting that both the co-operative and B be condemned *in solidum* for the price of the chicks. B is contesting the claim and, apart from pleas which concern the merits, is saying that, in any case, he should not be condemned *in solidum* with the co-operative for the price of the chicks. The court was asked to decide on whether solidarity exists between the co-operative and B.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

5. (a) The liability of the hotel keeper for damage inflicted to the person or property of the guest can be founded on either tortious or contractual grounds. How is it defined and understood in our Civil Code and jurisprudence?

(b) The owners of a block of apartments want to renovate the common parts of the block as they are in a bad state of repair. One of the owners is abroad and it is not envisaged that he will return to his apartment in the near future. The owners actually in Malta are in agreement about the need for the repairs, but have no way of contacting the one who is abroad. The owners in Malta decide to carry on with the repairs nonetheless. When the absent owner finally returns to Malta and goes to live in his apartment, he is asked to pay his share. He refuses as he states that he did not give his consent for the repairs to be made.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR (2012/13)
CVL3014 – LAW OF OBLIGATIONS
SPECIAL SESSION PAPER

MONDAY 2nd SEPTEMBER 2013

9.15 A.M. – 10.15 A.M.

Select *one* of the following questions and answer it. Each question counts for 100% of the mark:

- 1) To what extent have our Courts managed to limit the effect of exemption clauses inserted in contracts?
 - 2) Damages in Delict and/or Quasi-Delict are often said to be intended to bring about a "*Restitutio in Integrum*." Is this the only or the main purpose of the law of Delicts/Quasi-Delicts and is this principle consistently adhered to by our Courts?
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UNIVERSITY OF MALTA
FACULTY OF LAWS

Civil Law – Law of Obligations

LL.B. III Year

13th September, 2013
9.15am - 12.15pm

Answer any THREE Questions.

Each question is composed of section (a) and section (b) both of which must be answered.

Please note that (a) questions carry 23 marks and (b) questions carry 10.33 marks

USE A SEPARATE SCRIPT FOR EACH (a) QUESTION AND FOR EACH (b) QUESTION.

FOR THE ATTENTION OF STUDENTS: When discussing the (b) questions, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

1. (a) A has put his house up for sale. B is interested in buying the house. As a result, A and B indulge in an exchange of correspondence discussing the details of the proposed sale. Eventually, the parties agree on a price and the conditions of sale, but a few days before signing the promise of sale agreement (*konvenju*), A changes his mind, and no agreement is signed. B is claiming that the agreement reached by exchange of letters amounts to a valid promise of sale agreement and is seeking “enforcement” of the said agreement in terms of the law. B is also claiming that, in default, he should be awarded damages from A who refused to sign the promise of sale agreement. Discuss the legal principles involved.

(b) George and Sandra went to eat at a restaurant with a group of friends. During the meal, their five year old daughter Carly went to play with some other children in the front terrace (*parapett*) of the restaurant. Her parents were busy eating and chatting with their friends and were not paying any attention to their daughter. The restaurant owners, Anthony and Renzo, had placed a heavy stone pot on one of the low walls of the front terrace without securing it further. While playing, the children

accidentally dropped the stone pot which fell from the wall and landed on the fingers of Carly. As a result Carly lost a substantial part of three of her fingers.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose. It is important that you discuss who may incur responsibility for the damage suffered by Carly (giving reasons) and how the Maltese courts will quantify the damages *lucrum cessans* in the case of a five year old victim like Carly.

2. (a) Two persons, A and B, enter into an obligation and, as debtors of the obligation, expressly agree to assume responsibility for performance in solidum. As the obligation was not performed by the said two persons, through the fault of both, the creditor of the obligation insisted on compensation. To avoid a court case, A and B agreed to pay damages and entered into a public deed with the creditor whereby they constituted themselves certain, liquid and due debtors towards the creditor for a certain sum as compensation. They did not, in this deed, declare their liability to be in solidum. Notwithstanding this deed, A and B did not pay the agreed sum, and the creditor sued the said debtors to pay the agreed sum in solidum. A and B raised a plea in the sense that the public deed they signed created a novation to their previous obligation (liability for damages for non-performance) which, as signed and agreed to, cancelled out their previous obligation in solidum. Do you agree with this plea? In other words, does the public deed signed between A and B and the creditor constitute a novation and, if so, would this cancel out solidarity?

(b) Company A entered into an agreement with company B, which acted as an "Internet Service Provider", whereby the latter company bound itself, for a fee, to provide company A with all the facilities necessary so that company A could offer internet services to its clients. Company A was in default of its payments to company B, with the result that when the original contract was about to expire, company B refused to sign an extension of the agreement, unless company A and its directors agreed to sign a public deed whereby they constituted themselves certain, liquid and due debtors towards the company B as creditor. Company A signed this public deed and the extension of the agreement was also duly signed. Subsequently, company A sought to rescind the public deed claiming that its consent thereto was vitiated by violence, as it was put in a position where it had to sign the public contract as otherwise it would have its internet facility suspended.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

3. (a) When and under what circumstances can the so-called defence *inadimplenti non est adimplendum* be raised in an action for breach of contract. What is the conceptual basis of this plea.

(b) Ms X consulted Doctor A about some veins in her face and on his advice, she decided to have them removed in his clinic by means of laser treatment. Some time before her appointment, Ms X was informed that Doctor A was going to be abroad and that the treatment was going to be carried out by Ms B, a beauty therapist working in the doctor's clinic. Ms B applied excessive laser power and burnt the face of Ms X, causing her permanent white patches due to loss of pigmentation.

Explain by reference to the judgment of the Maltese courts with a similar factual scenario and the relevant provisions of law, the legal principles relating to liability for the facial scarring suffered by Ms X, and whether such liability is joint and several, the relative prescriptive period/s, and the heads (types) of damages which may be recovered by Ms X.

4. (a) Briefly explain the elements of liability in delict/quasi-delict in Maltese law. To what extent is it necessary to prove a "breach of duty imposed by law" so as to have such a liability, and is this element always understood in the same way by our courts?

(b) A was approached by B to set up a company and run its business together. A agreed. A few days after the company was set up, B asked A to accompany him to the bank. B wanted to take a personal loan from the bank, but A thought that he was going to provide the bank with his specimen signature to enable him to issue cheques on behalf of the company set up between A and B. At the bank, B took a personal loan and constituted himself a debtor of the bank, while A signed the document put before him by the bank official without reading it. B did not pay back the loan, and the bank sued both A and B for payment, as it resulted that A had signed a document constituting himself as a joint and several debtor for the loan taken by B. A is claiming that such a document was signed by mistake.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

5 (a) Maltese law relating to delict/quasi-delict reflects the mixed character of our legal system. Do you agree?

(b) A minor, who is 17 years old, and somewhat mature for his age, runs a mobile disco and regularly buys equipment to ensure his service is adequate and as required by his customers. He frequently buys his goods from the same shop. On one occasion, he bought some equipment from the same shop, but later changed his mind and is now seeking to rescind the sale on the bases of his lack of capacity.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL300 – LAW OF OBLIGATIONS

MONDAY 20th JANUARY, 2014

3.30 – 4.30 P.M.

Select one of the following questions and answer it:

- 1) Discuss the capacity of minors and illustrate when and under what circumstances a minor can rescind a contract he has entered into on the ground of lesion.

 - 2) Are the requirements for delictual and/or quasi-delictual liability the same in all cases? Discuss, paying particular attention to the requirement of a breach of a legally imposed duty.
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**UNIVERSITY OF MALTA
FACULTY OF LAWS**

Civil Law – Law of Obligations (CVL 3000)

LL.B. III Year

2nd June 2014
9.15am-12.15pm

Answer TWO Questions from Section A and TWO Questions from Section B. Questions in Section A carry 17 marks each and questions in section B carry 33 marks each. Use a Separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the Questions from Section A, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

Section A

- 1) Mrs. A was experiencing severe abdominal pain and was admitted to the public health institution under the supervision of medical consultant Mr. B. Mr. B was of the opinion that an urgent surgical intervention was necessary. The intervention was carried out under the supervision of consultant Mr. B, but performed by surgeon Dr. C. Although Mrs. A. was under the impression, even post-intervention, that the intervention had been performed by consultant Mr. B, Dr. C was properly qualified and skilled to perform the gynaecological intervention. However, during the intervention, complications arose and Dr. C inadvertently caused damage to the patient. Mrs. A suffered a 50% permanent disability as a result of the damage caused during the intervention.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose¹, paying particular attention to the nature of the legal relationships and of the civil responsibility that arises in the case and the interface between, or cumulation of, one type of civil responsibility and another.

- 2) A bride delivers her wedding dress to a laundry and dry cleaning company, for it to be dry cleaned. She later receives a call from the dry cleaners saying that the dress is very delicate and that they are not ready to take the risk and that if the client insists on it being dry cleaned, she will have to bear the risk herself. The bride gives the go ahead for the dress to be dry cleaned. The wedding dress is ruined and the bride sues for compensation. The company raises the plea that it cannot be found responsible for

the damages caused, since the parties had expressly agreed that the service would be performed at the sole risk of the client.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

- 3) The Local Council of Hal-Busbies awarded a tender for the cleaning of the locality to A. Mr. and Mrs. B claimed that their offer/price was cheaper than that of A and that therefore the tender should have been awarded to them instead. Consequently, Mr. and Mrs. B sued the Local Council, claiming that the award of the tender to A was unjustified and unlawful and requesting compensation for the damage they had suffered as a result. From the evidence produced by the parties to this law-suit, it appeared that in reaching its decision to award the tender to A, the Local Council was influenced by the violence and threats made by A, which were circumstances extraneous to the matter on which the Local Council had to decide (the award of the tender).

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose. In your answer, you should comment on the references made by the Court to the doctrine of precontractual liability.

Section B

- 4) 'The requirement that the damage caused be foreseeable plays an important role in determining whether liability in tort arises, both in relation to the tortfeasor and the victim.' For which purposes would it be correct to rely on this criterion and when would such reliance be misplaced? Could it ever conflict with the objective of *restitutio in integrum*?
- 5) What are the main differences between consent to a contract vitiated by error of fact and simulated consent? Can the two pleas be raised simultaneously in an action on the contract?
- 6) A debtor of an obligation under contract has two main defences when sued for non-performance: *force majeure* and *inadimplendi non est adimplendum*. Discuss, with reference to jurisprudence, the elements of these defences.
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
CVL3000 – LAW OF OBLIGATIONS

1st September 2014

9.15am-10.15am

*Select **one** of the following questions and answer it:*

- 1) Compare and distinguish error and fraud as vices of consent. Since every case of fraud involves an error, would you agree that fraud is redundant as a vice of consent?
 - 2) 'The different prescriptive periods involved are the only reason why one would want to distinguish tort actions from contractual and criminal actions.' Discuss, stating your agreement or otherwise with this proposition.
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**UNIVERSITY OF MALTA
FACULTY OF LAWS**

Civil Law – Law of Obligations (CVL 3000)

LL.B. III Year

1st September 2014
9.15am-12.15pm

Answer TWO Questions from Section A and TWO Questions from Section B. Questions in Section A carry 17 marks each and questions in section B carry 33 marks each. Use a Separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the Questions from Section A, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

Section A

- 1) John, a provider of professional consultancy services, sued his client Peter together with Peter's debtors, for payment of fees owed to him by Peter. Discuss the relevant legal principles considered by the court in relation to the requirements for the action against Peter's debtors; which were explored in a court case having similar facts as those described above.
- 2) During his lifetime a father transferred various immovable properties by onerous title (sale and emphyteusis) to two of his children ("the transferees"). Following the death of the father, some of his other children ("the plaintiffs") filed a law-suit against the transferees claiming that the values of the above-mentioned properties, which had been transferred by the father to the transferees, were in reality much higher than those indicated in the public deeds of transfer. The plaintiffs requested the court to decide and declare that there had been simulation and that the said contracts were substantially and in reality donations and not onerous transfers. The plaintiff also requested the court to decide and declare that the said public deeds were null as onerous contracts and were only valid as donations.

Discuss the relevant legal principles arising from this factual scenario, as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose.

- 3) Mrs A was employed with ABC Casino as a slot machine attendant. At the end of her day at work, she had the task to empty the coins from the slot machines. On one particular occasion, whilst lifting the recipient of the coins, Mrs. A suffered an injury; as a result of which she had to undergo weeks of therapy and became permanently

incapable of lifting heavy objects. Furthermore, after her injury, she could no longer conduct her life in the same manner as before, albeit she did find new employment following her injury. Mrs. A has sued her employer for damages.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose; paying particular attention to the nature of the compensable damage under Maltese law and to the method used for calculating the damages paid.

Section B

- 4) Compare the indirect liability of the employer for damage caused by his employee to that of the owner or user of an animal. Would you agree that the same principles underlie both cases of indirect liability, leading to similar results?
 - 5) Discuss novation as a means of extinguishment of contracts.
 - 6) Do you think that the courts of law in Malta are free to apply the principle *rebus sic stantibus* when it comes to requests for the enforcement of contracts? Give reasons for your answer with reference to court judgments on the subject.
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3RD YEAR
CVL3000 - LAW OF OBLIGATIONS

DATE: MONDAY 1ST JUNE 2015

TIME: READING TIME: 2:30PM – 2:35PM

EXAMINATION TIME: 2:35PM – 5:35PM

Answer TWO questions from Section A and TWO questions from Section B. Questions in Section A carry 17 marks each and questions in Section B carry 33 marks each. Use a separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the questions from Section A, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

1) Mr. Attard supplied Mr. Borg with building materials for improvements to be carried out to an immovable property that Mr Borg was leasing from Mr. Camilleri. The alteration works were carried out by Mr. Borg with Mr. Camilleri's consent. Mr. Attard sues Mr Borg for payment of the materials supplied and, although the courts uphold Mr. Attard's request, Mr. Borg is insolvent and cannot pay. Mr. Attard is still intent on recovering the price of the materials supplied.

Making reference to the judgment of the Maltese courts having a similar factual scenario, explain the action, if any, afforded by law to Mr. Attard against Mr. Camilleri. Describe the elements that must subsist in order for Mr. Attard to exercise such an action and the limitations, if any, of such an action, according to legislation, doctrine and jurisprudence.

2) Mr. and Mrs. Zammit visit a furniture showroom and, after viewing a particular piece of furniture, place their order for an identical piece of furniture. A few days after the delivery of the furniture, the Zammits realise that the furniture was not totally made out of solid wood, but some parts were made out of chipboard. Mr. Zammit confronts the salesman and claims that, at the time the Zammits placed the order, the salesman had said that the furniture was totally made out of solid wood. The salesman refutes the allegation and argues that the Zammits had seen the furniture on display and that the piece delivered to the Zammits was identical to that on display. The Zammits feel aggrieved and resort to legal action.

Making reference to the judgment of the Maltese courts having a similar factual scenario, explain the grounds on which the Zammits may base their action, the elements which need to be proven for each of the grounds and the distinctions between the grounds drawn by the Court.

3) Mr and Mrs Rossi were guests at the Maritime Kingdom Hotel. During their stay in the hotel, the couple had made use of the safe installed in their room and deposited in it a number of valuable items, including jewellery and money. One Saturday night, Mr and Mrs Rossi left the room in a hurry as they were about to miss a concert that they had booked. Upon returning to their room, they found the safe open and all the valuable belongings that had been deposited in it missing. Mrs. Rossi spoke to the chambermaid and the bartender who was on duty that night; but the staff insisted that all items placed in the safe are deposited at the guest's risk. However, there was no notice in writing in the room explaining that the use of the safe was at the risk of the guests. Furthermore, the security manager of the Maritime Kingdom Hotel claimed that Mr. and Mrs. Rossi could have made use of the safe deposit boxes found in the hotel's reception area instead of the safe in their room. However, Mr and Mrs Rossi claimed that nobody had informed them of this possibility.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose. Quote the relevant judgment and pay particular attention to the liability of the hotelkeeper, the degree of diligence he is required of him and any relevant limitations to the said liability.

SECTION B

4) What benefits are available to a creditor of joint and several debtors? Can a joint and several debtor plead set-off of what is due by a creditor to a co-debtor?

5) 'While the Maltese courts do not award moral damages, they nevertheless compensate for moral damage.' Discuss in the light of recent jurisprudence relating to tort liability for human rights violations.

6) What are the four main differences between an action of rescission and one of simulation?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B.HONS.3rd YEAR
CVL3000 - LAW OF OBLIGATIONS

DATE: TUESDAY 1ST SEPTEMBER 2015

TIME: READING TIME: 8:30-8:35AM

EXAMINATION TIME: 8:35-11:35AM

Answer TWO questions from Section A and TWO questions from Section B. Questions in Section A carry 17 marks each and questions in Section B carry 33 marks each. Use a separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the questions from Section A, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

- 1) Mr. Wilson decided to go visit his aunt who lives in Gozo. Whilst he was carefully driving his vehicle along the main road, another vehicle which was heading towards Mr Wilson, skipped the carriageway and drove straight into Mr. Wilson's car, causing extensive damage to the vehicle and harming Mr Wilson himself and causing him permanent disability.

After the accident Mr Wilson came to know that the driver of the other vehicle was a minor. Mr. Jones, the child's father, claimed that he was sleeping at home and had no idea that his son had taken his car for a drive. The child immediately admitted responsibility for the accident, but Mr Wilson claimed that Mr Jones, the father, should also make good for the consequences of his son's irresponsibility.

Analyse the relevant legal principles arising from this factual scenario, as they are expressed in the relevant judgment of the Maltese courts, where a similar scenario arose; paying particular attention to the notion of indirect responsibility and the liability of a person having charge of a minor.

- 2) Alan is a second-hand car dealer and a friend of Robert. Robert went to Alan's showroom to purchase a car. Robert wanted to buy a specific car as long as this car was not previously used as a rental vehicle and as long as it was used less than four years. Alan expressly stated that the car which Robert was interested in purchasing had never been used as a rental vehicle and that it had only been on the road for two years. Subsequently, Robert paid Alan the full price of the vehicle and Alan handed him the logbook of the vehicle. Robert had not insisted on obtaining the logbook before paying the price because he had trusted his friend Alan.

This notwithstanding, after he examines the logbook, Robert realizes that the vehicle has in fact been used as a self-drive rental for around four years. Robert files a case, claiming a refund of the full price he had paid from Alan, on the basis that he had been deceived by him and that he had been in error as to the characteristics of the vehicle.

Discuss the relevant legal principles arising from this factual scenario, as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose and paying particular attention to the specific vices of consent relevant to the case and the differences and similarities between them.

- 3) John entered into a promise of sale agreement with Paula for the purchase of an immovable property owned by Paula. During the term of the promise of sale, Paula sells the said property that she had promised to sell to John, to Gordon.

Making reference to the judgment of the Maltese courts having a similar factual background, explain the actions afforded by law to John, who is still interested in purchasing the property.

SECTION B

- 4) On what basis are damages awarded when the victim of tort dies? In your opinion is the approach currently taken by jurisprudence satisfactory or would it be preferable if some other approach were to be adopted?
- 5) Discuss the three main elements of a successful defence of *force majeure* in an action for breach of contract.
- 6) What are the characteristics of violence as a vice of consent?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. Hons. III Year
JANUARY 2016 SESSION – WRITTEN EXAMINATIONS
EXAMINATION: CVL3000 – LAW OF OBLIGATIONS (10%)

DATE: 14th January 2016
READING TIME: 1:00PM – 1:05PM
DURATION OF EXAMINATION: 1:05PM – 2:05pm

INSTRUCTIONS TO STUDENTS:

Choose *one* of the questions below and answer it. Each question counts for 100% of the final mark for this examination. Where a question is divided into different sub-questions, each sub-question carries an equal share of the mark allocated.

- 1) Under what circumstances can an "error of fact" in consent void a contract?

 - 2) 'Apart from proving the fault of the defendant, the plaintiff in a tort action must also prove that the defendant's conduct caused the damage complained of.' Discuss each of these two requirements of liability in tort, making clear whether you agree with this statement.
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. III YEAR
MAY/JUNE 2016 EXAMINATIONS

CVL3000 – LAW OF OBLIGATIONS

DATE: TUESDAY 31ST MAY 2016

READING TIME: 10:00AM – 10:05AM

DURATION OF EXAM: 10:05AM – 1:05PM

Answer TWO questions from Section A and TWO questions from Section B. Questions in Section A carry 17 marks each and questions in Section B carry 33 marks each. Use a separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the questions from Section A, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

1. Mr. Fernando was employed as floor-manager with ABC Bar & Restaurant, located in one of the most popular places for such businesses. On one particular night, an unidentified aggressor performed a hold-up on the establishment. Mr Fernando, together with the other shocked employees, surrendered to the armed aggressor. Mr Fernando cooperated with the aggressor but the latter shot him cold-bloodedly and Mr. Fernando died on the spot. Mrs Fernando sought to claim damages from ABC Bar & Restaurant, since the establishment failed to offer the necessary security measures to the benefit of its employees. The establishment had no burglar alarm system and had poor lighting at its entrance, which, as Mrs Fernando claimed, would have given the employees, including her late husband, the opportunity to flee for their lives. Mrs Fernando instituted a claim against the directors of the establishment claiming damages for the death of her husband.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose, both in first instance and appellate stage, quoting the relevant case and paying particular attention to the elements of fault and the computation of damages.

2. The heirs of the late Mr. Gatt filed an action against the insurance company that had issued a group life insurance cover to the company with which the late Mr. Gatt was employed. Although the insurance policy covered all the employees of the said company, the insurer failed to pay the claim filed by the heirs of Mr Gatt following his demise. In its defence, the insurer stated, amongst others, that it had no juridical relationship with the plaintiffs owing to the fact that the policy was issued to the late Mr. Gatt's employer.

Making reference to the judgment of the Maltese Courts having similar facts and to relevant doctrine and jurisprudence, express your views on the conclusions reached by the Honourable Court in the context of the principle of res inter alios acta and the ability, or lack of it, to stipulate for the benefit of third parties.

3. Mr Danny Borg, an industrial worker, lost his job and applied to the Social Security Department for the unemployment benefit. The Director of Social Security rejected Mr. Borg's request as he suspected that Mr Borg had disposed of his severance pay package precisely in order to qualify for this social assistance. Therefore, Mr. Borg appealed to the Umpire; stating that the Director's decision was unjust because he truly had no income. Mr. Borg explained that he had borrowed money from certain persons who imposed upon him a higher interest rate than that allowed by law and he had thus owed them considerable sums of money. Some friends had then decided to help him and had paid all his debts upon condition that he repaid *them* upon receiving his severance pay package upon his (early) retirement from employment, which he duly did. Hence, Mr Borg argued that he is entitled to the unemployment benefit in view of the circumstances of his case.

In your opinion what will be the Umpire's decision? If the outcome of such decision is unfavourable, Mr Borg has a right to lodge an appeal to the Court of Appeal (Inferior Jurisdiction). If you were representing Mr Borg, which arguments would you put forward in his favour? Which are the issues and legal points which the Court must consider to decide upon the case and what do you think will be the court's decision? Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose

SECTION B

4. To what extent can it be said that the quasi-contract of *negotiorum gestio* under Maltese law follows the objective theory of this concept?

5. Discuss (i) the manner in which consent can be manifested, in particular whether silence can be a form of consent and (ii) the basic requirements for the validity of a private writing.

 6. Damages in our law of tort are said to aim at a *restitutio in integrum*. Is this really the case in your opinion?
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. III YEAR
SEPTEMBER 2016 EXAMINATION SESSION

CVL3000 – LAW OF OBLIGATIONS (10%)

DATE: FRIDAY 2ND SEPTEMBER 2016

READING TIME: 8:30AM – 8:35AM

DURATION OF EXAMINATION: 8:35AM – 9:35AM

INSTRUCTIONS TO STUDENTS:

Choose ONE of the questions below and answer it. Each question counts for 100% of the final mark for this examination. Where a question is divided into different sub-questions, each sub-question carries an equal share of the mark allocated.

(1) In *Vassallo vs Mizzi*, the Civil Court (PA) said: “When the culpable harm that originates in a contractual context was (1) foreseeable at the time when the agreement was reached and (2) a direct consequence of the violation of the same, the action exercised must be contractual and cannot be based on tort.” Do you agree with this statement and does it introduce the *non cumul* rule in our Civil law?

(2) Does precontractual liability exist in our law? Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B.HONS.3rd YEAR
CVL3000 (90%) - LAW OF OBLIGATIONS

DATE: TUESDAY 6th SEPTEMBER 2016

TIME: READING TIME: 8:30-8:35AM

EXAMINATION TIME: 8:35-11:35AM

Answer TWO questions from Section A and TWO questions from Section B. Questions in Section A carry 17 marks each and questions in Section B carry 33 marks each. Use a separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the questions from Section A, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

- 1) Mr. Borg (a prospective vendor) and Mr. Zammit (a prospective purchaser) entered into a promise of sale agreement in relation to a piece of land. One of the conditions of this preliminary agreement stipulated that, during the period of validity of the agreement and prior to its expiry, Mr. Zammit was to build four garages on the piece of land. Mr. Zammit fulfilled his obligation but, upon the expiry of the promise of sale, Mr. Borg refused to appear on the final deed of sale.

Referring to a judgement of our Courts with analogous facts, advise Mr. Zammit of his rights against Mr. Borg to recover the costs incurred by him in building the garages.

- 2) A local council engaged contractor ABC Limited to execute construction works in a large public garden having picturesque views. The public garden was surrounded with signs indicating that works were in progress and some of the entrances to the garden were blocked with planks of wood, whilst at least one was left open for the workers to accede to the site.

ABC Limited was already nearing completion of all works when local resident Ms Brown decided to take a look at the newly restored public garden. Ms Brown entered the public garden through the entrance left unblocked. When she approached the railings overlooking a scenic view, she accidentally stepped into a hole which was still uncovered on account of the ongoing works. Sadly, Ms Brown suffered a fracture of her ankle and incurred several expenses, including medical ones, as well as loss of future earnings in view of her permanent disability.

Ms Brown sued the Local Council for payment of the damages suffered by her, for which she alleged that the Local Council was solely responsible, due to the inadequacy of the security measures adopted, as well as the lack of warning signs. The Local Council rejected Ms Brown's claims as absolutely unfounded, stating that Ms Brown's injuries were sustained on account of her irresponsible decision to enter the public garden at a time when it was clear that there were ongoing works. Moreover, the Local Council claimed that there was no link between its acts and the injuries sustained by Ms Brown; instead, there was a direct link between the plaintiff's carelessness and the damages sustained, thus exonerating the Local Council from all responsibility. The Local Council also called ABC Limited into the lawsuit, stating that if at all, it was the contractor who executed the works and who should have taken further measures to ensure public safety.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose, both in first instance and appellate stage, quoting the relevant case and paying particular attention to the elements of contributory negligence and the notion of the causal link.

- 3) Mr John Caruana owned a property situated at no.20, St Joseph Street, Victoria. He sold his property by means of a public deed published on the 17th June 2012 to Mr Charles Attard. In June 2006, John Caruana had verbally given his property out on lease to a local Club at the rate of €30 per day. The Club only effected a one-time payment of €3,000. It is to be noted that when Charles Attard bought the property from John Caruana, he paid an additional amount of €30,000 representing the amount of rent due and Mr Caruana had also transferred his right to Mr Attard to recover the said amount from the Club's Committee. The Club occupied the property until 30th June 2012. Mr Charles Attard wants to recover the amount of €30,000 from the Club.

Referring to a judgement of our Courts with analogous facts, advise Mr Attard of his rights at law. Which action is available to Mr. Attard so that he can recover what is due to him? What will be the Club's defence and how will the Court decide upon it? Reference must be made to the legal considerations involved in these circumstances and which will be considered by the Court.

SECTION B

- 4) To what extent, if at all, is the liability of the hotelkeeper for the property of the guest an objective liability in our law?
 - 5) Compare subrogation and novation as modes of extinction of obligations
 - 6) Contrast error and fraud as vices of consent. Is it true that fraud is superfluous as a vice of consent since every case of fraud necessarily involves error?
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3RD YEAR / LL.B. 3RD YEAR /
LL.B. 3RD YEAR WITH L.P. OPTION
MAY/JUNE 2017 EXAMINATIONS

EXAMINATION: CVL3000 LAW OF OBLIGATIONS

DATE: WEDNESDAY 31ST MAY 2017

DURATION OF EXAM: 10.00AM TO 1.05PM

Answer **TWO** questions from Section A and **TWO** questions from Section B. Questions in Section A carry ~~17~~³³ marks each and questions in Section B carry ~~36~~¹⁷ marks each. Use a separate script for each question.

FOR THE ATTENTION OF STUDENTS: When discussing the questions from Section B, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

1. Discuss the elements of the actio de in rem verso, and the criteria for the calculation of the "benefit" in the light of recent jurisprudence.
2. When is a resolutive condition in a contract considered to be express, and what are the effects of such a condition? Are there any differences in the effects if such a condition is implied?
3. To what extent is the principle that delictual/quasi-delictual liability is based on fault respected in the cases of indirect liability under our Civil Code?

SECTION B

4. Mr Zammit leased an apartment to ABC Co. Ltd; which in turn sublet it to Mr and Mrs Galea. ABC Co. Ltd failed to pay the rent for two successive terms and as a result of such failure, Mr Zammit instituted an action for eviction against ABC Co. Ltd and the original lease was terminated. As a consequence of this, Mr and Mrs Galea, in their quality of sublessees, were forced to evict the apartment. Mr and Mrs

Galea subsequently instituted an action against ABC Co. Ltd, claiming damages suffered as a result of the eviction; which they attributed to the fault of ABC Co. Ltd.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgments of the Maltese Courts (both first instance and appellate) where a similar scenario arose, quoting the relevant case.

5. Mrs Maria Sciberras, an elderly woman, entered into a contract of sale with Mr & Mrs Zammit whereby the latter bought a portion of land from Mrs Sciberras for the price of €50,000. The buyers obliged themselves to pay said amount without any interest by not later than 5 years from the signing of the contract.

On the same day that the contract of sale was signed, the same contracting parties entered into a private writing whereby, whilst referring to the contract of sale, the parties declared that the Zammits were offsetting the €50,000 purchase price against a debt which was due to them from Mrs Sciberras for services they had rendered to her. In addition, the Zammits obliged themselves to continue taking care of Mrs Sciberras. Eventually Mrs Sciberras, after having suffered a fracture in her shoulder, retired to an elderly people's home.

Mrs Sciberras subsequently sued Mr & Mrs Zammit, claiming that her consent on both the contract of sale and the private writing was vitiated and, moreover, she claimed that the contract of sale was simulated and thus asked the Court to declare the contract as null.

Mr & Mrs Zammit come to your office so that they file a reply to the sworn application. Which pleas would you raise and how in your opinion would the Court decide the case, particularly as regards the issue of simulation? In answering this question refer to a judgment of our courts that dealt with similar facts and explain the reasoning behind the court's decision.

6. A bank loaned a sum of money to a limited liability company. The company's shareholders bound themselves, through a private writing, to act as sureties in solidum with the principal debtor for the benefit of the bank. Through an oversight, the bank did not sign the said private writing. The principal debtor has defaulted on payment of the loan.

The bank is asking your advice as to whether it can call upon the guarantors to pay the sum owed to it by the principal debtor, even though the bank did not sign the agreement by means of which the sureties bound themselves in solidum with the principal debtor.

In advising the bank, you are requested to define and specify the nature of the contract in question, its characteristics, the category of agreements to which it appertains, and the requirements at law for its enforcement. In doing so you are requested to clearly make reference to (and name) that decision of our Courts where similar facts were considered and decided upon, and the considerations made by the Courts (both of first instance and appeal) in arriving at their judgments.

University of Malta
Faculty of Laws
January 2018 Examinations

CVL3000 LAW OF OBLIGATIONS

Thursday 18th January 2018

Duration of Examination: 8.30am to 9.35am

Select one of the following questions and answer it:

- 1) "Discuss the requisite of object in contract".
- 2) Explore the requirement of proving a causal linkage as a condition of liability in tort. As part of your answer explain and discuss the principle that the plea of 'fortuitous cause' cannot be upheld if the concurrent fault of the victim is proved to have contributed to the damage.

University of Malta
Faculty of Laws
May/June 2018 Examinations

CVL3000 - LAW OF OBLIGATIONS

Monday 28th May 2018

Duration of Examination: 8:30am-11:35am

INSTRUCTIONS TO STUDENTS:

Answer TWO questions from Section A and TWO questions from Section B. Questions in Section A carry 33 marks each and questions in Section B carry 17 marks each. Use a separate script for each question.

When discussing the questions from Section B, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

1. Discuss the three methods for calculating damages in cases of breach of contract. Highlight the main differences between the method of calculating damages for breach of contract and for tort.
 2. Discuss the effects of passive solidarity and the advantages to the creditor such solidarity carries with it.
 3. How do the Maltese courts handle situations of concurrent liability between contract and tort? Discuss making particular reference to practical cases.
-

SECTION B

4. Mr Borg and his son Kevin were waiting at the village square to see the local band march by during the patron saint's feast-day. The feast ('festa') is organised by the village's only two band clubs and by the Parish Priest. At one point, Jake Cauchi, a 14 year old, set on fire some papers in a metal recipient. Jake was unaware that the metal recipient contained traces of fireworks used the night before by the local band clubs' respective subcommittees. Upon contact with the flaming papers, the fireworks and the metal recipient exploded, seriously injuring Mr Borg's son, Kevin. Mr Borg filed a lawsuit against a number of defendants, including the two village band clubs, the Parish Priest, the legal representatives of Jake Cauchi and the physical persons who, as it resulted, were responsible for the cleaning and clearing of the entire area following the use of fireworks.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose, citing the relevant case and paying particular attention to the principles of delictual responsibility in terms of articles 1031, 1032, 1033 and 1050 of the Civil Code.

5. A lessor brings an action for eviction of the lessee on the basis that, amongst others, the lessee has sub-let the premises without the lessor's consent and in breach of the lease agreement. The lessee argues that when the lessor became aware of the situation, he continued to receive the rent regardless. With reference to the case decided by our courts which dealt with a similar set of facts, highlight the legal considerations you believe should be made by the court in this regard and the conclusions it should reach.
6. Valentina Cassar and Anthony Camilleri were shareholders in ABC Co Ltd way back in the late 1970's. At the time, ABC Co Ltd wanted to buy a property in Malta. However, the majority of its shareholders were foreigners and in accordance with Chapter 246 of the Laws of Malta the company could not buy property in Malta without previously obtaining the Finance Minister's permission. Consequently, Anthony Camilleri (who was also a director of ABC Co Ltd) bought a

property in Sliema in 1978 from Joseph Borg in the acts of Notary Daniel Grech against the price of LM3,000 for the immovable property and LM600 for the movable property.

On the same day, Anthony Camilleri leased the same property to ABC Co Ltd by means of a written agreement and amongst other clauses, the parties agreed that (i) the premises had to be used for commercial purposes in connection with the business of a hotel; (ii) the company was lending to the landlord the sum of LM3,600 with which he was purchasing the said tenement against receipt and he bound himself to pay the amount to the Company on demand without interests. Some ten years later, Anthony Camilleri died and his estate devolved upon his wife and children.

ABC Co Ltd asked Anthony Camilleri's wife, Jane, and children to appear on a contract and transfer the Sliema property to it because it was stating that Camilleri bought the property with its money and that he bought in his personal capacity for convenience sake. Having seen that Jane Camilleri and his children defaulted, ABC Co Ltd filed a suit in Court against Jane Camilleri and children demanding the Court to order defendants to transfer the Sliema property to the company.

Upon being notified with the sworn application, Mrs Camilleri asks for your advice and assistance. Which pleas and arguments should be raised? Have the Maltese Courts decided in relation to a similar set of events? Mention the case/s and explain and discuss the Courts' considerations and decisions.

University of Malta
Faculty of Laws
September 2018 Examinations

CVL3000 - LAW OF OBLIGATIONS

Date: Saturday 1st September, 2018

Duration of Examination: 8.30am to 9.35am

INSTRUCTIONS TO STUDENTS:

Select *one* of the following questions and answer it:

1. What do Maltese Courts mean by error in substantia in the context of error of fact?

2. Distinguish between delictual and quasi-delictual liability and explain the elements which are required to establish the liability of the tortfeasor in each case.

**University of Malta
Faculty of Laws
September 2018 Examinations**

CVL3000 - LAW OF OBLIGATIONS

Monday 10th September 2018

Duration of Examination: 8:30am-11:35am

INSTRUCTIONS TO STUDENTS:

Answer **TWO** questions from Section A and **TWO** questions from Section B. Questions in Section A carry 33 marks each and questions in Section B carry 17 marks each. Use a separate script for each question.

When discussing the questions from Section B, you should feel free to give your own opinion as to the merits of the relative court decision, and you should keep in mind that the examiners expect you to provide all the details of the decision.

SECTION A

1. Discuss the two elements of *eventus damni* and *consilium fraudis* with respect to the *actio pauliana*.
 2. Discuss the applicability and effect of resolutive conditions in contract.
 3. Explain the liability of the Hotelkeeper; giving your opinion as to whether it is best considered as a form of objective or subjective liability.
-

SECTION B

4. The Cassar Family kept a small wooden pleasure boat berthed in Marsaxlokk, along with dozens of other boats. In the vicinity, Small Vessel Services Ltd (SVSL) carried out restoration, repair and cleaning services for small and medium sized vessels. Amongst other methods, SVSL used to use fire to clean off any residues of tar. This method was known to everyone. It was also known to everyone that on a daily basis, pools of oil and fuel could be found on the surface of the sea in the area.

One day, whilst two SVSL employees were carrying out cleaning and repair activities, the surface of the sea caught fire, which spread to the nearby berthed boats, damaging a number of them, including family Cassar's small wooden pleasure boat. Unfortunately, even the Civil Protection's intervention was futile since their attempts to put off the fire ended up pushing the blazing water further onto the berthed vessels.

The Cassar Family instituted an action for damages against the two SVSL employees, but the two employees claimed that the damage was a result of a pure accident.

Discuss the relevant legal principles arising from this factual scenario as expressed in the relevant judgment of the Maltese Courts where a similar scenario arose, quoting the relevant case and paying particular attention to the principles indicated by the Court of Appeal in such case, including (but not limited to) the principles of contributory negligence and the principles of force majeure.

5. Mr. Zahra is a known organiser of illicit bets. Over a span of time Mr. Abela has raked up an amount of EUR 25,000 in betting debts which he owes to Mr. Zahra by way of illicit betting money. In order to formalise their position, Mr. Abela and Mr. Zahra enter into a public deed wherein it is stated that Mr. Zahra has loaned the said amount to Mr. Abela and Mr. Abela constitutes himself as certain, liquid and due debtor of Mr. Zahra for the same amount. However Mr. Abela fails to pay the amount liquidated and agreed to on the public deed and Mr. Zahra sues Mr. Abela to make the payment agreed to on the public deed.

Making reference to case-law where similar facts were considered and decided upon by our Courts, advise Mr. Abela to the defence that he should raise, the legal principles underpinning this defence and to the likely outcome of the lawsuit.

6. Mr Joe Borg had asked Mr Paul Bonello to take care of the construction of his villa on a plot of land. Mr Bonello had to make all the necessary arrangements to buy a plot and construct it. Mr Bonello in actual fact bought the land, contracted builders, appointed an architect, bought material and other expenses making use of Mr Joe Borg's money. Mr Bonello also coordinated all the works and he himself carried out some works. It seems also that for some months Mr Joe Borg lived with Mr Bonello and his wife at their home and Mrs Bonello helped him in his grocer shop. Eventually, the relationship between the couple and Mr Borg broke down.

Mr & Mrs Bonello filed proceedings against Mr Borg; asking the Court to liquidate an amount of money representing services rendered to Mr Borg as to those relating to the construction of the villa; his personal work; relating to the period whilst he was living with them; allegedly the money they lent him and also an amount of money to compensate Mrs Bonello's work in the grocer. They also requested the Court to condemn defendant to pay for the damages they suffered whilst he was living at their house because of breakages.

Mr Joe Borg seeks your advice and asks you to file a reply. Which pleas would you raise? Mention case-law and what would be the Court's considerations on the matter and its decision?

University of Malta
Faculty of Laws

January/February 2019 Examination Session

CVL3000 LAW OF OBLIGATIONS

Date: Thursday 24th January 2019

Duration of Examination: 11:30AM-12:35PM

INSTRUCTIONS TO STUDENTS:

Select **ONE (1)** of the following questions and answer it. Both questions carry equal marks.

1. Discuss the four requisites that an object of a contract needs to have.
2. 'Our law makes liability in delict and/or quasi-delict dependent upon proof of *culpa* or *dolus* and/or breach of a duty imposed by law'. Discuss.

Date: Monday 10th June 2019

Duration of Examination: 10:00AM-1:05PM

INSTRUCTIONS TO STUDENTS:

Answer TWO questions from Section A and TWO questions from Section B. Questions in Section A carry 33 marks each and questions in Section B carry 17 marks each. Use a separate script for each question.

The Questions from Section B are designed to elicit your opinion as to the applicable principles of Maltese law to the hypothetical facts given. However please note that these case studies are based upon actual Maltese jurisprudence and your familiarity with that jurisprudence will enhance the quality of your work.

Section A

1. Discuss the requisites of causa in so far as it controls contracts contrary to law. To what extent can such "contracts" lead to compensation under the rules of unjustified enrichment? (33 marks)
2. When and under what circumstances can the amount of penalty agreed to in penalty clauses be modified by the courts? (33 marks)
3. Article 1045(1) of the Civil Code has recently been amended to include a proviso stating:

‘Provided that in the case of damages arising from a criminal offence, other than an involuntary offence, and only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First of the Criminal Code and of wilful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First of the said Code, up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, the damage to be made good shall also include any moral harm and, or psychological harm caused to the claimant.’

In your opinion how has this proviso affected the courts’ ability to compensate for moral and/or psychological harm arising from delictual or quasi-delictual conduct? (33 marks)

Section B

4. Some time ago Mr and Mrs Debono checked into a renowned hotel for a couple of nights. Upon entering the room, the couple stored all their valuables in the safety deposit box in the room and made sure it was locked. After that they did not pay much attention to their deposited belongings until they checked out. Prior to their departure, they took their belongings from the safety deposit box but they claimed that €300 went missing.

The guests allege that the person responsible for the theft could only have been an employee of the hotel tasked with room cleaning or maintenance; however during the investigation it also transpires that throughout much of his stay Mr Debono had inadvertently left the keys to the safe deposit box in plain sight, on his bedside table.

Mr and Mrs Debono have decided to sue the owners of the hotel for compensation of their loss. Discuss the relevant juridical arguments that could be raised by the spouses Debono and the owners of the hotel, in the light of Maltese jurisprudence. In your answer give your opinion as to what remedy if any, is available against the hotel owner in order to compensate for the loss suffered by Mr and Mrs Debono. (17 marks)

5. Peter Galea acquired a used vehicle from Charles Theuma. In negotiating the purchase, Peter Galea asked specifically whether the vehicle had ever been used as a rental car and Charles Theuma had replied that it had not. Peter Galea had also asked whether the vehicle had been on the road for in excess of two years and Charles Theuma had assured him that it had not. After completing the purchase and paying the price, Peter Galea was handed the logbook from Charles Theuma, from which it resulted that the vehicle had been on the road for four years. Moreover, it resulted that Charles Theuma used to rent out the vehicle. Peter Galea would like to annul the purchase of the vehicle and recover the purchase price from Charles Theuma and asks for your advice.

In giving your advice, list the various legal grounds that Peter Galea may rely on in bringing his claim; in view of the likely objections that could be made by Charles Theuma and keeping in mind relevant Maltese jurisprudence. (17 marks)

6. AB owned a shop which he had rented out to CD a few years earlier. CD's business was not doing too well, and CD could not afford to pay any rent to AB. CD remained in occupation of the shop without paying any rent to AB for a number of years. Tired of the situation and wanting to cut his losses, AB decided to sell the shop to EF who was willing to acquire the shop notwithstanding that it was still occupied by CD.

As at the date of the sale, CD owed some €25,000 by way of unpaid rent to AB. AB and EF agreed on a selling price of €50,000 for the shop. AB also demanded from EF an additional sum of €15,000 to make good, at least in part, for CD's failure to pay rent during the previous years. EF agreed to this proposal and paid the €50,000 plus the €15,000 to AB. After the sale was completed, EF decided to sue CD for the payment of the entire amount of €25,000 that was originally due by way of rent to AB. EF is claiming that, in virtue of the payment of €15,000, he acquired from AB the right to recover from CD the entire sum of €25,000. CD is contesting EF's claim on the basis that he never had any form of contractual or other relationship with EF, thus EF is precluded from claiming any rental payments from him. In addition, CD is raising a subsidiary argument to the effect that there was no assignment of rights from AB to EF but rather the payment of the €15,000 constituted a payment with subrogation.

EF is seeking your advice on the following points: (a) whether he can sue CD at all; and (b) as to the distinction between an assignment of rights and payment with subrogation. You are NOT required to determine whether, in the circumstances, there was an actual assignment of rights or a payment with subrogation but you are to limit your advice to distinguishing between the two scenarios. (17 marks)

University of Malta
Faculty of Laws

September 2019 Examination Session

CVL3000 LAW OF OBLIGATIONS

Date: Wednesday 4th September 2019 Duration of Examination: 11:30AM-12:35PM

INSTRUCTIONS TO STUDENTS:

Select **ONE (1)** of the following questions and answer it.

1. Article 1031 of the Civil Code makes every person liable for 'the damage which *occurs through* his fault and Article 1033 imposes liability for 'any damage *resulting therefrom*' upon 'any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law.
Explain how the italicised words have been understood by our jurisprudence.
2. Discuss the concept of natural obligations and the extent to which it is used in our jurisprudence.

University of Malta
Faculty of Laws

September 2019 Examination Session

CVL3000 LAW OF OBLIGATIONS

Date: Monday 2nd September 2019

Duration of Examination: 8:30AM-11:35AM

INSTRUCTIONS TO STUDENTS:

Answer **TWO** questions from Section A and **TWO** questions from Section B. Questions in Section A carry 33 marks each and questions in Section B carry 17 marks each. Use a separate script for each question.

The Questions from Section B are designed to elicit your opinion as to the applicable principles of Maltese law to the hypothetical facts given. However please note that these case studies are based upon actual Maltese jurisprudence and your familiarity with that jurisprudence will enhance the quality of your work.

Section A

1. When and under what circumstances can a debtor plead legal set-off as a form of extinction of obligations? (33 marks)
2. Discuss the rights and obligations of the person who voluntarily undertakes the management of the affairs of another person (*negotiorium gestor*). (33 marks)
3. Certain judgments of our civil courts seem prepared to allow a creditor to invoke a concurrent liability based on contract and tort arising from the same factual scenario and against the same debtor. Is this allowed in our civil law? (33 marks)

Section B

4. Some time prior to his death, Joseph Grech transferred by title of sale to one of his sons, Neil, two properties for the amounts stipulated in the notarial deed. Following Joseph's death, his two other sons, Peter and Paul, seek your assistance to obtain a Court declaration that the said two properties were not transferred to their brother by onerous title but by donation. They allege that the price paid by Neil for the properties transferred to him by their late father was far too low.

On the night between the 2nd and the 3rd August 2019, B received a phone call from one of A's employees who informed him that A had experienced a malfunction at his bitumen- manufacturing plant and was compelled to instruct B to delay a delivery of bitumen which was scheduled for that night. It took almost six hours for A to resolve the malfunction at the plant and the delivery of the bitumen was delayed by a corresponding amount of time.

B sustained significant costs as a result of this delay, including overtime wages, additional fuel and port charges. B intends to claim the said costs from A who is refuting B's claim on the strength of the contract.

Advise B as to his rights against A also addressing any counterargument which A might invoke. (17 marks)

**University of Malta
Faculty of Laws**

January 2020 Examination Session

CVL3000 LAW OF OBLIGATIONS

Date: Thursday 16th January 2020

Duration of Examination: 2:30PM – 3:35PM

INSTRUCTIONS TO STUDENTS:

Select ONE (1) of the following questions and answer it.

1. 'The elements of delictual and/or quasi-delictual liability in our law are identical regardless of whether the wrongful conduct causing damage consists of an action or an omission.' Discuss.
2. Discuss error in substantia and the elements required for the success of an action based on this vice.



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FACULTY OF LAWS
DEPARTMENT OF CIVIL LAW
JUNE/JULY 2020 EXAMINATION SESSION

CVL3000 Law of Obligations

Monday, 15th June 2020

Examination time: 1pm – 4pm + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 2780

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

You have the option to either type in your answers on a word document or write down your answers on an A4 sheet/s of paper.

Once you have completed the examination, you are to save your answers in pdf format or scan your handwritten answers using Adobe Scan app and Microsoft Office Lens app, and upload them within the time indicated for the examination. **The name you should assign to the file you are going to upload to the VLE dropbox should be the study-unit code.** The VLE will then rename the file automatically to also include your name and surname.

You have been allowed 60 minutes for downloading the examination paper and uploading your responses. **Make sure that you upload the correct document.** If you upload the wrong document, simply upload again and the system will overwrite the document originally submitted.

You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

You may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

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INSTRUCTIONS TO STUDENTS:

Answer **ONE** question from **Section A** and **ONE** question from **Section B**.

Questions in Section A carry 50 marks each and questions in Section B carry 50 marks each.

Submit your exam answer file under the appropriate part of VLE for the question chosen.

The questions from Section B are designed to elicit your opinion as to the applicable principles of Maltese law to the hypothetical facts given. However, please note that these case studies are based upon actual Maltese jurisprudence and your familiarity with that jurisprudence will enhance the quality of your work.

Section A

1. Discuss the rules that apply to an *actio debitor debitoris mei*. In your answer, clearly identify the scenarios where there is doubt as to whether this *actio* can be made use of; clarifying in the light of doctrine and jurisprudence what in your opinion is the appropriate approach to take in each case.
2. What are the principles which must be followed for a lawful contract in favour of third parties to be made? In your opinion does our law cling too closely to Roman law in upholding the principle of the relativity of the contractual tie?
3. Which are the principal reasons identified by our jurisprudence for awarding and quantifying damages in cases where the victim of a delict or a quasi-delict, or of a breach of an employer's contractual duties to ensure a safe working place, dies as a result? In your answer give your opinion as to whether the 2018 amendment to Article 1045 of the Civil Code must influence damages awards in such cases.

Section B

4. Adolphus Sammut owns a small restaurant in Valletta. On the 31st July 2019, Adolphus entered into a promise of sale agreement with Bernardino Grech for the sale of the said restaurant. The term of validity of the promise of sale agreement was of one year. In terms of the promise of sale agreement, Bernardino was entitled to occupy and operate the restaurant during the term of the promise of sale agreement; however Bernardino also bound himself to carry out at his expense all works and take all other measures as may be required, from time to time, to operate the restaurant. The selling price was agreed at €250,000, out of which Bernardino paid Adolphus a deposit on account in the amount of €25,000. The promise of sale agreement also stipulated that the deposit paid

by Bernardino would be forfeited in favour of Adolphus, in the event that the former were to fail to acquire the restaurant without a valid reason at law.

Following the COVID-19 crisis, Bernardino experienced a sharp decline in business, to the extent that he does not consider the restaurant to be viable for the foreseeable future, given its small size. Added to that, Bernardino is also required, in terms of regulations issued by the Health Department, to take several restrictive measures to reduce the risk of exposure to the virus. Bernardino considers the cost of adopting these measures as not being financially feasible and has decided not to go ahead with the purchase of the restaurant. However, he is concerned that he may not have a valid reason to walk away and that he may risk losing the deposit paid to Adolphus. He is also concerned that Adolphus might decide to go ahead with the sale and implement the restrictive measures introduced by the Health Department at Bernardino's expense.

Bernardino seeks your advice on the above matters and wishes to know whether he has any legal grounds not to purchase the restaurant and whether he is entitled to the refund of the deposit paid to Adolphus. He also wishes to know whether Adolphus is entitled to go ahead with the sale and implement the restrictive measures needed to keep the restaurant open at Bernardino's expense. Advise Bernardino.

5. 'A road construction project has recently been completed near the street in which Alexander Zahra's house, where he has resided for the past fifteen years, is located. Last month, following a severe thunderstorm characterized by a heavy downpour of rain, Alexander returned home to a flooded underground garage and serious water damage to his SUV and the garage structure, caused by a mixture of rain and drainage water. Being an unprecedented incident, Alexander believes that the flooding was caused by the way the new road works had covered previously absorbent fields with impermeable asphalt and channeled the resulting excess water runoff onto his street, without sufficient provision having been made for increased drainage facilities. However, the private contractor responsible for carrying out the road construction project, the company responsible for Water Services and the Ministry for Infrastructure which financed the project are disclaiming any responsibility on their part. They are claiming that: i) Alexander had neglected the upkeep of his property's drainage system; ii) that being an underground property, Alexander's garage is subject to a legal obligation to receive any waters that flow naturally from the street; and iii) that due to the exceptionality of the precipitation, which was the most intense rainfall in a decade, this was a typical case of *force majeure*. In the meantime, however, Alexander's architect found proof that, following this incident, the Ministry for Infrastructure had ordered minor amendments, designed to improve drainage facilities, to the plans which had been originally approved by the water services company.

During a Zoom meeting with her son, in which he informed her of the damage to his property, Alexander's sixty year old mother, a retired teacher who was practising social distancing at home, became agitated, started walking around and, still holding her tablet in her hands, slipped down her stairway, suffering great pain and being unable to get up again as a result. Alexander quickly called Emergency and drove to his mother's house. Within a few minutes, paramedics arrived and they immediately rushed his mother into

an ambulance. Upon a closer medical analysis, a specialist in the hospital certified that Ms Zahra was suffering from injury to her spinal cord amounting to a permanent disability of 50%, meaning she was going to remain partially paralysed and unable to use her left hand or walk without the aid of a walking stick. Due to the severity of his mother's injury, Alexander is now paying for a live in carer for her. Interestingly, a second medical opinion requested privately by Alexander, reveals that the disability could have been caused or aggravated by the paramedics' mishandling of the patient. Alexander had, in fact, noticed that the paramedics had not placed a cervical collar around his mother's neck.

Advise Alexander Zahra on his position at law with respect to the flooding incident as well as the injury suffered by his mother, with particular regard to the possible liability of the private contractor, the Ministry for the Infrastructure, the Water Services company and the health authorities. You are expected to restrict your answer to issues of liability and not to discuss the quantification of damages.

6. Mr. and Mrs. Vella entered into a promise of sale agreement with Super Developers Limited to buy an apartment in a completed and highly finished state. The apartment was still being constructed at the time of the promise of sale. The promise of sale agreement was to expire on the 5th January 2020; on which date the parties were to enter into the final deed of sale, subject to the architect of Super Developers Limited issuing a certificate confirming that the apartment was completed and highly finished. On the 27th December 2019 the said architect issued the certificate of completion and on the same day Super Developers Limited intimated spouses Vella to appear on the deed of sale.

Spouses Vella needed an extension of two months which Super Developers Limited conceded subject to the payment of a penalty of EUR 2,500. The Vellas felt that they had no option but to agree and an appointment for the final signing was set for the 5th March 2020. On the 3rd March 2020 Super Developers Limited sent the Vellas an e-mail reminding them of the appointment and that they had to pay the penalty. The Vellas however replied that the apartment was not completed to the agreed specification. Super Developers Limited threatened the Vellas that if they do not sign the deed of sale on the 5th March and pay the penalty the promise of sale would lapse and the apartment will be sold to third parties. The Vellas caved in to the pressure, appeared on the deed of sale and paid the penalty, albeit under protest.

The Vellas now request your guidance as to whether they have a right to request the refund of the EUR 2,500 since the apartment was not completed as agreed on the promise of sale and they therefore should have never been intimated to appear on the deed on the 5th January 2020, as they were by the letter of intimation of Super Developers Limited of the 27th December 2019. The Vellas are in possession of a report by their architect that confirms their factual position on the state of completion of the apartment.

In providing the advice to the Vellas, refer to various decisions of the Court that dealt with similar issues and highlight the role of the Maltese courts throughout the years in developing the body of law on this subject matter.

**University of Malta
Faculty of Laws**

September 2020 Examination Session

CVL3000 LAW OF OBLIGATIONS

Date: Thursday 3rd September 2020 **Duration of Examination:** 11:30AM – 12:35PM

INSTRUCTIONS TO STUDENTS:

Select ONE (1) of the following questions and answer it.

1. Discuss the juridical nature of Precontractual Liability in our law of Obligations, making reference to relevant jurisprudence and exploring the legal implications of different classifications.

2. Must tort damage have been foreseeable by the tortfeasor in order to be compensable? Discuss.



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FACULTY OF LAWS
DEPARTMENT OF CIVIL LAW
SEPTEMBER 2020 EXAMINATION SESSION

CVL3000 LAW OF OBLIGATIONS

Monday, 7th September 2020

Examination time: 08:30am – 11:30am + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 2780; Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS. You have the option to either type in your answers on a word document or write down your answers on an A4 sheet/s of paper.

Once you have completed the examination, you are to save your answers (preferably in pdf format) or scan your handwritten answers using Adobe Scan app and Microsoft Office Lens app, and upload them within the time indicated for the examination. **The name you should assign to the file you are going to upload to the VLE dropbox should be the study-unit code.** The VLE will then rename the file automatically to also include your name and surname.

You have been allowed 60 minutes for downloading the examination paper and uploading your responses. **Make sure that you upload the correct document.** If you upload the wrong document, simply upload again and the system will overwrite the document originally submitted.

You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

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By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

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INSTRUCTIONS TO STUDENTS:

Answer **ONE** question from Section A and **ONE** question from Section B.

Questions in Section A carry 50 marks each and questions in Section B carry 50 marks each.

Submit your exam answer file under the appropriate part of VLE for the question chosen.

The questions from Section B are designed to elicit your opinion as to the applicable principles of Maltese law to the hypothetical facts given. However, please note that these case studies are based upon actual Maltese jurisprudence and your familiarity with that jurisprudence will enhance the quality of your work.

Section A

- 1) 'The *Actio Pauliana* is a tool given by the law to the creditor to obtain payment from a fraudulent debtor.' Explore the requisite elements to exercise this action, paying particular attention to how our jurisprudence has extended its scope.
- 2) Despite having a common root in a general concept of equity, the *Actio de in Rem Verso* differs significantly from the Action of Compensation for Services Rendered (*Servigi*). Compare and contrast these two quasi-contractual remedies.
- 3) Ever since Ordinance 21 of 1962 removed the capping of £1,200 on the payment of *damnum emergens* and *lucrum cessans* for damages which had been culpably caused, it has been an acceptable generalisation to state that damages in our law of tort are compensatory in nature. To what extent is this generalisation tenable in view of recent amendments to Article 1045 of the Civil Code and the provisions of Article 1047 Civil Code?

Section B

- 4) On three separate occasions, Joseph Vella, a fourteen-year old youngster, acquired different apparatus from XYZ Co. Ltd. Following the third and last occasion, Joseph Vella attempted to return the apparatus acquired on this third occasion back to XYZ Co. Ltd. claiming that, as a minor, he could not have acquired this apparatus and that therefore XYZ Co. Ltd. is duty bound to accept the apparatus back and refund the price paid by Joseph. XYZ Co. Ltd is refusing to accept Joseph's request and is stating that the apparatus was to be used by Joseph Vella in the trade that he was regularly exercising with his father's knowledge and consent.

XYZ Co. Ltd is seeking your advice on whether Joseph Vella's claim is justified at law.

- 5) Mr Borg entered into a contract of works with Mr Camilleri; in virtue of which Mr Borg engaged Mr Camilleri as his contractor to finish an apartment which Mr Borg had bought in shell form from a third party. The total contract price for the works commissioned to Mr Camilleri was of €40,000. The contract of works provided for a six-month completion date, with a penalty for the mere delay in the completion of the works in the amount of €1,000 / day of delay. The contract expressly stated that the said penalty was not subject to any abatement or mitigation. Mr Camilleri completed the majority of the works within the stipulated timeframe of 6 months; however he had some minor works which were left outstanding. Mr Camilleri contends that part of the delay is attributable to Mr Borg as he took very long to give certain instructions to Mr Camilleri. Ultimately, the works were only fully completed 60 days after the lapse of the agreed 6-month timeframe. Mr Borg is thus claiming €60,000 by way of penalty from Mr Camilleri, who is contesting this claim.

Advise Mr Camilleri as to his position at law.

- 6) Alexandra Zerafa is a 40-year-old housewife who started complaining of pains in her abdomen. Following the advice of her personal physician, she sought an expert opinion on her condition. She was told that she required a surgical intervention and she was soon placed under the care of Dr Andrew White, a consultant who led a private firm. The surgery was successful. However, a few months later it emerged that one of Alexandra's kidneys was failing and had to be removed. Alexandra sought further medical advice on the causes of the second surgery, and it transpired that her kidney had failed because of the damage which the first intervention had caused to her urether.

Alexandra is now claiming that she suffered this personal disability due to negligence and lack of skill by her surgeon. Some medical experts, however, have not only confirmed Dr White's advice to proceed with the first intervention, but that episodes of damage to the urether were frequent in such surgical operations. Alexandra is insisting that there was certainly a way through which the surgeon could have detected this damage in time, and other medical experts have suggested that certain procedures could have been followed during the pre-operation stage to guide the surgeon better, even though those procedures could not be considered as "standard".

It also resulted, eventually, that the first surgery was performed by Dr Samantha Smith: a surgeon working for Dr White's firm; who had been chosen by Dr White to carry out this intervention.

Advise Alexandra on her position at law, with particular reference to whether any medical liability imputed to the surgeon should be classified as contractual or tortious and what would be the implications of such classification. Also provide your opinion on whether Dr White can disclaim liability on the basis that he did not perform the intervention himself.



Third Year Law
Compulsory Units Past Papers

FAMILY LAW

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

B.A. IN LEGAL AND HUMANISTIC STUDIES.

SECOND YEAR

**CIVIL LAW CREDIT
BETROTHAL AND MARRIAGE**

25TH JANUARY, 2001

3.00 - 4.00 P.M.

CHOOSE ONLY ONE OF THE FOLLOWING QUESTIONS. YOU MAY ANSWER IN ENGLISH OR MALTESE.

1. "The Marriage Act provides for the recognition of Catholic Marriages, the decisions given by the Church Tribunals and the recognition of decrees 'super matrimonio rato et non consummato' given by the Roman Pontiff." Discuss this statement in detail and state how the legislator has tried to deal with cases of decisions delivered on or after the 16th July, 1975 but before the coming into force of section 24. (100 marks)

2. Answer each of the following questions **briefly and without any unnecessary general introductions:**

(a) Show how fraud can be one of the grounds for the nullity of a marriage (34 marks) (Note: Do not refer to the other grounds) and

(b) Discuss the restriction on marriages within prohibited degrees; (33 marks) (Do not refer to the other restrictions) and

(c) When can a marriage, whether celebrated in Malta or abroad, be considered as valid? (33 marks).

3. Answer each of the following questions **briefly and without unnecessary general introductions:**

(a) Show how the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal society, can be considered as a ground for the nullity of a marriage? (30 marks) (Do not refer to the other grounds) and

(b) Section 36 of the Marriage Act gives details about the application of the Act stating "Nothing in this Act shall affect the validity of a marriage which was valid at the time it was contracted." State how the Court of Appeal has dealt with this subsection in the case "Agius versus Agius" and discuss whether you agree with this position or with the different position adopted by the First Hall of the Civil Court in a more recent case. (40 marks)and

(c) Advise John:

He celebrated his engagement with Josephine in lavish style at the Hotel Du Rhin but he has now fallen in love with a young secretary whom he finds irresistible. His potential father-in-law is threatening to sue him (a) to foot the bill of the party, (b) to pay for the moral damages he has caused Josephine as she has become the talk of the town; (c) to return the camera, the poloneck jersey and the cuff links Josephine has given him during their courtship. In the meantime Josephine insists on retaining the necklace John had brought her from Lugano. (30 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS

JUNE 2001 EXAMINATIONS

B.A. LEGAL AND HUMANISTIC STUDIES I YEAR

CIVIL LAW

Tuesday, 12th June 2001

9.15a.m. – 10.45a.m.

Students are reminded that

1. All answers should be clearly indicated on the cover of the first booklet;
2. Only the first answer(s) to each section will be graded;
3. Answers should be concise and to the point;
4. Section A answer carries forty marks and Section B answers carry thirty marks each;
5. Time for this exam is one hour thirty minutes.

Section A

Choose ONE

1. Outline any changes necessary to amend the notion of parental authority and bring it into line with contemporary family law.
2. Compare and contrast curatorship and tutorship, making particular reference to the responsibilities listed at law.
3. "Adoption is for the sole benefit of the child". To what extent, if at all, does the law embody this principle.

Section B

Choose TWO

1. Mr. A has huge debts and wishes to sell the matrimonial home which is his paraphernal property and move to smaller rented accommodation. He does not wish to involve his wife in any of the transactions. Advise Mr. A.
2. Mr. and Mrs. C separated de jure five years ago. They have three children, two of whom are over eighteen but occupied in full-time education, all living with Mrs. C. Mr. C. is refusing to pay maintenance for the older children. Advise Mrs. C.
3. Baby G is eight months old. Mr. G is unsure whether he is her father. Explain to Mr. G. the circumstances in which he may act to repudiate his daughter and the consequences of such action.
4. Ms X discovers that her name on the official Act of Civil Status differs from the name she has always used. Advise her as to the steps involved in amending the document.

UNIVERSITY OF MALTA

FACULTY OF LAW

Credit: Betrothal and Marriage
Second Year

Time allowed: 1 hour
4.45p.m to 5.45p.m

24th January, 2002

Answer ONE question only. You may use either English or Maltese in your answer.

1. Nathan has been courting Margaret, a University student, for the last three years. He has given her lavish gifts as Christmas and Easter presents: a complete malachite set consisting of a pair of earrings, a necklace and a bracelet, a four hundred pound outfit from Harrods, golden fountain pens, a dishwasher and a sewing machine. She reciprocated by giving him gold cuff links, an Armani suit, and a Pentium IV computer because he is an Internet buff. During the summer holidays, Margaret's father held an engagement party at Wardija Palace and he had to borrow money from a Spanish Bank to foot the bill. All the V.I.P's of the island were present for this pleasant summer evening.

However, while following a credit in International Law in Paris, Nathan fell madly in love with Naomi whom he met revising her notes in the Luxembourg Gardens. He intends marrying her in Malta next week though he fears that Naomi may be unfaithful and has doubts whether she has already had a baby from another Sorbonne student.

Advise Nathan on these two problems:

- (a) He would like to know whether it would be possible to plead adultery and fraud as grounds for the annulment of his marriage or whether he can rely on some other ground if things turn sour. (65 marks)
- (b) In the meantime, Margaret's father has sent him a bill for the expenses incurred in the engagement and his daughter is insisting on (a) moral damages; (b) to take back all the gifts she gave him; and (c) to keep all the gifts she received from him. Does Margaret's father have a right to be paid and should Margaret's claims be totally admitted? (35 marks)

The examination paper has two pages. Please turn over to page 2

L. Quintana
L. Quintana

2. (a) Distinguish between impotence as a ground of annulment in section 19(1)(e) and annulment of marriage on the ground of non-consummation (Section 19A). (65 marks)

(b) The Marriage Act prohibits marriage within certain degrees. (Chapter 255, section 5). Explain this section only. Any reference to the other sections will be ignored. (35 marks)

3. (a) What conditions have to be met for the recognition of a Catholic marriage? (Refer to sections 21 and 22 only of Chapter 255. Do not refer to decisions given by tribunals). (60 marks)

(b) During a holiday in the French Riviera, Marija, a typist hailing from Victoria, Gozo fell in love with Helmut, an engineer from Berlin who was working in Nice. This whirlwind relationship was happily concluded by a marriage in a French registry at Bordeaux. A short time after, Helmut's expertise was needed in Washington D.C. and as he had to work for long hours, Marija started seeing an Ambassador representing a country in Africa. An American court granted Marija's divorce. Advise her about: (1) whether her marriage in France was valid; (2) whether her divorce can be recognised in Malta. (40 marks)

R. Q. T. M.

FACULTY OF LAWS
B.A. Legal and Humanistic Studies 1 Year
Examination in Civil Law
9.00am – 10.30am, Monday 10th June 2002

Answer 1 question from Part A and 2 questions from Part B
Part A question carries 40 marks and Part B questions carry 30 marks each.
Reference to case law is recommended in each answer.

Part A

1. "In the last ten years, the concept of maintenance has evolved to acknowledge significant changes in society."
To what extent, if at all, does the law reflect this statement?
2. The care of children is the primary responsibility of their birth parents. In which cases does the law terminate such responsibility and how does it provide for alternative care?

Part B

3. Mr and Mrs A have been married for eight years and have two minor children. Mrs A tells you that her husband has a problem with alcohol dependence and gambling. She is concerned about his latest decision to sell the matrimonial home and requests advice as to her rights.
4. Mr B has received an anonymous letter stating that his 2-year old son is the result of an adulterous affair his wife had when he was serving a three-month prison term. He has not yet confronted his wife with the information. Advise Mr B.
5. Ms C had formally consented to the adoption of her daughter but has changed her mind now that her boyfriend has asked her to marry him. Proceedings for adoption have already started and the child has been living with the prospective adopters for ten weeks. Advise Ms C.

B.A. Legal and Humanistic Studies 1 Year
Supplementary Examination in Civil Law
9.00am – 10.30am, Saturday 7th September 2002

Answer 1 question from Part A and 2 questions from Part B
Part A question carries 40 marks and Part B questions carry 30 marks each.
Reference to case law is recommended in each answer.

Part A

Choose one question

1. "There is no longer any distinction between legitimacy and illegitimacy". To what extent, if at all, is this statement confirmed by Maltese Law and case law?

2. How are the best interests of the child reconciled with the rights of birth parents in adoption?

Part B

Choose two questions

3. Ms X, aged 16, is pregnant and wishes to marry Mr Y, aged 17. Her parents refuse to give their consent to the marriage. Ms X and Mr Y ask for your advice regarding their legal position.

4. Mr A maintains his wife and three children, aged 16 and over, according to the terms of a consensual separation. He also maintains another woman and their two children, aged 6 and under. Mr A has entered into a new relationship and wishes to stop all maintenance payments. Explain Mr A's obligations at law.

5. P was born male and has undergone surgery to become female. P now wishes to change the entries relating to name and sex in her act of civil status. Advise P as to the procedure.

B.A. Legal and Humanistic Studies 1 Year
Examination in Civil Law
8.00am – 9.30am, Friday 6th June 2003

Answer 1 question from Part A on a booklet clearly marked Part A and
2 questions from Part B on a separate booklet clearly marked Part B.
Part A question carries 40 marks and Part B questions carry 30 marks each.

Part A

Answer ONE question

1. "The rights and duties of spouses and parents have changed substantially since Act XXI.1993". To what extent, if at all, does case law reflect this statement?
2. What are the patrimonial and personal implications for the child when parental authority ceases *ipso jure* or the parents are deprived of parental authority?

Part B

Answer TWO questions

3. Mrs A has inherited a house from her father's estate and both she and her husband and children wish to live in it as the matrimonial home. She is worried that her husband will use it to borrow more money for his business which is already in serious financial difficulty. Advise Mrs A.
4. Mr B's parents have both tragically died in a car crash leaving him and his 5 year old sister orphans. Mr B is 20 years old and plans to get married in two years time. Both he and his girlfriend would like to adopt Mr B's sister now. Advise Mr B.
5. Mr C, born male, has had a sex change and wishes to amend his birth certificate to reflect this fact and a new choice of first name. Advise Mr C.

B.A. Legal and Humanistic Studies 1 Year
Resit Examination in Civil Law
4th September 2003 – 9.00a.m. – 10.30a.m.

Answer 1 question from Part A on a booklet clearly marked Part A and 2 questions from Part B on a separate booklet clearly marked Part B. Part A question carries 40 marks and Part B questions carry 30 marks each.

Part A

Answer ONE question

1. With reference to case law, how correct would it be to say that the right to maintenance is an absolute right?
2. "In adoption, the consent of the birth parents of the child is a *sine qua non* to the proceedings". To what extent, if at all, does Maltese law and case law uphold this statement?

Part B

Answer TWO questions

3. Mr A has been working abroad for the past two years coming to Malta regularly for his holidays to visit his wife and three children. He has received an anonymous letter claiming that his baby son aged five months is not his child. He wishes to take action to remove his name from the boy's birth certificate. Advise Mr A.
4. Ms B is sixteen years old and pregnant. She wishes to marry her boyfriend Mr Z who is the father of their child. Her parents are completely opposed to the marriage and wish to take steps to prevent it. Advise Ms B's parents of the options available at law.
5. Mr and Mrs C are the parents of two children X aged six years and Y aged four. Three weeks ago, both children were placed under a care order following allegations of serious abuse against the parents. Ms D has heard of the case and wishes to offer the children a home. Advise Ms D.

Faculty of Laws
LL.B. Year II
Test in Family Law

Wednesday 2 February 2005
9.15am – 12.15pm

Answer **FOUR** questions: one question from each section and another question from any section.

Write your answer(s) to each section on a separate booklet, clearly entering your index number on each booklet.

Total mark 200 - (a) questions carry 25 marks each and (b) questions carry 20 marks each. [20 marks / 10% were allocated to tutorials]

Section I

1. (a) "Termination of parental rights is often advisable but rarely applicable". Discuss the circumstances which give rise to termination of parental rights and comment on the statement, making reference to case law and comparative law.

(b) A fatal car accident has left two minor children without parents. Their neighbour, with whom they have a close relationship, wishes to care for them but their only aunt in Canada wants to assume responsibility for them. Advise the aunt.

2. (a) "The notion of illegitimacy is an outdated concept". Discuss this statement with reference to both Maltese and comparative law.

(b) The welfare authorities have identified Ms Grech as a single parent whose adoption makes it impossible for her to care for her two minor children aged 2 and 4 years. An Interim Care Order was served on Ms Grech ten days ago. She comes to you to help her contest the Order – Advise Ms Grech.

3. (a) To what extent, if at all, does the withholding of consent in adoption affect the final decree?

(b) Mr Borg has been married and childless for eight years. He suspects that his two-month-old baby is not his child because of his frequent absences from Malta caused by work. List the questions you would ask before being in a position to advise Mr Borg.

Section II

4. (a) Examine the procedure in terms of the Marriage Act for the recognition of a decision of nullity of a Catholic marriage granted by an Ecclesiastical Tribunal.

(b) Anne is 23 years old and has been married to Julian for six years. She tells you that she was forced into marriage by her father who had threatened to throw her out of the house and kill her boyfriend because she was pregnant prior to marriage. Advise Anne according to the terms of Article 19.

5. (a) "Although Maltese legislation does not cater for local application for divorce, recognition of foreign divorce is possible." Discuss this statement with reference to the conditions for its applicability and relevant case law.

(b) Andrew and Marie have been married for eighteen months. Andrew has discovered that Marie's mother has a history of mental illness which was kept hidden from him prior to marriage. He also feels that Marie is immature and has failed to adapt to married life in the way she constantly neglects him and refuses to start a family. Advise Andrew as to any possible grounds for annulment.

6. (a) Discuss the effects of a putative marriage in terms of the Marriage Act.

(b) Jane and Stanley got engaged just two months ago. Jane's parents hosted a lavish reception inviting many dignitaries and business contacts and have already made a down payment on a house for the couple. Stanley has met someone else and wishes to break off the engagement. Jane is feeling embarrassed as gossip travels fast in Malta. She is demanding both moral and material damages. Advise Jane.

Section III

7. (a) "The quantum of maintenance in separation differs from that awarded in other circumstances." To what extent, if at all, do you agree with this statement?

(b) Mr and Mrs Agius have applied for separation. Mr Agius is contesting his *de facto* care and custody of their two minor children aged 2 and 5 years respectively. Mrs Agius's lawyer has cited the tender years doctrine during mediation. Advise Mr Agius.

8. (a) "The award of care and custody of minor children greatly influences allocation of matrimonial home". With reference to case law, discuss the truth or falsity of this statement.

(b) Mr and Mrs Farrugia are parties to separation proceedings. The matrimonial home has been assigned *pendente lite* to Mrs Farrugia. She wishes to buy another house with personal funds immediately. Advise Mrs Farrugia.

9. (a) Explain the provisions that may be ordered *pendente lite* at the request of the spouses applying for separation.

(b) Mr Zammit has been separated from his wife for four years. As the result of a court judgement which found him guilty of adultery, he was ordered to vacate the matrimonial home which is his paraphernal property and pay regular maintenance. Mr Zammit has got to know that his wife is having an affair. Advise Mr Zammit.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
CVL2010 – FAMILY LAW

WEDNESDAY 1ST FEBRUARY 2006

9.15AM – 12.15PM

Answer FOUR questions: one question from each section and another question from any section.

Write your answer(s) to each section on a separate booklet, clearly entering your index number on each booklet.

Total mark 200 - (a) questions carry 25 marks each and (b) questions carry 20 marks each. [20 marks / 10% were allocated to tutorials]

Section I

1. (a) Outline the various alternative forms of care available under Maltese law, making particular reference to the procedure required to access them.

(b) Mrs A has been separated *de facto* for 1 year and was cohabiting with the father of her 8 month old child until they split up a few weeks ago. The child's act of birth lists him as the son of Mrs A's husband, although Mr A is not aware of the existence of the child. In the circumstances, Mrs A wishes to initiate proceedings against her husband to obtain maintenance for the child. Advise Mrs A.

2. (a) Cite those cases where termination of parental authority is indicated as an option under Maltese law, highlighting the consequences of such termination on

- (i) the child ;
- (ii) the parent.

(b) Ms X has a sister, Ms T, aged 84 years who is suffering from Alzheimer's. Ms X has been visiting and caring for her sister for over ten years. Ms T's illness has progressed considerably and she now needs round the clock attention. Ms X has found her a suitable place but this requires substantial payment. Ms T is the owner of a house worth LM80,000 but is too confused to make any decisions regarding its sale.

Advise Ms X.

3. (a) "Act XVIII.2004 has brought about considerable changes to promote a more inclusive society". Making reference to two specific issues in Law of Persons, to what extent, if at all, do you agree with this statement.

(b) Ms R is 17 years old and is in her sixth month of pregnancy. She is due to start University in a few months time. Her parents have made it clear to her that they will not support her if she keeps the baby. Ms R has come to you for advice



relating to the options available and particularly the legal implications if she places the child for adoption.

Section II

(a) Explain the notion of 'domicile' and show why this connecting factor plays such a vital role in 'The Marriage Act.'

(b) Peter and Elaine have been married for the past five years. Recently Elaine discovered that Peter is having an affair with a number of partners and that he is sterile. Elaine is desperate to have children and she is now asking for your advice about whether she can file for an annulment because of Peter's infidelity and his sterility. Prior to the marriage Peter had been to several specialists about his problem but he never informed Elaine about the results. Advise Elaine.

5. (a) Examine the following ground for the annulment of a marriage: 'if the consent of either of the parties is vitiated by a serious defect of discretion of judgment on the matrimonial life or on its essential rights and duties or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage.' (19(1)(d)). Illustrate by case law BOTH parts of this ground.

(b) At 53 Monique obtained an annulment of her marriage with Paul who was clearly the guilty party in the proceedings. Monique has asked for your advice about (a) the status of the children after the annulment; (b) the possibility of asking for maintenance from her ex-husband because she is unemployed and unemployable; (c) whether she will have any problems if she decides to marry a neighbour who has shown great interest in her; (d) if the Maltese marriage Registrar objects to the celebration of a marriage in Malta with another person who has already got a wife and whose law of domicile allows polygamy.

6. (a) What are the conditions for the recognition of a Catholic Marriage and for the recognition of a decision of the Tribunal?

(b) John Portelli, a person domiciled in Malta, married Eva Grass, a lady domiciled in Germany in a registry office in Switzerland. The couple flew off to Miami and after a three week holiday, the poetry of the relationship melted away. John Portelli filed successfully for a divorce in the U.S.A. On returning to Malta, he presented the judgement in the marriage registry but the marriage registrar declined to register the judgement. Within a short time John Portelli fell in love with an eighteen year old from Gudja and the lady's family held a party at the 'Kuyper Belt Hotel' where they spent about five thousand Maltese liri and invited some of the most important members of society. John Portelli has had another change of heart because a Norwegian lady studying Greek at the University of Malta proved irresistible. He has just informed the Gudja girl that the romance is

over. However, her parents are not amused and they are pestering John Portelli with bills for photographs, flower arrangement, alcoholic drinks, Chinese food and evening meals. John would like to know whether his marriage in Switzerland was valid; how to tackle the marriage registrar about the U.S.A. divorce; and whether he can put up a defence against the Gudja parents who are asking for real damages. To make matters worse their daughter is asking for moral damages because she has become the talk of the town since John decided to call it a day. Advise John Portelli who is on the verge of a breakdown.

Section III

7. (a) To what extent, if at all, do the grounds of separation influence the courts in allocation of custody? Use local case law to describe developments in this field.

(b) Mr and Mrs T separated *de jure* six months ago with Mr T ordered to pay maintenance and vacate the matrimonial home in view of his violence against his wife. Mr T has now come to know that Mrs T is having an affair and is living with her lover in his house. Advise Mr T.

8. (a) "Maltese law has eliminated fault-based separation in a bid to encourage resolution of family disputes". Discuss with reference to the sections of the Civil Code.

(b) J and P are the sons of Mr and Mrs Z who separated one year ago. Both are full time students who live with their mother. J is 18 years old and P's birthday is a few months away. Mr Z is refusing to pay maintenance for his sons stating that they are old enough to care for themselves and he is supporting two young children from another relationship. Mrs Z does not have gainful employment and cannot afford to support her sons without their father's financial support. Advise Mrs Z.

9. (a) Describe the criteria applied in the determination of maintenance for spouse and child/ren, making reference to recent case law.

(b) Mrs A is of non-Maltese nationality. She feels that her marriage has irretrievably broken down and wishes to leave Malta for good, taking her two children aged 2 and 4 years with her. She is afraid of telling her husband because she claims he has threatened violence in the past. She intends booking a one way ticket and severing all ties with him. Advise Mrs A.

Faculty of Laws
LL.B. Year II
Resit Examination in Family Law

Friday 1 September 2006
9.15am – 12.15pm

Answer FOUR questions: one question from each section and another question from any section.

Write your answer(s) to each section on a separate booklet, clearly entering your index number on each booklet.

Total mark 200 - (a) questions carry 25 marks each and (b) questions carry 20 marks each. [20 marks / 10% were allocated to tutorials]

Section I

1. (a) "Adoption is always carried out in the best interests of the *adoptandus*, not the adopter". To what extent, if at all, is this statement true at Maltese law?

(b) Mrs Agius has a 14 year old son John whom she is trying to bring up on her own ever since her husband went to prison four years ago. John has already been in trouble with the law for petty theft and spends time with a gang of older boys who drink, smoke and shop lift. Mrs Agius has tried to discipline John but she is afraid of his reaction as he is a big boy and has already hit her on several occasions and refuses to take any notice of her. John rarely goes to school and stays out until late with his friends. Advise Mrs Agius as to her legal position.

2. (a) "The rights of children born outside wedlock have been improved by Act XVIII.2004." Compare the current position of children born in and outside wedlock and comment on the quote.

(b) Ms Gatt has been caring for her minor brother and sister ever since their widowed mother died last year. Their maternal relations are now insisting that she is too young at 19 to care for her siblings and to administer their inheritance and have applied to the court for the elder uncle to be appointed tutor. Ms Gatt comes to you for advice about her options.

3. (a) Describe the procedure necessary for interdiction and incapacitation together with the circumstances for its removal, making reference to domestic and comparative legislation.

(b) Joseph Tabone was born male and is so indicated on the act of civil status and marriage certificate. Following gender reassignment she now wishes to change name to Josephine and have all her official documentation corrected to reflect her current sex. Advise Ms Tabone.

Section II

4. (a) Examine the possibility of having a marriage annulled on the following ground: 'if the consent of either of the parties is extorted by violence, whether physical or moral, or fear'.

(b) Josephine Borg has decided to break off her relationship with Joe Zammit as she has now decided to pursue her university studies abroad. Joe Zammit is a skilled worker and has never shown any interest in tertiary education. Joe Zammit has paid a substantial sum for the engagement party, given Josephine expensive personal presents and is feeling socially embarrassed by Josephine's decision. Advise Joe Zammit.

5. (a) Examine the four grounds regarding restrictions of marriage. (Sections 3 to 6 of Chapter 255)

(b) The marriage between Marija Camilleri and Joseph Camilleri has been declared void by the Court. Before the judgment, they had been married for nine years and had two children. Marija Camilleri is now unemployed. Advise Marija Camilleri about the effects of a putative marriage. (Section 20 of Chapter 255).

6. (a) Sections 21 to 32 of Chapter 255 deal with the (i) recognition of Catholic marriages; (ii) the recognition of decisions given by tribunals. Explain in detail.

(b) How far is it possible for a person who has obtained a divorce decree or judgement from a foreign court to re-marry in Malta? (Section 33 of Chapter 255).

Section III

7. (a) Cite the various forms maintenance may take both *pendente lite* and post judgement within a separation case.

(b) Mrs Mallia accuses her husband of domestic violence against her and their two minor children. She shows you medical certificates attesting the incidents and tells you she is afraid to leave the matrimonial home because of her husband's reaction. With particular reference to recent legislation, advise Mrs Mallia.

8. (a) Analyse the extent to which the child of separating parents is heard within separation proceedings in Malta. In your answer, make reference to recent legislation and case law.

(b) After a whirlwind romance, Mr Zahra and Ms Xerri got married in December 2005 but immediately realised that they were incompatible. They have already found other partners and wish for a speedy termination of their marriage. Advise the couple.

9. (a) "Allocation of matrimonial home has a domino effect on a series of other issues within separation proceedings." Discuss with particular reference to case law.

(b) Sandro and Kevin are the sons of Mr and Mrs Portelli who separated eighteen months ago. Mrs Portelli was awarded custody of the boys and took them to her country of origin in Italy. During their last visit to Malta to spend the summer holidays with their father, Kevin related that his mother's boyfriend was abusive towards him and his brother and has refused to return to Italy. Advise Mr Portelli.

Faculty of Laws
LL.B. Year II
Examination in Family Law

Wednesday 23 January 2008
10.30am – 1.45pm

There are 15 minutes allocated for reading the paper.
Answer THREE questions. Choose ONE question from each section, making sure you answer both parts of the same question.
If different parts of a question are answered, marks will be allocated only to the first part of the question.
Write your answer to each section on a separate booklet, clearly entering your index number on each booklet.
Marks this paper: 100 - (a) questions carry 18 marks each and (b) questions carry 15 marks each. Total 33x3 = 99 + 1 *ex gratia*
[Tutorial marks have also been graded out of 100 and carry 10% of the total mark]

SECTION ONE

1. (a) Compare and contrast the institutes of curatorship and tutorship, highlighting the responsibilities of the person entrusted with such appointment.
(b) Ms Tonna has two children aged three and five years. Her partner Mr Frendo is married to another woman and has a child of twelve who both know nothing about his relationship with Ms Tonna. Ms Tonna relies on Mr Frendo to supply maintenance for her and the children. She is worried that if Mr Frendo leaves her, she will have no way to enforce her claim. Mr Frendo has not acknowledged the children and is reluctant to do so as this information may reach his wife. Advise Ms Tonna.
2. (a) "Fostering better serves the child's interests as an alternative to adoption". Discuss this statement drawing on domestic and international principles of child law.
(b) Joan Debono was born a man but has just undergone gender reassignment surgery. She wishes to amend her identity card and other official documents and marry her partner Anthony Savona. Advise Ms Debono, making reference to domestic law and European jurisprudence.
3. (a) "The definition of family cannot remain static but must change in keeping with time and place." To what extent, if at all, do you agree with this statement? Make reference to domestic legislation, local and European jurisprudence in your response.
(b) Mr Zammit has been caring for his six year old son ever since his wife left him two years ago and went to live in Canada. He is finding it hard to cope and has been drinking so much that he has lost his job. He is not on speaking terms with his wife's parents although they keep nagging him to see their

grandson. Mr Zammit's new girlfriend had a drug abuse problem and her children are under a care order. He is afraid that his son will also be taken away from him. Advise Mr Zammit.

SECTION TWO

4. (a) State what you understand by "domicile" and discuss the role played by this concept and by that of "citizenship" in "The Marriage Act"

(b) During her marriage with John, Mary discovered that her husband is sterile! She is very eager to have children and cannot imagine going on in this marriage without them. Advise Mary who is also receiving the attention of a foreigner whose main interest in any eventual marriage is to obtain a work permit in Malta.

5. (a) "A marriage shall be void if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life or on its essential rights and duties" (Section 19(1)(d) of The Marriage Act). By reference to local case law, show how the Maltese Courts have applied this ground of annulment.

(b) The Church Tribunal declared F's marriage with G as null. F has asked you what steps he has to take to have this decision recognised. F is also worried that G is going to contest the decision of the Church Tribunal. Advise F.

6. (a) "Advising a young couple about the legal effects of a courtship which has come to an unfortunate end requires a consultation exercise in various parts of the law" Discuss this statement and suggest any reforms you would make to the "institute" of betrothal.

(b) Advise:

(i) Y who has called on you after the Marriage Registrar decided not to proceed to the publication of the banns of a marriage that Y intended celebrating with Z.

(ii) A person resident in Malta who would like to marry by proxy a female resident in Australia

SECTION THREE

7. (a) To what extent has mediation had an impact on the legal procedure of separation in Malta?

(b) Mr Borg has been married for eight years and has suspicions that his wife is having an affair. He is awaiting the results of an investigation he commissioned and is determined to separate from his wife if he finds she has committed adultery. He comes to you and confides that his first act will be to change the locks on the doors so that she will be unable to get in the house and to prevent her from having access to their three children. Advise Mr Borg

8. (a) "Care and custody of children frequently becomes a crucial issue in separation proceedings because of the implications on maintenance and

Faculty of Laws
LL.B. Year II
Examination in Family Law

Wednesday 3 September 2008
9.15am – 12.30pm

There are 15 minutes allocated for reading the paper.
Answer THREE questions. Choose ONE question from each section, making sure you answer both parts of the same question.
If different parts of a question are answered, marks will be allocated only to the first part of the question.

Write your answer to each section on a separate booklet, clearly entering your index number on each booklet.

Marks this paper: 100 - (a) questions carry 18 marks each and (b) questions carry 15 marks each. Total 33x3 = 99 + 1 *ex gratia*

[Tutorial marks have also been graded out of 100 and carry 10% of the total mark]

SECTION ONE

1. (a) (a) "Termination of parental rights is often advisable but rarely applicable". Discuss the circumstances which give rise to termination of parental rights and comment on the statement, making reference to case law and comparative law.

(b) Clara Dimech was born a man but has just undergone gender reassignment surgery. She wishes to amend her identity card and other official documents and marry her partner John Spiteri. Advise Ms Dimech, making reference to domestic law and European jurisprudence.

2. (a) Compare and contrast the institutes of curatorship and tutorship, highlighting the responsibilities of the person entrusted with such appointment.

(b) Ms Chircop is 16 years old and is in her third month of pregnancy. Her SEC results show that she has the opportunity to pursue her dream of becoming a physiotherapist. Her parents have made it clear to her that they will not support her if she keeps the baby and insist she gives it up for adoption as soon as it is born. The father of the child is a fellow student also aged 16 years. Ms Chircop has come to you for advice relating to the options available and particularly the legal implications if she places the child for adoption.

3. (a) "Fostering better serves the child's interests as an alternative to adoption". Discuss this statement drawing on domestic and international principles of child law, from a child centred point of view.

(b) Ms Abela is 16 years old and wishes to marry Mr Busuttill aged 18. Her parents oppose this marriage as they expected their daughter to continue her education and get married later in life. They are concerned as they feel that Mr Busuttill who has been in trouble with the police and is out of work is unsuitable. Advise Ms Abela's parents.

SECTION TWO

4. (a) State what you understand by "domicile" and discuss the role played by this concept and by that of "citizenship" in "The Marriage Act"

(b) Joan and David got engaged six months ago. Joan's parents gave a huge party and David bought Joan an expensive diamond ring. David has met someone else and wishes to break off the engagement. Joan is refusing to give back the ring and her parents wish to sue David for material damages. Advise David.

5. (a) Examine carefully the formalities preceding marriage.

(b) Helen Borg was married to an Italian in 2004. She now wants to obtain a divorce from her Italian husband who is now living in Switzerland. Advise her.

6. (a) Examine the following grounds for the annulment of a marriage:

(i) Impotence; (ii) fraud.

(b) Raymond Vella married a German lady in 1999 and the latter went to live in Croatia. Raymond Vella has obtained a decision from the Church Tribunal annulling his marriage in 1999. The German Lady is furious because she is insisting that there was nothing wrong with the marriage and that the Church Tribunal never heard her views. Advise Raymond Vella.

SECTION THREE

7. (a) "Maintenance allocation in separation cases is at the mercy of judicial discretion." Discuss the methods used to apportion maintenance, making reference to case law in order to establish the truth or falsity of this comment.

(b) Mr and Mrs Pace who have two minor children aged three and five, have applied for separation. Mrs Pace who has always been the children's primary carer wishes to emigrate to Australia with her new partner, taking the minor children. She is anxious to conclude a separation agreement as fast as possible and has already booked the plane tickets as she heard that according to the tender years doctrine the children will automatically be allocated to her. Advise Mrs Pace.

8. (a) "Care and custody of children frequently becomes a crucial issue in separation proceedings because of the implications on maintenance and allocation of matrimonial home". In what way, if at all, does local and foreign jurisprudence substantiate this statement?

(b) Mr and Mrs Falzon are awaiting a final decision in bitterly contested separation proceedings. Mr Falzon has entered into a new relationship and his partner is expecting a baby. He wishes to purchase a flat with his new partner. Mrs Falzon is very hurt by her husband's adultery and is unwilling to cooperate in any way. Advise Mr Falzon.

9. (a) "Allocation of matrimonial home has a domino effect on a series of other issues within separation proceedings." Discuss with particular reference to recent case law.

(b) Sean and Kristina are the children of Mr and Mrs Tabone who separated eight months ago. Mrs Tabone was awarded custody of the children and took them to her country of origin in Italy. During their last visit to Malta to spend the summer holidays with their father, Kristina related that her mother's boyfriend was abusive towards her and her brother and has refused to return to Italy. Advise Mr Tabone.

Faculty of Laws
LL.B. Year II
Examination in Family Law

Wednesday 21 January 2009
10.30am – 1.30pm

Answer **THREE** questions. Choose **ONE** question from each section, making sure you answer both parts of the same question.
If different parts of a question are answered, marks will be allocated only to the first part of the question.

Write your answer to each section on a separate booklet.

Marks this paper: 100 - (a) questions carry 18 marks each and (b) questions carry 15 marks each. Total 33x3 =99 +1 *ex gratia*

[Tutorial marks have also been graded out of 100 and carry 10% of the total mark]

SECTION ONE

1. (a) "Notions of family within Family Law have evolved in keeping with judgements of the European Court of Human Rights" To what extent, if at all, does this apply to the position in Malta?

(b) Mr Zarb has been caring for his 82 year old Uncle Gregory for the past ten years since the onset of senile dementia. No court proceedings were ever instituted. His sister Mrs Abela has now demanded to see the accounts. Mr Zarb is hurt and angry at the suggestion of any wrong doing and has refused to speak to her. She has threatened to take action against him. Advise Mr Zarb.

2. (a) Explain the implications of the 2008 amendments to the law on adoption, making particular reference to the best interests of the child principle.

(b) Mr Falzon has just come to know that he was listed as the father of Angelica now aged 2 years eight months. He had been estranged from his wife (Angelica's mother) and living with his present partner since six months prior to the birth. He has never had any contact with the child and his wife never asked him for maintenance and she is now living with another man. Mr Falzon wishes to take steps to remedy this issue. Advise Mr Falzon.

3. (a) "An act of civil status is witness to a historical fact". Outline the way in which the Maltese courts have interpreted this premise, while acknowledging the rights of the

individual to respect for family life.

(b) Ms Borg has three children from three different men aged six years and under. She struggles to make ends meet and can only work part-time on odd jobs because of her family commitments. Recently one of the children's fathers Mr Damato threatened to take away his child Darren as he and his wife have no children and he would be prepared to care for the boy. He said that as soon as he made a report, the social workers would remove the children from their mother as they deserve a better standard of living. Ms Borg has run away from her residence with the children and is hiding in temporary shelter because she is terrified that she will lose her children. She comes to you for advice.

SECTION TWO

4. (a) 'The Marriage Act' recognises both Catholic marriages and the decisions given by the tribunals which can pronounce on the validity of a Catholic marriage'. Discuss this statement by clearly explaining the conditions which have to be fulfilled for such recognition.

(b) A would like to marry B. However, the Marriage Registrar has notified both parties that he cannot issue a certificate for the publication of the banns. A would like to know what these banns are and how he can challenge the decision of the Marriage Registrar. Advise A.

5. (a) According to section 19(1)(d) of 'The Marriage Act' a marriage shall be void if the consent of either of the parties is vitiated by a serious defect of discretion of judgment on the matrimonial life or on its essential rights and duties.' What are these essential rights and duties and how have our Courts interpreted this part of section 19(1)(d)?

(b) While holidaying in Germany, Mary Borg, a Maltese, married a man domiciled in Pakistan. Her husband had already been married twice and his intention was mainly to obtain a residence permit in Malta. Advise Mary Borg on whether (i) her marriage was valid according to section 18 of 'The Marriage Act' and (ii) whether there are any remedies in this situation.

6. (a) To what extent is it true to say that the Marriage Act restricts the freedom to marry?

(b) About five years ago, John Camilleri decided to start working in New York as a waiter. He fell madly in love with Suzanne, a French lady, an official with the French Embassy in New York on a three year appointment. They married, went to Hawaii for their honeymoon and their romance evaporated like an ice cube in the desert. John Camilleri has obtained a divorce from New York and would like to know whether he can marry his new sweetheart from Sannat. Advise him. Moreover, he would also like to

know whether the German Courts have jurisdiction to pronounce a second divorce if he and his Italian wife become habitually resident in Germany. Advise him.

SECTION THREE

7. (a) The award of maintenance is dependent on a wide range of variables that are said to preclude the introduction of a standard schedule for maintenance determination. Outline these variables and draw conclusions as to the local applicability of this statement, making reference to the practice in foreign jurisdictions.

(b) Mr Lanzon has suspicions that his wife is having an affair. He even thinks that their second child who was born five months ago may not be his. He is worried that if he seeks to separate from his wife this will adversely affect his financial situation as he is employed by his wife's father and lives in her family's company home. He is also concerned that as a man he will have no chance in being awarded custody of his son aged 4 years. Advise Mr Lanzon.

8. (a) In what ways does the law contribute towards ensuring that children have the right to be cared for by their parents, particularly in cases where the parents are *de facto* or *de jure* separated? Make reference to local case law to answer this question.

(b) Ms Tabone and her husband Mr Vella are in the process of separation but it is taking a long time to reach a settlement. Ms Tabone is the sole owner of the matrimonial home as this was her paraphernal property. She wishes to sell it to be able to use the funds to pay off her debts so she can leave the Island with her German partner. The court had provisionally decreed that both spouses should continue to live in the matrimonial home *pendent lite*. Advise Ms Tabone.

9. (a) Allocation of matrimonial home to one party may be one of the *pendente lite* provisions made by the courts during an action for separation. List the other provisions that may be given and explain how these may impact on the final judgement.

(b) Mr and Mrs Frendo are in the process of mediation regarding their separation. After two months of negotiations, Ms Frendo has just disclosed to you, her lawyer, that she and her children are victims of domestic violence. As she is still living in the same house as Mr Frendo she is afraid of the consequences if he comes to know of her allegation. Explain what action you would take in such circumstances.

Faculty of Laws
LL.B. Year II
Examination in Family Law

Tuesday 1 September 2009
9.15am – 12.15pm

Answer **THREE** questions.

Choose **ONE** question from each section, making sure you answer both parts of the same question. If different parts of a question are answered, marks will be allocated only to the first part of the question.

Write your answer to each section on a separate booklet.

Marks this paper: 100 - (a) questions carry 18 marks each and (b) questions carry 15 marks each. Total 33x3 =99 +1 *ex gratia*

[Tutorial marks have also been graded out of 100 and carry 10% of the total mark]

SECTION ONE

1. (a) Cite those cases where termination of parental authority is indicated as an option under Maltese law, highlighting the consequences of such termination on (i) the child ; (ii)the parent.

(b) Mrs Attard has been separated *de facto* for 1 year and was cohabiting with the father of her 8 month old child until they split up a few weeks ago. The child's act of birth lists him as the son of Mrs Attard's husband, although Mr Attard is not aware of the existence of the child. In the circumstances, Mrs Attard wishes to initiate proceedings against her husband to obtain maintenance for the child. Advise Mrs Attard.

2. (a) To what extent, if at all, has the notion of parental authority become more child centred? Make reference to case law to substantiate your response

(b) Ms Gatt has been caring for her minor brother and sister ever since their widowed mother died last year. Their maternal relations are now insisting that she is too young at 19 to care for her siblings and to administer their inheritance and have applied to the court for the elder uncle to be appointed tutor. Ms Gatt comes to you for advice about her options.

3. (a) "Adoption is always carried out in the best interests of the *adoptandus*, not the adopter". To what extent, if at all, is this statement true at Maltese law?

(b) Mrs Agius has a 14 year old son John whom she is trying to bring up on her own ever since her husband went to prison four years ago. John has already

been in trouble with the law for petty theft and spends time with a gang of older boys who drink, smoke and shop lift. Mrs Agius has tried to discipline John but she is afraid of his reaction as he is a big boy and has already hit her on several occasions and refuses to take any notice of her. John rarely goes to school and stays out until late with his friends. Advise Mrs Agius as to her legal position.

SECTION TWO

4. (a) To what extent is it true to say that decisions of the '[Catholic] Tribunal' are automatic?

(b) 'X' (the bride) and 'Y' (the bridegroom) are due to celebrate marriage according to the Catholic rite tomorrow, the 2nd September 2009. This morning the bridegroom 'Y' has informed the bride that, owing to an impediment, the Parish Priest has decided not to go on with the marriage ceremony. 'Y' argues that the problem can be solved by going through a civil marriage instead. 'X' is adamantly refusing this alternative though there is no bar to such a civil ceremony. You are one of the guests of the bride on the point of presenting her with your wedding present. 'X' faints and asks for your advice. What would you say?

5. (a) If you are asked to advise a young man whose future bride has abandoned him without any reason, would you rely on 'The Promises of Marriage Law' or on the 'Civil Code?' Do you think that new legal provisions should be enacted to deal with the non-fulfilment of a promise of marriage?

(b) Franca, a young Maltese girl from Gharb, married Georg, a German, in France. Georg never informed Franca that he had in fact married in Weimar (Germany) and had a son. They are now living in Spain. Franca is now querying whether her marriage was valid and, if so, she is asking for advice whether she can obtain a divorce or an annulment?

6(a) Examine any two grounds on which a marriage may be declared null. Illustrate by case law.

(b) 'A', a Maltese, wishes to marry 'B', who lives in Australia by proxy. Explain the procedure.

SECTION THREE

7 (a) "The award of care and custody of minor children greatly influences allocation of matrimonial home". With reference to case law, discuss the truth or falsity of this statement.

(b) Mr Borg has been separated from his wife for four years. As the result of a court judgement which found him guilty of adultery, he was ordered to vacate the matrimonial home which is his paraphernal property and pay regular

maintenance. Mr Borg has recently come to know that his wife is having an affair. Advise Mr Borg.

8 (a) Cite the various forms maintenance may take within a separation case making reference to both *pendente lite* and post judgement.

(b) Sam and Kevin are the sons of Mr and Mrs Pace who separated eighteen months ago. Mrs Pace was awarded custody of the boys and took them to her country of origin in France. During their visit to Malta this year to spend the summer holidays with their father, Kevin related that his mother's boyfriend was abusive towards him and his brother and has refused to return to France. Advise Mr Pace.

9 (a) "The introduction of the domestic violence act has affected the separation process by ensuring more equitable solutions for both parties". To what extent, if at all, do you agree with this statement?

(b) After a whirlwind romance, Mr Zammit and Ms Abela got married in January 2009 but immediately realised that they were incompatible. They have already found other partners and wish for a speedy termination of their marriage. Advise the couple.

Faculty of Laws
LL.B. Year II
Examination in Family Law
Wednesday 27 January 2010
10.30am – 13.30pm

Answer **THREE** questions.

Choose **ONE** question from each section, making sure you answer both parts of the same question. If different parts of a question are answered, marks will be allocated only to the first part of the question.

Write your answer to each section on a separate booklet.

Marks this paper: 100 - (a) questions carry 18 marks each and (b) questions carry 15 marks each. Total 33x3 =99 +1 *ex gratia*

[Tutorial marks have also been graded out of 100 and carry 10% of the total mark]

SECTION ONE

1. (a) Cite those instances in which the presumption of fatherhood may be challenged under Maltese law. In your answer, use case law to make reference to the debate relating to “the legal presumption being allowed to prevail over the biological reality”.

(b) Ms Borg has an ongoing problem with drugs and has spent time in prison for prostitution to fund her drug habit. She has a child of four years and her current female partner is encouraging her to place the child in residential care until they can undergo a rehabilitation programme. Ms Borg is concerned that this may result in the child being placed under a care order with no possibility of appeal from the decision. Advise Ms Borg

2. (a) “In alternative care, the suitability of the parent(s)/ carer(s) should be determined according to the needs of the child”. Discuss with reference to recent legal provisions in the law on Adoption and Foster Care.

(b) Jane was born John and following forty troubled years, during which John got married and had two children, has undergone medical procedures to effect a sex change. Jane wishes to change all official documentation and get married to a man but has been told this is not possible. Advise Jane.

3. (a) To what extent, if at all, has the jurisprudence of the European Court of Human Rights impacted on the notion of “Family” in Maltese Family Law? Make reference to local and ECHR case law to substantiate your answer.

(b) Mrs Attard has four children aged 10, 8, 4 and 2. Mrs Attard is *de facto* separated from the father of the two eldest children and he no longer lives in Malta and cannot be traced. Mrs Attard is currently living with the father of the

two youngest children although he has not acknowledged the children and does not always contribute to their maintenance. Mrs Attard has heard that her social assistance for the children will be stopped if she does not take steps:

1. to sue her husband for maintenance, and
2. to register the younger children's father in their birth certificate

Advise Mrs Attard.

SECTION TWO

4. (a) John was wandering in Valletta six weeks before his engagement with Mary. He entered a bookshop within twenty minutes inside he felt carried away by Miranda the salesgirl. Three days later he met Miranda in a wine bar in Vittoriosa and he continued having regular appointments with her. Every time he picked some souvenir – bits of cigarette ends she had smoked, some locks of her, her lipstick, her handkerchief.....Finally the engagement day arrived and John invited Miranda to the party 'as an old time friend'. But his girlfriend Mary smelt that something was wrong because John fainted just as he was putting the ring on her finger. Then Mary saw Miranda staring at John. The engagement party was over.... Mary needs your advice about whether John had a good reason to abandon her. She is worrying about the diamond set, the ring, the expensive shawl, the fridge and the washing machine he had given her. She has also asked you about the expenses for the party, the hi-fi equipment she had given John and the daily meals for five years her mother had prepared for him. Mary also feels embarrassed because all the village now knows that she has been jilted by John. In the meantime Miranda has abandoned John who continues following her even threatening suicide. John maintains that a young man can always have a change of heart. Advise Mary.

(b) Friar Lawrence has been appointed a parish priest in a small village in the south of Malta. A young couple, Romeo and Juliet, have just visited him insisting that he marries them within a week as they have fallen out with their parents. Juliet had been adopted from Romania by Romeo's father and they have lived in the same household for the past fifteen years. Friar Lawrence intends meeting the wishes of the romantic couple and then to transmit the act of marriage to the Director of the Public Registry one month later. Advise Friar Lawrence.

5. '(a) A marriage shall be void if the consent of either of the parties is vitiated by a serious defect of discretion of judgment on the matrimonial life, or on its essential rights and duties.' Discuss and refer to case law.

(b) Mr.Zammit is feeling as if he has been given a new lease of life after obtaining a decision from the [Church] Tribunal that his 1999 marriage was null. He is now under the impression that he may marry his new sweet heart straight away without following any other formality. Advise Mr Zammit.

Faculty of Laws
LL.B. Year II
Special Session Examination in Family Law
Thursday 9th September 2010
9.15AM - 12.15PM.

Answer THREE questions.

Choose ONE question from each section, making sure you answer both parts of the same question. If different parts of a question are answered, marks will be allocated only to the first part of the question.

Write your answer to each section on a separate booklet.

Marks this paper: 100 - (a) questions carry 18 marks each and (b) questions carry 15 marks each. Total 33x3 =99 +1 *ex gratia*

[Tutorial marks have been graded out of 100 and carry 10% of the total mark]

SECTION ONE

1 (a) Interdiction and tutorship are said to share a number of common characteristics. List the comparisons and highlight the essential differences between the two institutes, indicating any need for changes in the law.

(b) Mr Bartolo has been married and childless for seven years. He suspects that his two month old baby is not his child because of his frequent absences from Malta caused by work. List the questions you would ask before being in a position to advise Mr Bartolo.

2 (a) "The definition of family cannot remain static but must change in keeping with time and place." To what extent, if at all, do you agree with this statement? Make reference to domestic legislation, local and European jurisprudence in your response.

(b) Ms Borg is a single mother of three children aged 8 and under, who has been readmitted to Mt Carmel Hospital for long term treatment. Her partner is the father of the two youngest children and has been trying to care for the whole family while working full time as a builder but is finding it impossible to cope. The maternal grandmother who is on bad terms with her daughter and with the partner now wishes to look after the children herself. She has called appogg and indicated that a care order should be issued and that the children should be placed in her care. Advise appogg.

3 (a) Termination of parental rights is often advisable but rarely applicable". Discuss the circumstances which give rise to termination of parental rights and comment on the statement, making reference to case law and comparative law.

(b) Mr and Mrs Demajo have adopted a child from overseas and wish to register the adoption locally. They have also heard that their child's mother may make arrangements to keep in touch with him after the adoption and they are concerned about the effect this may have on their family. Advise them as to the options available.

SECTION TWO

4 (a) One of your clients is asking for your advice about the legal consequences of breaking a relationship with his girlfriend after having courted her for the past four years. His future mother in law used to prepare lavish dinners for him and a few months ago your client and his girlfriend held a first class engagement party in one of Malta's leading hotels. What legal principles should you keep in mind while advising him?

(b) Mrs Zammit has just learnt that the [Church] Tribunal has declared her 1990 marriage invalid. She feels that there was nothing wrong with her marriage. Her ex-husband is planning to register the Tribunal decision. Mrs Zammit would like to know whether she can still contest the decision.

5 (a) According to section 19 of Chapter 255, marriage shall be declared void
"(e) if either of the parties is impotent, whether such impotence is absolute or relative, but only if such impotence is antecedent to the marriage;
(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;"

Explain both these grounds.

(b) Mr and Mrs Cuschieri have been married for five years. They have now moved to Germany where Mr Cuschieri is working as a lawyer. Their marriage has seriously deteriorated and Mr Cuschieri has decided to obtain a divorce decree from Germany. Advise him.

6. (a) "One cannot marry validly without following the formalities preceding marriage."- How far is this true? Can a decision of the marriage registrar be challenged?

(b) A has been adopted by the Cutajar family. B, his sister, has also been adopted by another Maltese family. They have fallen madly in love, e-mail each other every hour, and are planning to get married. Recently they discovered that they are brother and sister. Advise them.

SECTION THREE

7 (a) Discuss the effects of the Domestic Violence Act (Chapter 481) with reference to the powers of the Family Court and the impact on spouses seeking separation.

(b) Mr and Mrs Attard have applied for separation. Mr Attard is contesting his wife's *de facto* care and custody of their minor child aged 2 years. Mrs Attard's lawyer has cited the tender years doctrine during mediation. Advise Mr Attard.

8. (a) "Maltese law has eliminated fault-based separation in a bid to encourage resolution of family disputes". Discuss with close reference to the sections of the Civil Code.

(b) Mrs Vella concluded a separation last year and was awarded care and custody of the 3 minor children, the right to live in the matrimonial home and substantial maintenance for herself and the children. She has fallen in love with a female friend and is tempted to start an affair but is concerned about possible legal repercussions. Advise Mrs Vella.

9(a) "Care and custody determination often influences *pendente lite* provision of matrimonial home and the quantum of maintenance awarded." Does case law prove this statement to be true?

(b) Mr and Mrs Caruana are awaiting a final decision in bitterly contested separation proceedings. Mr Caruana has entered into a new relationship and his partner is expecting a baby. He wishes to purchase a flat with his new partner. Mrs Caruana is very hurt by her husband's adultery and is unwilling to cooperate in any way. Advise Mr Caruana.

UNIVERSITY OF MALTA
FACULTY OF LAWS
JANUARY 2011
LL.B. II
CVL2010 – FAMILY LAW

WEDNESDAY 2ND FEBRUARY, 2011

1.00PM – 4.00PM

ANSWER THREE QUESTIONS. WRITE YOUR ANSWER TO EACH QUESTION ON A SEPARATE BOOKLET.

MARKS THIS PAPER: 100 – (A) QUESTIONS CARRY 20 MARKS EACH AND (B) QUESTIONS CARRY 13 MARKS EACH. 1 MARK IS AWARDED *EX GRATIA*.

[Tutorial marks have also been graded out of 100 and carry 10% of the total mark]

1. (a) Art. 2 of the Civil Code stipulates that the law promotes the unity and stability of the family. Do you consider the relative measures, as provided by law, to live up to such promotion?

1. (b) Mario not so long ago committed adultery and, to compound his troubles has now lost his job. His wife has just filed a case for personal separation against him and is claiming maintenance 'pendente lite'. He is objecting on the ground that the limited social assistance he is entitled to is not sufficient to maintain their child and his father; moreover he insists his wife could seek employment even though she says she is not in a position so to do. Where does Mario stand?

2. (a) The Marriage Act mentions a number of restrictions on marriage (Art. 3-6). Discuss critically these restrictions.

2. (b) Silvana Decelis who graduated as an engineer a couple of years ago has already made a name for herself and will soon be marrying Julius Borg. For professional reasons she would not like to drop her maiden surname yet is concerned about the surname any children born in marriage will carry. Advise on the possible options.

3. (a) Distinguish between a 'de jure' and a 'de facto' separation. Who may demand a personal separation, and on which grounds?

3. (b) The relationship between Silvio and Marthese, who had been going out together for the last two years, has just ended. According to Silvio they had been meeting merely as friends. Marthese claims that they would have eventually married; had it not been so her parents would not have accepted to have him dine once a week at home and she would not have given him any of the gifts she did in fact give him. Silvio contends that as there was no engagement party it could not be said that there was a betrothal. Where do Silvio, Marthese, and her parents stand at law?

4. (a) Discuss with reference to case law, the circumstances of the different types of custody arrangement and their effects on children and their parents.

4. (b) About a year ago, Mr. Vella and Ms. Bigeni had a baby boy following a short relationship that was later terminated. These two persons no longer speak to each other. Presently, the baby is in the care of the mother who in turn is living with her partner who she met two months ago. On the other hand, Mr. Vella lives alone and wishes to see his child on a regular basis. He seeks your advice as to necessary procedures that would secure him regular visits to his offspring. Advise Mr. Vella.

5. (a) What is the position at law of child born out of wedlock? Discuss, among other things, issues relating to acknowledgement and impeachment of that acknowledgement, and the surname of the child.

5. (b) Andy and Marlene had been living together for five years when their son John was born. When John was about to go to school Andy realized that his son did not carry his surname. It was at this time that Marlene told Andy that she had never gone through a legal separation from her husband since he was given a long prison term just a few weeks after their 'de facto' separation and they never bothered formally separating since there were no children involved and they had no common property of any value. Andy wishes to be recognised as John's father and Marlene finds no objection with this.

a) What is their position at law? b) How would their position have been different, if at all, had the child been born just a year into their relationship?

UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2011
LL.B. II
CVL2010 – FAMILY LAW

FRIDAY 2ND SEPTEMBER, 2011

9.15AM – 12.15PM

ANSWER THREE QUESTIONS. WRITE YOUR ANSWER TO EACH QUESTION ON A SEPARATE BOOKLET.

MARKS THIS PAPER: 100 – (A) QUESTIONS CARRY 20 MARKS EACH AND (B) QUESTIONS CARRY 13 MARKS EACH. 1 MARK IS AWARDED EX GRATIA.

[Tutorial marks have been graded out of 100 and carry 10% of the total mark]

1. (a) Article 19 of the Marriage Act is one of the mainstays of the said Act. Elaborate.
1. (b) Martin and Daphne have been married for the last eight years. In one of their not-so-frequent quarrels Daphne, in the heat of the moment, claimed that Martin had committed adultery two years ago which he vehemently denies. He retorted that whereas Daphne could work part-time to add to the family income she prefers staying at home chatting with friends. Examine this situation in the light of the relevant Civil Code provisions highlighting the rights and duties of Martin and Daphne.
2. (a) Consider critically any two grounds giving rise to separation, illustrating your answer by reference to case law.
2. (b) Thomas, an English man living in London, had planned to marry Desiree, a young Maltese lady, at Mdina in the third week of September. Only yesterday he informed her that he had just been diagnosed with a rare, non life-threatening disease which nevertheless entails three spells - each lasting two weeks – in hospital for the next six years, with the first treatment having had to be fixed for the second week of September. Thomas is prepared to appoint his brother as proxy for the marriage. Desiree is very confused; not only is she not so sure about the validity of such procedure but in view of the disease she is having second thoughts about the intended marriage. Advise Desiree.

P.T.O.

3. (a) Examine the notion of maintenance between spouses, and that due to children.

3. (b) Anita intends filing a letter requesting permission to start separation proceedings against her husband Albert. She claims he is not maintaining her even though he has the means to do so, and that he turns violent on the slightest of pretexts. As she often hears that separation procedures take years to be concluded she is worried that she hardly stands any chance of having some remedy in the short term. Advise Anita.

4. (a) Discuss the notion of 'care and custody' making reference to recent case-law.

4. (b) Mr. and Mrs. Borg separated judicially two years ago. Together they have two children, Emily and John, three and eight years old respectively. The court awarded exclusive custody of the two children to the mother. Mr. Borg is not happy with this situation and wishes to obtain sole custody of John. Advise Mr. Borg on the possibilities available to him by law.

5. (a) Write about the two instances when the law presumes that a child is conceived or born in wedlock.

5. (b) Edward and Clarissa got married in 2006 after Clarissa had given birth to a child that Edward had legally recognised as his own in the act of birth. The couple *de facto* separated a few weeks ago. Edward came to you for advice since he does not want to keep on maintaining the child. The reason for this is the fact that although he had recognized the child as his own he knew, at the time, that the child's natural father was Clarissa's ex-boyfriend with whom she had broken up a few weeks prior to meeting him. When Edward told Clarissa that he did not want to continue maintaining the child given he was not his biological father, Clarissa told him 'You should have seen that before putting the child in your name, you knew he wasn't yours. He's your responsibility now!' Edward wants to know whether, given the circumstances, he can stop being considered the child's father, what the legal procedures he needs to go through are and whether he is likely to end up footing the bill. Discuss what advice you would give Edward and the reasons for the same.

Faculty of Laws
LL.B. Year II
Examination in Family Law
Thursday 26th January 2012
9.15AM - 12.15PM.

Answer THREE questions.

Write your answer to each question on a separate booklet clearly indicating the question answered and other relevant details.

Marks this paper: 90% [Tutorial marks carry 10% of the total mark]

Each question carries equal marks.

Question 1

Melissa, a student, gave birth to Paul, a child with special needs on the eve of her seventeenth birthday. Melissa declared the father to be 'unknown' on the child's birth certificate. In the meantime, John, a nineteen year old University student, is not sure if he is Paul's biological father. His relationship with Melissa was of a short term nature and he is unsure whether Melissa had other intimate relationships with someone else during the period the child was conceived.

However, John feels that it is his duty to contribute to the child's needs and so he is already giving a small part of his stipend to Melissa to cater for the child's basic needs. Meanwhile he has heard that Melissa intends to leave Malta to study abroad but it is unclear whether she means to take Paul with her or leave him with his grandparents. He is determined to ask the Court to be granted custody of Paul if it is conclusively proven that he is the child's biological father.

1. Does the fact that Melissa is a minor affect your answer?
 2. How does the declaration regarding unknown paternity impact on the issue?
 3. What are the consequences of such registration with regard to the child's civil status?
 4. How would filiation impact on John's position regarding:
 - i. Maintenance (child with special needs)
 - ii. Custody
 5. What are John's rights in relation to Melissa's possible travel plans?
- Advise John on the possible problems he might encounter in this scenario and the solutions to them making reference to Maltese Law and applicable jurisprudence.**

Question 2

Martin and Mary Rose married in 1996 and had a child Marilyn in 1998, whom they both adore.

After having lived in rented premises for four years they managed to acquire a good-sized flat in part thanks to money Martin inherited and the balance by way of a bank loan. Repayment is over thirty years.

Unfortunately the relationship between the spouses has recently taken a turn for the worse as they are no longer seeing eye to eye.

Only two days ago Martin dropped a bombshell. He claimed that from advice he got - he did not disclose where he got it from - not only has he got a very good chance to separate but it is also very likely that their marriage is not valid as, he claimed, there was never a proper commitment on their part.

Mary Rose was dumbstruck and protested that Martin could not just claim that the marriage never existed. Neither was there room for a separation as problems could always be resolved.

She has rushed over to you for advice about the following matters:

1. Where do both spouses stand as regards the validity -or otherwise - of their marriage?
2. Assuming that the marriage is really null,
 - i. what is the status of their daughter Marilyn?
 - ii. what would happen to their flat?
3. If the marriage is valid can Martin just press for separation on no valid ground, and certainly against her wishes?
4. Were Martin to file a case for separation
 - i. who is to be granted custody of Marilyn ?
 - ii. would Mary Rose be entitled to continue residing in their flat?

Mary Rose describes herself as a housewife with a very limited education. She needs maintenance both for her and Marilyn but Martin is insisting that unless the flat is sold he would not be able to provide maintenance.

5. What rights does Mary Rose have regarding maintenance:
 - i. for herself?
 - ii. for Marilyn?

Advise Mary Rose to the best of your ability illustrating your advice by reference to court judgments where possible.

Question 3

John married Bianca met while working in the same office at the European Commission in Brussels. John is Maltese and Bianca is Italian and the couple got married in Bianca's home town in Italy eight years ago. Last year they decided to come to live in Malta with their two young children: Carlo aged four and Giacomo aged eighteen months. John found a good job and they are living in a flat belonging to John's parents until they buy a matrimonial home.

Bianca is finding it very difficult to cope with life as a full time parent, particularly as Giacomo has a serious illness which requires full time attention. She has had to resign from her job in order to come to Malta and is feeling very isolated and depressed. She has demanded a full time carer so that she can spend some time outside the home and find a part-time job. John is very protective of Giacomo and when he heard this, he lost his temper and hit Bianca. He has told her that if she raises this issue again he will sue for separation, throw her out of his house. He said that her actions would lead any court to automatically award him custody of the children and he would take steps to ensure she has no access to them at all. He

has also threatened to make a report about her unfitness as a mother to the social services.

Bianca has no-one to turn to in Malta and seeks legal advice from you regarding the following issues:

1. Has Bianca's legal position as a married woman changed in any since moving to Malta?
2. Is John correct in stating that the flat is "his" house" and can he evict her from it?
3. Is Bianca correct to be concerned that she may lose her children?
4. Is John right in saying that her actions are those of an unfit mother?
5. Can Bianca take any action against John for hitting her?
6. Should Bianca speak to social services herself?

Advise Bianca drawing on current law and practice, making reference to court judgements where applicable.

Question 4

Doreen is twenty seven years old. She grew up in a children's home and never knew her biological father but knows her mother who has been treated for a mental illness by repeated admissions to hospital since Doreen's birth. She also has an older sister, Teresa, who is married with three children of her own and who refuses to have anything to do with Doreen because of her current boyfriend.

Doreen has been in many relationships including one marriage which broke down four years ago but she was never legally separated. She has one child from the marriage and three other children from different fathers ranging in age from three to twelve years. She also suffers from her mother's mental illness and this sometimes requires her to be admitted for treatment so during those times the children are usually cared for in a children's home. Her current partner is due to stand trial for armed robbery and she is worried that if he goes to prison and she requires treatment again she may lose the children permanently. Social workers have repeatedly encouraged her to place the children in foster care or give them in adoption but she refuses to do so. Yesterday she received a letter from her former landlord, demanding arrears for the past two years' rent for the apartment she used to live in together with her husband until she left him.

1. What is Doreen's position vis a vis her husband?
2. Is she responsible for the payment of rent?
3. Is Doreen right to be concerned that the children may be taken away for her permanently?
4. Explain to Doreen the pros and cons of placing her children in foster care and/or adoption.
5. Does Teresa have any legal obligation to help Doreen?

Suggest a course of action which is in the best interests of Doreen and each of her four children, highlighting each of the legal institutes involved.

Question 5

Martin and James have just returned from their honeymoon in Spain where they got married. James was previously married to Catherine in Malta fifteen years ago and they have two children Samantha aged fourteen and Paul aged twelve. James and Catherine separated consensually ten years ago and obtained an annulment in November 2010. James has regular access to the children and they spend the weekend with him on every alternate weekend. They seem to look forward to the time they spend with their father and he has always been an active parent who takes an interest in them and has regularly paid maintenance to Catherine for herself and for the children since the separation. Catherine is engaged to Patrick and they plan to marry in May 2012.

Patrick has always been opposed to the children spending time with Martin and to their visiting for a whole weekend. Now that James has married Martin he has told Catherine that he would like to adopt the children and while she likes this idea she is worried that James may not be happy about the proposal. Patrick has also suggested that Catherine should go to court to request a variation of the custody arrangements in light of this recent marriage, citing the best interests of the child as the basis for the change. He does not know that according to the separation agreement, Catherine is living in a house belonging to James until the children reach the age of eighteen.

Catherine comes to you for advice asking:

1. Should she apply to court to adjust the access arrangements which James currently enjoys with the children?
2. Should she give her consent to the adoption of the children by Patrick?
3. Should she suggest that James give his consent to such an adoption?
4. What would be the impact of her remarriage and/or the adoption on her rights to maintenance from James?
5. Would the annulment have any impact on maintenance payable to Catherine and/or the children?
6. Would she have to vacate the house on marriage/adoption?

Respond to Catherine's questions and give her your advice about all the legal issues in this scenario.

UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2012 EXAMINATION SESSION
LL.B. II YEAR / L.P. OPTION

CVL2010 – Family Law
Tuesday 4th September, 2012
11.45AM – 2.45PM

Answer THREE questions.

Write each answer on a separate booklet.

In responding to each question and giving your advice include all possible options, making reference to current law and jurisprudence as applicable.

Total marks for this paper 90% (10% were allocated to tutorial assignments)

CASE ONE

Krista has been *de facto* separated from her husband Michael for the past six months ever since she filed proceedings for separation. She is living in rented accommodation together with their two children, Max aged eight and Karl aged five but she is finding it difficult to cope financially as Michael is not paying her any maintenance and her wages are insufficient to cover all the bills and the children's private school fees. She has started seeing another man and is worried that this may be used against her in the forthcoming court case even though she left her husband because he was having an affair with another woman. Now Michael has sent her a letter stating he wants her to go back home. She comes to you saying she is convinced the marriage is over and asks for your advice to attain maintenance immediately and regain control of the family home.

1. How will Krista's infidelity affect the separation?
2. How will Michael's infidelity affect the separation?
3. How will maintenance be decided?
4. How will allocation of the matrimonial home be determined?
5. How will Michael's failure to pay maintenance be regarded?
6. Should there be any issues regarding allocation of custody?
7. What are the requirements regarding reconciliation according to law?

Advise Krista on these issues, raising any other relevant concerns.

CASE TWO

Gina and Tony have been trying to have a baby for the past six years and since they married last year they have decided that their best option is to adopt. They did not register this interest formally but have been doing some exploratory work on their own. For instance, they have been in touch with a distant relative who is a missionary in Ethiopia and they have made inquiries about the legality of surrogacy. Now they have decided to speed up the process as much as possible but are unsure about the legal requirements of the adoption process and come to you with a list of questions:

1. Is it true that they may not adopt before they have been married for a set number of years?
2. Is it true that both Gina and Tony must be over 30 years of age?
3. Is it true that they will be able to commission a surrogate mother if all else fails?
4. If they have a child of their own during the time they are awaiting the baby could they decide to stop the process?
5. Is it true that if they adopt a child from a foreign country there are additional procedures to be followed?
6. Is it true that the child they adopt will have to keep in touch with the birth parents?
7. In what way will their health, financial status and reputation affect their chances of being given a child in adoption?

Gina and Tony tell you that they feel that they will only be complete as a family when they have a child and they are willing to pay whatever it costs to make this happen.

Advise Gina and Tony, making reference to the basic principles of the law on adoption.

CASE THREE

Nathan and Shirley had a seven-year relationship, which ended five years ago when Shirley left him for another man. Last week Nathan met Shirley's mother for the first time since Shirley left and he was shocked at her harsh words towards him for failing to maintain his son, Paul. This was the first time Nathan heard of a son and when he asked Shirley to confirm or deny the news she said her son's father was her husband Donald. Nathan went to Paul's school to catch a glimpse of the boy in the playground and ended up feeling positive that Paul must be his child because he bears him such a strong resemblance. ~~Paul~~ Nathan has since married Amelia and they have a daughter Janice. He is concerned at Amelia's reaction but feels it is morally imperative that he acknowledge Paul if he is his son. He asks you

1. How can he claim legal paternity of the child?
2. Is this possible notwithstanding the opposition of Shirley?
3. Does Donald have any rights vis a vis Paul?
4. Should he go up to Paul and talk to him about their relationship?

5. What would be the legal consequences of being acknowledged as Paul's father?
 6. Would Amelia have any say in the process and could he keep this secret from her?
 7. Would claiming paternity of Paul affect his daughter Janice in any way?
- Advise Nathan, taking into account both the short and long term repercussions of his actions

CASE FOUR

Pamela, Fabien, Martin and Edward have been living with their grandmother Nanna Katy for the past six months ever since their father was sentenced to five years imprisonment. Nanna Katy is not very well and is living on social assistance, which means she is constantly struggling to care for the children without financial and physical help, particularly after her husband died in March this year. Even though times are difficult, she insists that she should be the person to continue to care for them. The children's mother Hannah visits sometimes but has serious drug abuse problems and does not feel she can take care of the children herself although she hopes to be in a position to do so soon. Her own parents would also like to care for the children but know they are not welcome in Nanna Katy's home, not even to visit. Nanna Katy comes to you to ask

1. Should she insist that Hannah pay maintenance for the children?
 2. Would it be better for the children if Hannah is completely removed from contact with them?
 3. What will be the consequences if she informs the authorities that she needs help?
 4. What protection could be given to the children by the State?
 5. What steps could be taken for her to be made legally responsible for the children in a more formal way?
 6. How could the children be involved in the decision?
 7. How could the father be involved in the decision?
- Advise Nanna Katy, highlighting the various options of alternative care available.

CASE FIVE

Matthew and Julie got engaged three years ago and Julie's parents threw a huge party to celebrate, inviting over 500 guests Julie and her mother are now planning a very extravagant wedding, which is set for 30 September 2012. They have paid numerous deposits on the hall, catering, flowers, cars, et cetera in line with the long list of essentials drawn up by the wedding planner. Julie's wedding dress has been

ordered from Paris and has cost four thousand euros, the honeymoon to Barbados has been booked and paid for and the invitations are written and just waiting to be sent.

Matthew is feeling increasingly pressured by the situation and is concerned that he will not be able to earn enough money to keep Julie in the style to which she is accustomed. Julie's parents constantly remind Matthew how they have helped him build up his business both financially as well as by providing him with numerous contacts. Matthew is now increasingly convinced that he will not be happy with Julie as his wife because she is too attached to her parents and is too concerned with material things. He is afraid of Julie's father and is very worried about the consequences of leaving her. He comes to you to ask

1. What will be the repercussions if he breaks the engagement?
2. Is his ground for terminating the engagement a valid reason at law?
3. Would Julie's parents have any rights against his business?
4. Would he be responsible in any way for the costs of the engagement party?
5. Would Julie be bound to return the solitaire engagement ring he bought her, which he is still paying off?
6. Would he be responsible for the wedding expenses even though he played no direct part in the preparations?
7. Would he have any rights over the flat he and Julie bought as their future matrimonial home, even though Julie's dad lent them the money?

Advise Matthew, making particular reference to the possible consequences should he go ahead with the marriage.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR

CVL2000 – Family Law
Thursday 27th June, 2013
09.15AM – 12.15PM

Answer **THREE** cases out of the five listed below.
Write each answer on a separate booklet.

Answer all seven questions in each of the three cases you select.

10 marks are allocated to each case for appropriate reference to jurisprudence and case law.

CASE ONE

Anne fell madly in love with Hans, a German citizen. Her father threw a splendid engagement party at the Hotel Cymbeline when practically speaking all the cabinet members were invited. Anne gave Hans a 24-carat engagement ring. Within a few months the couple decided to marry but the marriage registrar refused to publish the banns and they had to turn to Dr Borg Micallef Farrugia for advice. When this obstacle was overcome, the village priest sent for Anne and informed her that he could not go on with the wedding ceremony as he had information that Hans had forced an ex-girlfriend to have an abortion. With the wedding invitations already out and the caterer in full swing, Hans suggested that they should go through a civil ceremony. Anne flatly refused as she insisted on marriage according to the Catholic rite. The wedding was cancelled but the bills still fell thudding through Anne's letter box like homing pigeons. The village did not stop gossiping. So, to escape the hostile atmosphere surrounding her, Anne flew to Florence where she met Pierre, a French citizen domiciled in Spain. The romance was translated into a marriage in the marble covered battistero in front of Santa Maria del Fiore. While honeymooning in Barcelona, Anne realised that Pierre was interested in two Spanish ladies well known for their flamenco dancing. She quickly filed for a divorce decree in the Barcelona Court (Family Division) which she obtained within two months. She would like to marry Gamri from Bir Miftuh but she has heard that he is sterile.

Advise Anne on the following:

1. Does her father have any right to recover the costs of the engagement party and wedding? (15 marks)

2. Can she ask Hans to have her engagement ring back? (10 marks)
3. Has she any right for moral damages as she is feeling embarrassed about the cancellation of her first marriage ceremony? (15 marks)
4. Dr Borg Micallef Farrugia had advised them to file a constitutional case against the Marriage Registrar. Had he given the right advice? (15 marks)
5. Was her marriage ceremony in the Florence battistero valid? (10 marks)
6. Will her divorce decree be recognised in Malta? (10 marks)
7. Will she be able to ask for the annulment of her marriage to Gamri if his sterility is confirmed after the marriage ceremony? (15 marks)

CASE TWO

Caroline and Brian have been married for twenty-two years and have two children, Shawn aged twenty-two and Tom aged eleven. Shawn is a University student and has another two years left to finish his studies while Tom has a mental disability which requires special schooling and attention. Since the birth of Tom, Brian and Caroline have been de facto separated but living in the same house and while Caroline is a loving mother towards their sons, she has become increasingly jealous and violent towards Brian over the years.

Brian has been having an affair with Maggie for the past six months. He decides he wants to seek a divorce from Caroline, buy a flat and go and live with Maggie but he is afraid of Caroline's reaction as the last time he mentioned leaving her she tried to stab him.

He is also worried about maintenance issues as he is struggling to keep his little corner shop open and does not know how he will be able to maintain two households if ordered to do so.

Brian comes to you for advice.

1. Is there any way he can apply for a quick divorce? (10 marks)
2. What would be the legal consequences of his going to live with Maggie? (15 marks)
3. Would there be any problem if he were to buy a flat straight away? (10 marks)
4. What steps could he take to protect himself against Caroline? (15 marks)
5. Would he be expected to pay maintenance for Caroline? (10 marks)
6. How would maintenance for each of their sons be calculated? (15 marks)
7. How does Family Law theory contribute towards the resolution of issues as detailed in this case? (15 marks)

CASE THREE

Alison, a 28 year old widow has a four year old child Jean, born from her marriage with her deceased husband. She is currently in a serious relationship with Karl and they both wish to get married in the near future. She is concerned about the legal consequences that this marriage will present with regard to her child's welfare, and asks for your advice on the following issues:

1. Can Karl adopt Jean? (15 marks)
2. Can the adoption application be revoked? (10 marks)
3. Does Alison need to consent to such application? (10 marks)
4. If this adoption takes place, what legal rights will Karl have over Jean? (10 marks)
5. Will Karl have parental authority over Jean? (15 marks)
6. What rights will Jean acquire if Karl becomes his legal father? (15 marks)
7. What would happen to Jean if the couple marry and then separate? (15 marks)

CASE FOUR

Paul works as a manager with one of the leading hotel companies in Malta and as a result of this is regularly abroad on business. He comes to your office evidently confused and distraught by what he has recently discovered. He informs you that he has been married with Yvonne for the past three years. They have a son called Alex who is two years old. Paul had been having doubts as to his wife's fidelity for quite a long time and has recently come to know that, in his absence, she regularly sees a man called Mike who works with her, after work and at Mike's house. Paul has not yet confronted his wife with this and requires your advice as to what he should do from now on. He is concerned that although he has been bringing up Alex as his own son, the boy might not even be his. He does not bear him any resemblance but looks a lot like Mike according to the pictures he has seen of this man. During one of their rows his wife herself had brought this into doubt by suggesting that the boy was only hers and that, for all Paul knew, he could have been conceived during one of his trips abroad when he used to leave her alone for days on end.

1. What are the remedies available to Paul should he decide to proceed for the repudiation of the child Alex? Which formalities are required? (20 marks)

2. Should Paul decide not to repudiate the child and continue treating him as his son would others be able to bring such an action? Against whom would any action for repudiation be directed? (15 marks)
3. Paul also queries the possibility of submitting himself to a paternity test. He is concerned that Yvonne might not agree to submit herself or the child to one. What is the legal position on this? (15 marks)
4. Paul seeks your advice as to whether he should proceed immediately with an action for separation based on his wife's adultery. Advise him. (15 marks)
5. Paul seeks your advice as to whether he should seek to confront his wife and/or Mike over the above-described facts. Advise him. (10 marks)
6. Would any admission on the part of Yvonne facilitate or expedite matters from a legal point of view? (10 marks)
7. Paul also seeks your advice as to how he should behave towards his son Alex both before and during proceedings if these are instituted. (5 marks)

CASE FIVE

Martin – a successful but workaholic IT Consultant – and Charmaine married 5 years ago. They have an only child Angelica born 4 years ago. Charmaine left the matrimonial home 9 months ago claiming she could not stand Martin's constant nagging and occasional indecent language he resorted to. The Department of Social Services has stopped sending her provisional maintenance as Charmaine never took any legal steps. On his part Martin is only willing to support Charmaine if she returns to the matrimonial home with Angelica and in the meantime is toying with the idea of filing a Court case to obtain sole custody of Angelica claiming that his wife is not in a position to see to the wellbeing of the child. Charmaine hotly contests this charge.

1. Was Charmaine in breach of the law in leaving the matrimonial home? (15 marks)
2. Is Martin's contention – regarding support to Charmaine – legally correct? (10 marks)
3. Where does Martin stand with his proposed sole custody case? (15 marks)
4. What legal steps can Charmaine take to obtain a maintenance allowance? (15 marks)
5. Does Charmaine have enough grounds to file a separation case? (10 marks)
6. Could Charmaine request Martin to leave the matrimonial home so that she can move in with Angelica? (10 marks)
7. In what way does this case highlight the tension between welfarism, power and rights often central to Family Law theory? (15 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR

CVL2000 - Family Law
Thursday 5th September, 2013
09.15AM - 12.15PM

Answer **THREE** cases out of the five listed below.
Write each answer on a separate booklet.
Answer **all seven questions** in each of the three cases you select.
10 marks are allocated to each case for appropriate reference to jurisprudence and case law.

CASE ONE

After four years of courtship, Anne decided to break off her relationship with Paul as she felt uncomfortable with his looks once he started wearing spectacles. Moreover, she feels that he cannot make up his mind about the marriage date as he keeps postponing giving a final decision. She is now worried about a golden necklace he had given her and a diamond covered watch she had given him as a Christmas present. Moreover, she would now like to marry a certain Gustavo from Madrid who has obtained a divorce from his American wife from a Belgian court. Gustavo's American wife had been domiciled in Belgium but he had never left Spain. She is already having trouble with the marriage registrar who is reluctant to publish the marriage banns though her wedding in Gharb has become the talk of the town. Gustavo has informed her that he is not interested in having children at all because he prefers to spend his money on expensive cars and flying to the Bernabeu to see Madrid play all the season games. Anne's sister, Angelica, who lives in Malta, would like to marry Hermann, a German, by proxy.

- (1) Does Anne have a good ground for breaking her relationship with Paul? (15 marks)
- (2) What is going to happen to the gifts, which have been exchanged? (10 marks)
- (3) What are the chances of Gustavo's divorce being recognised in Malta? (10 marks)

- (4) What remedy, if any, does she have against the marriage registrar? (15 marks)
- (5) If the marriage is celebrated, how can she be sure that it has been validly contracted? (15 marks)
- (6) Once she is married, what can she do if Gustavo persists in refusing to have children and in following his life style? (15 marks)
- (7) Can Angelica marry Hermann by proxy? (10 marks)

CASE TWO

John and Carla have been married for twenty-four years and have four children, Simon aged twenty-two, Michael aged twenty, Patrick aged seventeen and Nina aged four. Simon is a University student, Michael has a full-time job in a design company and Patrick is studying for his Matsec exams with a view to going to University, Nina is still in kindergarten. When Nina was born, Carla had a very difficult birth and has suffered from post-natal depression ever since. John is a manager at a large local company and he has been looking after the children and maintaining the household largely on his own since the birth of Nina. At the Christmas staff party he started having an affair with a work colleague, Bridget. Bridget is divorced and is bringing up two minor children without any financial help from her ex husband who is untraceable. She has given John an ultimatum: if he wants to continue their relationship, he must move in with her and divorce his wife so they can get married. James does not see any future in his life with Carla but is worried about the impact this move may have on her mental health and how it will affect the children. He has already had a fight with his two elder sons over the matter when Bridget visited John at home and on that occasion the police had to be called in to stop the fight, with both John and Simon ending up in Casualty, needing medical attention and stiches for their wounds.

John comes to you for advice:

1. Is there any way he can quickly get a divorce without causing his wife too much stress? (10 marks)
2. What would be the legal consequences of his going to live with Bridget before the divorce is final? (15 marks)

3. Could the judge perceive John's actions as constituting domestic violence against Carla? (10 marks)
4. Would the fact that he is leaving mean that he would lose custody of the children? (15 marks)
5. Would he be expected to pay maintenance for Bridget and her children? (10 marks)
6. How would maintenance for each of his children be calculated? (15 marks)
7. Which theories of Family Law theory could best be applied in the resolution of this case? (15 marks)

CASE THREE

Adele is 17 years old. During her childhood, her biological parents persistently ill-treated her until she was removed from her home and since she was five years old she has lived in a number of settings, both residential care and foster care. For the past eight years, she has been living in the care of the same foster carer, Jane, who is very fond of Adele and wishes to adopt her. However, before doing so, Jane comes to ask for your legal advice about the following concerns:

1. Can she, a foster carer, adopt Adele? (15 marks)
2. What legal differences exist between being a foster carer and an adopter? (15 marks)
3. Does Jane need the consent of Adele's biological parents before adopting Adele? (10 marks)
4. What is the legal procedure that she has to follow in order to adopt Adele? (15 marks)
5. Can Adele object to this adoption? (10 marks)
6. As Adele is still a student, will Jane need to support her financially in her education? (10 marks)
7. To what extent, if at all, does Family Law Theory contribute to the understanding of the different institutes in Family Law?(15 marks)

CASE FOUR

Jeremy is twenty-three years old and had been dating Lucienne for three years. They broke up six months ago after he discovered that Lucienne had been having an affair with his best friend Paul. Lucienne had neither denied nor confirmed this but had agreed to terminate their relationship. He informs you that, a few days ago, whilst talking with a common friend he got to know that Lucienne is expecting a child and is planning on getting married to her new boyfriend Jean. Jeremy, who suspects that he might be the father of the child, has in the meantime tried to approach Lucienne and has seen her evidently pregnant with child together with her new boyfriend. Before proceeding further he fixes a meeting at your office and raises the following queries with you:

1. What are the remedies available to Jeremy should he seek to determine whether he is the actual father of the child expected by Lucienne? Which formalities are required? (15 marks)
2. How might his rights be affected, if at all, if in the meantime Lucienne got married to Jean. Which remedies would be available to him in that case and which formalities would be required? (15 marks)
3. Which rights and obligations would attach to him should it be confirmed that he is the father of the child expected by Lucienne. (15 marks)
4. Should he decide not to recognise the child and feign ignorance of Lucienne's pregnancy, would others be able to bring an action against him if he is the father? (15 marks)
5. Against whom would any action intended to establish the paternity of the child be directed? (10 marks)
6. Jeremy also queries the possibility of submitting himself to a paternity test. He is concerned that Lucienne might not agree to submit herself or the child to one. Advise him accordingly. (10 marks)
7. Would any admission on the part of Lucienne facilitate or expedite matters from a legal point of view? (10 marks)

CASE FIVE

1. Felicity a University graduate, and Marcello, an employee on minimum wage, married in 1992. They have 3 children, Fiona, Ethelbert and Chantelle aged respectively 19, 17 and 14; Fiona is at University, Ethelbert attends the Junior College and the youngest has just completed her annual secondary school exams.

Unfortunately over the last three years things have not been working out as they should for Felicity and Marcello. To make matters worse, Marcello is also alleging that a year ago Felicity committed adultery, which she vehemently denies.

It seems that separation is inevitable yet Marcello states that he can't afford to waste his time in court. In effect both spouses do not have an inkling how to go about the matter.

1. What steps would Marcello and Felicity have to take to reach a consensual separation? (15 marks)

2. Should agreement for consensual separation prove impossible, how can they proceed to start a court case? (15 marks)

3. What rights of custody do both parents have vis a vis the children? (15 marks)

4. Will Felicity's alleged adultery have any bearing on the issue of custody? (15 marks)

5. Marcello and Felicity are also in disagreement over the children's maintenance. The father claims he can maintain them by staying with them whereas Felicity, following the allegation of adultery, is seriously considering making him move out of the matrimonial home leaving her to reside with the three children while Marcello maintains all four of them. Advise. (20 marks)

6. How does Family Law theory contribute towards the resolution of issues as detailed in this case? (10 marks)

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. II YEAR

CVL2000 – FAMILY LAW (Conditionally Progressed)

WEDNESDAY 18th JUNE, 2014

9.15AM – 12.15PM

Choose **TWO** cases out of the four listed below.

Write each answer on a separate booklet.

Answer **all questions** in each of the two cases you select.

In each case students are expected to make appropriate reference to jurisprudence and case law.

CASE ONE

Jane and Jake have been married for twenty years, since they were both 28 years old. They have a comfortable home and although they are not well off they live a simple life where Jake works as a driver with a soft drinks company and does some farming in his family's fields. Though they have no children together, for the past six years they have fostered two siblings Tyron and Jonathan who are now 8 and 6 years old respectively. The boys' biological mother Tina has now given birth to another baby Victoria. The biological father of the three children is not known. One month ago Tina was interdicted by the Court and is therefore unable to maintain Victoria. Jane and Jake would love to bring up Victoria too and wish they could adopt both her and her brothers Tyron and Jonathan. They come to you with the following list of questions, in search of advice.

1. Does Jane and Jake's age restrict them from adopting any of the children? (10marks)
2. Does Tyron's, Jonathan's or Victoria's age play any part in the adoption process? (12marks)
3. Do Jane and Jake need Tina's consent to apply for the adoption and to carry it through? (15marks)
4. Would Jane and Jake's health, financial and social status affect their chances of adopting the three children? (15marks)
5. Will either of the three children be affected by changes to their civil status rights if adopted by Jane and Jake? (12marks) Would it benefit Tyron and Jonathan to maintain their status as fostered children? (6marks)

6. Could Tina request payment for the adoption to be carried out, particularly as she is giving up Victoria because she cannot support her? (10marks)
7. What is the procedure for application for adoption? (10marks) Which are the institutions involved in the adoption process? (10marks)

CASE TWO

Paul and Mary have been married for eight years and have one child Gregory who is three years old. Since Gregory's first birthday Paul has been missing his life as a bachelor and he decided to start going out with his friends again, leaving Mary and Gregory alone most of the time. Mary is very frustrated at this behaviour and has reacted violently towards him, throwing things at Paul and even hitting him. A few days ago, while on her way to her part-time job, Mary was stopped by a visibly pregnant woman who informed her that she is expecting Paul's child. Mary confronted Paul who confirmed this. Devasted by the news, Mary attacked Paul and tried to choke him in front of Gregory who started to scream hysterically. Mary has decided she cannot take Paul's actions and has come to you for advice on the best way to end her marriage.

1. Can Mary demand personal separation against Paul? (4marks) If affirmative, on which ground(s)? (10marks)
2. Can Mary demand divorce from Paul? (4marks) If affirmative, on which ground(s)? (10marks)
3. What conditions are necessary for Mary to institute proceedings for (a) separation, (b) divorce, against Paul? (12marks)
4. What would be the consequences of proving that Paul has given cause to the separation or divorce? (8marks)
5. (a) on Separation and (b) on Divorce, would Paul be relieved from the obligation of paying maintenance for Mary and Gregory? (12marks) Would the fact that he might be bound to maintain another child have any bearing on the judgement? (10marks)
6. Would Paul be able to counter that Mary has given cause to the separation or divorce because of her actions? (5marks) What procedures are available to protect (a) Paul, (b) Gregory? (15marks)
7. What repercussions would this move have on Gregory and would the actions of his parents have any effect on the Court's decisions in relation to care and custody and access arrangements? (10marks)

CASE THREE

Angela and Sam had been in a steady relationship for just a few months and got married in May 2014. Angela's mother planned a lavish reception following a big church wedding for their only daughter and sent out invitations to over eight hundred people. Sam was not happy at the way Angela's mother took over what he hoped would be a small wedding dinner for close friends and family but he was wary of complaining too loudly as Angela's father is his boss. Sam knows that his promotion in the company is directly related to this relationship and to the fact that Angela's mother treats him like the son she never had. The couple returned from Angela's parent's gift honeymoon in Bali yesterday but the trip was fraught with problems and the couple have not consummated the marriage. The company driver picked them up at the airport and took them directly to their new matrimonial home in the penthouse belonging to Angela's father's company. Today they are due to go to Angela's parents for lunch to share their news and photos but just before they leave Sam receives a phone call from a former lover, Matthew, who is still hurt by Sam's rejection and is threatening to reveal details of their relationship, to Angela. Sam had given him a substantial sum of money for his silence back in April and things were quiet for a while but now Matthew wants more. Just as Sam is concluding the phone call, he finds Angela sobbing in the bedroom. She shares with him that she suffers from chronic depression, has been suicidal and is under medication and close psychiatric support. Sam is in a huge panic and comes to you for advice.

1. Does this qualify as a valid marriage? (10marks)
2. Are there any legal implications should Sam's actions come to the attention of Angela and her parents? (10marks)
3. Are there grounds for annulment? If affirmative state the ground(s). (12marks)
4. Does the failure to consummate the marriage have any importance? (10marks)
3. Can Sam claim damages for Angela's failure to disclose her medical condition? (10marks)
5. Can Angela claim damages from him in any way? (10marks) Could Angela's parents claim any damages from Sam? (10marks)
6. Can Sam continue to live in the matrimonial home? (10marks)
7. Would the couple be able to remarry if they are granted a civil annulment? (6marks) Or should they petition for a divorce? (6marks) Could they petition for divorce? (6marks)

CASE FOUR

Patrick is a divorced man with one son Jake aged eleven who lives with his mother but visits his father every weekend from Friday night until Sunday afternoon. Sophie had been in a relationship with Sean for five years and they had two children. Sean never acknowledged the girls because of his marital relationship and children but he visits Sophie and the girls

regularly and pays maintenance for all three of them. Sophie gave Sean an ultimatum that he must leave his wife and acknowledge their children but he has refused to do so. Sophie broke up with Sean and turned to Patrick and fell in love with him. Since April, they have all been living in Patrick's house but they have been experiencing many difficulties. Jake is very upset to come home at weekends to find another woman and two little girls and he has been violent towards them. Patrick responds by hitting Jake which makes Sophie very upset and scares the girls. Jake's mother saw bruises on her son and came round to the house to speak to Patrick and demand that Sophie and her children leave the house otherwise she will not send Jake next weekend. Patrick responded that he will not accept any interference and Jake must obey him and continue to visit. Patrick comes to you to check out his rights and obligations.

1. Can Jake's mother legally stop sending Jake to visit? (8marks) What would be the consequences of such action? (10marks)
2. Could Jake decide not to visit his father anymore? (10marks)
3. Are there any circumstances where Jake's mother : Patrick's ex-wife may legally demand that Sophie leave Patrick's house? (10marks)
4. Could Patrick ask for full custody of Jake and send the boy to his mother at weekends so Jake can get accustomed to living with Sophie and the girls as a family? (15marks)
5. Who, if anyone, could take legal action under the Domestic Violence Act against Patrick? (15marks) What other actions are available against Patrick? (10marks)
6. Could Sean legally come to reclaim his children or demand access rights? (12marks)
7. If Sean stops paying maintenance would Patrick become liable to support the girls? (10marks)

UNIVERSITY OF MALTA

FACULTY OF LAWS

CVL2000 – FAMILY LAW (CONDITIONALLY PROGRESSED)

COURSE: LL.B. 2ND YEARS HONS.

DATE: TUESDAY 9TH SEPTEMBER 2014

TIME: 9.15AM – 12:15PM

Choose **TWO** cases out of the four listed below. Answer all questions in each of the two cases you select. Write each answer on a separate booklet.

When a question is divided into parts, each component carries the same mark, unless otherwise indicated.

In each case students are expected to make appropriate reference to jurisprudence and case law.

CASE ONE

Jane is the ten-year old daughter of Mark and Sarah. The latter had dated for a number of years until their relationship was terminated by Mark. They have since retained an amicable relationship. At the time of Jane's conception and birth Sarah had been still officially married to Steve although she was 'de facto' separated from him. Mark has always regarded Jane as his own daughter and treated her as such. In the meantime Sarah and Steve are still undergoing legal separation proceedings with Sarah receiving 'pendente lite' regular maintenance for herself and her son James from her husband Steve. Sarah and Mark meet you at your office and raise the following queries in connection with the possibility of Jane being duly recognised as their child:

1. What are the remedies, if any, available to the couple in order to obtain recognition of Sarah as their daughter? Which formalities are required and, in particular (i) are they contentious, (ii) which Court would be competent to consider their request and (iii) against whom would any such formalities need to be directed? (20 marks)
2. Are any such remedies effected by the fact that (i) Jane was conceived and born when Sarah was already married with Steve and (ii) that they have allowed ten years to pass from when Jane was born in order to take action? (20 marks)
3. Mark seeks your advice as to which rights and obligations would attach to him upon recognition of Jane as his daughter. Advise him. (20 marks)
4. Could any action taken by Mark and/or Sarah jeopardise the latter's rights in the separation proceedings pending between her and her husband Steve? Would James' rights and status be effected? If yes, in what way? (15 marks)

5. Does the fact that they are not currently in possession of a DNA test certifying Mark's paternity affect in any way their remedies, if any, at law? Should the couple submit themselves to a DNA test at this stage and/or should they seek to contact Steve of their intention should they decide to formally recognise Jane as their daughter? (15 marks)
6. Should they decide not to formally recognise Jane as their daughter, would others be able to bring such an action against them? (10 marks)

CASE TWO

Adrian and Lisa had been in a relationship for eight months, when Adrian proposed in front of all their family and friends in a surprise engagement party, which he organised with the help of his sister Alison. Lisa, although uncertain as their relationship was only at the early stages, agreed to get married as she felt pressured by the fact that all their family and friends were present at the party and that all brought with them expensive gifts including exclusive silk bed sheets imported directly from India and given to them by Alison. At the party, a priest blessed Adrian and Lisa's engagement rings and the two wrote their eternal love and promise to marry on fine papyrus, which was specifically imported by Adrian from Egypt for the special occasion. At the end of the party, Adrian gifted Lisa with a pair of keys to a villa that he bought for them to live in upon getting married. On the wedding day, three months after the engagement party, Lisa told Alison that she had a lot of doubts about getting married to Adrian, and admitted that she is suspecting that Adrian was having an affair. Alison was offended by Lisa's accusations about her brother and swore that she will shame her with all their family and friends if she ever said anything like this again. Lisa drank a few shots of vodka then walked down the aisle inside the church of Adrian's hometown. Adrian and Lisa have now been married for six months but Lisa feels miserable and comes to you for advice.

1. Does this qualify as a valid marriage (10 marks)?
2. What importance does the writing on the papyrus have (10 marks)?
3. Are there grounds for annulment? If affirmative state and explain the ground(s). (30 marks)
4. Can the couple remarry if they are granted a civil annulment (10 marks)? Or should Lisa petition for a divorce (10 marks) and/or separation (10 marks)?
5. Can Lisa continue living in the villa (10 marks)?
6. Can Lisa keep the silk bed sheets given to the couple by Alison (10 marks)?

CASE THREE

Berta and Ian have been in a relationship for one year when Berta got pregnant and subsequently gave birth to baby Jake. Berta registered baby Jake alone as Ian was reluctant to go with her. A few months later Berta got pregnant again and subsequently gave birth to baby Kate. Berta registered baby Kate alone as Ian was again disinterested in going with her. During Berta's pregnancy with Kate Ian asked Berta to marry him. Berta and Ian in fact got married three months/90 days following baby Kate's birth. A year into the marriage Ian started taking Berta for granted so that Berta found solace with John her workmate and soon started an intimate relationship with him. Out of this relationship Berta got pregnant with her third child and subsequently gave birth to baby Liam. Berta registered baby Liam alone as John refused to go with her since he was married and did not want to ruin his marriage. Liam was brought up with the rest of Berta's family until a few years down the line Ian decided to leave Berta to start a new romance whilst John changed his Job and Berta was left alone with three children to look after without any maintenance from Ian or John.

Berta came to you for advice on how to settle the following filiation queries so that she could then seek maintenance from her children's respective fathers:

1. According to law, are Jake, Kate and Liam considered to be conceived and born out of or in wedlock? (10 marks)
2. How does the fact that Jake, Kate and Liam were not acknowledged by the father affect, if at all, their filiation in their act of birth registered in the Public Registry? (10 marks)
3. Does Berta need to seek any judicial action/s to demand a declaration of paternity of any or all of her children? If yes, what type of action/s? (20 marks)
4. Should Berta decide not to pursue with any action, would others be able to bring an action with regards to the filiation of any or all of the three children? (15 marks)
5. Is any action to contest the status of any or all of the three children always lawful? (15 marks)
6. Is clarification of natural parentage of any or all of the three children required to pursue an action with regards to their filiation? If yes, who is entitled to clarify? Is there a legal remedy if clarification of natural parentage is opposed? If yes is acquiescence for such clarification absolute? (20 marks)
7. Will Berta's declaration of paternity with respect to any or all of the three children aid or expedite matters from a legal point of view? (10 marks)

CASE FOUR

In 2008 Sam and Francesca met Sally who was four years old and living in a children's home. Sally's parents both had a substance abuse problem when Sally was born and while Sally's father is now in a full time job and another relationship outside his marriage, Sally's mother is still abusing drugs and has had another two children with another partner also outside the marriage. Both these children are also under a care order and Sally sees them sometimes. Sally's mother visits her daughter very sporadically but Sally's maternal grandparents have maintained contact on a weekly basis since she was born. Sally's father has shown little interest in his daughter, although his current partner who cannot have children of her own has expressed the wish to take Sally into their home.

Sally had been placed with nuns under a care order shortly after she was released from hospital still suffering from withdrawal symptoms. Sam and Francesca do not have any children of their own and following a short time as social contacts in 2009 they became Sally's official foster carers and have been caring for her in their own home ever since. They would now like to adopt Sally and come to you for advice.

1. (a) What legal conditions would Sam and Francesca be required to fulfil in order to adopt Sally? (15 marks) (b) Would their foster care be taken into account in any way? (5 marks)
2. To what extent, if at all, would Sally's opinion be considered in the proceedings? (15 marks)
3. (a) Would it be possible for Sally's father and his girlfriend to oppose the adoption? (15 marks) (b) Could Sally's father's girlfriend apply to adopt Sally herself? (5 marks)
4. (a) What role, if any, would Sally's (i) mother, (ii) father have in the Court's consideration of the adoption application? (15 marks) (b) Would it be possible for them to change their mind at any stage of the proceedings? (5 marks)
5. What rights, if any, do Sally's maternal grandparents have during this process? (10 marks)
6. Would it be possible for Sally's mother to oppose the adoption on the grounds that she has plans to enter a rehabilitation programme, after which she will reunite all her children? (5 marks)
7. Does the law provide for the maintenance of relationships with all significant people in Sally's life following the finalisation of adoption? (10 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. III YEAR
MAY/JUNE 2016 EXAMINATIONS

CVL2000 – FAMILY LAW

DATE: FRIDAY 10TH JUNE 2016

READING TIME: 10:00AM – 10:05AM

DURATION OF EXAM: 10:05AM – 1:05PM

Choose **TWO** cases out of the four listed below.

Write each answer on a separate booklet.

Answer **all questions** in each of the two cases you select.

In each case students are expected to make appropriate reference to jurisprudence and case-law.

CASE A

Michael and Daniela married in 2007. Two years later, Daniela gave birth to their first and only child, Paula. The couple separated by virtue of a contract of personal separation in 2010. The separation is amicable, and both parties accept that they were simply too young to have committed to marriage.

By virtue of the contract of separation, Michael binds himself to pay unto his daughter, Paula, a monthly sum of maintenance, together with half of Paula's health and educational expenses. Furthermore, it was agreed by Michael and Daniela that the matrimonial home should be sold. However, they have not yet managed to sell it and continue to live there together. Michael and Daniela sleep in separate rooms, but occasionally eat together, and share errands. Eventually, Michael began a new relationship with Daniela's colleague, Elena. Daniela is not pleased about Michael's new relationship.

Michael has decided that he would like to marry Elena in Malta and then move to China. He comes to you intent on filing divorce proceedings:-

1. You inform Michael that divorce will not be granted unless the Court is satisfied that adequate maintenance is being paid:
 - a. What is the meaning of 'adequate maintenance'? (5 marks)

- b. Will Michael be awarded a divorce if he has failed to pay his share of Paula's health and educational expenses for the past three months? (5 marks)
 - c. Will Michael's obligation to supply maintenance to his daughter cease upon divorce? If not, for how long will Michael be expected to pay Paula maintenance? (15 marks)
2. Michael knows that in order to be awarded a divorce in Malta he must have been 'living apart' from his wife and is concerned that he may not qualify:
 - a. For how long must Michael have been living apart from Daniela? Explain to Michael why the Maltese legislator believed this condition to be necessary (15 marks)
 - b. Will Michael be awarded a divorce if he has always lived in the same house as his wife? (20 marks)
3. Michael is concerned that his wife will oppose his request for divorce:
 - a. Can Daniela oppose Michael's request for a divorce? If so, on what grounds? (10 marks)
 - b. What guarantees, if any, can Daniela request from the Court to safeguard her daughter's right to maintenance? (5 marks)
4. What are your duties as Michael's lawyer as outlined in article 66G of the Civil Code? (10 marks)
5. What are the effects of the dissolution of marriage as outlined in article 66I. of the Civil Code? (15 marks)

CASE B

Phyllis and John married in Malta and consequently the community of acquests regime applies. During the first years of their marriage, they spent a good deal of time travelling and conducting a number of business ventures. John convinced Phyllis that that he had been engaged by a marketing and publicity firm, but in actual fact he had contrived a plan to solicit money from this firm. He had met in the presence of his wife a number of representatives of the firm and signed a number of contracts with the firm; one of which was a loan from the said firm for the promotion of his adventure which consisted of an expedition of luxurious vehicles in the desert of Saudi Arabia. Everything was fictitious of course: a *mis en scene / messa in scena*. The event never took flight and John disappeared with the money he obtained easily from the firm.

It took some time for the firm to discover the deception. The firm instituted judicial proceedings against both John and his wife Phyllis to recover its costs and the loan that it had granted. John could not be traced and in court was represented by curators. In Court, Phyllis pleaded that she was not aware of the dealings between the firm and her husband, albeit she was present for a couple of meetings. She asked the Court to declare that her husband was the wrong doer and that her assets

whether paraphernal or forming part of the community of acquests should not be touched. In her view her husband should be liable for the whole of the payments due to the marketing firm.

1. After having examined the facts of the above case, would you agree that Phyllis should not be held responsible for the dealings of her husband and therefore should not be held liable for the debts incurred as a result of a willful offence? (5 marks) Support your answer with reference to the particular provisions of the Civil Code dealing with the community of acquests. (15 marks)

Phyllis and John have two minor children. Considering that her husband had absconded, Phyllis needs to be advised on what legal safeguards to take. She does not want to legally separate nor divorce him as she is still in love with him, he is the father of her children and she is convinced that his financial problems will soon be sorted.

2. Explain to Phyllis the procedure required by law that she is obliged to follow so that she may perform acts of extraordinary administration without the consent of her husband who is currently absent from Malta. (20 marks)
3. Which are two (2) situations which could result in the exclusion of a spouse from the administration of the community of acquests? (5 marks) What procedure is required by Law to achieve this exclusion? (5 marks)

Phyllis inherited a one third undivided share of a garage from her parents. The garage is the object of a sale by licitation. The garage was always leased out to third parties.

4. How do you classify this one third undivided share? (5 marks) Does the sale by licitation of this particular immovable fall under the definition of an act of extraordinary administration? (5 marks) Is her husband's consent, intervention or appearance on the final contract required? (5 marks) What would be the situation had the immovable been inherited completely by the spouse and used as the matrimonial home? (5 marks) Phyllis used to receive her share of the rent as the garage had always been leased out to third parties prior to the sale. Did her share of the rent belong to the community of acquests or was it entirely paraphernal? (5 marks)
5. In the hypothesis that Phyllis and John revert back to a time before their marriage, what matrimonial regime would you as her legal adviser with hindsight recommend? (15 marks). Why do you advise that regime as opposed to the others? (10 marks)

CASE C

Stanley and Marie had been in a relationship for eight months, when Stanley proposed in front of all their family and friends, in a surprise engagement party, which he organized with the help of his sister Caroline. Marie, although uncertain as their relationship was only at the early stages, agreed to get

married as she felt pressured by the fact that all their family and friends were present at the party and that all brought with them expensive gifts, including exclusive silk bedsheets imported directly from India and given to them by Caroline. At the party, a priest blessed Stanley and Marie's engagement rings and the two wrote their eternal love and promise to marry on fine papyrus, which was specifically imported by Stanley from Egypt for the special occasion. At the end of the party Stanley gifted Marie with a pair of keys to a villa that he bought for them to live in upon getting married. On the wedding day, three months after the engagement party, Marie told Caroline that she had a lot of doubts about getting married to Stanley and admitted that she is suspecting that Stanley is having an affair. Caroline was offended by Marie's accusations about her brother and swore that she would shame her in front of all their family and friends if she ever said anything like that again. Marie drank a few shots of vodka and then walked down the aisle inside the church of Stanley's hometown. Stanley and Marie have now been married for six months, but Marie feels miserable and comes to you for advice.

1. Does this qualify as a valid marriage? (10 marks)
2. What importance does the writing on the papyrus have? (10 marks)
3. Are there grounds for annulment? If affirmative, state and explain the ground(s). (30 marks)
4. Can the couple remarry if they are granted a civil annulment? (10 marks) or should Marie petition for a divorce? (10 marks) and/or separation? (10 marks)
5. Does Marie have the right to continue living in the villa *pendente lite*? (10 marks)
6. Can Marie keep the silk bed sheets given to the couple by Caroline? (10 marks)

CASE D

Jack and Martha have been in a relationship for five years. At first they put off marriage pending the civil annulment of Jack's marriage to Susan but even after the annulment was confirmed last year, they put off the marriage because Martha wants a big wedding and they did not have sufficient funds to pay for it. During those five years Jack and Martha had two children, Karl aged four and Bethany aged one. Jack also has a child, Tina aged nine, from his marriage to Susan. During the past five years Jack and Martha have been living in a small holiday flat belonging to Martha's father where it has been difficult to find enough space for two adults and three children when Tina comes to visit at the weekend.

Martha's aunt has recently passed away leaving her a large old house that requires renovation and some cash. Martha wants to use the money for her dream wedding and settle down in the house once the necessary works make it habitable. Jack has a good job and although he is still paying maintenance to Susan and contributes to maintenance for Tina, Martha is sure he has enough money to do up the house so they can move soon.

Jack does not seem at all happy at the prospect of marriage and the move and says he is content to leave things as they are. He is becoming quite verbally abusive and tries to pressure Martha into silence. For instance, he has not yet acknowledged their children and threatens to stop maintaining them all if Martha insists on these changes. He tells Martha that as they are not married she would have to repay him all the maintenance he has paid out over the past five years.

Martha comes to you for advice.

1. (i) What could happen if Jack did stop paying maintenance for Karl and Bethany? (10 marks)
(ii) Would acknowledgement affect the situation? (5 marks)
(iii) Could Martha force such acknowledgement? (10 marks)
 2. Could Jack refuse to maintain Martha? (5 marks)
 3. Will Jack always have to pay maintenance to (i) Susan (10 marks) (ii) Tina? (10 marks)
 4. If they were to marry, would Martha's house automatically belong to Jack too? (10 marks)
 5. Is there any truth to Jack's threat regarding repayment of maintenance? (10 marks)
 6. Could Jack successfully plead for custody of the younger children? (10 marks)
 7. What action, if any, could Martha take to stop Jack's abuse? (15 marks)
 8. Martha just wants to "live happily ever after" with the father of her children and seeks your legal advice to fulfil this wish. (5 marks)
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3RD YEAR /
LL.B. 3RD YEAR WITH L.P. OPTION
MAY/JUNE 2017 EXAMINATIONS

EXAMINATION: CVL2000 FAMILY LAW

DATE: TUESDAY 6TH JUNE 2017

DURATION OF EXAM: 10.00AM TO 1.05PM

Choose **TWO** cases out of the four listed below and labelled A, B,C,D.

Write the answer of each case on a separate booklet.

Answer **all questions** in each of the two cases you select.

In each case students are expected to make appropriate reference to jurisprudence and case-law.

A. Marta has severe depression and has been committed to Mount Carmel Hospital on several occasions in response to her illness. Her relationship with her husband Kurt has deteriorated as a result of her condition and he has now informed her that he is in a relationship with another woman and is seeking a divorce.

Marta has two children: Tina now aged twelve is the child of a premarital affair, while Beppe aged six is the son of the marriage. Kurt has always acknowledged responsibility for both Tina and Beppe and supplied maintenance for them. Both children live with their maternal grandparents when their mother is in hospital as Kurt's work makes it difficult for him to care for them. Kurt's new relationship has no room for children and although Kurt wishes to see the two children once a week, he cannot commit to more.

Marta is worried that the Court may consider her an unfit parent and refuse her the custody of both children, even when she is well. Social workers have suggested that in the circumstances, both children should be placed under a care order; but Marta is opposed to this option. She is also concerned that she may be deemed to have given rise to the divorce and lose her rights over the matrimonial home which is a house she inherited from her grandmother.

Advise Marta regarding:

- 1) Are there sufficient grounds to file for divorce? (10 marks) Could Marta's opposition to the divorce stall or halt the proceedings? (10 marks)

- 2) How does the Court assess fitness of a parent? (5 marks) Is it a foregone conclusion that Marta is an unfit parent and Kurt a fit parent in this scenario? (10 marks)
 - 3) To what extent if at all would the children be given the opportunity to share their opinion with the Court prior to the (i) *pendente lite*, (ii) final decision? (5 marks for (i) & 5 marks for (ii))
 - 4) Could the Court decide that neither parent should be allocated custody of the children and entrust them to the care of third parties, possibly under a care order? (15 marks)
 - 5) What would be the implications of Marta being found responsible for the breakdown of the marriage? (10 marks)
 - 6) Could Marta lose her rights, including ownership, over the matrimonial home if she is found responsible for the breakdown of the marriage? (10 marks)
 - 7) Could Kurt be ordered to continue to pay maintenance for Tina following the divorce? (10 marks)
 - 8) What other recommendations could the Court make to respond to the needs of this family when making its decision in the best interests of the child? (10 marks)
-

B. Charles and Sharon got married in 2010. Their only child, Stephanie, was born in 2011. The couple get separated by virtue of a contract of personal separation in 2012. In their contract of separation Charles bound himself to pay €300 a month as maintenance for his minor daughter together with half of all expenses concerning her health and education. Moreover, the parties agreed to continue living in the matrimonial home until it was sold.

However, it is now 2017 and the house has not yet been sold and the spouses continue to live together. Charles and Sharon go about their daily lives avoiding contact with one another as much as possible. They both have long-term partners and take meals separately; their only link is their daughter.

On one particular evening in 2016, a few months shy of the four year anniversary of their separation, Charles and Sharon went out with some common friends and had too much to drink. When they got home the pair had intimate relations. Charles regretted it, but Sharon believed that this could reignite their marriage and was willing to try. Charles begins considering a divorce in order to dissolve the marriage. He comes to you intent on filing the necessary proceedings:-

1) Charles informs you that he has refused to pay maintenance for the needs of his daughter. With regards to Charles's obligation to supply maintenance:

- a. Will his request for divorce be upheld if he fails to pay the arrears due and future maintenance? (7 marks)
 - b. How much maintenance is he meant to pay for divorce to be granted? (3 marks)
 - c. Will Charles's obligation to supply maintenance to his daughter cease upon divorce? If not, for how long will Charles be expected to pay Stephanie maintenance? (15 marks)
- (Total: 25 marks)

2) Charles knows that in order to be awarded a divorce in Malta he must have been 'living apart' from his wife and is concerned that he may not qualify:

- a. For how long must Charles have been living apart from Sharon? Explain to Charles why the Maltese legislator believed this condition to be necessary (15 marks)
 - b. Will Charles be awarded a divorce if he has always lived in the same house as his wife? (20 marks)
 - c. Will the fact that Charles had intimate relations with his wife be considered by the Court? If so, how? (15 marks)
- (Total: 50 marks)

3) Charles is concerned that his wife will oppose his request for divorce:

- a. Can Sharon oppose Charles's request for a divorce? If so, on what grounds? (10 marks)
- b. What are the effects of the dissolution of marriage as outlined in article 66L of the Civil Code? (15 marks)

C. Three brothers: Anton, Joseph and Charles, together with their sister Anne, have asked you for legal advice about the following problems. Advise each of them on each problem:

- 1) Anton would like to marry a Serbian lady. However the Marriage Registrar is refusing to publish the banns, as he is not sure that the Serbian lady is not already married. Anton is insisting to file an application alleging a breach of his human rights. (20 marks)
- 2) On the other hand, Joseph's Maltese wife has obtained a divorce from Australia and he is adamant that this is just a worthless piece of paper. (20 marks)
- 3) The youngest brother, Charles, is now graduating as a lawyer and would like to break off a courtship which has lasted seven years. He is afraid that his potential in-laws will present hefty bills for the meals and the engagement reception. (20 marks)

- 4) To complicate matters further, Charles has fallen in love with a Saudi Arabian woman whom he would like to marry albeit she is already married to another man, whom she was forced to marry at the age of 12. (20 marks)
- 5) Finally Anne, the only sister of these three brothers, is arguing that her marriage should be annulled because her husband is beating her every day, is verbally abusive and is also having an affair with his secretary. (20 marks)

D. PART ONE:

Although an only daughter, Mary had stormy relations with her parents. Indeed she did not speak to her father for almost twenty years. Recently, she learnt that her father passed away a few months ago. In his last will he bequeathed to her only the reserved portion (that is, the minimum entitlement to his estate permitted by law) and appointed his widow as his sole heiress. Through her legal counsel she called upon her mother to pay her the reserved portion. Her mother's lawyer replied by accepting to pay a certain amount based on calculations which took into account the presumption that all assets formed part of the community of acquests that existed between the spouses. In fact, all assets and liabilities listed in the inventory were halved prior to calculating the reserved portion. On receiving the lawyer's letter with the amount offered, Mary immediately objected and disagreed with the figures in the statement. Her father had been a businessman and owned several immovable properties which he had either inherited or bought in his own name and also various investments with banks and other financial institutions made during the marriage itself. Mary was under the impression that prior to their marriage her parents had drawn up a pre-nuptial agreement which regulated their patrimonial affairs. Her mother replied that it was true that they kept their activities separate but she could not recall ever going to a Notary's office for assistance. However, since she does not understand legal matters and her memory is slipping, she replied to her daughter that she will leave it to her lawyer to advise her. Mary told her mother that she would be checking with the Public Registry and seeking legal advice regarding her position.

Questions:

- 1) Is Mary correct to start the necessary verifications at the Public Registry and in the hypothesis that she obtains a negative result following a search in the Public Registry records but instead a signed private writing emerges from one of the drawers of her late father's desk, can she claim that the private writing was valid and sufficient to exclude the community of acquests? (15 marks)
- 2) If in actual fact it results that a post-nuptial contract was made during marriage, explain the difference in the formalities required *ad validitatem* for pre-nuptial and post-nuptial contracts. (15 marks)
- 3) Given that pre-nuptial contracts have been described as a taboo and rarely entered into before marriage, would you advise and convince your Clients to

draw up such a contract? Support your answer with reasons as may be necessary. (10 marks)

PART TWO:

Mary's uncle John was involved in the import/export business. After lengthy and complicated judicial proceedings, he separated from his estranged wife, Sarah. In the judgment pronouncing the separation, the Court had decided that the matrimonial home belonged to the community of acquests that was being liquidated following the separation. The Court further ordered that the house be sold as none of the spouses were interested in acquiring the other's undivided share of the immovable property. At the time, John was still residing in the house whereas Sarah lived elsewhere. John has a dominant character and maliciously boasted with everyone he knew that his wife owned nothing and everything belonged to him because of his hard work as the sole bread winner. Therefore it was no surprise that without informing Sarah, he entered a promise of sale agreement to sell the house with all its furniture and shortly afterwards, an appointment for the publication of the final deed of sale was scheduled. The Notary asked him to contact his wife to appear on the final deed. He refused because according to him the house belonged to him and he was in business. He expected to receive the entire price. Sarah discovered what her husband was up to and on the day of the sale appeared at the Notary's office to claim her share of the price John had negotiated and which was acceptable to her.

Questions:

- 4) Briefly explain the situations where a spouse is allowed by Law to act on his own account without the need to solicit the consent of the other spouse. (10 marks)
- 5) Describe the course of action that the other spouse can resort to should she have grounds to oppose a transaction made by her husband without her consent. (10 marks)
- 6) From your analysis of the situation described in Part B above, now that John and his spouse are legally separated, was Sarah in order and correct to intervene to appear and claim her share of the price? (10 marks) Had she not discovered the sale on time and had John proceeded on his own account and pocketed the money received from the sale, would his wife have a right of recourse against her husband in the same manner as she would have had they not separated? (10 marks)
- 7) Had John and his wife not separated and the wife agreed to grant John a power of attorney ("prokura") to appear on her behalf, describe the formalities required for a valid mandate (power of attorney) made by one spouse in favour of the other. [20 marks]

University of Malta
Faculty of Laws
May/June 2018 Examinations

CVL2000 - Family Law

Friday 15th June 2018

Duration of Examination: 8.30AM – 11.35AM

INSTRUCTIONS TO STUDENTS:

Answer **TWO** cases. Write each answer on a separate booklet.

In responding to each question and giving your advice include all possible options, making reference to current law and jurisprudence as applicable.

Case ONE

In 2012, Mary, a famous paediatrician, married John, who runs a small shop with hardly any clients. They now have two children. Mary has called at your office about the possibility of the annulment of the marriage because of John's adultery and the difference in intellectual abilities. During the interview with your client you have discovered that John does not care about the children and spends all his spare time at the local bar drinking beer. He once told Mary that at the time of marriage he had positively excluded marriage itself as he was more interested in a Maltese girl from Għasri. In the meantime Mary has attracted the attention of a famous ophthalmologist during a conference in Berlin. The latter has just filed for a divorce in Germany. Mary would like to know:

- (a) Whether her marriage with John can be annulled because of John's adultery and because of the difference in intellectual levels between the couple only or on any other ground or grounds. (40 marks)
- (b) If she has her case of the nullity of the marriage decided by the Church Tribunal, what does she have to do once the decision is given? (20 marks)
- (c) Whether she can marry the German ophthalmologist. (20 marks)
- (d) The effects on the spouses and on the children once the nullity of the marriage is pronounced. (20 marks)

Case TWO

George and Petra have been married for eight years and have a child, Josey, of five. Both George and Petra work. They are currently living in a flat which was acquired by George in his own name before he married Petra, although he did this through funds half of which were contributed by Petra's parents. They also currently owe the bank a €30,000 loan which they had taken jointly whilst married in order to furnish the house. George informs you that he and his wife have been recently facing problems in their marriage. He tells you that, following the birth of their only son, his wife started neglecting him and that, as a result, he has involved

himself in a sexual relationship with Lisa, a work colleague of his. He also believes that his wife might be seeing someone else. His relationship with Lisa has now been going on for a few months and before involving himself more deeply with her he wishes to obtain answers from your end in connection with a number of personal and patrimonial matters pertaining to his marriage.

- a. George wishes to know the legal difference between separation and divorce (10 marks), in particular, whether he can or should opt directly to divorce from his wife (10 marks). In such a case, which formalities would need to be satisfied by him before he can be declared divorced? (10 marks)
- b. Should he decide to separate from his wife:
 - i. Would his sexual relationship with Lisa have any bearing on the outcome of such a case? (5 marks)
 - ii. Should he attempt to discover whether Petra is also seeing anyone else as he currently suspects? (5 marks)
 - iii. With regards to the flat currently occupied by himself and his wife, what is the likelihood that he will be able to successfully argue that the flat is exclusively his, considering that the title of the property lies exclusively in his name? (15 marks)
 - iv. Which rights, if any, can be raised by Petra and/or her family on the flat? (15 marks)
 - v. What is the likelihood that Petra will be able to deprive him completely of his property and/or of his possession thereof, considering also that he anticipates that she will insist on Josey continuing to reside with her in the flat? (10 marks)
 - vi. Would he be able to sell or otherwise transfer the flat even whilst still married, particularly should he decide to settle his share of the loan owed to the bank as soon as possible? (10 marks)
 - vii. Under what circumstances, if any, would he be able to seek Petra's immediate eviction from the flat? (10 marks)

Case THREE

Samantha and James have been married for just over a year and are planning to move to a bigger house now that they are expecting twins. The house they currently live in as matrimonial home was settled on James following his divorce from his first wife Amanda and he still owes her €280,000 for the remainder of his share. James also pays maintenance of €300 per month for their son Dylan aged nine who lives with his mother Amanda.

Amanda is on bad terms with James following the breakdown of their marriage owing to his adultery with Samantha. She has just learned from Dylan that the twins are on the way and of the plans to move house. She is furious and has demanded that James pay off the remaining money immediately and says she will no longer permit access to Dylan twice weekly as agreed.

Samantha is very worried as she has had to stop working and has no income at the moment. Also she has a good relationship with Dylan and feels that the boy will be negatively affected by stopping visits. James looks into the divorce settlement and confirms that he is correct to

expect Dylan to spend one weekday afternoon and one weekend day with him but there is no agreement regarding staggered payment of the share of the matrimonial home. James and Samantha come to you for advice:

- (a) Is Amanda correct at law to withhold access rights? (10 marks) What say, if any, does Samantha have in relation to this issue? (5 marks) What rights does Dylan have regarding contact with (i) his father? (5 marks) (ii) Samantha? (5 marks) What steps can James take to enforce access to Dylan? (10 marks)
- (b) At this stage is there anything James can do to request payment of his debt by instalments? (10 marks) Could Amanda request the eviction of James and Samantha from the house? (5 marks) How could Amanda ensure that she is paid the money owed to her? (10 marks)
- (c) If James defaults on payment of maintenance because he is short of money what could Amanda do to enforce payment? (10 marks) Could James offer to supply maintenance in kind by taking Dylan into his home on a full time basis? (10 marks)
- (d) If the move to a bigger house materializes, would James still owe Amanda the same liability regarding the remaining payment on the first house? (10 marks) To what extent, if at all, would Samantha be responsible for the debt on the new house and the outstanding payment from the old one? (10 marks)

Case FOUR

James, a Maltese national and Amanda, a British national have been married for 12 years. One fine day Greg returns home from work to an empty house and a note. The note read:

"I cannot take it anymore. I am going back to the UK. I love you but cannot live with you and your temper and I fear for the kids. We will be safe. Do not look for us. I am not sure that I want to be married to you anymore and that I can trust you with the children again. Take care of yourself. Amanda"

The children Matthew and Amy are 10 and 8 years old.

Greg comes to you for advice, desperate to have his family back but at the same time aware of his recent bouts of bad temper. He brings the note with him for you to analyse and to seek legal advice.

- (a) What procedures would commence once Greg made the discovery that his wife had abducted his children and taken them to another country? (25 marks)
- (b) In the light of such procedures, can Greg fight for the care and custody of his children considering that he is still vested with parental authority? (15 marks)
- (c) Explain the process including any conditions that the court might make both for access and for care and custody arrangements. (20 marks)
- (d) Can Amanda seek sole care and custody in the light of the abduction as well as the possible separation? (20 marks)
- (e) The wording of the note sends the message that couple might resort to mediation given the manifest measure of good will on Amanda's part. Explain the mediation process. (20 marks)

University of Malta
Faculty of Laws
September 2018 Examinations

CVL2000 - Family Law

Date: Monday 3rd September 2018

Duration of Examination: 8.30AM – 11.35AM

INSTRUCTIONS TO STUDENTS:

Answer **TWO** cases. **Write each answer on a separate booklet.**

In responding to each question and giving your advice include all possible options, making reference to current law and jurisprudence as applicable.

Case ONE

John has been married to Elsie for 12 years and they have two children Antoine, 10 and Amelie, 4. He confides in you as a friend, but also as a lawyer, that he is afraid that Elsie might return to France because she is home sick.

One day he returns home and finds that Elsie has indeed left home and abducted the children. She calls him to inform that she is in France with the children at her parents' house.

John comes running to you for assistance. You inform him of what he has to do and where he has to go in such circumstances.

- a. What is name of the authority where John has to go to seek help and what is its role? (10 marks)
- b. What mechanism under an international convention is set in motion once John goes to the authority in question? (20 marks)
- c. What is the name of the domestic legislation, which transposes such convention? (5 marks)
- d. Explain to John the issues of care and custody as they arise under this domestic legalisation. (20 marks)
- e. Does the law envisage any type of mediation for John and Elise during these proceedings? (20 marks)
- f. John is hopeful that Elsie might come back to Malta where they can resolve their issues peacefully. Is a voluntary return envisaged by the law? In case Elsie were to return to Malta of her own free will, what would happen to the proceedings opened by John with the authority? (25 marks)

Case TWO

Paul is very disappointed his girlfriend for the past seven years has all of a sudden left him because she has fallen in love with a rich American. He has called for advice to see whether he has a right to ask his ex-girlfriend for the jewellery set and the expensive shawl he gave her on her last birthday, and whether he has to return to her all the personal gifts she gave him. He has also spent a fortune on her travels abroad. In the meantime, he has become interested in a German lady who is married to an Italian. He would like to know whether he can marry this German lady. Paul is also worried about the marriage of his sister who is due to marry within two weeks but now her father-in-law has passed away because of a heart attack. Finally his younger sister married a Pakistani who just wanted to become a citizen of Malta to work here. Now he has left his home and is living in Valletta with the Pakistani wife he married before he came to Malta.

Advise Paul:

- a. About the gifts exchanged between him and his girlfriend and the money spent on travel abroad where he always had to foot the bill. (25 marks)
- b. About whether he can marry the German lady. (25 marks)
- c. Any difficulty his sister he may in connection with her marriage. (25 marks)
- d. The solution to his younger sister's problem. (25 marks)

Case THREE

Max and Megan have been in a relationship for six years. After the annulment of Max's marriage to Kate was confirmed last year, they put off the marriage because Megan wants a big wedding and they did not have sufficient funds to pay for it. Max and Megan have a child, Andrew aged three and Max also has another child, Tom aged nine, from his marriage to Kate. During the past six years Max and Megan have been living in a small holiday flat belonging to Megan's parents but they will have to vacate it before next summer. Megan has recently inherited a large old house that requires expensive renovation. Recently Megan started a part time job and she wants Max to contribute financially to make the house habitable so they can move in after the dream wedding she is planning for December 2018.

Max is struggling to cope with all the financial burdens on his salary, including maintenance payments to Kate and Tom, and is becoming verbally abusive every time Megan mentions the wedding or the house. He tells her he is happy with the *status quo*. He reminds her that he has not yet acknowledged their child and threatens to leave if Megan does not stop what he refers to as "nagging". He tells Megan that as they are not married she would have to repay him all the maintenance he has paid out over the past five years.

Megan comes to you for advice.

- a. What could happen if Max did stop paying maintenance for Andrew? (10 marks) (ii) Would acknowledgement affect the situation? (5 marks) (iii) Could Megan force such acknowledgement? (10 marks)
- b. Could Max refuse to maintain Megan? (5 marks)
- c. Will Max always have to pay maintenance to (i) Kate (10 marks) (ii) Tom? (10 marks)
- d. If they were to marry would Megan's house automatically belong to Max too? (10 marks)
- e. Is there any truth to Max's threat regarding repayment of maintenance? (10 marks)
- f. Could Max successfully plead for custody of the younger child? (10 marks)
- g. What action, if any, could Megan take to stop Max's abuse? (15 marks)
- h. Megan just wants to "live happily ever after" with the father of her child and seeks your legal advice to fulfil this wish. (5 marks)

Case FOUR

John, 45 and Rose, 40 have been married for twenty years and have two children, Ronald who is 17 and May who is 15. Rose has always been the primary carer of the children and, in agreement with her husband, had opted out of work a few years into their marriage in order to look after the household and eventually the family needs. John owns a shop selling automobile parts. She has recently inherited property following her father's demise. She informs you that John had always been a heavy drinker but his drinking problem had taken a turn for the worse over the last few months. She has also noticed that, of late, he appears depressed and opts to stay at home in the mornings leaving his shop closed. She admits to having involved herself in an intimate relationship with Roderick, who is also married and a family friend, and that John has recently become aware of this. She does not exclude that this information might have induced him to drink even more. She informs you that she has found in Roderick an extremely supportive soulmate and that they have often discussed the possibility of leaving their respective spouses in order to live together, possibly in the property, which she has inherited from her father. However, John has threatened that should she decide to leave the house he will make sure that he gets all the property as well as the children. She is also scared that the children might decide to stay with their father, should they discover her relationship with Roderick. She comes to your office and shows you a legal letter, which she received from one of her husband's suppliers claiming five thousand euros (€5000) for goods delivered to him and which he has failed to pay. As she hands you the letter you notice very evident bruises on her arm.

- a. Exhaustively advise Rose as to the legal formalities and requirements which she will have to satisfy should she decide to separate or divorce from her husband. (20 marks)
- b. Rose wishes to safeguard her husband's business for her sake and for the sake of the children. Which remedies, if any, are available to her at law? (10 marks) Is or will she be duty bound to settle any part or the whole claim raised by her husband's supplier? (10 marks)

- c. Is it true that her husband can manage to deprive her of both her property as well as of her children should she decide to separate from him? (10 marks) Can she move out of the matrimonial home if her husband turns violent towards her or towards the children? (10 marks)
- d. Can she decide to sell the property, which she has inherited from her father in order to have sufficient funds to maintain herself and the children? (10 marks) Which remedies, if any, would be available to her in order to ensure that her husband continues to provide for her own basic needs and also those of her children? (10 marks)
- e. Exhaustively advise Rose as to the best way to proceed in order to ensure, as much as possible, that she retains a stable and good relationship with her children as well as any patrimonial rights she might have over her inheritance, her husband's business and all the property acquired during marriage. (20 marks)

University of Malta
Faculty of Laws

June 2019 Examination Session

CVL2000 FAMILY LAW

Date: Monday 17th June 2019

Duration of Examination: 8:30AM-11:35AM

INSTRUCTIONS TO STUDENTS:

Answer TWO (2) cases. Write each answer on a separate booklet.

In responding to each question and giving your advice include all possible options, making reference to current law and jurisprudence as applicable.

Case ONE (50% of total marks)

1. One of your clients is a certain Agnes, a famous dentist with a thriving profession. She married a man from Tunisia four years ago when she was just twenty four years old. She is very worried because her husband has never shown any interest in her or in their two children. In fact, he never intended having any children at all even speaking openly about this before the marriage. All he wanted was to make enough money as quickly as possible to retire from work at forty. The marriage enabled him to get a work and residence permit and now he could not care less. Agnes claims that she was immature when she married and her husband's friends are ready to testify that he had no intention of marrying at all while going through the marriage ceremony.
 - (a) Agnes would like to know whether she can file a suit for an annulment of her marriage in the Family Court section and if the court rules that her marriage was null what the effects are going to be according to section 20 of the Marriage Act. (65 marks)

In the meantime two of your clients have obtained a decision from the 'Catholic' Tribunal declaring their marriage null. One of them is a citizen of Malta and the other is domiciled in France.

- (b) You have to advise them whether the Tribunal was competent to decide the case and should the answer be in the affirmative what should be done with the decision. (35 marks)

Case TWO (50% of total marks)

2. John and Tom have been married for two years and have just adopted Karl aged five who has Down's syndrome; while they also care for Adam - John's son by a previous marriage - who is nine years old. John receives maintenance for Adam from his wife Angele whom he divorced two years ago. Angele's new partner Steve suggests the maintenance should be revised as Angele has stopped working to have their twins, due in September, and has been threatening towards John and Tom both physically and through harassing homophobic phone calls. John is retaliating by refusing to allow the court mandated contact between Adam and his mother. This stress is taking a toll on John and Tom's relationship and Tom has mentioned a possible separation, asking John to leave the matrimonial home which is his paraphernal property, although John contributes to the mortgage payments. John does not wish to end the marriage and comes to you for advice

- (a) What are John's rights against Angele regarding maintenance for Adam and will they be affected by the arrival of the twins? (15 marks)
- (b) Is John correct at law to withhold contact and are there any possible consequences for doing so? (15 marks)
- (c) Is Angele's partner liable for the maintenance? (5 marks)
- (d) What can John do to stop the threatening behaviour? (15 marks)
- (e) Is Tom correct at law to ask John to leave the matrimonial home? (10 marks)
- (f) Does the fact that John is contributing to the mortgage payments give him any rights over the house? (10 marks)
- (g) Could Tom unilaterally file for divorce? (10 marks)
- (h) If the marriage did end would Tom be liable for maintenance for Karl (5 marks) and Adam (5 marks)?
- (i) As John does not wish to end the marriage what advice could you give him? (10 marks)

Case THREE (50% of total marks)

3. Mark and Daniela got married in 2010. Two years later, Daniela gave birth to their first and only child, Gabriella, who was born with a disability, as defined in the Equal Opportunities (Persons with Disability) Act. The couple get separated by virtue of a contract of personal separation in May 2015.

In the contract, Mark bound himself to pay unto his daughter, Gabriella, a monthly sum of maintenance, together with half of Gabriella's health and educational expenses. Furthermore, in order to expedite the contract, Mark and Daniela agreed to continue residing in the matrimonial home but to place it for sale immediately. During this time Mark and Daniela sleep in separate rooms, but eat together as a family with their daughter, and occasionally share errands. Eventually, Mark began a new relationship with a co-worker, Karen. Daniela is not pleased about Mark's new relationship.

Mark has decided that he would like to marry Karen in Malta and then move to Spain. He comes to you intent on filing divorce proceedings:

You inform Mark that divorce will not be granted unless the Court is satisfied that adequate maintenance is being paid:

- (a) What is the meaning of 'adequate maintenance'? (5 marks)
- (b) Will Mark be awarded a divorce if he has failed to pay his share of Gabriella's health and educational expenses for the past three months? (5 marks)
- (c) Will Mark's obligation to supply maintenance to his daughter cease upon divorce? If not, for how long will Mark be expected to pay Gabriella maintenance? (15 marks)

Mark knows that in order to be awarded a divorce in Malta he must have been 'living apart' from his wife and is concerned that he may not qualify:

- (d) For how long must Mark have been living apart from Daniela? Explain to Mark why the Maltese legislator believed this condition to be necessary (15 marks)
- (e) Will Mark be awarded a divorce if he has always lived in the same house as his wife? (20 marks)

Mark is concerned that his wife will oppose his request for divorce:

- (f) Can Daniela oppose Mark's request for a divorce? If so, on what grounds? (10 marks)

- (g) What guarantees, if any, can Daniela request from the Court to safeguard her daughter's right to maintenance? (5 marks)
- (h) What are your duties as Mark's lawyer as outlined in article 66G of the Civil Code? (10 marks)
- (i) What are the effects of the dissolution of marriage as outlined in article 66L of the Civil Code? (15 marks)

Case FOUR (50% of total marks)

4. John and Michelle have been living in an apartment owned by John's father since they got married in 2012. They have a child with a severe disability and the older he gets the more obvious it is that the apartment is not suitable for his needs. However since they survive on a single salary, they cannot afford to move. Michelle is increasingly resentful that she has had to give up her well paid profession to give their child the full time care he requires as John refuses to care for their son other than financially. Matters came to a head last week when John exploded after another heated argument with Michelle and he pushed her causing her to hit her head and requiring five stitches. Michelle has asked John to leave the matrimonial home as she intends to file for divorce. John is sorry for his actions and is promising he will carry his responsibilities as a husband and father but Michelle has heard it all before and isn't convinced. Michelle comes to you for advice.

- (a) Does she have sufficient grounds at law to sue for divorce? (15 marks)
- (b) What amount of maintenance can she expect the Court to assign for herself and for their son? (20 marks)
- (c) Is she legally correct to expect John to vacate the matrimonial home? (10 marks)
- (d) If John's father demands the return of the apartment, could she and their son be rendered homeless? (10 marks)
- (e) Would John have any right to demand custody or access to their son? (20 marks)
- (f) Could she take legal action against John for the injury he caused? (15 marks)
- (g) Do you as her lawyer have any obligation to suggest a reconciliation even after these events? (10 marks)

University of Malta
Faculty of Laws

September 2019 Examination Session

CVL2000 FAMILY LAW

Date: Friday 6th September 2019

Duration of Examination: 8:30AM-11:35AM

INSTRUCTIONS TO STUDENTS:

Answer TWO (2) cases. Write each answer on a separate booklet.

In responding to each question and giving your advice include all possible options, making reference to current law and jurisprudence as applicable.

Case ONE (50% of total marks)

1. Mr John Debono is being sued for damages by his ex-girlfriend. He contends that he could no longer go on with Mary as she never wants to go out on Sunday to keep working on her Ph.D. thesis. Mr Debono enjoys life to the full and while holidaying in Switzerland he fell madly in love with an enchanting lady from Chile. Mary now belonged to the past and he is dreaming of marrying in Santiago and travelling through all South America. However, he is being sued by Mary to return the Japanese camera, the smartphone and the engagement ring she gave him when she thought he adored her. On the other hand, he is furious that she does not want to return the thousand Euro shawl he brought her from Iraq and the five diamond ring he gave her during the engagement reception.

(a) He needs your advice as he maintains that a young man has a right to change his love without going through all this. (50 marks)

Fast forward four years and his Chilean wife visits to your office because she would like to annul her marriage with Mr Debono. He has made it clear that he wants to live in great freedom. He has joined the Bird Club, the Pigeon Club, the Rabbit Club and the local football club. According to his Chilean wife Mr Debono has no time for her and for the kids, gives her hardly any money to maintain herself and the children and has now become obsessed with saving money to retire as early as possible from working. So he counts the matches his wife uses, checks the water and electricity metres every day and expects his wife to go to work on foot to save on transport expenses. Recently he has started calculating the amount of soap she uses in washing the clothes.

(b) Advise Mr Debono's Chilean wife about whether it is worthwhile filing for the annulment of the marriage. (50 marks)

- (h) Could Jacqueline also sue Astrid for maintenance? (5 marks)
- (i) To what extent, if at all, would Astrid be responsible for the debt on the new house and the outstanding payment from the old one? (10 marks)
- (j) To what extent, if at all, is Sean accorded the right to be heard in these proceedings? (15 marks)
- (k) What recommendations could you make to try to resolve the issues before initiating legal proceedings? (5 marks)

Case THREE (50% of total marks)

3. Sefora, 42, and Justin, 51, have been married for fifteen years. They have one child, Stephen, who is fourteen years old and has a mental disability which prevents him from leading an independent life. Both Sefora and Justin are unemployed and live on social benefits in a property which was financed in part by a government subsidy. The couple have been unhappy for a number of years, having had very little interaction, intimate or otherwise, for four years. Justin can no longer stand to live this way but cannot afford to move out of the matrimonial home since he is unable to afford rent and has no alternative accommodation. He has also thought about starting a relationship with a colleague he has known for some time but believes that this will compromise his position in the event of likely separation or divorce. He decides to speak to a lawyer and comes to you asking for advice.

- (a) Sefora and Justin are not legally separated. Is it possible for divorce proceedings to be filed in the absence of a separation judgment or contract? (5 marks)
- (b) Justin voted against divorce in the 2011 referendum and is considering filing separation proceedings instead of divorce proceedings. If he does so, will he have to wait until final judgment to then begin divorce proceedings? (10 marks)
- (c) Briefly explain to Justin what conditions must be satisfied at law in order for a divorce to be granted. (10 marks)
- (d) Justin wants to know whether he has an obligation to pay maintenance:
 - i. Does Justin have an obligation to supply maintenance (i) to Sefora and (ii) to Stephen? If so, how much? (15 marks)
 - ii. b) If so, for how long will Justin be expected to pay maintenance (i) to Sefora and (ii) to Stephen? (15 marks)
 (Total: 30 marks)
- (e) Are the couple likely to be awarded a divorce since they still live under the same roof? (25 marks)

- (d) The death of the spouse, Francesco Abela, brought about the termination of the community of acquests. What other situations bring about the termination and liquidation of the community of acquests? (25 marks)
- (e) Francesco had signed on his own account a number of bills of exchange in his favour as part of his business. Neither his wife's consent nor her signature were acquired prior to issuing the bills of exchange. Could the debtors challenge those bills of exchange on the ground that the wife's consent was missing? Support your answer with reference to the particular provisions of the Civil Code regulating the community of acquests. (20 marks)



Third Year Law
Compulsory Units Past Papers

NOMINATE CONTRACTS

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

UNIVERSITY OF MALTA
FACULTY OF LAWS - LL.B. – III Year
CVL3034 – NOMINATE CONTRACTS

FRIDAY 30TH JANUARY 2015

10:30 AM – 12:30 PM

Select *one* of the following questions and answer it. You should tackle *all* parts, i.e. Parts a), b) and c) of the selected question. Part a) counts for 30% of the final mark, Part b) for 35% and Part c) for 35%. Where a question is divided into different sub-questions, each sub-question carries an equal share of the marks allocated.

Kindly use separate examination booklets for Part a), Part b) and part c) of your answer.

1a) The Civil Code imposes a number of requirements in writing for the validity of a lease agreement, concluded after 1st January 2010, in respect of urban, residential or commercial property. Assess such requirements in the light of jurisprudence. What would be the consequence, in your view, if one or more requisites were omitted? (30 marks)

1b) John Portelli has called on you with the following four problems. *Use separate paragraphs to advise Mr Portelli on each of these four problems.* (35 marks)

(i) He is the seller in a preliminary agreement and he has learnt that the buyer does not intend to turn up for the contract. The buyer has paid €10,000 on account of the final price. Mr Portelli needs the money to expand his new business.

(ii) He is the buyer in a preliminary agreement and during the past two months a restaurant has opened right in front of his new apartment and one of the neighbours is planning to run a discotheque. He has paid €30,000 by way of earnest (*kapparra*) and he now wants to know whether these new developments entitle him to recede from the contract.

(iii) He has bought a garage for his BMW. Now he is realising that though the area was indicated as 100 square metres it is only 95 square metres. He is insisting on a rescission of the contract.

(iv) His daughter, Silvana, intends to marry very soon. Recently she went to a furniture dealer and immediately bought a €60,000 dining room set. The delivery was going to be effected on the following day. During the night, the furniture shop was struck by lightning and the set suffered irreparable damage. Silvana is now being sued by the furniture dealer for the price.

1c) Define the rights and obligations which regulate the three party relationship in a mandate *prestanome*, whose underlying object is unlawful. Quote judgments in support of your arguments. (35 marks)

ig 1 of 2

2a) Assess the methods of termination by the Employer of a contract of works – *locatio operis* and the consequences of such termination with reference to jurisprudence. (30 marks)

2b) According to section 1409 of the Civil Code: *'The seller is in law bound to warrant the buyer against any eviction which deprives him, in whole or in part, of the thing sold, and against any easement or burden on the same, claimed by others and not stated in the contract.'* Explain this provision of the law in detail and with reference to local jurisprudence and clearly set out any time limits involved and any remedies according to the various situations envisaged by the law (total eviction, partial eviction, undeclared non-apparent easements, sale of tenement as free from easements or burdens, and the express exclusion of the warranty). (35 marks)

2c) Rachel and Dennis jointly left some of their precious and expensive belongings with Mario their trusted friend, who himself offered his services and support for free. To return the good deed, they loaned Mario a substantial sum of money repayable over 5 years with an agreed 10% rate of interest. Unfortunately, Mario was robbed and, to make matters worse, his business went bust due to a volatile market. Mario was adequately insured against the theft. However, he had incurred substantial expenses for maintaining his friends' expensive belongings in a good condition and environment; which however proved futile.

It so happened that Mario and his brother Neil who co-owned some agricultural land, borrowed a mechanical plough from Frank, their neighbour as they needed to till and sow their lands before the rainy season. Frank agreed on condition that they return the machinery on demand. This plough developed serious mechanical failure which necessitated immediate and expensive repairs. Beset by all this bad luck, Mario no longer had a guaranteed income and quarrelled with his friends. Frank now requests the immediate return of his plough for no apparent reason when Mario and Neil were still in the middle of their job whilst Rachel and Dennis are worried both about the return of their belongings and of Mario's loan.

Provide all those involved with a legal opinion on all reciprocal rights, duties and obligations as they emanate from the facts as indicated in the above contracts. (35 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. Hons. III Year
JANUARY 2016 SESSION – WRITTEN EXAMINATIONS
EXAMINATION: CVL3034 – Nominate Contracts

DATE: 18th January 2016

READING TIME: 1:00PM – 1:05PM

DURATION OF EXAMINATION: 1:05PM – 3:05pm

INSTRUCTIONS TO STUDENTS:

Answer *one* question from Part A), *one* question from Part B) and *one* question from Part C). You should tackle *all* parts of the selected question. Each question counts for 33 % of the final mark and 1 % of the final mark will be given on an *ex gratia* basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. *Kindly use separate examination booklets for Part A), Part B) and Part C) of your answer.*

PART A

1. (i) Consider the formal and substantial requirements of a contract of lease (18 marks); (ii) Does the Civil Code distinguish between a lease of movables and different categories of immovable? (15 marks)
2. How, in your view, does the Civil Code apportion responsibility for repairs and maintenance in a lease of immovable property? (33 marks)

Part B

3. Mrs Xuereb is claiming that she bought an apartment, the measure of which was indicated as about 200 square metres. (i) She has now discovered that the apartment measures only 192 square metres and so she is having trouble placing one of her kitchen cupboards inside it. (ii) Moreover, she has discovered that there are easements over the apartment, although she had bought it as 'free and unencumbered'. (iii) Finally, she is displeased with the mahogany table which the furniture dealer supplied as she wanted one made of teak.
Use separate paragraphs to advise Mrs Xuereb in detail on each of these three problems. (33 marks)
4. The seller is bound to warrant the thing sold against any latent defects. Discuss this warranty in detail; referring to the nature of the warranty, the actions available, the time limits for such actions to be made, the exclusion of the warranty and to relevant jurisprudence. (33 marks)

Part C

5. Define in order to distinguish the essential elements which differentiate the contracts of *commodatum*, *precarium*, and *mutuum*. (33 marks)
6. John lent a sum of money with interests in terms of law to his brother Kevin to be returned when he had the means to do so. Kevin eventually misplaced and lost this sum of money which he had borrowed from John.

Months later, before proceeding abroad for work John and Maria jointly deposited their car in Kevin's garage with instructions to keep it properly maintained. Kevin used the car as if it were his own.

Maria returned to Malta for some days and before returning abroad, she gave a substantial sum of money to her sister Martha in order to purchase an expensive antique on her behalf. Martha executed her instructions but refused to hand over the antique as she incurred additional expenses.

Beset by misfortune, Kevin was involved in a car accident without his fault and the car was a total loss but it was comprehensively insured. Faced with financial difficulties Kevin uses the insurance money for his business.

John, his brother Kevin, Maria and her sister Martha now wish to sort out their affairs. Discuss the legal issues in terms of the contracts of mutuum, deposit and mandate as arising from the above. (33 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. III YEAR
SEPTEMBER 2016 EXAMINATION SESSION

CVL3034 – NOMINATE CONTRACTS

DATE: WEDNESDAY 7TH SEPTEMBER 2016
READING TIME: 8:30AM – 8:35AM
DURATION OF EXAMINATION: 8:35AM – 10:35AM

INSTRUCTIONS TO STUDENTS:

Answer *one* question from Part A, *one* question from Part B and *one* question from Part C. You should tackle *all* parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an *ex gratia* basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. *Kindly use separate examination booklets for Part A, Part B and Part C of your answer.*

PART A

1. Discuss the rules relative to the dissolution of a lease with reference to jurisprudence; focusing on the provisions on termination where the lessor is a Government or a corporation or an authority established by law. Do you agree with the policy behind them? (33 marks)
2. (i) Evaluate the rules, as they emerge from the Civil Code, relating to sublease and assignment; (20 marks) (ii) where the lessee is a limited liability company, the Civil Code equates a transfer of more than fifty percent of the shareholding to a sublease. How fair and reasonable would you consider this provision? In your view, is the rule one which can be excluded or derogated from contractually? (13 marks)

PART B

3. 'A promise to sell a thing for a fixed price shall not be equivalent to a sale; but if accepted, it shall create an obligation on the part of the promisor to carry out the sale, or if the sale can no longer be carried out, to make good the damages to the promisee.' Discuss the nature of the preliminary agreement, the difference between 'paying on

account of the price' and paying 'by way of earnest', the possibility of finding a good reason not to honour the preliminary agreement and the relevant jurisprudence on the various problems which have arisen in connection with the preliminary agreement. (33 marks)

4. Mr Calleja is the buyer in a preliminary agreement and he has paid 10,000 Euros on account of the final price. He has been told that a ghost is regularly appearing in the balcony and has confirmed that the apparition is a real one because it signaled to him when he visited the building on Christmas Day at night. To make matters worse, the bank does not want to lend him any money and, next to the room he intends to use as an office, an ice cream vendor has just started a business; attracting hundreds of clients and making parking very difficult. He has also bought a lovely villa, but his neighbor has informed him that part of this villa did not belong to Mr Calleja's seller. Advise Mr Calleja in detail about all the legal problems involved. (33 marks)

PART C

5. Discuss the principles established by our Courts and by the Civil Code relative to mandate *Prestanome* (33 marks)
6. David and Anna, a married couple from Turkey whose 2 daughters, Maria and Ben were studying Art at the University of Malta, wanted to purchase a house in Malta. After having identified a suitable property, the parents instructed their children to make the necessary arrangements to conclude the sale and even sent them the money for this purpose. Maria and Ben proceeded but unknown to their parents, they bought the property in their sole names in order to qualify for a special scheme which entitled foreign students studying at the local university to a substantial subsidy and also to an exemption from the usual permits required for foreigners to purchase immovable property in Malta.

Upon completion of their university studies, Maria and Ben threw a graduation party in a hotel lobby. They took the opportunity and invited a number of artists to exhibit their works of art against a nominal fee. It so happened that a fire broke out and most of the artists lost their works of art which were destroyed whilst some guests also lost their coats which they left at the hotel cloak room against payment. David and Anna realised that their children abused of their trust, the artists and guests want compensation for their losses as Maria and Ben are now in trouble facing difficulties.

Analyse the above contractual relationships and submit a legal opinion to all the involved parties on their rights and obligations at law. (33 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. III YEAR
JANUARY 2017 EXAMINATIONS SESSION

CVL3034 – NOMINATE CONTRACTS

DATE: FRIDAY 20TH JANUARY 2017

READING & NOTING TIME: 8:30AM – 8:35AM

DURATION OF EXAMINATION: 8:35AM – 10:35AM

Writing is permitted during the Reading and Noting time

INSTRUCTIONS TO STUDENTS:

Answer one question from Part A, one question from Part B and one question from Part C. You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an *ex gratia* basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. **Kindly use separate examination booklets for Part A, Part B and Part C of your answer.**

PART A

1. 'Contractual provisions relative to termination or dissolution of a lease may supplement, but may not derogate from, the provisions of the Civil Code.'
How far would you agree with this statement? (33 marks)

2. Review and assess the provisions of the Civil Code on the treatment of extraordinary and ordinary repairs and maintenance. In your analysis compare the provisions dealing with extraordinary and ordinary repairs and maintenance. (33 marks)

PART B

3. Sections 1409 to 1423 of the Civil Code deal with the warranty of quiet possession of the thing sold. Show in detail how the Civil Code deals with this warranty. In your answer distinguish between quiet possession and vacant possession; expose the consequences for the seller if somebody challenges the buyer as to the title of the thing bought, or if the buyer is evicted from part of the thing; explain the warranty in regard to easements not declared and the rights of the buyer where the tenement is sold as free from easements or burdens. State also what happens where the buyer fails to make the seller a party to the proceedings in eviction and the different time limits applicable to any possible action. (33 marks)

4. Mrs. Mamo has called on you with a number of legal problems. She has appeared on a preliminary agreement as a buyer and has paid 20,000 Euros on account of the final price of an apartment in Bugibba. Now she is having second thoughts about purchasing the apartment because she has set her eyes upon a villa at Wardija. Moreover she had acted as a broker by taking a prospective buyer on the spot and showing him a house at Zejtun. However albeit the final deed was subsequently drawn up, she never received any fee. She is also complaining about a fridge which she bought *tale quale* four months ago, but which is not functioning at all. Advise Mrs Mamo about all these three problems. (33 marks)

PART C

5. Discuss the principles relating to mandate *prestanome* by quoting judgements in support of your arguments. (33 marks)

6. 'Katia and Ivan are married. They own a farm, from which they carry out their agricultural activities. Half way through the harvest, their tractor broke down and they borrowed another one from their friend Joseph on the condition that it be returned to him on demand against a token fee of twenty

euro. Unfortunately, whilst they were using this borrowed tractor, the engine caught fire due to a serious fault and needed replacement.

Despite this incident, Katia and Ivan decided to go ahead with their plan to attend an agricultural fair in Sicily. In order to finance this trip, Ivan discussed with Katia the possibility of taking a loan. Ivan unilaterally went ahead and approached his cousin Mark who agreed to lend him a substantial amount to be repaid with interest when he is in a position to do so.

Before leaving, Ivan and Katia deposited all their antique paintings with their neighbour Charles, a known gambler, who offered to store them in his house until their return. Upon coming back home, they discovered that the paintings had gone missing.

All these circumstances contributed to Ivan and Katia's financial decline and eventual marriage breakdown. Their business is on the verge of bankruptcy, whilst Joseph expects to have his machinery repaired and Charles refuses any responsibility regarding the missing paintings. Katia also claims that she owes nothing to Mark.'

Discuss. (33 marks)

**University of Malta
Faculty of Laws**

Bachelor of Laws (Honours)

CVL3034 NOMINATE CONTRACTS

Tuesday 5th September 2017

Duration of Examination: 10:00am to 12.05pm

(Instructions to students).

Answer One Question from Part A, One Question from Part B and One Question from Part C. You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an *ex gratia* basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. **Kindly use separate exam booklets for Part A, part B and part C of your answer.**

PART A

1. Assess the provisions of the Civil Code relative to (i) the unlawful use of the thing let and (ii) the non-use of a residential tenement.

 2. For the purposes of the law of lease, what constitutes (i) a sublease and (ii) an assignment of the lease?
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PART B

3. Advise Mr Friggieri on these 3 problems:
 - a. Mr Friggieri has called on you about a prospective buyer of a plot of land who had paid him 10, 000 euros by way of earnest and who is now probably not going to appear on the final deed. Mr Friggieri would like the sale to go through as he is desperately short of money to expand his business.

 - b. Moreover Mr Friggieri is very angry that he is likely to lose the front garden of a villa he bought a few months ago as somebody is challenging his title to a part of the building.

 - c. He is also worried about his newly acquired flat on the Front at Sliema because the measurement indicated was 200 square meters but now the seller is demanding an increase in the price as the area is actually 210 square meters

4. Explain in detail the warranty in respect of latent defects and distinguish this warranty from the action available where the thing which the seller offers to deliver is not of the quality promised.
-

PART C

5. Define, compare and contrast the essential elements which differentiate the contracts of *commodatum*, *precarium* and *mutuum*.
6. Benjamin, a passionate collector of prestigious watches approached Giancarlo, an online agent based in Malta, and tasked him with finding and purchasing a limited edition watch for himself and a prestigious diamond-studded timepiece for his partner. Giancarlo, who has plenty of contacts across the continent, identifies the two models of watches and advances a sum of money to two respective retailers in order to secure their purchase. Giancarlo promptly calls Benjamin in order to inform him about the successful deals; but much to his dismay, Benjamin tells him that he is no longer interested in the diamond-studded watch. He also tells him that due to the financial difficulties faced by his business firm, he cannot pay him immediately; although he is still expecting Giancarlo to deliver the watch by the agreed date.

In the meantime, Giancarlo's friend Aidan, a car dealer, decides to buy a fleet of cars from a foreign exporter. Aidan, however, does not have sufficient space in his garage and he therefore deposits the newly-arrived vehicles in the warehouse of his neighbour Robert. Along with the cars, Aidan also entrusts Robert with €5,000 in cash, giving him his express consent to make use of them. During one stormy night, however, Robert decides to take advantage of his good relationship with Aidan and goes out for a drive with one of the cars that were under his custody. Due to his inexperience behind the wheel of such a powerful car, he skids into a centre-strip and causes substantial damage to the vehicle. Coincidentally, during the same night, a bolt of lightning triggers a fire in Robert's warehouse, thereby destroying some other cars as well as the cash Aidan gave him, which he kept in the warehouse office.

Giancarlo and Aidan come to you for advice (see below). Proceed to deliver a legal opinion on all reciprocal right and duties that emanate from the facts as they emerge from the above contracts.

- a. Benjamin refuses to pay for the diamond-studded watch, for which in the meantime Giancarlo had paid a forfeitable deposit, and expects to have the other watch delivered to him on time despite him not having the cash to pay him.
 - b. Robert is denying any responsibility regarding what happened during the fateful night; he does not want to compensate Aidan for any of the damages that he sustained, nor return the sum of money that he had given him.
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UNIVERSITY OF MALTA
FACULTY OF LAWS
JANUARY 2018 EXAMINATION SESSION

CVL3034 – NOMINATE CONTRACTS

DATE: WEDNESDAY 24TH JANUARY 2018

DURATION OF EXAMINATION: 14:30 – 16:35

INSTRUCTIONS TO STUDENTS

Answer one question from Part A, one question from Part B and one question from Part C. You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an *ex gratia* basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. Kindly use separate examination booklets for Part A, Part B and Part C of your answer.

PART A

1. Assess the provisions of the Civil Code relative to pre-1995 commercial leases: would you consider that a fair balance has been achieved between the lessor and lessee in the case of such leases? (33 marks)
2. Consider the obligation of the lessee to make use of the thing let as a *bonus paterfamilias* in a contract of lease in the context of the other lessee's obligations deriving from the contract. How far would you agree that *this* is the fundamental duty of the lessee? (33 marks)

PART B

3. 'A promise to sell a thing for a fixed price shall not be equivalent to a sale; but, if accepted, it shall create an obligation on the part of the promisor to carry out the sale, or, if the sale can no longer be carried out, to make good the damages to the promisee.' (Section 1357(1) of Chapter 16). Discuss the problems that may arise in connection with the preliminary agreement in particular with the use of the expressions 'earnest' or 'on account of the final price', good reasons for not appearing on the final contract, the procedure and time frames laid down in section 1357(2) of the Civil Code, illustrating by relevant jurisprudence. (33 marks)

4. Mrs Micallef has called at your office with a number of problems. (a) She is claiming that she has acted as a broker when she drove a prospective buyer to the apartment which was for sale but then the prospective buyer concluded a contract with the owner and she did not receive any broker's fee. (b) She has bought a terraced house at Birzebbuga and now she has discovered that the seller was not the true owner. (c) Eighteen months ago she received a consignment of green tiles for her new bathroom whereas she had ordered yellow ones to match the curtains she had bought from Catania. She is claiming that this is a latent defect and would like an immediate remedy. In the meantime she has fixed the green tiles just the same and seller has just sent her a judicial letter to pay the bill. (33 marks).

PART C

5. The rules relating to the grant of a mandate and its termination by a person in anticipation of his incapacity as they emerge from Article 1864A of the Civil Code differ from those regulating the grant and termination of an ordinary mandate. Evaluate these peculiar requisites in order to distinguish between them. (33 marks)
6. Two spouses, Chris and Carla jointly deposited their precious belongings in a safe deposit box with a bank for safe keeping against payment. Before going abroad, Chris verbally authorised his wife Carla to appear also on his behalf on a promise of sale agreement to purchase the couple's dream summer residence. Carla went ahead with the acquisition of the property; however, she did so in her sole name.

Whilst Chris was abroad, Carla borrowed a sum of money, which sum was to be repaid with interests when she had the means to do so. Unfortunately, Carla lost the entire sum.

In view of her financial difficulties and anticipating the possible breakdown of her marriage, Carla proceeded with the publication of the deed for the purchase of the above property in her sole name intending to resell it for substantial profit. She also wants to withdraw the valuables deposited in the safe deposit box.

Advise Chris and Carla of their rights and obligations relating to their joint deposit, Carla's unilateral purchase of the summer residence and Carla's loan. (33 marks)

University of Malta
Faculty of Laws
September 2018 Examinations

CVL3034 - Nominate Contracts

Date: Thursday 13th September 2018

Duration of Examination: 8.30AM – 10.35AM

INSTRUCTIONS TO STUDENTS:

Answer one question from Part A, one question from Part B and one question from Part C. You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an *ex gratia* basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. Kindly use separate examination booklets for Part A, Part B and Part C of your answer.

Part A

1. Examine critically, in the context of contract of works, that is *locatio operis*, the provisions relative to a) termination of the contract and b) the responsibility of the contractor and architect in the case of a building which perishes or is in manifest danger of falling to ruin. (33 marks)

2. Review, with your comment, the grounds for dissolution of a lease. (33 marks)

Part B

3. Section 1424 of the Civil Code lays down that 'The seller is bound to warrant the thing sold against any latent 'defects'. Explain in detail what the implications of this warranty, whether it is possible to exclude it, the repercussions on the seller if he was aware of the defects, the actions available and the time frames in which they can be exercised. Illustrate by case law. (33 marks)

4. Mr Preca is one of your regular clients and on a hot August afternoon he comes fuming to your office because:

- (a) He is angry that eight months ago he was evicted from part of a villa that he had bought at Imqabba and now he can no longer hire the back part of the villa as he had always contemplated doing to top up his pension entitlement;

- (b) Twenty months ago he bought an apartment for his daughter which was described as having a footprint of 200 square metres but he has now discovered that the footprint is only 150 square metres;
- (c) In a preliminary agreement, he is the seller of a terraced house and the prospective buyer, who has paid him €10,000 by way of earnest, is now claiming that he is no longer interested in appearing on the final contract because there is a mechanic's shop right next to the house and the prospective buyer is claiming his money back.
(33 marks)

Part C

5. Discuss the elements of mandate *prestanome* as they emerge from the interplay of articles 1864, 1871, 1873 and 1880 of the Civil Code. (33 marks)

6. Peter and Mary, two keen artists borrowed a sum of money with interests from Jack in order to purchase and do up their art studio. Upon purchase and completion of their art studio, Peter and Mary organised an art exhibition for the public for which they invited artists to exhibit their art works. Some of these artists participated in the art exhibition and exhibited their works for free whilst others were paid a small nominal fee. Arrangements for cloak room facilities against payment were also made for guests visiting the exhibition who wished to deposit their coats for safe keeping.

Alas, it so happened that some of the art works which were borrowed went missing whilst a number of guests had their coats pilfered from the cloak room. The artists and the guests are unsure whether adequate insurance cover was taken.

Peter and Mary are now in financial trouble as they are facing substantial claims for damages, losses and compensation whilst Jack also wishes to get his money back immediately due to their tight financial situation.

Analyse the above contractual relationships and give all the involved parties a legal opinion on the legal issues involved. (33 marks)

University of Malta
Faculty of Laws
January/February 2019 Examination Session

CVL3034 NOMINATE CONTRACTS

Date: Thursday 7th February 2019

Duration of Examination: 8:30AM-10:35AM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1) question from Section A, ONE (1) question from Section B and ONE (1) question from Section C.** You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an ex gratia basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. Kindly use separate examination booklets for Section A, Section B and Section C of your answer.

Section A

1. Examine the amendments introduced to the Civil Code by Act VIII of 2018 relative to subleases.
2. Does the Civil Code treat in the same or in a different manner default for violation of a condition of the lease and non-payment of the rent?

Section B

3. Discuss the warranty of the quiet possession of the thing sold referring in particular to the meaning of this warranty, the exclusion of this warranty, the rights of the buyer if he is evicted from all the property bought or from part of the property.
4. Mrs Bezzina is a regular client of yours and on a busy afternoon she has come to your office with the following problems. Advise her about **each** of the following problems.
 - (a) She has recently bought a second hand car for 8,000 Euros from Mr Caruana only to discover that the car had actually been stolen by a certain Saviour Borg from Mr Zammit and then sold to Mr Caruana. The police have traced the car and Mrs Bezzina has had to give up the car to Mr Zammit.

- (b) She has recently appeared on a preliminary agreement as a buyer of a villa at Santa Maria Estates and she paid 50,000 Euros on account of the final price. She is afraid that the seller intends to sell the villa to somebody else.
- (c) Finally Mrs Bezzina is having problems with her microwave oven which she bought only two months ago. She is insisting with the seller that the latter provides a new one as she is alleging that the micro wave oven must have had a latent defect.

Section C

- 5. Define to distinguish between *Commodatum*, *Precarium* and *Mutuum* under the Civil Code.
- 6. Ann and Jes, a married couple regulated by the community of acquests ran a supermarket. It so happened that their freezers developed a fault and they jointly deposited all their frozen goods with a trader running a business of cold stores until the problem was resolved. Jes had to immediately borrow a sum of money with interests in his and Ann's name to replace the freezers and granted a special hypothec on their home as security. The loan was to be repaid when they had the means to do so.

In the meantime Ann and Jes took the opportunity to go for a holiday but alas, they quarrelled and want to separate. They abandoned their supermarket and are now facing financial difficulties to repay their loan and other business creditors. The lender wants immediate payment of the sum loaned whilst Ann is contesting the borrowing and the security granted by Jes. Furthermore, all the frozen goods were ruined due to an unforeseen event and although fully insured, the trader disclaims any responsibility.

Analyse the above contractual relationships and give a reasoned opinion on the legal issues involved to Ann, Jes, the cold store trader and the lender.

**University of Malta
Faculty of Laws**

September 2019 Examination Session

CVL3034 NOMINATE CONTRACTS

Date: Monday 9th September 2019 **Duration of Examination:** 10:00AM-12:05AM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1) question from Section A, ONE (1) question from Section B** and **ONE (1) question from Section C**. You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an ex gratia basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. Kindly use separate examination booklets for Section A, Section B and Section C of your answer.

Section A

1. Review the provisions of the Civil Code, as amended by Act XXVII of 2018, relating to the lease of a band club.
2. Review, including your comments, the grounds for dissolution of a lease.

Section B

3. Distinguish very carefully the provisions of the law regarding the warranty against latent defects from those which deal with receiving an object of a different quality from that agreed upon.
4. A client has called at your office with the following problems:
 - (a) He has bought a plot of land as free and unencumbered from any burden, but now he has discovered that he has to pay a perpetual ground rent of five thousand Euros per annum.
 - (b) He has appeared as the buyer in a preliminary agreement and he has paid fifty thousand Euros on account of the final price. In the meantime he has learned that the seller is trying to sell the same property to someone else at a higher price.
 - (c) He is interested in buying a plot of land at Fgura, but the landowner does not want to warrant peaceful possession.

- (d) Finally his daughter is a party to a preliminary agreement involving a flat on the seventh floor of a block of flats. She has now discovered that no building permit to build more than four floors has ever been issued.

Section C

5. Delineate the specific rules established by Article 1864A of the Civil Code for the grant of a mandate by one in anticipation of his incapacity.
6. Maria and her Japanese friend Lynn, who was on a visit to Malta, jointly deposited their precious belongings with Maria's friend against payment before spending some days in Gozo. Having fallen in love with the islands and before returning to Japan, Lynn instructed Maria to enter into preliminary negotiations and do the necessary on her behalf for the purchase of a house by her. She also handed Maria a substantial sum of money for this purpose.

Maria finalised a promise of sale and purchase agreement of a house but alas, Lynn died suddenly before the deed of purchase could be finalised by Lynn. Maria went ahead with the purchase but in her sole name, trusting that Lynn's heirs would not realise. Furthermore, the precious belongings which Maria and Lynn had deposited with Maria's friend were also lost as he was quite negligent in all his affairs.

Lynn's children who were also her heirs, came to Malta to sort out and finalise their mother's affairs. Maria allowed them to stay in the house which she had just purchased without any payment until they returned to Japan.

Lynn's heirs refuse to vacate the house claiming it is theirs. They also wish specific performance of their late mother's mandate granted to Maria, apart from other possible remedies at law.

Advise them of their legal position on all the issues mentioned above.

University of Malta
Faculty of Laws

January 2020 Examination Session

CVL3034 NOMINATE CONTRACTS

Date: Monday 20th January 2020

Duration of Examination: 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1) question from Section A, ONE (1) question from Section B and ONE (1) question from Section C.** You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an ex gratia basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. Kindly use separate examination booklets for Section A, Section B and Section C.

Section A

1. Examine and comment on the provisions of the Civil Code relative to commercial subleases which were entered into prior to the 1st June 1995, and which were scheduled to expire on the 31st May 2018. (33 marks)
2. Consider and explain the provisions of the Civil Code relating to the dissolution of leases. (33 marks)

Section B

3. 'A promise to sell a thing for a fixed price shall not be equivalent to a sale; but, if accepted, it shall create an obligation on the part of the promisor to carry out the sale, or, if the sale can no longer be carried out, to make the damages to the promisee.' (Section 1357 (1) of the Civil Code). Explain this provision of the law and subsection (2) of the same section with regard to preliminary agreements involving the transfer of immovable property and state when it is possible to recede from such a contract. Illustrate through jurisprudence. (33 marks)
4. Mr Cassar has called at your office asking for your legal advice. Advise Mr Cassar about all of these three problems. Make sure that your advice is direct and supported by jurisprudence. In giving your advice, go straight to the point and illustrate through jurisprudence.

- (a) Some time ago Mr Cassar bought a large plot of land to build a villa with a swimming pool. Now his neighbour is suing him in court because the neighbour is claiming that part of the land belongs to him (the neighbour). (11 marks)
- (b) In January 2019 he ordered pink tiles for his bathroom. Instead, in October of 2019, he received blue tiles which were not to his satisfaction. (11 marks)
- (c) Three weeks ago he bought a laptop but he is now suspecting that it contains a hidden defect since it is not responding properly to his commands. (11 marks)

Section C

5. Distinguish between possible variations of responsibility for the contracting parties in Mandate, Deposit, *Commodatum*, *Precarium* and *Mutuum*, in terms of the Maltese Civil Code. (33 marks)

6. David borrowed a sum of money from his mother Amy to carry out refurbishment works in his restaurant. This was to be repaid with interests when he had the means to do so.

It turned out that certain kitchen equipment also had to be replaced. David temporarily borrowed this equipment from Paul, a friend of his, until he would have been in a position to replace them, presumably, once his business would have got going again. This equipment was to be returned to Paul on his demand. It so happened that the restaurant caught fire and all the contents were destroyed. Although these were insured, David's business is now ruined.

Faced with such adversity, David decided to take a break. He and his business partner Sara jointly deposited all their precious jewellery with their friend Alex for safe keeping, and went abroad to rethink their strategy. David returned alone.

Amy now wants her money back, Paul is claiming damages for his equipment, whilst David wants to withdraw his precious jewellery from Alex.

Analyse the above contractual relationships and submit your opinion on the legal issues involved between David, Amy, Paul and Alex. (33 marks)

**University of Malta
Faculty of Laws**

September 2020 Examination Session

CVL3034 NOMINATE CONTRACTS

Date: Tuesday 1st September 2020 **Duration of Examination:** 8:30AM – 10:35AM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1) question from Section A, ONE (1) question from Section B and ONE (1) question from Section C.** You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an ex gratia basis. Where a question is divided into different sub-questions, each sub-question carries an equal share of the 33% mark allocated. Kindly use separate examination booklets for Section A, Section B and Section C.

Section A

1. Consider the meaning of tenant in the Civil Code in respect of (i) residential leases and (ii) commercial leases. (33 marks)
2. Examine the grounds for, and implications thereof, relative to termination of a contract of works in terms of the provisions of the Civil Code. (33 marks)

Section B

3. Your grandfather has decided to buy a plot of land overlooking Marsaxlokk Bay to spend his last days breathing fresh air. But he is not sure whether the prospective seller of the plot is the owner and has doubts whether the land is subject to servitudes or burdens. Give your grandfather a comprehensive advice about the warranty of peaceful possession before he makes his final decision. (33 marks)
4. You are at the office during this hot summer when three clients call on you with their problems. What advice would you give to each of the following clients?
 - (a) Three months ago Mr. Preca bought a Mercedes which has become the centre of attention of all the villagers. However, this week he discovered that the engine is not functioning properly, the brakes screech without breaking into a halt and the entire electricity system has broken down. Advise Mr Preca. (11 marks)

- (b) Mrs Adamson is worried because she has appeared as a buyer in a preliminary agreement involving the transfer of a lovely townhouse at Lija. The preliminary agreement will lapse two months from today. In the meantime she has heard that the seller is trying to obtain a higher price by selling this house to someone else. She is not sure whether she has paid the €10,000 by way of earnest or on account of the final price. Advise Mrs Adamson. (11 marks)
- (c) Finally, Mr Soler, a man who is in his eighties, is angry because he has recently bought a lotto ticket and he has not won. He insists that he should have his money back. He is also furious that his efforts to do up his bathroom have been frustrated by a seller who provided him with blue tiles instead of yellow tiles. Advise Mr Soler. (11 marks)

Section C

5. Define the main characteristics which distinguish ordinary mandate from an enduring mandate granted by one in anticipation of one's incapacity in terms of Article 1864A of the Civil Code. (33 marks)
6. John and Luana were married under the community of acquests. John verbally granted his wife authority to perform any act of extraordinary administration in his name. She borrowed a sum of money for her personal needs against a pledge of her husband's bank account as security.

Luana verbally borrowed an immovable property from her parents in order to enable her enjoy the summer holidays with her husband John. This was to be returned upon simple demand. Regular payments in recognition of the good deed were made by Luana to her parents for use of their property, most often than not refused, other times accepted. Alas, one fine day some extraordinary and necessary repairs cropped up. These were of so urgent a nature to preserve the immovable that they were completed by Luana and John without notifying the lenders.

Luana now quarrelled with both her husband and her parents who now want their property back. John is also disputing the pledge granted by his wife and any liability for her borrowing.

Analyse all the above contractual relationships and advise all those involved with Luana of their reciprocal rights and obligations. (33 marks)



L-Università
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FACULTY OF LAWS
DEPARTMENT OF CIVIL LAW
FEBRUARY 2021 EXAMINATION SESSION

CVL3034 NOMINATE CONTRACTS

Monday, 1st February 2021

Examination time: 08:30 – 10:30 + 15 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone: 2340 3251; 2340 2780

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

By sitting for this examination, I declare that I am aware of the provisions of the regulations regarding conduct during examinations and I pledge to observe them.

Students may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

Students may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

With regard to FLOWmulti examinations, you are advised to type directly on WISEflow (and not on MS Word intending to copy and paste on WISEflow).

With regard to FLOWassign examinations, you are advised to upload your work in PDF format.

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INSTRUCTIONS TO STUDENTS:

Answer **ONE (1) question from Section A, ONE (1) question from Section B and ONE (1) question from Section C.** You should tackle all parts of the selected question. Each question counts for 33% of the final mark and 1% of the final mark will be given on an ex gratia basis. Where a question is divided into different sub-questions, each subquestion carries an equal share of the 33% mark allocated.

The minimum word limit for your reply to each selected question is 1,200 words; the maximum is 1,500 words. Therefore, you are not allowed to write more than 4,500 words in all.

Section A

1. Consider:
 - a. the requisites of a contract of lease (17 marks)
 - b. the obligations of the lessee (16 marks)
2. Evaluate in a contract of works:
 - a. the responsibility of the architect and contractor (17 marks)
 - b. the provisions relating to the termination of the contract (16 marks)

Section B

3. 'The seller is in law bound to warrant the buyer against any eviction which deprives him, in whole or in part, of the thing sold, and against any easement or burden on the same, claimed by others and not stated in the contract.' Explain this provision of the law and state whether it is possible to agree that the seller shall not be liable to any warranty. (33 marks)
4. Mr Caruana is a regular client of yours. One afternoon he calls at your office with the following three problems. Advise him and illustrate by case law where appropriate.
 - (a) He has appeared on preliminary agreement as a seller with the intention to sell a house of character at Imqabba. He has been paid one hundred thousand Euros by the buyer on account of the final price. He has now found a buyer who is ready to offer him a better price. He has tried to persuade the original buyer to recede from the contract but the original buyer is adamant on buying the house of character. Advise Mr Caruana. (11 marks)

- (b) Eighteen months ago he bought a large villa at Zurrieq but he has very recently discovered that the beams are defective and that the foundations of the building are shaky. Advise Mr Caruana. (11 marks)
- (c) Mr Caruana is also a very enterprising broker. About six months ago he took a prospective buyer right in front of a house whose owner was planning to sell it. He has now learnt that his client has acquired the house but Mr Caruana has not been paid his brokerage fee. Advise Mr Caruana. (11 marks)

Section C

5. Section 1857 (2) of the Civil Code states that "Subject to any other special provision of the law, a mandate can be granted verbally, or even tacitly."

Indicate the 4 main exceptions to this rule where special provisions of the law necessitate that mandate can only be granted by an instrument in writing. (33 marks)

6. Ian and Carla were married in Malta under the patrimonial regime of the community of acquests. Whilst abroad together on a work assignment, they verbally authorised their friend Kurt to appear on their behalf to borrow a sum of money in their name for him to utilise it to purchase their dream home also in their name.

When they returned to Malta they realised that it all went wrong. Kurt did borrow on their behalf in their name but without agreeing on the specific rate of interest and the terms of payment and he had also purchased the property but in his own name.

Faced with this adversity they borrowed an apartment from their friend Julia until they sorted their problems with Kurt and the lender, which apartment had to be returned on her simple demand.

Analyse the above contractual relationships and submit your opinion on the applicable legal principles between Ian and Carla against Kurt, the lender of money and Julia. (33 marks)



THIRD YEAR LAW
COMPULSORY PAST PAPERS

MAJOR CONTRACTS

If you require any further information, have any suggestions or have found any mistakes in the publication, feel free to e-mail academic@ghsl.org.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
JANUARY 2010
CVL3022 – MAJOR CONTRACTS

WEDNESDAY 3RD FEBRUARY 2010

3.30PM – 4.30PM

Answer any one of the three questions, making sure that you answer both parts in cases where the question is divided into (a) and (b). The (b) questions should be answered as briefly as possible. Where appropriate, reference to local jurisprudence is advisable.

You must answer in English. !

- (1) Outline the principal aspects of the amendments to the rent law enacted in 2009.
- (2) (a) The warranty against latent defects can only be invoked if a number of conditions are satisfied. Discuss. (60 marks)

(b) On the 1st October 2009 Mr. Farrugia bought a laptop and a house. He also ordered some modern garden furniture to fix near the pool. Within a few days, his laptop failed to respond to a number of commands. On the other hand, the garden furniture he received was in the classical style but he decided to use it just the same. To make matters worse, last night, the floor of the kitchen caved in under his weight (100 kilograms!) while he was preparing his bedtime teapot. Finally this morning he received a bill for his garden furniture but he does not want to settle it once the furniture sent to him was not of the same quality as the one he had ordered. Advise Mr Farrugia as to his complaints regarding the furniture, the laptop and the house. (40 marks)
- (3) (a) Consider and explain (i) the responsibility of the contractor and the architect in a contract of works and (ii) the grounds of dissolution of a contract of works. (60 marks)

(b) Alex Grech is a young entrepreneur. He thinks that this is the right moment to invest in immovable property. So he has concluded three preliminary agreements with Mr. Cutajar about three plots of land. For plot A, he has paid €20,000 as earnest (kapparra). For plot B he has paid €30,000 on account of the final price and at the same time agreed that he would forfeit the sum if he failed to appear on the final contract. As regards plot C, he was under the impression that he could raise the height up to six floors. Now he has discovered that there is a servitude of 'altius non tollendi' (restraining him from building beyond a certain height) effective beyond the second floor. Mr Grech is aware that his seller is trying to sell plot A to somebody else. As regards plot B, he is now having second thoughts about buying it. As far as

plot C is involved, he is considering this as a bad investment and does not wish to proceed with the sale. Advise Mr Grech about the three preliminary agreements. (40 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. – III YEAR
CVL3022 – MAJOR CONTRACTS

WEDNESDAY 26th JANUARY, 2011

3.30 P.M. – 4.30 P.M.

Select *one* of the following questions and answer it. You should tackle *both* part a) and part b) of the selected question. Part a) counts for 65% of the final mark and part b) for 35%. *Kindly use separate examination booklets for Part a) and Part b) of your answer.*

- 1a)** Examine the obligations of the Lessor in the contract of lease. (65 marks)
- b)** Mr Ellul is a party as a prospective purchaser in three preliminary agreements. In the first one he paid €10,000 as earnest (kapparra). In the second one he has paid €10,000 on account of the final price. In the third one he has also paid €10,000 on account of the final price but this preliminary agreement included a clause that the amount paid was forfeitable if he fails to appear on the deed of sale.
- Advise Mr.Ellul about any consequences he faces should he decide not to appear on the deed of all the three preliminary agreements **without having any valid reason.** (35 marks)
- 2 a)** Assess the position of commercial leases in the light of Act X of 2009 (65 marks)
- b)** Three months ago Mr Tonna ordered a Japanese Computer with 64 RAM. Moreover he bought an expensive overhead projector and a plot of land as free and exempt from any easement or burden. Mr Tonna has now discovered that the computer supplier has delivered a Chinese computer with 32 RAM; the overhead projector is functioning badly and that there is an apparent easement on the property.
- Advise Mr Tonna about any legal rights he may have in all the three situations. (35 marks)
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UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. – III YEAR – CVL3022 – MAJOR CONTRACTS

MONDAY 23RD JANUARY, 2012

9.15 A.M. – 10.15 A.M.

Select *one* of the following questions and answer it. You should tackle *both* part a) and part b) of the selected question. Part a) counts for 65% of the final mark and part b) for 35%. *Kindly use separate examination booklets for Part a) and Part b) of your answer.*

- 1a) "Failure by the lessee to make use of the object leased is in some instances equated in the civil code to an improper or unlawful use." Comment on this statement, indicating whether, in your view, the principles involved are consistent.
- b) Busuttill bought a plot of land to build a large house on it. His neighbour has successfully challenged Mr. Busuttill's right to thirty per cent of the entire area and hence he has had to abandon any idea of a large garage for the truck he uses to sell vegetables. He is also worried about a second plot he bought at Mellieha last year. This measured 500 square metres and was sold at €6000 per square metre. The seller has discovered that the area transferred exceeds the twentieth part of the quantity stated in the contract and the seller is asking for an adjustment in the price. In addition to all this, Mr. Busuttill has become aware that a buyer who, by a preliminary agreement, has bound himself by paying a sum of money on account of the final price, to appear on deed of sale, is now having second thoughts. Finally, Mr. Busuttill has problems over a house at Marsaxlokk which he is paying for by instalments of €500 per month. Now a third party has filed an *actio rei vindicatio* challenging his title. Advise Mr. Busuttill about his **four** problems.
- 2a) Examine the provisions of the civil code relating to the termination and/or dissolution of lease
- b) Attard bought a lottery ticket for €50 Euros but she failed to win any prizes. She would like to claim her money back. Moreover, she has discovered that the house she bought from Mr. Vella did not belong to him at all. In addition to this, her new fridge, which she bought only five months ago, is giving her a lot of trouble as it is making her vegetables hot rather than cooling them. Mrs Attard has a further problem. She is the buyer in a preliminary agreement where she has paid €10,000 on account of the final price for a house of character at Saint Paul's Bay. She is now afraid that the house is haunted by a maiden who had been killed by a knight in 1786. The house lies adjacent to a pig sty, too many cars drive past night and day, and a discotheque plays loud music till four o'clock in the morning. Advise Mrs. Attard about her **four** problems.

UNIVERSITY OF MALTA
FACULTY OF LAWS - LL.B. – III Year
CVL3022 – MAJOR CONTRACTS

FRIDAY 6TH SEPTEMBER 2013

9:15-10:15A.M.

Select *one* of the following questions and answer it. You should tackle *both* Part a) and Part b) of the selected question. Part a) counts for 65% of the final mark and Part b) for 35%. In each case, part b) is divided into four sections, each of which carries an equal share of the 35% allocated to part b).

Kindly use separate examination booklets for Part a) and Part b) of your answer.

1a) Consider the position of leases of commercial tenements entered into i) *before* and ii) *after*, the 1st June 1995 (65 marks)

b) Three months ago Ms Miriam Vella bought a fridge which is giving her a lot of trouble. The seller is continually promising to come to check what has happened, but so far he has not put in an appearance. Moreover, a couple of days ago, she appeared on a preliminary agreement to buy an apartment at Bugibba where she paid €10,000 on account of the final price. Ms Vella is now having second thoughts about the apartment, as a noisy pizzeria next door is attracting too many clients. She has also concluded a contract where she bought a plot of land of 1,000 square metres at €50 per square metre at Marsaxlokk and now the seller has discovered that he has actually sold her 1030 square metres. Finally, she recently bought some bedroom furniture from a leading dealer for €20,000 but, as she had no space for it, she left the furniture at the shop for a week. Yesterday a flood took the island by surprise and the matrimonial bed ended up floating in the main road at Birkirkara, with residents trying to take a joyride on it. Ms Vella needs your advice about (i) the fridge, and also about (ii) what she is to do, given her reluctance to proceed with the purchase of the Bugibba apartment and (iii) her emphatic refusal to pay an extra Euro for the plot of land at Marsaxlokk. (iv) Nor can she understand why the furniture dealer is insisting on being paid after she has seen her dream bed smashing into an iron fence in Birkirkara valley. *Use separate paragraphs to advise Ms Vella on each of these four problems.* (35 marks)

2a) Review the grounds of termination of a contract of works (*appalti – locatio operis*) available to both of the parties to the contract. (65 marks)

b) (i) Mr Caruana bought a mediaeval house in Mdina for half a million Euros. Now the seller has discovered that he was not the rightful owner and is insisting on annulling the sale. (ii) Mr Caruana has also ordered some yellow tiles to decorate the internal yard, but the seller has provided him with some hideous green ones, fit to convert a peaceful haven into a witch's nocturnal haunt. (iii) Mr Caruana has also purchased a villa on Wardija heights for the sum of €500,000. Mr Caruana agreed to accept the deal without being given a warranty of peaceful possession, although he is fully aware that the seller's title was based purely on acquisitive prescription. Now his title is being challenged and the seller does not want to return the price. (iv) Finally, Mr Caruana has sold a haystack to a farmer, who is his neighbour on Wardija heights. The rains came down and the haystack is now as flat as a pancake. The farmer does not want the haystack and is refusing to pay up. *Use separate paragraphs to advise Mr Caruana on each of these four problems.* (35 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS - LL.B. – III Year
CVL3022 – MAJOR CONTRACTS

WEDNESDAY 23RD JANUARY 2013

10:30-11:30A.M.

Select *one* of the following questions and answer it. You should tackle *both* Part a) and Part b) of the selected question. Part a) counts for 65% of the final mark and Part b) for 35%. In each case, part b) is divided into four sections, each of which carries an equal share of the 35% allocated to part b).

Kindly use separate examination booklets for Part a) and Part b) of your answer.

1a) Assess the provisions of the Civil Code relating to duties of repair and maintenance under a contract of lease of immovable property (65 marks)

b) (i) A few weeks ago Mrs Grech bought a lottery ticket for €20, hoping to win a prize of €10,000. However, her number was not drawn and she is now asking for her money back. (ii) Moreover, last month, she bought a microwave oven which is now giving her serious problems. (iii) All this came a time when her friend was planning a holiday cruise in the Baltic Sea. As her friend was short of funds she sold Mrs Grech a debt of €5,000 for just €3,000 Euros which Mrs Grech considered as very attractive. Now Mrs Grech has just heard that the debtor who owed the €5,000 is insolvent. (iv) To make matters worse, Mrs Grech is involved in a preliminary agreement as a seller of a large plot of land at Birzebbuga for which she has already received €10,000 by way of earnest (*kapparra*) but she has just discovered that the buyer is now reluctant to proceed with the acquisition.

In four separate short paragraphs advise Mrs Grech on each of the problems appearing above. Clearly indicate the problem you are dealing with by using the appropriate number. (35 marks)

2a) How satisfactory would you consider the provisions of the Civil Code relating to the continuation of a lease by the heirs of a tenant? (65 marks)

b) (i) Mr Preca has just bought a plot of land overlooking Xemxija Bay. He has now become aware that the plot is subject to a non-apparent easement because he can build up to a certain height only. (ii) Moreover, ten days ago he sold and delivered a computer from his outlet to a law student who has not so far turned up to pay. (iii) Meanwhile Mr.Preca is refusing to pay the price for a machine he bought from a factory operating in Malta. The seller and Mr Preca had agreed on the price and on the machine but Mr Preca could not pick up the machine at the time of the sale as he did not have enough space in his own shop. In the meantime, some parts of the machine have been stolen. (iv) Finally Mr Preca intends selling a debt he is owed by a friend and would like to know what procedure he has to follow.

In four separate short paragraphs advise Mr Preca on each of the problems appearing above. Clearly indicate the problem you are dealing with by using the appropriate number. (35 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS – LL.B. III YEAR
CVL3022 – MAJOR CONTRACTS

Wednesday 22nd January 2014

9.15am-10.15am

Select *one* of the following questions and answer it. You should tackle *both* part a) and part b) of the selected question. Part a) counts for 65% of the final mark and part b) for 35%. In each case, part b) is divided into four sections, each of which carries an equal share of the 35% allocated to part b).

Kindly use separate examination booklets for part a) and part b) of your answer.

- 1a) Consider the articles of the Civil Code and the principles applicable to dissolution of lease. How far, in your view, would the non-performance of a lease contractual obligation, in the absence of an express resolutive condition creating termination for default, be a valid ground for dissolution of the lease?
- 1b) Advise Mrs Grech about each of these four problems:
- (i) Mrs Grech purchased a house in Gudja, becoming the neighbour of Mr Borg, who owned the adjacent property. Mr Borg subsequently evicted Mrs Grech from part of her house in Gudja. Her neighbour succeeded in taking her garage and all her back garden. Both were extremely important for her, as she used the garage as a shop, while in her garden she grew flowers, which she used for wedding flower arrangements.
 - (ii) In 2012, Mrs Grech agreed with an owner of a huge orchard to buy all his crop of apples for the following year, but unfortunately in 2013 the trees yielded no apples at all. Nor was she lucky with her Lotto draw, as she opted to play the same number for 52 weeks in succession but never managed to win a Lotto prize. She would like to have her money back.
 - (iii) Two months ago, Mrs Grech appeared as the seller in a preliminary agreement. She received €20,000 as earnest (*kapparra*). The parties forgot to indicate the date when the final deed would be drawn up and Mrs Grech has found another buyer, who intends offering her a much higher price for the same apartment.
 - (iv) Finally, Mrs Grech is worried because although five days ago she sold six dry flower arrangements to a lovely bridesmaid, the latter has not yet paid her at all. Moreover, she would like to know whether she can cancel a contract

whereby she sold a villa at Safi as the buyer has gone broke, is unemployed, and is unlikely to pay her the €100,000 Euros due to her.

- 2a) The Civil Code purports to regulate (i) leases which were in force before 1st June 1995, (ii) leases which were created after 1st June 1995 and (iii) leases created after 1st January 2010. How far would you consider this to be a correct assessment? Develop your reply referring to the articles of the Civil Code and other relevant legislation.
- 2b) Advise Mr Portelli about each of these four problems:
- (i) Recently Mr Portelli agreed to buy an apartment at Marsascala and, in the preliminary agreement, paid €20,000 Euros on account of the final price. Mr Portelli is now having second thoughts about buying the apartment, as his girlfriend hails from Safi and prefers to have a house in her native village. Moreover, he has discovered that next to the block of flats there are two mechanics plying their trade and a noisy bar which keeps playing the song 'A Hard Day's Night', even at 2 o'clock in the morning. He wishes to know whether he can recede from the preliminary agreement.
 - (ii) Mr Portelli is claiming a brokerage fee on the sale of a house, which he had taken a prospective buyer to see from the outside and about whose owner he had given sufficient details such that the owner could easily be identified. Eventually the deed was concluded between the prospective buyer and the seller, but Mr Portelli has not received his fee at all.
 - (iii) Mr Portelli is also worried about the solar panels he bought two months ago. Every morning he checks the meter to see whether they have produced any units of electricity. So far the meter reads: '0 units'.
 - (iv) As Mr Portelli has an outstanding debt to settle, he would also like to know whether, with the written consent of his father, he can sell his right to the succession of his 89 year old father. He would also like to sell the right to the pension he is receiving from the State.

UNIVERSITY OF MALTA
FACULTY OF LAWS - LL.B. – III Year
CVL3022 – MAJOR CONTRACTS
SEPTEMBER 2014 SESSION OF EXAMINATIONS

WEDNESDAY 10TH SEPTEMBER 2014

9:15-10:15A.M.

Select *one* of the following questions and answer it. You should tackle *both* Part a) and Part b) of the selected question. Part a) counts for 65% of the final mark and Part b) for 35%. In each case, part b) is divided into four sections, each of which carries an equal share of the 35% allocated to part b).

Any references to relevant jurisprudence will enrich your answer and this will be recognised in the final grade.

Kindly use separate examination booklets for Part a) and Part b) of your answer.

-
1. a) Assess the provisions of the Civil Code relating to the dissolution of a lease.

b) Peter Grima (1) bought a house from a vendor who claimed that he had been living in it for fifteen years without anybody challenging his title. Now Peter Grima has just received a judicial letter from a certain Mr Zahra, who claims that he is the rightful owner. (2) Four months ago, moreover, Peter Grima purchased an electrical cooker; which is now giving him trouble as three of the burners are not responding when he switches them on. (3) Peter Grima has also assigned a debt he is owed, amounting to €50,000, to Mr Zammit for €40,000. In the meantime, the debtor has become insolvent and Mr Zammit is asking him for a refund. (4) Finally Peter Grima sold a plot of land to Mr Sciberras. He has now realized that the plot actually measures more than one twentieth part greater than the size stated in the contract. He is insisting that Mr Sciberras should pay the difference, while Mr Sciberras is adamant on not paying a cent more than he paid. Advise Mr Grima about each of his four problems.

 2. a) How far can a contract of works (*locatio operis*) be unilaterally terminated by either the employer or the contractor? Consider the consequences for either party in the case of such unilateral termination.

b) Marlene Xuereb purchased an amber necklace from a shop in Valletta. After putting it on at home and posing in front of the mirror, she felt that the necklace made her look like a fat rabbit, as her neck is too short. (1) She is insisting that the vendor take the necklace back. Moreover, thirty months ago, Marlene Xuereb ordered two hundred green ceramic tiles for her bathroom. However, the supplier sent her two hundred blue tiles. She decided to use them, but now her upper class friends are commenting that they do not match the fittings in the room. (2) She would like to send the tiles back to the supplier and claim her money back. (3) Marlene Xuereb is so hard up that she has assigned her right to the succession of her father, who is still fit enough to run round the village twice a day. (4) Finally, Marlene Xuereb is being threatened with being evicted from that part of her house where she has her living room, which is normally flooded with sunlight and where the cat loves to stretch itself for long naps. Advise Mrs Marlene Xuereb about each of her four problems.

UNIVERSITY OF MALTA
FACULTY OF LAWS - LL.B. – III Year
CVL3022 – MAJOR CONTRACTS

FRIDAY 30TH JANUARY 2015

10 30AM – 11 30AM

Select *one* of the following questions and answer it. You should tackle *both* Part a) and Part b) of the selected question. Part a) counts for 65% of the final mark and Part b) for 35%. In each case, part b) is divided into four sections, each of which carries an equal share of the 35% allocated to part b).

Kindly use separate examination booklets for Part a) and Part b) of your answer.

1a) The Civil Code imposes a number of requirements in writing for the validity of a lease agreement, concluded after 1st January 2010, in respect of urban, residential or commercial property. Assess such requirements in the light of jurisprudence. What would be the consequence, in your view, if one or more requisites were omitted? (65 marks)

1b) John Portelli has called on you with the following four problems. *Use separate paragraphs to advise Mr Portelli on each of these four problems.* (35 marks)

(i) He is the seller in a preliminary agreement and he has learnt that the buyer does not intend to turn up for the contract. The buyer has paid €10,000 on account of the final price. Mr Portelli needs the money to expand his new business.

(ii) He is the buyer in a preliminary agreement and during the past two months a restaurant has opened right in front of his new apartment and one of the neighbours is planning to run a discotheque. He has paid €30,000 by way of earnest (*kapparra*) and he now wants to know whether these new developments entitle him to recede from the contract.

(iii) He has bought a garage for his BMW. Now he is realising that though the area was indicated as 100 square metres it is only 95 square metres. He is insisting on a rescission of the contract.

(iv) His daughter, Silvana, intends to marry very soon. Recently she went to a furniture dealer and immediately bought a €60,000 dining room set. The delivery was going to be effected on the following day. During the night, the furniture shop was struck by lightning and the set suffered irreparable damage. Silvana is now being sued by the furniture dealer for the price.

2a) Assess the methods of termination by the Employer of a contract of works – *locatio operis* and the consequences of such termination with reference to jurisprudence. (65 marks)

2b) Mary Grima, a regular client, has called on you with the following four problems. *Use separate paragraphs to advise Mary Grima on each of these four problems.* (35 marks)

(a) Three months ago, her son bought a Mercedes to show around the village. All of sudden, there is serious engine trouble and for three days in succession the car failed to start. She would like to know whether her son has any remedy at law.

(b) Seven months ago, she ordered one thousand green bathroom tiles but the seller provided her with red ones instead. At first, she was very angry about the colour but then she went on to use them and to buy an appropriate set to match. The seller has called on her to ask for the money; but she is refusing to pay as the seller had not delivered the tiles in accordance with her order.

(c) One year ago her husband, William, appeared as the buyer in a contract of sale. A broker is claiming that he had taken her husband right on the spot to show him the apartment. After that, the broker never heard a word from either William or the seller. William is refusing to pay any brokerage fee which the broker is strongly insisting on.

(d) Finally Mary Grima appeared with her husband as prospective buyers of a large plot of land over which they can build twenty apartments. However, the seller has sold the plot to somebody else for a higher price. Mary Grima is desperate as all her dreams have evaporated into thin air. Advise her.



FOURTH YEAR LAW
COMPULSORY UNITS PAST PAPERS

MINOR CONTRACTS

If you require any further information, have any suggestions or found any mistakes in the publication, feel free to e-mail academic@ghsl.org.

University of Malta – Faculty of Laws
LL.D. I Year – Academic Year 2006/2007

CVL4004 - Minor Contracts

Thursday 31 May 2007

You may reply in English or in Maltese

Time Allowed – One Hour

Paul, a goldsmith was married to Jane under the community of acquests. Faced with an urgent order for 2000 gold ingots, he borrowed 2 kilos of gold and a sum of money with interest from his brother Joseph who also ran his business as a goldsmith. In the meantime, Joseph also borrowed some delicate machinery from Paul on which he incurred substantial expenses for repairs in order to use it.

Before going abroad, Paul and Jane left a box of precious metals with Joseph who, although known for his carelessness, offered to receive it for safekeeping, and a safe deposit with their bank against a fee. Upon their return to Malta, Paul purchased some land against a loan as verbally authorised by Jane. Both the bank and Joseph were robbed of the items held in deposit but the bank was insured.

Discuss the legal principles involved by outlining all reciprocal rights and obligations as they emerge from the above.

University of Malta – Faculty of Laws
LL.D. I Year – Academic Year 2006/2007

CVL4004 - Minor Contracts

Tuesday 04 September 2007

You may reply in English or in Maltese

Time Allowed – One Hour

(a) Define the principles applicable to mandate *prestanome* and their relationship with the provisions relative to property held subject to fiduciary obligations under article 1871A of the law of mandate.

(b) Compare the salient features which distinguish the contract of *Mutuum* from the contract of *Commodatum*.

University of Malta – Faculty of Laws
LL.D. I Year – Academic Year 2007/2008

CVL4004 - Minor Contracts

Tuesday 27 May 2008 – 10.45 to 11.45 am

You may reply in English or in Maltese

Time Allowed – One Hour

Tom and his wife Ann whose business necessitated frequent travelling abroad, used to keep their precious belongings deposited with their bank in a safe deposit box against a fee. Whilst abroad, Tom verbally authorised his wife to appear in his name to conclude and purchase a holiday apartment and to do all that may be necessary for this purpose. Ann concluded the sale but she did so against a loan secured by a special hypothec on Tom's house to guarantee repayment.

In the meantime their son Jamie borrowed some money from Jack with interests to enable him settle a gaming debt of which Jack had no knowledge. Ann also loaned her precious painting to Maria, her business partner for a couple of days to show it to an important visitor but then forgot to return it.

Months later Maria was robbed of Ann's precious painting. Ann wanted to retrieve some precious belongings from the bank whilst Tom was again abroad, Jack wanted his money back and Tom was not happy at all with the conduct of affairs which his wife had carried out in his name.

Discuss all legal principles and issues involved.

Special session

University of Malta - Faculty of Law

L.L.B. Year - Academic Year 2007/2008

CVL4004 - Minor Contracts

Tuesday 10 June 2008 - 10.45 to 11.45 am

You may reply in English or in Maltese

Time Allowed - One hour

Jake, a US citizen wanted to grasp a one-off opportunity to purchase an immovable in Malta. He instructed Anna his Maltese girlfriend to purchase this immovable in her name and left their internal matters to be sorted out at a later stage.

Anna executed the instructions but she left an outstanding balance of price due to vendor secured by a special privilege. She also borrowed a sum of money from Matthew which was intended for betting and whose purpose lender was informed. This was secured by a special hypothec on the same immovable.

Afraid of being robbed Jake deposited some gold ingots with a mint with authority to use it and whilst abroad, he loaned his immovable to his friend against a small monthly payment to be returned on demand.

Jake is not satisfied at all with his internal affairs with Anna, the mint and his friend whilst the Vendor and Matthew now want their money back immediately with all interests in terms of law.

Discuss all legal principles and issues pertaining to the above including the relevance of *Lucchesi noe. vs Sultana et.* (Court of Appeal - 03/12/2004)

University of Malta – Faculty of Laws

LL.D. I Year – Academic Year 2007/2008

CVL4004 - Minor Contracts

Tuesday 02 September 2008 – 10.45 to 11.45 am

You may reply in English or in Maltese

Time Allowed – One Hour

- (1) Explain the relationship between a *prestanome* and a fiduciary mandate;
- (2) Discuss the right of retention where applicable, in deposit, *commodatum*, *precarium*, mandate and *mutuum*.

University of Malta – Faculty of Laws
LL.D. I Year – Academic Year 2008/2009

CVL4004 - Minor Contracts

Monday 25 May 2009 – 11.45 am to 12.45 pm

You may reply in English or in Maltese

Time Allowed – One Hour

Lynn and John jointly deposited with their friend Cory a box of precious items for safekeeping as they were going for a holiday.

Concurrently, John also deposited with Cory some boxes of expensive but perishable wine which she was supposed to distribute to her distinguished guests whilst throwing a dinner party. Alas, she was robbed of the lot but fortunately was insured.

In the meantime Lynn and John also took a loan with interests for a substantial sum of money for the purchase of a complex to be eventually demolished and rebuilt into several independent units. No rate of interest was agreed upon and the parties did not fix a time for repayment. In the course of demolishing, an electricity sub-station which provided electricity to the complex and to the immediate neighbourhood must be removed.

Lynn has absconded without trace and the lender is now requesting immediate repayment of the loan due to loss of benefit of time together with interest and arrears in terms of law. Cory is also being requested by John to return his expensive wine and his box of precious items.

The electricity provider is also reluctant to remove the sub-station and is claiming damages, ordinary and extraordinary expenses both for maintenance and for relocation.

Advise all parties by discussing the legal principles and issues involved.

University of Malta – Faculty of Laws

LL.D. I Year – Academic Year 2008/2009

CVL4004 - Minor Contracts

Tuesday 01 September 2009 – 11.45 am to 12.45 pm

You may reply in English or in Maltese

Time Allowed – One Hour

Jef, who did not have such a healthy marriage with May, instructed his friend Paul to purchase an apartment which was to be retained in Paul's name in order to avoid certain obligations regulated by the community of acquests.

In order to finance this property transaction and some of his betting habits, Jef borrowed a substantial sum of money with interest, payable when he had the means for so doing. Paul executed his instructions but left an outstanding balance of price secured by a special privilege in terms of law.

Paul temporarily loaned the apartment to his girlfriend for some time until she actually purchased hers. This he did against a nominal monthly payment but nevertheless, to be returned upon his demand.

Jef and May have now reconciled and they, Paul, his girlfriend, the money lender and the vendors ask you to explain their legal rights and obligations.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2009/2010

CVL4004 – Minor Contracts

Monday 31 May 2010 - 02.15 pm – 03.15 pm

Paul was passing through a bad patch and needed a cash injection for his bakery. He borrowed a sum of money with interests from his brother Stephen and Eliza his wife, repayable when he had the means to do so. To help out, they also allowed Paul to use their premises for three years, to be returned upon request when they returned from abroad. Furthermore, they also deposited a truckload of sacks of flour for use at his bakery.

Before going abroad, Stephen and Eliza jointly deposited their precious diamonds with a jeweller against payment. Without informing Eliza, Stephen also gave the jeweller irrevocable verbal authorisation to act on his and his wife's behalf for four years to pledge these diamonds as security for Stephen's indebtedness.

Paul used to send regular payments to Stephen and Eliza to compensate them for their good deeds. Unfortunately, Stephen died suddenly and left Eliza his sole heir. The jeweller acted upon Stephen's instructions without pledging all the diamonds but alas, he was then robbed without being insured. Now Paul's bakery has caught fire with a serious danger of insolvency.

Faced with all the bad luck and struck with grief, Eliza wishes to settle and close all her and her predeceased husband's affairs.

Advise Eliza of all her remedies, rights and obligations against Paul, the jeweller and Stephen's creditors.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2009/2010

CVL4004 – Minor Contracts

Wednesday 01st September 2010 - 1.00 pm – 2.00 pm

Max and Ilona were 2 foreigners who resided in Malta after getting married. They were given an apartment under a temporary and gratuitous title by John, their trusted Maltese friend but against some compensation and only until they purchased their residence to settle permanently here.

They had to go abroad on a business trip and before leaving, they deposited a substantial sum of money with John with instructions to use it for the purchase, on their behalf, of a tenement in Sliema and under such other conditions as he deemed fit. John abused of his friendship and misused the money entrusted to him. He purchased the tenement in his own name and left an outstanding balance of price in favour of the vendor secured by a special privilege.

John has now requested Max and Ilona to vacate his apartment as he wanted to sell in order to settle his outstanding indebtedness in favour of the vendor. John has now died and his wife and children accepted his inheritance without any reservations.

Max and Ilona are now claiming damages and do not intend to vacate the apartment until they are paid by John's heirs.

You are requested to submit your written opinion on the issues involved.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2010/2011

CVL4004 – Minor Contracts

Friday 03rd June 2011 - 1.00 pm – 2.00 pm

Please reply in English

Nick a jeweller, borrowed some gold ingots from Carla to satisfy an urgent request to produce gold coins for a special occasion. On his way to the factory, Nick was robbed. Carla also loaned Nick money with interests in order to help him settle gaming debts which he had incurred some weeks before.

Faced with mounting problems, Nick and Maria his wife needed to go abroad for a break. They jointly deposited their jewellery with Carla for safe keeping against a reward and for which she also incurred high insurance costs. Nick and Maria have now quarrelled and Maria cuts short her holiday but Carla refused to return her the jewellery as some had gone missing.

With Nick still abroad, Maria borrowed a sum of money from Louis which she secured by a special hypothec on her and Nick's land and she also gave him permission to use it for cultivation. She also allowed some hunters to use this same land during the hunting season.

As a gesture of goodwill, Louis incurred quite an expense to rebuild some agricultural rooms which were used for the storage of tools and also gave Maria seasonal fruits from this land. The hunters also carried out some repairs to the perimeter walls and now none wish to vacate the land.

Nick has now returned to sort matters with Maria and with all third parties, preferably to nullify all of his borrowings with Carla and all acts carried out by his wife with third parties if and where possible.

Advise all involved parties of their rights in terms of law.

8/11/2011

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UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2010/2011

CVL4004 – Minor Contracts

Monday 12th September 2011 - 08.00am – 09.00am

Please reply in English

Anna who was happily married to Brian in Malta, unilaterally instructed her friend Carla to purchase on her behalf and on credit a number of expensive antiques from David. Carla who was an antiquarian with a clinical eye for such items, realised their potential and abused of the trust placed in her. She did purchase these antique items on credit but in her own name. Anna realised the abuse and she immediately withdrew her authority but it was too late.

It so happened that when these antiques were in Carla's possession at her store, the fire alarm went off. Taken over by panic, Carla deposited the lot together with a packet of money with her neighbour Enrico. She authorised him to use the money but it was to be returned to her on demand. Alas Enrico, who was known for his carelessness and negligence, was robbed of the whole lot.

Discuss the reciprocal rights, duties and obligations of all the involved parties as they emanate from the above relationships.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – 2011/2012

CVL4004 – Minor Contracts

Friday 01st June 2012 - 09.15am – 10.15am

Please reply in English

2 brothers, A and B were 2 foreign students at the University in Malta. Their married parents H and W who were US citizens, wished to purchase property in Malta. After having identified a suitable home, H instructed his children to make the necessary arrangements to conclude the sale. It so happened that there was a special subsidy for which only foreign students studying in Malta qualified. A and B purchased the property with their parents' money but in their sole name in order to get the subsidy.

After successful completion of their studies A and B, who were also keen artists, organised a graduation party in conjunction with an art exhibition in a local hotel for which a number of artists exhibited their pieces against a fee. Alas some curtains caught fire and most were ruined beyond repair. Furthermore, some guests who left their coats at the hotel cloak room against payment left without them as they got lost.

Before visiting their parents in the U.S., A and B hired a safe deposit box at a bank to secure some expensive items. They also procured a loan with interests from C which was secured by a special hypothec over their parents' property in order to have the property completed in time for their return.

H and W realise that their children abused their trust, the artists and guests want compensation for their loss, C wishes to get paid immediately, whilst an expensive coin went missing from the safe deposit box hired by A and B.

Give all the involved parties a legal opinion on how to proceed after analysing the above contractual relationships.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – 2011/2012

CVL 4004 – Minor Contracts

Thursday 13th September 2012 - 09.15am – 10.15am **Please reply in English**

H, a silversmith and W were married under the community of acquests. They wanted to change their residence with a bigger workshop for H and whilst W was indisposed, H purchased some property against a loan as verbally authorised by his wife.

Faced with an urgent order for silver medals, H borrowed some silver and a sum of money with interests from F. Alas, their production necessitated the use of specialised machinery which H borrowed from Z and for which H had to incur a considerable expense for repairs in order to make good use thereof.

Pressed for time to complete the order, H and W left their precious jewellery with S, W's sister who they knew was quite careless but who herself offered to help in accepting them for safekeeping. Furthermore, they left their precious stones at their bank for safe keeping against a fee. Months after, S was robbed without having any insurance cover whilst the precious stones went missing from the bank.

Outline all legal principles as a result of the above contractual rights and obligations.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. I Year – 2012/2013

CVL 4004 – Minor Contracts

Thursday 06th June 2013 - 02.15pm – 03.15pm

Please reply in English

Answer the following question

100%

Jack, who was in the business of cold storage, was married to Tanya. Facing financial difficulties Jean loaned him a sum of money with interests at the maximum rate allowed by law, repayable when he had the means to do so but on condition that hypothecary security be granted. Jack informed his wife and unilaterally granted Jean a special hypothec on his matrimonial home as security.

In the meantime, Tony who was an importer of fruit was offered the use of Jack's cold stores out of friendship and without payment. The imported fruit had to be kept in a fixed and stable temperature.

Jack's financial position did not permit adequate maintenance and his refrigeration machinery was developing frequent faults. Consequently he borrowed some refrigeration machinery from Anna which she knew was defective and as a result, Jack also had to carry out substantial repairs for its use.

Notwithstanding all best endeavours, Tony's fruit went sour and Jack's financial position has so worsened that his repayment capacity is now doubtful.

Advise all involved parties of their rights at law.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. 1 Year – 2012/2013

CVL4004 – Minor Contracts

Wednesday 11th September 2013 - 10.30am – 11.30am

Please reply to the following question in English

Steve, who was in business, was married to Paola in Malta. They purchased some property for development under which they discovered an underground chamber servicing the needs of an electricity provider which did not emerge from searches. Money was being paid for this use and construction difficulties were encountered.

Before proceeding abroad Steve and Paola left some valuable items with Peter, who was negligent and careless in his affairs but against the payment of a fee. Steve also borrowed a sum of money from a bank at 13% interest for his business repayable within 10 years and instructed Anita, his close associate, to purchase on his behalf some immovable property in her sole name in order to avoid his creditors' intrusion.

Steve is now facing financial and marital difficulties, his wife remained abroad, he quarrelled with Anita and Peter was robbed of the lot but was also insured.

All the involved parties with whom he has a relationship wish to crystallise their respective position at law. Define the mutual rights and obligations of Steve, Paola, the electricity provider, Peter, Steve's bankers and Anita.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. I Year – 2013/2014

CVL4004 – Minor Contracts

Wednesday 11th June 2014 - 11.45am – 12.45pm

Please reply to the following question in English

Lennox and Claire, a married couple were in the business of printing. Half way through an urgent job, their machinery failed and in order to finish it, they borrowed some machinery from Tony to be returned on demand and against the payment of a small fee. Facing difficulties in their business, they continued to use the borrowed machinery and it developed serious faults which required extensive repairs.

Lennox and Claire had to go abroad for business and after having discussed the matter with Claire, Lennox borrowed a sum of money from his friend Luca with interests to be repaid when the business picked up. The loan was secured by a special hypothec on his and Claire's home.

Before going abroad they jointly deposited their precious jewellery with their friend Alex who offered to keep it in a safe place until their return but who was known to them for his negligence. Alas, part of the jewellery went missing.

Claire returned alone and empty handed from abroad as, facing all these difficulties, her husband Lennox absconded.

Luca wishes to get paid and Tony needs substantial expenses to have his machinery repaired. Claire also realises that Alex has not only lost part of the jewellery but he also refuses to return it to her.

Advice Luca, Tony and Claire of all their rights at law as between themselves and with third parties.

UNIVERSITY OF MALTA

LL.D. 1 Year – 2013/2014

CVL4004 – Minor Contracts

Thursday 11th September 2014 - 10.30am – 11.30am

Reply to the following question in English

Anna, who was married to Brian in Malta, unilaterally gave verbal instructions to her friend Carla to purchase on her behalf some expensive pieces of antique furniture on credit from David during an auction. Carla, who had an excellent taste for antiques, realised their potential value and taken over by greed, abused of the trust placed in her by Anna. She did purchase all the antique items on credit but in her own name rather than for and on behalf of her friend. Anna was informed of this abuse but the immediate withdrawal of her instructions was useless as Carla had already purchased them.

It so happened that when these antique pieces were under Carla's custody, her fire alarm went off. Taken over by panic, Carla deposited them in a warehouse which belonged to Enzo, a friend of hers. She also entrusted him with a substantial amount of money with authority to use it but to be returned to her on demand. Alas Enzo, who was notoriously known for his carelessness and negligence, was robbed of the whole lot.

To complicate matters further, Carla died suddenly and her heirs together with all the involved individuals are now rather confused on how to proceed.

Proceed with a legal opinion on all reciprocal rights, duties and obligations which emanate from the facts as they emerge from the above contracts.

UNIVERSITY OF MALTA

LL.D. | Year – 2014/2015

CVL4004 – Minor Contracts

Friday 30th January 2015 - 10.30am – 11.30am

Reply to the following question in English

Rachel and Dennis were married in Malta with the community of acquests. They jointly left some of their precious and expensive belongings with Mario their trusted friend, who himself offered his services and support for free. To return the good deed, they loaned Mario a substantial sum of money repayable over 5 years with an agreed 10% rate of interest.

Unfortunately, Mario was robbed and to make matters worse, his business went bust due to a volatile market. Mario was adequately insured against the theft however he had incurred substantial expenses for maintaining his friends' expensive belongings in a good condition and environment which however proved futile.

It so happened that Mario and his brother Neil who co-owned some agricultural land, borrowed a mechanical plough from Frank, their neighbour as they needed to till and sow their lands before the rainy season. Frank agreed on condition that they return the machinery on demand. This plough developed serious mechanical failure which necessitated immediate and expensive repairs.

Beset by all this bad luck, Mario no longer had a guaranteed income and quarrelled with his friends. Frank now requests the immediate return of his plough for no apparent reason when Mario and Neil were still in the middle of their job whilst Rachel and Dennis are worried both for the return of their belongings and for Mario's borrowings.

Dennis is abroad for some months and Rachel now not only needs to sort out her and her husband's affairs, but she also gives her friend Nicola unilateral instructions for the performance, on their behalf, of an act of extraordinary administration.

Provide all those involved with a legal opinion on all reciprocal rights, duties and obligations as they emanate from the facts as indicated in the above contracts.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.D. 1st YEAR
SEPTEMBER 2015 EXAMINATIONS

EXAMINATION: CVL4004 – Minor Contracts

DATE: 10th September 2015

READING TIME: 10.00am to 10.05am DURATION OF EXAMINATION: 10.05am to 11.05am

INSTRUCTIONS TO STUDENTS: Reply to the question in full

Joe, whose marriage with Mary was not quite healthy, gave instructions to his friend Anton to purchase an apartment which was to be retained in Anton's name. This would enable Joe to avoid certain marital obligations towards his wife Mary due to the community of acquests between them.

In order to finance both this property transaction and some of his betting habits, Joe borrowed a substantial sum of money with interest, to be repaid when he had the means for so doing. Anton executed Joe's instructions but exceeded his mandate as he left an outstanding balance of price secured by a special privilege in favour of vendors in terms of law.

In the meantime Anton loaned the said apartment to his friend Anna against a nominal monthly payment to be returned upon his demand and until she actually purchased her own property.

Joe and Mary have now reconciled and they, Anton, Anna, the money lender and the vendors ask you to delineate all their reciprocal rights and obligations in terms of law.

Question (2)

Maria and Luca got married and made an *unica charta* wherein Maria nominated Luca her sole universal heir with the residue to her future descendants whilst Luca left her the usufruct of his estate and nominated his parents, brothers and sisters universal heirs. Luca died childless and was survived by his wife Maria, by his mother and by the descendants of his predeceased brothers and sisters.

Maria married Tony and had 2 children, Mark and Paola. She modified her will and left Tony, her second husband, 2 properties by singular title, 1 of which she inherited from her parents whilst the other was purchased during her current marriage, and then nominated her 2 children Mark and Paola heirs. Eventually another child, Amy was born to Maria and Tony.

Maria died and Tony donated a house to his son Mark and to his spouse on the occasion of their marriage. Tony made a will and bequeathed his beloved antique car to his 3 children in equal portions of 1/3 each, and his precious stamp collection to Amy to whom he eventually donated it. Tony has now died and Mark renounces to his share of the antique car but is survived by descendants.

Explain the rights of succession relative to the estates of Luca, Maria and Tony under current legislation and before the amendments introduced in 2004.



Third Year Law
Compulsory Units Past Papers

Selected Topics in INTERNATIONAL LAW

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

**UNIVERSITY OF MALTA
FACULTY OF LAWS**

JUNE 2011 SESSION OF EXAMINATIONS

INTERNATIONAL LAW

**6th June 2011
9.15am – 12.15pm**

Answer concisely:

**One question from Section A
Two questions from Section B**

All questions carry equal marks.

Please answer each question on a separate booklet.

SECTION A

1. Examine the relationship between municipal law and international law drawing on the provisions of the *Ratification of Treaties Act 1983*.
2. Sovereignty is the essence of Statehood. Discuss.
3. Discuss the criminal responsibility of the individual at International Law.

SECTION B

4. Give a detailed exposition of the relevant provisions of the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York Convention, 1958), also explaining its importance as an international treaty and the method of its incorporation into Maltese law.
5. Describe how International law regulates the use/conservation of natural resources that occur in areas beyond national jurisdiction, drawing on the mineral resources of the deep sea bed, living marine resources and climate change.
6. Write short notes on:
 - (a) The element of 'innocence' in innocent passage as elaborated in article 19 of the 1982 *Convention on the Law of the Sea*;
 - (b) The powers granted to the coastal State in the contiguous zone under the 1982 Convention;
 - (c) Piracy under the *Maltese Criminal Code*.

[Marks for Question 6 will be divided equally for (a), (b) and (c)].
7. Give an account of the principles of public international law which govern State Immunity. To what extent has the original conception of the doctrine been limited?

8/11/2011

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UNIVERSITY OF MALTA
FACULTY OF LAWS

SEPTEMBER 2011 SESSION OF EXAMINATIONS
MONDAY 5TH SEPTEMBER 2011 9:15AM - 12:15PM
INTERNATIONAL LAW

Answer concisely:

One question from Section A
Two questions from Section B

All questions carry equal marks.

Please answer each question on a separate booklet

SECTION A

1. International custom may be described as evidence of a general practice accepted as law. Discuss.
2. What forms of jurisdiction exist under international law? Carefully examine the principles governing jurisdiction of States in International Law.
3. There is an inextricable link between statehood and sovereignty. To what extent if at all do you agree with this statement?

SECTION B

4. Compare how International law has developed to regulate human activities that affect the following natural resources: climate, living resources on the high seas and the mineral resources of the deep seabed.
5. Explain the criteria of 'passage' and 'innocence' in Part II, Section 3 of the UN Law of the Sea Convention (1982). To what extent does Maltese legislation conform with the said criteria?
6. Critically appraise the notions of immunity *ratione personae* and *ratione materiae* in the context of State immunity.
7. 'Awards delivered pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which convention was opened for signature in Washington on the 18th March, 1965 ... shall be recognised and enforced by the courts of Malta as if such award were final judgments under the laws of Malta.' (Section 76(1) Malta Arbitration Act 1996)

Discuss the salient features and provisions of the above-mentioned Washington Convention, explaining also the notions of Recognition and Enforcement of arbitral awards.

UNIVERSITY OF MALTA
FACULTY OF LAWS
JUNE ~~2021~~ SESSION OF EXAMINATIONS

INTERNATIONAL LAW

2022
11th June 2022
9.15am – 12.15pm

Answer concisely:

One question from Section A
Two questions from Section B

Please answer each question on a separate booklet.

SECTION A

1. If every State enjoys sovereignty within its own territory how can International law regulate activities which occur in areas within national jurisdiction? Discuss in the light of International case law and more recent developments in International law. [33 marks]
2. (a) Analyse the element of *opinio juris sive necessitatis* in the formation of Customary International Law. [20 marks]

AND

- (b) Examine the relationship between custom international law and treaty rules, with particular reference to the 1969 *North Sea Continental Shelf (Germany/Denmark; Germany/Netherlands)* Judgment, delivered by the International Court of Justice. [13 marks]
3. (a) Article 3(3) of the Ratification of Treaties Act (Cap 304 of the Laws of Malta) stipulates at 'No provision of a treaty shall become or be enforced as part of the law of Malta except by or under an Act of Parliament.' Discuss. [17 marks]

AND

- (b) What would, in your opinion, be the correct legal procedure the government has to follow in accordance with the provisions of the Ratification of Treaties Act (CAP 304 of the Laws of Malta) if:
 - (i) Malta joins the North Atlantic Treaty Organization (NATO) [4 marks].
 - (ii) Malta concludes a bilateral double taxation agreement with Qatar [4 marks].
 - (iii) Malta conclude a trilateral agreement with Tunisia and Italy on the delimitation of the continental shelf after intense but successful negotiations [4 marks].
 - (iv) Malta withdraws from the General Fisheries Council of the Mediterranean because it cannot agree with the other Parties in setting quotas on Blue Fin Tuna [4 marks].

P.T.O.

SECTION B

4 With reference to the Articles on the Responsibility of States for Internationally Wrongful Acts and relevant jurisprudence discuss how conduct is imputed to a State. [33 marks]

5

(a) Ensuring observance of diplomatic privileges and immunities is ultimately only successful because of reciprocity. Discuss [33 marks]

OR

(b) Diplomatic privileges and immunities are not absolute. Highlight the main exceptions. [33 marks]

6.

(a) To what extent, if at all, is contemporary international criminal law grounded and based upon the sources of international law? [33 marks]

OR

(b) Outline the essential features, characteristics and elements of the core crimes which fall within the jurisdiction of the International Criminal Court. [33 marks]

7. The regime regulating the suppression of piracy *jure gentium* operates as an exception to the rule of flag State exclusivity on the high seas. Carefully analyse and evaluate:

(a) the provisions relating to the international crime of piracy in the 1982 *United Nations Law of the Sea Convention* [20 marks]

AND

(b) recent international action aimed at combating armed robbery against ships [13 marks].

UNIVERSITY OF MALTA
FACULTY OF LAWS

SEPTEMBER 2012 SESSION OF EXAMINATIONS

(MON. 10th SEPT. 2012
9.15 AM - 12.15 PM)

INTERNATIONAL LAW

Answer concisely:

One question from Section A
Two questions from Section B

All questions carry equal marks.

Please answer each question on a separate booklet

SECTION A

1. Analyse the element of '*opinio juris sive necessitatis*' as one of the constitutive elements of Customary International Law.
2. Does Malta adopt a dualist or a monist approach with respect to the ratification of treaties? The Ratification of Treaties Act (Chapter 304 of the Laws of Malta) establishes various procedures that must be followed on a national level before Malta ratifies a treaty. Discuss.
3. Carefully examine the principal theories establishing the legislative and enforcement jurisdictions of States under International Law.

SECTION B

4. (a) "As a body of international law, international criminal law requires an understanding of the sources and interpretation of international law. But it is also criminal law and as such needs substantive provisions that are clear and exact rather than the often more imprecise formulations of international law." [Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst, An Introduction to International Criminal Law and Procedure, 2nd Edn., Cambridge University Press, 2010, page 16]

To what extent, if at all, do you agree with the extract here above?

OR

(b) Individuals who commit core crimes are not primarily punished by international courts.

To what extent, if at all, do you agree with the above statement in the light of the enforcement of international criminal law?

5. While International Law is primarily concerned with rules which govern the relations between States, States are not the only subjects of International Law. Discuss this statement in the light of the status of the individual in International Law.
6. Do the two notions of Free Trade and the Protection of the Environment under international law complement each other or does a conflict exist between the two? Discuss.
7. Analyse the doctrine of innocent passage as stipulated in Part II, Section 3 of the UN Law of the Sea Convention (1982) and explain the extent to which relevant Maltese legislation conforms with the said criteria.

UNIVERSITY OF MALTA
FACULTY OF LAWS

JUNE 2013 SESSION OF EXAMINATIONS

INTERNATIONAL LAW

24th June 2013
9.15am – 12.15pm

Answer concisely:

One question from Section A
Two questions from Section B

Please answer each question on a separate booklet.

SECTION A

1. 'The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolute rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules ...' Discuss this quotation from the Nicaragua Case focusing on the material element in the formation of Customary International Law. *[33 marks]*

2. Is Malta a monist State, a dualist State or a combination of monism and dualism? Discuss with reference to the various doctrines in International Law and to the Ratification of Treaties Act (Cap 304 of the Laws of Malta). *[33 marks]*

3. Evaluate the implications of:

- (i) the decision of the International Court of Justice in the Corfu Channel Case with respect to the interpretation of State sovereignty and
- (ii) the Advisory Opinion of the International Court of Justice in the Reparations for Injuries Case in relation to legal personality under International Law

[33 marks divided equally between both sections]

SECTION B

Either:

4a. Outline the correlation, if any, between State responsibility and the perpetration of core crimes. *[33 marks]*

Or:

4b. Does International Criminal Law strike an equitable balance between:

- on the one hand, rights of suspects and rights of accused persons, and
- on the other hand, rights of victims and witnesses, and the rights of the international community? *[33 marks]*

5. Define and discuss the various types of jurisdiction that arise in international criminal jurisdiction. *[33 marks]*

6. Critically analyze the doctrine of innocent passage as it is regulated in the United Nations Convention on the Law of the Sea and Maltese domestic Law. *[33 marks]*

7. Discuss how State jurisdiction over natural resources varies according to where they are located. *[11 marks]*

Give examples to show how international law regulates:

- (i) natural resources that occur beyond national jurisdiction *[11 marks]* and
- (ii) human activities that may negatively affect common natural resources *[11 marks]*.

UNIVERSITY OF MALTA
FACULTY OF LAWS

SEPTEMBER 2013 SUPPLEMENTARY SESSION OF EXAMINATIONS

INTERNATIONAL LAW

11th September 2013
9.15am – 12.15pm

Answer concisely:

One question from Section A
Two questions from Section B

Please answer each question on a separate booklet.

SECTION A

1. Analyse the element of *opinio juris sive necessitatis* in the formation of Customary International Law. [33 marks]
2. To what extent, if at all, do you consider Malta to be a dualist state in its international obligations and a monist state as a member of the European Union? [33 marks]
3. Sovereignty is an effect of Statehood and also a relative right vis-a-vis the State's obligations towards the international community. Discuss. [33 marks]

SECTION B

4

Either:

(a) To what extent, if at all, may International Criminal Law contribute towards the maintenance of international peace and security? [33 marks]

Or

(b) What link, if any, exists between International Criminal Law, International Humanitarian Law and International Human Rights Law? [33 marks]

5. Discuss the principle of Universal Jurisdiction as exists at International Law. [33 marks]

6. The United Nations Convention on the Law of the Sea 1982 defines the internal waters of a State as 'waters on the landward side of the baseline of the territorial sea'. Discuss the regime of the internal waters, focusing on the sovereignty which the coastal State enjoys therein. [33 marks]

7. The exploitation of resources within and beyond national jurisdiction has been influenced by various developments that occurred within the international community of States. Discuss. [33 marks]

UNIVERSITY OF MALTA

FACULTY OF LAWS

JUNE 2014 SESSION OF EXAMINATIONS

INTERNATIONAL LAW - INL3000

13th June 2014

9.15am – 12.15pm

Answer concisely **THREE QUESTIONS** from the following 5 questions.

ALL QUESTIONS CARRY EQUAL MARKS

Please answer each question on a separate booklet.

1. The corollary of independence and equality of States is the duty on the part of States to refrain from intervention in the internal and external affairs of other States. Discuss this statement *also* in the light of the decision of the International Court of Justice in the *Corfu Channel Case* (ICJ Reports 1949) (UK vs Albania).
2. The *Ratification of Treaties Act* (Chapter 304 of the Laws of Malta) lays down the ratification procedure for certain treaties under Maltese law. In article 3 (1) the Act establishes that a treaty which falls under its scope, “*shall not enter into force with respect to Malta unless it has been ratified or its ratification has been authorised in accordance with the provisions of this Act*”. In article 3(3) it also provides that “*No provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament.*” Explain.
3. The admissibility test, which comprises the complementarity principle and the gravity threshold, is crucial for a determination of the jurisdiction (or otherwise) of the International Criminal Court. Discuss and elaborate.
4. Jurisdiction is a facet of State Sovereignty. Comment on this statement in the light of the various principles of jurisdiction established in International Law, distinguishing between a State’s prescriptive and enforcement jurisdiction.
5. Discuss the extent of the coastal State’s jurisdiction in the Territorial Sea as regulated in the 1982 United Nations Convention on the Law of the Sea, and in relevant Maltese legislation.

UNIVERSITY OF MALTA

FACULTY OF LAWS

INL3000 – SELECTED TOPICS IN INTERNATIONAL LAW

SEPTEMBER 2014 SESSION OF EXAMINATIONS

COURSE: LLB III

DATE: THURSDAY 11th SEPTEMBER 2014

TIME: 9.15a.m-12.15p.m.

Answer concisely THREE QUESTIONS from the following 5 questions.

ALL QUESTIONS CARRY EQUAL MARKS

Please answer each question on a SEPARATE BOOKLET.

1. International custom may be described as evidence of a general practice accepted as law. Discuss.
2. Explain the criteria of 'passage' and 'innocence' in Part II, Section 3 of the UN Law of the Sea Convention, 1982. To what extent does Maltese legislation conform with the said criteria?
3. Sovereignty is the essence of Statehood. Discuss.
4. 'Any debate on the status of the Individual in International Law today is only of academic importance as there is no doubt that, like States and International Organisations, he is a fully-fledged subject of the regime.' Discuss.
5. To what extent, if at all, have the Nuremberg Principles forged International Criminal Law?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3rd YEAR
MAY/JUNE 2015 EXAMINATIONS

EXAMINATION: SELECTED TOPICS IN INTERNATIONAL LAW INL 3000

DATE: 15th June 2015

READING TIME: 1 PM to 1.05 PM

DURATION OF EXAMINATION:

1.05 PM to 4.05 PM

ANSWER CONCISELY *THREE QUESTIONS* FROM THE FOLLOWING 5 QUESTIONS.

ALL QUESTIONS CARRY EQUAL MARKS

PLEASE ANSWER EACH QUESTION ON A SEPARATE BOOKLET.

1. The evolution of International law over centuries reflects the delicate balance between respect for the sovereignty of States and the encroachment of International law upon their reserved domain when issues become a matter of international concern. Discuss.
2. Discuss how Chapter 304 of the Laws of Malta *The Ratification of Treaties Act* lays out detailed provisions to determine the national legal procedure for the ratification of treaties by Malta, distinguishing between the procedure to be applied for various treaties including those that do not fall within its scope and codifying the dualist approach.
3. (a) In so far as the Rome Statute of the International Criminal Court is concerned, the concepts of '*ne bis in idem*' and 'fair trial' are multifunctional. Discuss and elaborate.

OR

- (b) To what extent, if at all, may *aut dedere aut judicare* be identified as the cornerstone of the enforcement of international criminal law?
4. '[T]he exercise of jurisdiction is ordinarily premised on the presence of a nexus of the matter to be regulated with the regulating State. One jurisdictional principle, however, the

universality principle, does not operate on the basis of a connecting factor linking up a situation with a State's interests.' (Reydam, *Jurisdiction in International Law*)

Discuss the principle of universal jurisdiction in the light of this statement also commenting upon the so-called 'treaty-based universal jurisdiction'.

5. Write short notes on (*each paragraph carries equal marks*):
- (a) the element of innocence in innocent passage under the 1982 UN Convention on the Law of the Sea;
 - (b) the nature and extent of the coastal State's powers in the contiguous zone under the Territorial Waters and Contiguous Zone Act and the 1982 UN Convention on the Law of the Sea;
 - (c) the definition of the continental shelf under the Continental Shelf Act 2014 and the 1982 UN Convention on the Law of the Sea.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 1ST YEAR
MAY/JUNE 2017 EXAMINATIONS

EXAMINATION: INL3000 – SELECTED TOPICS IN INTERNATIONAL LAW

DATE: Wednesday 14th June 2017

DURATION OF EXAMINATION: 10.00AM to 1.05 PM

ANSWER CONCISELY *THREE QUESTIONS* FROM THE FOLLOWING 5 QUESTIONS.

ALL QUESTIONS CARRY EQUAL MARKS

PLEASE ANSWER EACH QUESTION ON A SEPARATE BOOKLET.

1. Article 5 of the *United Nations Convention on Jurisdictional Immunities of States and their Property* determines that: “[a] State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.”
Discuss and elaborate. In your answer include reference to the restrictive theory of sovereign immunity.
 2. In the *Reparation for Injuries Advisory Opinion*, the International Court of Justice stated that: “[t]he subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.”
Discuss, with reference to the subjects of International Law.
 3. Examine concisely the maritime jurisdiction exercised by Malta under its legislation in:
 - (a) the territorial sea;
 - (b) the contiguous zone; and
 - (c) the continental shelf.In your answer reference should be made to the *1982 United Nations Convention on the Law of the Sea*. (Note: each paragraph carries equal marks)
 4. *Either:*
 - (a) Prevention, prosecution and punishment are pivotal to an effective international criminal law. Discuss and elaborate.*Or:*
 - (b) To what extent, if at all, has international criminal law contributed towards the constitutionalization of international law.
 5. Irregular maritime migration is characterized by conflicting interests which are reflected in the relevant international laws regulating the phenomenon. Discuss.
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**University of Malta
Faculty of Laws**

Bachelor of Laws (Honours)

INL3000 – Selected Topics in International Law

Monday 11th September 2017

Duration of Examination: 8.30am to 11.35am

ANSWER CONCISELY THREE QUESTIONS FROM THE FOLLOWING 5 QUESTIONS.

ALL QUESTIONS CARRY EQUAL MARKS

1. Article 17 of the 1982 United Nations Convention on the Law of the Sea provides that subject to the rules laid down by the Convention, "ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea". In the light of this statement explain what constitutes "innocent passage", and consider in particular whether (a) warships and (b) submarines are entitled to exercise the said right.
2. The Transformation of Treaties in Maltese Law is established by law under the Ratification of Treaties Act. To what extent if at all is the Ratification of Treaties Act suitable in this day and age to ensure better transparency and a comprehensive approach.
3. (a) Is the Rome Statute of the International Criminal Court a codification of customary international law or is it new treaty law?
OR
(b) To what extent, if at all, are the words 'unable' and 'unwilling' relevant for the purposes of the enforcement of international criminal law?
4. Define the term 'jurisdiction'. Carefully examine the main principles governing the jurisdiction of States in international law.
5. The State is not the only subject of international law. Discuss, with reference to organisations and the individual as subjects of international law.

**ANSWER CONCISELY *THREE* QUESTIONS FROM THE FOLLOWING 5 QUESTIONS.
ALL QUESTIONS CARRY EQUAL MARKS
PLEASE ANSWER EACH QUESTION ON A SEPARATE BOOKLET.**

1. A subject of international law is “an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claims” (Reparation for Injuries Case, ICJ Reports (1949)). Discuss this statement with reference to three subjects of Public International law.
2. The Ratification of Treaties Act enshrines the dualist approach but needs to be amended to address the wide discretion it bestows upon the government of the day. To what extent if at all do you agree with this statement.
3. A. Core crimes are forms of system criminality which stand out for their 'contextual elements' (also referred to as 'contextual circumstances').
Discuss and elaborate.

OR

- B. Under international criminal law, the concept of a fair trial is multidimensional. It is embodied in the Nuremberg Principles, its deprivation can constitute a war crime, it is most relevant for the purposes of the two-pronged International Criminal Court admissibility test, and it is tantamount to a fundamental human right.
Critically analyse the various dimensions of the concept of a fair trial under international criminal law.
4. The 'Mothers of Srebrenica', a Foundation established under Dutch law representing 6,000 survivors of victims of the Srebrenica genocide, initiated proceedings before a Dutch civil court. The Foundation holds both the Dutch State and the United Nations (UN) responsible for not preventing the genocide and the fall of the enclave of Srebrenica in 1995. However, the Dutch Supreme Court ruled that the UN cannot be brought before a Dutch court. Why not? Does it matter that the Foundation holds the UN responsible for something as serious as the failure to prevent genocide?
 5. Examine concisely:
 - (a) the control which a coastal State is allowed to exercise in the contiguous zone; and
 - (b) the measures which a coastal State is allowed to take in relation to the protection of archaeological and historic objects in the contiguous zone.

In your answer you should refer to the position under the 1982 UN Convention on the Law of the Sea and the relevant Maltese legislation.

University of Malta
Faculty of Laws
SEPTEMBER 2018 EXAMINATIONS

INL3000 – Selected Topics in International Law

Date: TUESDAY, 4TH SEPTEMBER 2018

Duration of Examination: 8.30AM – 11.35AM

CHOOSE THREE QUESTIONS OUT OF FIVE.

ALL QUESTIONS CARRY EQUAL MARKS.

1. To what extent does the Ratification of Treaties Act prescribe a legal procedure that adopts a dualist approach for Malta to ratify treaties and what kind of discretion does it bestow upon the government of the day?
2. States are the original, as well as the primary, subjects of International Law. Discuss, with reference to the criteria for statehood.
3. 'Individuals may not yet be participating in the international legal system to the same extent as States. But the trend is clear: the role of the individual in this system is continuing to expand ...'. (MD Evans International Law) In the light of this statement, discuss the status of the individual in International Law.
4. Examine the right of innocent passage through the territorial sea as established under Part II Section 3 of the 1982 United Nations Convention on the Law of the Sea. In your answer you should consider whether (a) warships, (b) submarines, and (c) aircraft are entitled to exercise the said right.
5. (a) International criminal law heavily relies upon the prevention, prosecution and punishment of crimes. Discuss and elaborate.
OR
(b) To what extent, if at all, has international criminal law contributed towards 'the internationalization of the rule of law', also referred to by some as 'the constitutionalization of international law'?

University of Malta
Faculty of Laws

June 2019 Examination Session

INL3000 SELECTED TOPICS IN INTERNATIONAL LAW

Date: Monday, 24th June 2019

Duration of Examination: 8:30AM - 11:35AM

INSTRUCTIONS TO STUDENTS:

Answer concisely **THREE (3)** questions out of five (5) questions.

All questions carry equal marks with one (1) mark awarded *ex gratia*.

Please answer each question **on a separate booklet**.

1. Article 17 of the 1982 United Nations Convention on the Law of the Sea provides that, subject to the rules laid down by the Convention, “ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea”. In light of this statement explain what constitutes “innocent passage”, and consider in particular whether (a) warships, (b) submarines and (c) aircraft are entitled to exercise the said right.
2. Answer **EITHER (a) OR (b)**:
 - (a) To what extent, if at all, is it fair to state that victims and witnesses are adequately protected (safeguarded) in the realm of the enforcement of international criminal law?
 - (b) To what extent, if at all, is it correct to uphold that the ICC Statute constitutes both the crystallization of customary international law and also new conventional international law?
3. The Government of Ethal¹ has approached you as a consultant on the law of air and outer space.

Ethal does not have national space legislation, but it has ratified the following:

 - Chicago Convention of 1944 (*Convention on International Civil Aviation*);
 - Outer Space Treaty of 1967 (*Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*); and
 - Liability Convention of 1972 (*Convention on International Liability for Damage Caused by Space Objects*).

¹Note that Ethal is a fictitious State.

The Government wants to understand the fundamental principles of international air and space law. You are thus asked to explain the following:

- (a) Where does the airspace of Ethal end and where does outer space begin? Does Ethal's sovereignty extend to outer space? (8 marks)
- (b) Can Ethal claim sovereignty over the Moon or other celestial bodies? Can it mine and extract the resources thereof; in this respect, should it ratify the Moon Agreement of 1979 (*Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*)? (8 marks)

The Government is interested in using outer space to improve its Armed Forces. To this end:

- (c) Can the Armed Forces of Ethal use outer space for military purposes? Specifically, can it launch a weapon in outer space; can it launch a satellite which supports military-based operations on Earth? (7 marks)

Finally, the Government intends on developing an outer space industry. In doing so, it wants to ensure that this industry will be in line with international law.

Therefore:

- (d) If an Ethal-registered company wants to carry out space activities, who will be responsible for those activities? Should Ethal enact national space law? (5 marks)
 - (e) If the space object of an Ethal-registered company causes damage, who will be liable? Is there a difference – in terms of liability – between a space object causing damage to an aircraft in flight, and a space object causing damage to another space object in outer space? (5 marks)
4. Please answer the following question relating to the case *Hasan Nuhanović v. The Netherlands* of the Netherlands Supreme Court: can the actions or omissions by Dutchbat, that resulted in the death of Hasan Nuhanović's brother, be attributed to the State of the Netherlands? Explain what the Court's reasoning was in this case.
5. 'States are primarily but not exclusively the subjects of international law ... International law is no longer - if it ever was - concerned only with States ...' (Oppenheim). Discuss.

University of Malta
Faculty of Laws

September 2019 Examination Session

INL3000 SELECTED TOPICS IN INTERNATIONAL LAW

Date: Tuesday 10th September 2019 **Duration of Examination:** 8:30AM - 11.35AM

INSTRUCTIONS TO STUDENTS:

Answer concisely **THREE (3)** questions out of **FIVE (5)** questions.

All questions carry equal marks with **ONE (1)** mark awarded *ex gratia*.

Please answer each questions on a **separate booklet**.

1. Discuss the contiguous zone regime under the 1982 United Nations Convention on the Law of the Sea.
2. As legal adviser to the Minister for Foreign Affairs you have been requested to provide a legal critical analysis. Is the Ratification of Treaties Act still fit for purpose as the legal instrument that transforms treaties into Municipal law for Malta or it is time to propose a more transparent and comprehensive legal instrument regulating the relationship between International Law and Municipal Law for Malta as a sovereign State.
3. Please answer all of the questions below. Each question carries equal marks.
 - (a) Does international air and/or space law establish the end of air space and the beginning of outer space?
 - (b) According to international space law, who does outer space belong to and who can claim sovereignty thereover and/or therein?
 - (c) According to international space law, can outer space be used for military purposes? (d) According to international space law, who is responsible and/or liable for space activities?
4. Please read Articles 6 and 7 of the Articles on The Responsibility of International Organizations of the International Law Commission (ILC, 2011), and Articles 4 and 8 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts (2001) on the following page.

5. Answer EITHER:

- (a) Analyse the salient provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

OR:

- (b) The principle of complementarity underpins the Rome Statute of the International Criminal Court. Discuss and elaborate.



L-Università
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FACULTY OF LAWS
DEPARTMENT OF INTERNATIONAL LAW
JUNE/JULY 2020 EXAMINATION SESSION

INL3000 SELECTED TOPICS IN INTERNATIONAL LAW

Tuesday, 30th June 2020

Examination time: 8:30am – 11:30am + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 3688

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

You have the option to either type in your answers on a word document or write down your answers on an A4 sheet/s of paper.

Once you have completed the examination, you are to save your answers in pdf format or scan your handwritten answers using Adobe Scan app and Microsoft Office Lens app, and upload them within the time indicated for the examination. **The name you should assign to the file you are going to upload to the VLE dropbox should be the study-unit code.** The VLE will then rename the file automatically to also include your name and surname.

You have been allowed 60 minutes for downloading the examination paper and uploading your responses. **Make sure that you upload the correct document.** If you upload the wrong document, simply upload again and the system will overwrite the document originally submitted. You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours. You may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

.....

INSTRUCTIONS TO STUDENTS:

Answer concisely **TWO (2)** questions out of **FOUR (4)** questions.

All questions carry equal marks.

1. Please read Article 8 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts (2001) below:

ILC's Articles on Responsibility of States for Internationally Wrongful Acts (2001)

Article 8

Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Please explain how, and under which circumstances, this article can be used as international legal basis for attributing conduct of peacekeepers to the troop-contributing State. (50 marks)

2. The Government of Ambrosia* has engaged you as a consultant. Ambrosia does not have national space legislation, but it has ratified the following legal instruments:
 - Chicago Convention of 1944 (the "Convention on International Civil Aviation");
 - Outer Space Treaty of 1967 (the "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies"); and
 - Liability Convention of 1972 (the "Convention on International Liability for Damage Caused by Space Objects").
 - a. A private-owned company registered in Ambrosia transports passengers and cargo, via a helicopter, to neighbouring States. The Government of Ambrosia wants to know: Whether the helicopter is an 'aircraft' and whether the Chicago Convention applies to the activities of the helicopter. (10 marks)
 - b. Ambrosia is planning on launching a space object from its territory into outer space. The space object will travel through and across the airspace of Ambrosia as well as the airspace of other States. The Government of Ambrosia wants to know:
 - i. Whether it has sovereignty over its airspace and the airspace of other States; (5 marks)

* Note that Ambrosia is a fictitious State.

- ii. Whether its airspace ends at one point and whether outer space begins at another; (5 marks)
 - iii. Whether it can claim sovereignty in outer space. (5 marks)
- c. A second and different private-owned company registered in Ambrosia wants to launch a space object from Ambrosian territory to the Moon in order to mine it. The Government of Ambrosia wants to know:
- i. Whether or not it will be responsible for the space activities of this company, and whether or not it should enact national space law; (10 marks)
 - ii. Whether or not it will be liable for any damage caused by space objects of the company, and whether there is a difference, in terms of liability, between a space object which causes damage to an aircraft in flight or on the Earth's surface, and a space object which causes damage to another space object in outer space; (10 marks)
 - iii. Whether or not it should ratify the Moon Agreement of 1979 (the "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies"). (5 marks)
3. Article 17 of the 1982 United Convention on the Law of the Sea provides that, subject to the rules laid down by the Convention, "ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea". In the light of the relevant provisions of the said Convention, please answer the following questions:
- a. What constitutes (i) passage (5 marks), and (ii) innocent? (10 marks)
 - b. Under what conditions are (i) warships (10 marks), (ii) submarines (5 marks), and (iii) nuclear-powered ships (5 marks) entitled to exercise the right of innocent passage?
 - c. Do planes have the right of innocent passage through the airspace over the territorial sea? (3 marks)
 - d. What are the rights of protection accorded to the coastal State when (i) a commercial vessel (5 marks), and (ii) a foreign warship (7 marks) violate the right of innocent passage in its territorial sea?

In your answers reference should be made, where applicable, to customary international law, Maltese legislation, and international jurisprudence.

4. The armed conflict in Syria has been going on for over nine (9) years. More than half a million persons perished, and over five (5) million have escaped to neighbouring States where they claim refugee status. Evidence to the effect that Bashar-al-Assad (hereinafter referred to as 'Assad'), President of Syria, ordered and/or committed and/or failed to prevent genocide, crimes against humanity and war crimes is available. Throughout the conflict, some regional and Western States have provided material support to Syrian armed opposition forces which control large parts of Syria, whereas Russia, Iran and Hezbollah (a militant group based in Lebanon) assist the Syrian government forces.

In 2016, 'The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of the Most Serious Crimes under International Law Committed in the Syrian Arab Republic Since 2011' (hereinafter referred to as 'the IIIM') was established by means of United Nations General Assembly Resolution 71/248. This mechanism, however, is of a quasi-prosecutorial nature in so far as it does not set up a court/tribunal which may try alleged criminals. Germany, Austria, Sweden, Denmark and Norway incorporated specialized prosecution units within their public prosecution services. These identify, collect and preserve evidence which derives from eyewitness accounts of asylum seekers whose country of origin is Syria. Last year Spain broadened, once more, its laws which permit it to exercise universal jurisdiction over all core crimes. The idea to devise a special and/or extraordinary court which would be funded by the United Nations was proposed by Brazil, to no avail.

Some weeks ago, Assad, who has been constrained to move from one city to another in Syria for security reasons, arrived irregularly, by boat, in Malta, a State Party to the Rome Statute of the International Criminal Court. It seems that Assad chose to travel to Malta in view of its low record of transmission of covid-19, its robust medical infrastructure, its Mediterranean climate, its purported neutrality, significant linguistic similarities to Syria and deep connections he has with a local business tycoon.

In the hope to remain undetected, Assad guised his identity by growing a beard and long hair. Yet, he was recognised at St. Thomas Bay by a Syrian refugee who downloaded, on social media, a photo of Assad, which he took upon recognising him. The Syrian refugee promptly filed a police report. Assad was arrested by Marsaskala police officers later on throughout the night, and transferred for questioning to General Police Headquarters, Floriana, in the early hours of 14 April 2020. Throughout the interrogation, whilst asserting his personal and functional immunities, Assad claimed to be willing to order the surrender of government forces provided that an amnesty be granted by the Maltese Government in order to guarantee his immunity from prosecution.

Mr. Zdzislaw Galicki, UN Special Rapporteur of the International Law Commission on the topic of *aut dedere aut judicare*, tweeted that he welcomes the arrest of Assad. Many NGOs have asked Malta to accept the peace deal and to grant an amnesty to Assad, in the hope that a cessation of hostilities would conclusively prevail. Syrian rebel/opposition forces indicated that should Assad step down in a formal and irrevocable manner by formally relinquishing all his powers as President, they will rule Syria with an eye to its prompt democratization without seeking to prosecute Assad on Syrian soil. After a press conference held by Malta's Prime Minister by means of which the international community was unequivocally notified that Malta has custodial jurisdiction over Assad, Malta received two requests. The first request was sent by Spain on 15 April 2020. A *note verbal* was attached to the request. This *note verbal* stipulated that Spain is a major contributor of the IILM. Spain requested the extradition of Assad since it wants to try him for core crimes under its laws permitting universal jurisdiction, and under other applicable international laws. On 19 April 2020, the State of Texas (USA), which admits the death penalty (capital punishment), has requested the extradition of Assad. Texas wants to try Assad for the murder of US Army Master Sgt. Jonathan Dunbar from Austin, Texas (USA). Dunbar was killed, on 1 February 2013, allegedly by Syrian government forces, in Manbij, Syria. Yesterday, a prominent Dutch jurist wrote, on a webpage belonging to the University of Pretoria, where she lectures international law, that the *forum conveniens* for heinous crimes of such gravity is the International Criminal Court.

Today, after a meeting of Cabinet, the Maltese Government engaged you in order to seek **legal advice**. Advise the Maltese Government by drafting a **legal opinion** which shall be submitted to Cabinet. (50 marks)



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FACULTY OF LAWS
DEPARTMENT OF INTERNATIONAL LAW
SEPTEMBER 2020 EXAMINATION SESSION

INL3000 Selected Topics in International Law

Tuesday, 15th September 2020

Examination time: 8:30AM – 11:30AM + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 3688

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

You have the option to either type in your answers on a word document or write down your answers on an A4 sheet/s of paper.

Once you have completed the examination, you are to save your answers in pdf format or scan your handwritten answers using Adobe Scan app and Microsoft Office Lens app, and upload them within the time indicated for the examination. **The name you should assign to the file you are going to upload to the VLE dropbox should be the study-unit code.** The VLE will then rename the file automatically to also include your name and surname.

You have been allowed 60 minutes for downloading the examination paper and uploading your responses. **Make sure that you upload the correct document.** If you upload the wrong document, simply upload again and the system will overwrite the document originally submitted.

You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

You may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

Instructions to students:

Answer concisely **TWO (2)** questions out of **FOUR (4)** questions.
All questions carry equal marks.

1. Please read Article 7 of the ILC's Draft articles on the responsibility of international organizations (2011) below:

Article 7

Conduct of organs of a State placed at the disposal of an international organization

The conduct of an organ of a State that is placed at the disposal of an international organization shall be considered under international law an act of the organization if the organization exercises effective control over that conduct.

Please explain how, and under which circumstances, this article can be used as international legal basis for attributing conduct of peacekeepers to the United Nations organization.

(NB. Only the relevant parts of Article 7 are stated above.) **(50 marks)**

2. Discuss the contiguous zone regime under the 1982 United Nations Convention on the Law of the Sea. **(50 marks)**
3. The Government of Caledonia* has engaged you as a consultant.

Caledonia has ratified the following legal instruments:

- Chicago Convention of 1944 (the "Convention on International Civil Aviation");
- Outer Space Treaty of 1967 (the "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies");
- and
- Liability Convention of 1972 (the "Convention on International Liability for Damage Caused by Space Objects").

Caledonia does not have any national space law.

* Note that Caledonia is a fictitious State.

- a) An aircraft registered in Caledonia is used only to transport Government officials from Caledonia to other States when they are on official duty. The Government of Ambrosia wants to know:
- i. What is an 'aircraft'? **(10 marks)**
 - ii. Does the Chicago Convention apply to this aircraft considering that it only transports Government officials on official duty? **(5 marks)**
- b) The Government of Caledonia will launch a space object from Caledonian territory into outer space. The Government of Caledonia wants to know:
- i. Where does outer space begin? **(10 marks)**
 - ii. Can the Government of Caledonia claim sovereignty in outer space? **(5 marks)**
- c) The Government of Caledonia would like to improve its Armed Forces. The Government of Caledonia wants to know whether it can use outer space for military purposes. **(5 marks)**
- d) A private company registered in Caledonia wants to launch a space object from Caledonian territory into outer space. The Government of Caledonia wants to know:
- i. Who will be responsible for the space activities of this company? **(10 marks)**
 - ii. Who will be liable for any damage caused by the space object of this company? **(5 marks)**
4. The Federal Republic of Mexico is a State Party to:
- i. the Rome Statute of the International Criminal Court;
 - ii. the United Nations Convention Against Transnational Organised Crime;
 - iii. the Inter-American Convention on Human Rights; and
 - iv. the International Covenant on Civil and Political Rights.

Its President, Andrés Manuel López Obrador, has opted for a non-confrontational approach against the drug cartels, focusing, instead, on tackling inequality central to his efforts under a policy dubbed "*abrazos, no balazos*" - hugs not bullets. He took office vowing to remove the military from the streets in the fight against structured drug trafficking organisations, all of which exceed three (3) persons in number, and end his predecessors' war on drugs. Instead, he promised, he would address the roots of crime by tackling poverty through social development programs and capital investment mechanisms.

Yet, his policies have been met with harsh criticism after a number of high-profile attacks, including an ambush in which nine (9) members of a Mormon community were killed between the Mexican states of Sonora and Chihuahua on 17 July 2020. All the victims, with the exception of a Canadian passer-by who was killed in the attack, originate from Lafayette, Louisiana, United States of America (hereinafter referred to as 'USA') and are linked to a breakaway Mormon community/sect which settled in Mexico in the 1990s. The perpetrators have not been identified because a sham investigation was conducted by the Mexican municipal authorities. The Home Affairs Minister merely reported that the group could have been targeted accidentally as a result of mistaken identity and that he was saddened by their deaths. Sonora state in northern Mexico is being contended by two rival gangs, *La Línea*, which has links to the larger *Juárez* cartel, and *Los Chapos*, which is deeply associated to the *Sinaloa* cartel. These Mexican gangs fund their criminal enterprise by laundering the proceeds or property, through USA banks, of organised crimes ranging from abductions, kidnappings, and hostage-taking, in order to perpetrate cruel and violent attacks against the civilian population of their rival gangs. To secure acceptance from local communities (civil society) and the allegiance of members of the civilian population, such gangs supply significant amounts of cash (Mexican peso) which are channelled to the organisation of church feasts and festivals, to the maintenance of sports teams and to the sustainability of charities. In this way, they vaunt effective control over large territories within the state wherein they operate.

The Federal Bureau of Investigation of the USA, which is not a State Party to the Rome Statute of the International Criminal Court, has offered assistance to the Mexican competent authorities both in their specific investigation of the above killings and in their general quest to prosecute drug lords who exercise enough authority and control to be able to effectively rule within certain areas/territories of Mexico. However, by means of a joint press statement, the Mexican federal, State and municipal [local] police forces announced that Mexico would dedicate its resources, including its intelligence agents, its Attorney-General and its army, by acting with independence and fairness in pursuing the criminals behind all attacks and in bringing them to justice promptly.

However, the violence escalated. On 20 August 2020, ten (10) indigenous musicians, members of the *Sensación Musical* group, were killed and burnt in an ambush allegedly perpetrated by armed members of the *Los Ardillos* drug cartel in the town of *Chilapa de Álvarez* (Guerrero State). A passer-by, Ernesto Hernán Rodríguez Gómez, filmed the *Chilapa de Álvarez* murders from his own mobile phone and circulated the filming via social media just a few minutes thereafter. His lawyer has asked the competent State authorities to subject his client, Ernesto Hernán Rodríguez Gómez, to an effective witness protection programme because since his client uploaded the video footage, he has received various death threats from ruthless narcotraffickers (guerrillas) belonging to the *Los Ardillos* drug cartel. At dawn the car of the eyewitness was set on fire, and he is now hiding, in nearby Acapulco, in an uninhabited

summer residence belonging to his lawyer's step-mother. The request for a witness protection programme was rejected by the Mexican competent authorities on 2 September 2020.

In the meantime, documentary evidence, photos and CCTV footage which were identified, collected and preserved by Guatemalan human rights activists show that Mexican guerrillas obtain weaponry by virtue of arms trafficking from across the border at El Paso, Texas, USA, into *Ciudad Juárez* in Mexico. Mexican authorities blame the fragile regulatory framework applicable to banks operating within North Carolina, USA, and permissive gun laws prevailing within Arizona, USA, a border Constitutional Carry State. On the other hand, USA President Donald Trump, besides accusing his Mexican counterpart of interfering in USA domestic affairs and deliberately rejecting specialized assistance which the USA had kindly offered ultimately to enhance border controls and secure regional stability, referred to the invocation of the rules of State responsibility in so far as Mexico has failed to suppress bribery, corruption and financial crimes committed by its competent authorities along the 2,000-mile border from Brownsville, Texas, to San Diego, California. In Trump's views, such omissions imputable to Mexico also constituted the direct cause of an increase in migrant smuggling and trafficking in human beings predominantly from rural areas of Mexico into the bordering American States of California, Arizona, New Mexico and Texas. A White House official contends that this, in turn, causes damages to the USA. Subsequently, in an attempt to soothe the diplomatic row and attract favourable media attention, the President of Mexico publicly announced the launch of a Specialized National Agency [SNA] designed to detect and prosecute bribery, corruption and financial crimes committed by State officials and also to curb spiralling violence perpetrated by drug cartels in Mexico. Notwithstanding an outstanding budgetary endowment which would guarantee lucrative salaries to members of the SNA and a very user-friendly registration system for would-be applicants, the twenty-four hour deadline has expired at noon (12:00 hrs) on 11 September 2020. From a total of eight thousand five hundred (8,500) eligible members of the *Policía Federal Ministerial*, nobody signed up to the SNA amid fear of being killed on the job and/or for fear of being exposed owing to collusion between drug cartels and the Mexican relevant competent authorities.

Yesterday you received an email from Adrián Ramírez López, the President of the *Liga Mexicana por la Defensa de los Derechos Humanos* which is directly affiliated to *Fédération internationale des ligues des droits de l'homme*, of which it is a Mexican branch. You are being requested to provide **legal advice** intended to seek and obtain access to criminal justice for relatives of the deceased victims further to the perpetration of the abovementioned violence in Mexico, by identifying and pursuing the available and appropriate jurisdictional avenues for such purposes.

Draft the **legal opinion**. You may refer to case-law (jurisprudence), amongst other sources, in such legal opinion. **(50 marks)**



Third Year Law
Compulsory Units Past Papers

COMPANY LAW

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

UNIVERSITY OF MALTA
FACULTY OF LAWS
JUNE 2014 SESSION OF EXAMINATIONS
LL.B. Second Year Hons.
CML2011 – COMPANY LAW

Friday 6th June 2014

2.15 p.m. – 4.15 p.m.

Answer any TWO (2) questions

All questions (including (a) and (b) questions) carry equal marks

Answer each question (including (a) and (b) questions) on a separate script

1. What, in your view, are the principal characteristics of a limited liability company under Maltese law?
2. The share capital clause and the objects clause are two very important clauses of the Memorandum of Association of a limited liability company. Explain why you do or you do not agree with this statement and describe what each of the said two clauses should contain.
3. (a) "The Courts will not allow a person to circumvent his contractual obligations by the expediency of acting through a limited liability company". Discuss

(b) Describe the way in which a person may become a director, and how he may stop being a director, of a company.
4. Maltese Company Law and the Maltese Courts seek to protect third parties from *ultra vires* acts done in the name of the company. What do you understand by this statement?
5. (a) Article 214(2)(b)(iii) of the Companies Act (Chapter 386, Laws of Malta) states that a company shall be dissolved by the Court if the Court is of the opinion that there are grounds of sufficient gravity to warrant the dissolution and subsequent winding up of the company. To what extent is it true to say that this provision of the law grants a minority shareholder a just and equitable remedy?

(b) Outline the remedies provided to a member of a company in terms of article 402(3) of the Companies Act (Chapter 386, Laws of Malta).

UNIVERSITY OF MALTA

FACULTY OF LAWS

SEPTEMBER 2014 SESSION OF EXAMINATIONS

LL.B. Second Year Hons.

CML2011 – COMPANY LAW

Tuesday 2nd September 2014

Time:.....9.15-11.15A.M.

Answer any TWO (2) questions

All questions (including (a) and (b) questions) carry equal marks

Answer each question (including (a) and (b) questions) on a separate script

- 1(a). Outline the process for the incorporation of a limited liability company under Maltese law.
- 1(b). Describe each of the ways whereby a person may become a member of a limited liability company under Maltese law.
2. Discuss the statutory and judicial inroads to the principle of separate juridical personality under Maltese law.
- 3(a). Two of the clauses that must appear in the memorandum of association of any company registered in Malta are the name of the company clause and the registered office clause. What does each of these clauses entail?
- 3(b). Discuss: How are directors appointed and to whom do they owe their duties?
4. Article 137(3) of the Maltese Companies Act provides that the business of a company shall be managed by the directors who may exercise all such powers of the company as are not, by the Companies Act or by the memorandum or articles of the company, required to be exercised by the company in general meeting. Explain this statement fully.
5. What protection is given to minority shareholders in the Maltese Companies Act?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. SECOND YEAR HONS.
JUNE 2015 SESSION OF EXAMINATIONS
EXAMINATION: CML2011 – COMPANY LAW

DATE: Monday 8th June 2015

READING TIME: 10.00am to 10.05am.

DURATION OF EXAMINATION: 10.05am to 12.05pm.

INSTRUCTIONS TO STUDENTS:

Answer any TWO (2) questions.

All questions (including (a) and (b) questions) carry equal marks.

Answer each question (including (a) and (b) questions) on a separate script.

Non-programmable calculators may be used.

1. Which, in your view, are the main characteristics of the limited liability company under Maltese law?
2. According to article 69(1) of the Companies Act (Chapter 386, Laws of Malta), the memorandum of association of every company must set out certain contents amongst which are the name and the objects of the company. Describe these two requirements in detail.
3. (a) Discuss the ways in which a director can be appointed to, and removed from, the board of directors of a company.

(b) Maltese courts will lift the corporate veil where the corporate form is used to circumvent contractual obligations. Discuss.

4. Except in very limited and clear-cut cases, anything that is done by the board of directors which exceeds the limits of their authority or by any director which is beyond his powers is binding on the company, and a company is furthermore bound by any act that it does even though that act falls outside its objects. Explain this statement fully.

5. Diving Services Limited (DSL) is a company registered in Malta. The object for which the company was set up was to provide services related to diving. The shareholders of DSL are: (i) Peter Naudi, who owns 35% of the shareholding; and (ii) Joe Bugeja who owns 65% of the shareholding. Both shareholders are directors. Relations between the two are not as good as they used to be. The company no longer provides any services related to diving, and Joe Bugeja is insisting that he should use the company to develop property. Peter Naudi keeps resisting such a move, but he is constantly being outvoted by Joe Bugeja. In point of fact the company is now fully active in property development and there is no hope that it will ever resume its diving services. Joe Bugeja is seeking to hold a general meeting to remove Peter Naudi from being a director of the company. Joe Bugeja also owns another company that sells construction material and all the material that DSL requires for its developments is being purchased from the said company. Peter Naudi seeks your advice as a minority shareholder. What would your advice be?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. SECOND YEAR HONS.
SEPTEMBER 2015 SESSION OF EXAMINATIONS
EXAMINATION: CML2011 – COMPANY LAW
DATE: 7th September 2015, *MONDAY*

READING TIME: 08.30am to 08.35am.

DURATION OF EXAMINATION: 08.35am to 10.35pm.

INSTRUCTIONS TO STUDENTS:

Answer any TWO (2) questions

All questions (including (a) and (b) questions) carry equal marks

Answer each question (including (a) and (b) questions) on a separate script

Non-programmable calculators may be used

1. Discuss the concept of separate juridical personality in the context of Maltese company law
2. List and outline the contents that must be set out in the Memorandum of Association of every limited liability company registered under the Companies Act, 1995.
3. (a) Discuss the rules in the Companies Act, 1995 which enable the corporate veil to be lifted in the case where the number of members of the company is reduced to below two; and
(b) Discuss the different ways in which a company director may cease to hold the office of "director".

(continued)

Page 1 of 2

4. (a) Differentiate between the ways whereby a person may become a member of a limited liability company under the Companies Act, 1995 ; and
(b) Describe the features under Maltese law of a share that is set out as being a participating and redeemable preference share.

5. Discuss one of the following remedies available to a minority shareholder:
 - a) The just and equitable remedy; or
 - b) The unfair prejudice remedy.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. SECOND YEAR HONS.

JUNE 2016 SESSION OF EXAMINATIONS

EXAMINATION: CML2011 – COMPANY LAW

DATE: Monday 27th June 2016

READING TIME: 10.00am to 10.05am.

DURATION OF EXAMINATION: 10.05am to 12.05pm.

INSTRUCTIONS TO STUDENTS:

Answer any TWO (2) questions

All questions (including (a) and (b) questions) carry equal marks

Answer each question (including (a) and (b) questions) on a separate script

1. Identify and describe three principal features of the limited liability company under Maltese law.
2. What are the contents that must be set out in the memorandum of association of a limited liability company by virtue of article 69 of the Companies Act, 1995 (Chapter 386)? Describe any two of them in detail.
3. The powers of the company are exercised either by a resolution of the general meeting or by a resolution of the board of directors. Do you agree with this statement? And what are the kinds of meetings and types of resolutions that are

relevant for the purposes of this statement? Describe each kind of meeting and each type of resolution that you mention.

4. (a) Explain and illustrate the principle of the separate juridical personality of a limited liability company under Maltese law.

(b) "Anybody can be a director of a company, provided such person is duly appointed by the shareholders of the Company." To what extent do you agree with such statement.

5. Who may file legal proceedings in terms of Article 402 of the Companies Act, 1995 (Chapter 386)? How does this provision afford protection to a shareholder who complains that he is being treated in an unfair manner?

University of Malta
Faculty of Laws
JUNE 2018 SESSION EXAMINATIONS
CML2011 – Company Law

Date: Monday 11th June 2018

Duration of Examination: 8.30AM – 10.35AM

INSTRUCTIONS TO STUDENTS:

Answer any TWO (2) questions.
All questions carry equal marks.
Answer each question on a separate script.

1. Article 69 of the Companies Act sets out the contents that must feature in the Memorandum of Association of every company. What are they? Describe three of them in detail.
2. Discuss the principle of the separate juridical personality of companies with reference to court judgments.
3. A Director must act honestly and in good faith in the best interests of the Company. Discuss.
4. In what manner does the Companies Act afford protection to minority shareholders?
5. Critically examine the application of the “ultra vires” doctrine in company law, with particular reference to the applicable provisions of the Companies Act and judgments delivered by the Maltese Courts.

University of Malta
Faculty of Laws

January/February 2019 Examination Session

CML2011 COMPANY LAW

Date: Tuesday 29th January 2019

Duration of Examination: 2:30PM-4:35PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

- 1) Discuss the principle of separate juridical personality in Maltese company law.
- 2) Describe the process for the incorporation of a company under the Companies Act.
- 3) A director is bound to act honestly and in good faith, in the best interest of the Company. Discuss.
- 4) Discuss the manner in which directors are appointed and removed.
- 5) Should a company be free to do whatever it likes with its capital, providing it is solvent or should a company be restricted by capital maintenance rules?

Date: Monday 27 January 2020

Duration of Examination: 11:30AM – 1:35PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. Examine critically the "ultra vires" doctrine in company law, making reference to relevant recent judgements.
2. Capital maintenance rules ensure that the capital of a company is preserved for the protection of creditors. Discuss.
3. The two most important features of a company are the separate juridical personality and the limited liability of its shareholders. Discuss.
4. Discuss the salient features of (a) the Memorandum and (b) the Articles of Association of a company.

5. Are the rights of minority shareholders adequately protected under company law?

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69
pic/
Ltd
variable
fixed - SICAV plc/Ltd
INVOA plc/Ltd
AOA - First Schedule of Companies Act provides template
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transfer of shares
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2 Registered Office Clause
3 object clause
5 Share Capital & Shares Clause
6 management clause
7 Representation clause - judicial/contractual rep
8 secretary of company clause
9 Duration clause
4 subscriber's clause
- name
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FACULTY OF LAWS
DEPARTMENT OF COMMERCIAL LAW
FEBRUARY 2021 EXAMINATION SESSION

CML2011 Company Law

Friday, 5th February 2021

Examination time: 08:30 – 10:30 + 15 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone: 2340 3251; 2340 3204

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

By sitting for this examination, I declare that I am aware of the provisions of the regulations regarding conduct during examinations and I pledge to observe them.

Students may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

Students may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

With regard to FLOWmulti examinations, you are advised to type directly on WISEflow (and not on MS Word intending to copy and paste on WISEflow).

With regard to FLOWassign examinations, you are advised to upload your work in PDF format.

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INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions. All questions carry equal marks.

Word limit: **1500 words per question, longer essays will not be fully read.**

1. Michael Moss has a thirty percent (30%) shareholding in Vincenti Holdings Limited. The other seventy percent (70%) shareholding is held in equal portions by his friends Paul Bamber and John Drury. Vincenti Holdings Limited in turn owns eighty percent (80%) shareholding in Brighton Garage Operations Limited – a company that operates a major car park in St Julians. The other twenty percent (20%) is owned in equal portions by the same Paul Bamber and John Drury. Both Paul Bamber and John Drury are the sole directors of Vincenti Holdings Limited and they are also the sole directors of Brighton Garage Operations Limited.

Michael Moss is concerned that his investment in Vincenti Holdings Limited is giving him no return. Vincenti Holdings Limited has not declared a dividend in years, and very little information is given at the Company's annual general meeting, except that the Company's subsidiary Brighton Garage Operations Limited has hardly made any profit. At a recent annual general meeting Michael Moss has asked to see the profit and loss account of Brighton Garage Operations Limited, but this request was denied.

A disgruntled employee of Brighton Garage Operations Limited has however informed Michael Moss about what is really going on within Brighton Garage Operations Limited, namely: that the two directors are on the company's pay roll and paying themselves a huge salary; that recently the same two directors formed another company between them which imports car park automated gates and paying machines, and that this newly formed company was awarded a tender by Brighton Garage Operations Limited, for the full refurbishment of the St Julians car park. Michael Moss is livid and he has come to you for legal advice.

2. Armchair Creations Limited ("ACL") is a limited liability company that was incorporated in Malta in 2014. ACL was set up with two shareholders (Jeffrey Zammit and Fiona Abdilla) each holding 50% of its issued share capital. On 1 December 2019, Mr Zammit entered into a share sale agreement with Ms Abdilla whereby he sold his shareholding in ACL to Ms Abdilla. ACL was also a party to the share sale agreement. In the share sale agreement Mr Zammit undertook and bound himself, for a period of two years from 1 December 2019, (1) not to employ any individual who was in the employment of ACL on 1 December 2019; and (2) not to solicit any business from any of the customers of ACL listed in an annex to the share sale agreement. A penalty of €20,000 was established for each infringement.

In January 2020, Mr Zammit set up a limited liability company (by the name of Furniture Design Limited ("FDL")) with himself as the sole shareholder and sole director. Within a month of its incorporation, FDL proceeded to employ two persons who had been in the employment of ACL when the share sale agreement was signed and started soliciting business from customers of ACL whose name appeared on the annex to the share sale agreement.

Discuss the legal principles involved in the above scenario by reference to the facts thereof and advise Ms Abdilla and ACL of their rights, if any, and of any course of action, if any, they make take to protect or enforce such rights.

3. Two Maltese residents wish to register a limited liability company in Malta. What questions would you ask them to enable you to draft the memorandum and articles of association of the company? And how would you describe to them the process for the registration of the company?
4. Some of the shareholders of XYZ Limited want to take back the amount they paid by way of contribution to the share capital for the formation of the company prior to its dissolution and consequential winding up.

The company directors of XYZ Limited have sought your advice as to whether the shareholders' proposed action is permissible by law and whether there could be a breach of the rules established by law vis-à-vis capital maintenance and creditor protection. Give reasons in support of your advice.

5. 123 Limited is a company that operates in the tourism industry. In 2020 the company's business was negatively impacted by the COVID-19 pandemic. It experienced financial difficulties and defaulted in the repayments of its bank loans, it struggled to pay employees' wages and other creditors. At the same time, it incurred additional expenses in order to become COVID-19 compliant.

Advise 123 Limited on whether it can annul contracts entered into with the bank and other creditors. The company directors also want your advice as to what it can do in order to alleviate part of this financial problem, apart from the payment of loans.



Third Year Law
Compulsory Units Past Papers

ADVANCED COMPANY LAW

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

**University of Malta
Faculty of Laws**

June 2019 Examination Session

CML3010 ADVANCED COMPANY LAW

Date: Wednesday 19th June 2019

Duration of Examination: 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. "A director's duty to act honestly and in good faith permeates all the duties incumbent upon a director." Discuss.
2. "The office of the Registrar of Companies was a wonderful creation and it has continued to grow and develop." Discuss this statement and analyze the significance, roles and responsibilities of the Registrar of Companies in the development of Maltese company law.
3. "The lifting of the corporate veil is an exception to the principle of the limited liability of shareholders." Critically discuss this statement in terms of Maltese company law.
4. Discuss the remedies available to minority shareholders who suffer an unfair prejudice, with particular reference to second tier shareholding and the availability or otherwise of the derivative action at Maltese law.

University of Malta
Faculty of Laws

September 2019 Examination Session

CML3010 ADVANCED COMPANY LAW

Date: Tuesday 10th September 2019 Duration of Examination: 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. "There are several reasons why companies may find themselves in serious trouble. It may be the result of corporate governance failings, but not necessarily; and some companies fail, while others do not." Discuss this statement with particular reference to recent happenings in the corporate world.
2. "The corporate veil can only be lifted in very exceptional circumstances." Critically discuss this statement, with particular reference to judgments delivered by the Maltese courts.
3. "The duties of directors of a company are nowadays so onerous that many competent and honest individuals refuse to accept appointments as directors". Discuss this statement stating clearly whether you agree or not, and why.
4. Compare and contrast Amalgamations and Divisions of companies in the light of the provisions of the Companies Act.



L-Università
ta' Malta

FACULTY OF LAWS
DEPARTMENT OF COMMERCIAL LAW
JUNE/JULY 2020 EXAMINATION SESSION

CML3010 Advanced Company Law

Friday, 19th June 2020

Examination time: 08:30 – 10:30 + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 3143

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

You have the option to either type in your answers on a word document or write down your answers on an A4 sheet/s of paper.

Once you have completed the examination, you are to save your answers in pdf format or scan your handwritten answers using Adobe Scan app and Microsoft Office Lens app, and upload them within the time indicated for the examination. **The name you should assign to the file you are going to upload to the VLE dropbox should be the study-unit code.** The VLE will then rename the file automatically to also include your name and surname.

You have been allowed 60 minutes for downloading the examination paper and uploading your responses. **Make sure that you upload the correct document.** If you upload the wrong document, simply upload again and the system will overwrite the document originally submitted.

You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

You may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

INSTRUCTIONS TO STUDENTS:

Students are to choose TWO (2) out of FOUR (4) questions.

All questions and sub questions carry equal marks.

1. Companies were not intended to last forever and there may be various reasons why companies close down or fail. Discuss this statement with reference to recent corporate incidents and closures.
2. Why are companies important for the Maltese economy AND what corporate features have contributed to their success?
3. A client of yours is planning to convert a partnership En Nom Collectif into a Limited Liability Company. You have been asked to advise:
 - (a) What the process of conversion will entail;

AND

 - (b) Whether creditors of the partnership En Nom Collectif will be prejudiced by the conversion and what remedies, if any, do they have to oppose the conversion.
4. Citing relevant judgements, discuss one of these two remedies available to shareholders in a company:
 - Either**
 - (a) the just and equitable remedy;
 - OR**
 - (b) the unfair prejudice remedy.

University of Malta
Faculty of Laws

September 2020 Examination Session

CML2011 Advanced Company Law

Date: Monday 7 September 2020

Duration of Examination: 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. What are the objectives underpinning the capital maintenance rules? Are they still relevant today?
2. Discuss the manner in which directors are appointed and removed.
3. Who may propose an action in terms of Article 402 of the Companies Act? How does this provision afford protection to a shareholder who complains that he is being treated in an unfair manner?
4. Describe the clauses that must be included in the Memorandum of Association under the Companies Act.
5. Critically discuss the effects and consequences of the bestowal of separate juridical personality on a company.



Third Year Law
Compulsory Units Past Papers

EU INTERNAL MARKET LAW

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

UNIVERSITY OF MALTA

FACULTY OF LAWS

JUNE 2016 EXAMINATION

LL.B. HONS. 3RD YR

ECL 3004 – EU Internal Market Law

Monday 6th June 2016

Reading Time 14:30-14:35

Examination Time – 14:35-16:35

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

1. 'On the whole, Directive 2004/38/EC (Citizens' Directive on free movement of persons) is best regarded as a consolidation and codification exercise adding little to the substantive rights of EU citizens.'

Discuss.

2. Explain briefly the development of the Schengen *acquis* and explain its significance in legal terms with regards to the free movement of persons.
3. Discuss the importance of Case C-415/93 *Bosman* for the functioning of the free movement of persons.
4. The aim of Directive 2006/123/EC (Services' Directive) was to open up the market in services, which accounts for over two thirds of Europe GDP.

Discuss the main features of the Directive highlighting the main difficulties faced by Member States in its implementation and acceptance.

5. Monetary Union within the EU had a long gestation period.

Explain the development of Monetary Union and how it contributed to the free movement of capital.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2016 EXAMINATION

LL.B. Hons. III Years

ECL 3004 – EU Internal Market Law

Wednesday 7th September, 2016

Reading Time: 8.30 a.m. – 8.35 a.m.

Duration of Exam: 8.35 a.m. – 10.35 a.m.

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

1. The Court of Justice of the European Union sought to give the definition of worker and the concept of employment a wide interpretation on the basis that free movement of workers is one of the foundations of the EU.

Discuss.

2. The notion of creating a monetary union within the EU has a long history. Explain the development of monetary union and its significance to the free movement of capital.

3. The aim of Directive 2006/123/EC was to open up the market in services, which accounts for over two thirds of the European GDP.

Discuss the main features of the Directive highlighting the difficulties faced by Member States in its implementation and acceptance.

4. Explain briefly the development of the Schengen *acquis* and explain its significance with regards to the free movement of persons.

5. Advocate General Sharpston has held that the introduction of Union citizenship by the Maastricht Treaty “recognised the essential role of individuals, irrespective of whether or not they were economically active, within the newly created Union. Each individual citizen enjoys the rights and owes duties that together make up a new status - a status which the Court declared in 2001 was ‘destined to become the fundamental status of nationals of the Member States’.” (Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l’emploi* [2010] OJ 90/15, Opinion of Advocate General Sharpston, paragraph 68 citing Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31)

Discuss the notion of EU citizenship with reference to case-law and to the relevant legislation.

END OF PAPER

UNIVERSITY OF MALTA

FACULTY OF LAWS

MAY/JUNE 2017 EXAMINATION SESSION

LL.B. (Hons) III yr.

ECL 3004 – EU Internal Market Law

DATE: Monday 19th June 2017

DURATION OF EXAMINATION: 10.00AM to 12:05PM

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

1. With reference to case law dealing with the free movement of goods, distinguish between dual burden rules and equal burden rules and explain how this distinction was affected by subsequent judgments wherein the Court of Justice of the European Union sought to remedy the situation resulting from the Sunday Trading cases.
2. Explain by reference to case law of the Court of Justice of the European Union the meaning of the second paragraph of Article 110 TFEU (Internal Taxation).
3. The abolition of obstacles to the free movement of persons is one of the main objectives of the achievement of an internal market. The definition of the concepts 'worker' and 'work' is not found in EU law. Instead, these concepts were gradually established by the Court of Justice of the European Union (CJEU).
Discuss with reference to relevant case law, while reflecting on the worker's purpose in taking up employment, time commitment and remuneration.
4. Article 54 TFEU provides that companies should be treated in the same way as nationals for the Treaty provisions on freedom of establishment. However the law governing establishment of companies is more complex than the law governing natural persons. To what extent can companies move freely within the European Union?
Discuss with reference to relevant case law.

END OF PAPER

**UNIVERSITY OF MALTA
FACULTY OF LAWS**

LL.B. (Hons) III yr.

ECL 3004 – EU Internal Market Law

Wednesday 6th September 2017 Duration of Examination: 10.00am to 12:05 pm

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

1. With reference to case-law, explain and highlight the differences and/or similarities between the justifications to quantitative restrictions and measures having equivalent effect as laid down by Article 36 TFEU and the mandatory requirements doctrine developed by the Court of Justice of the European Union.

2. The judgement in Keck Case-292/92 represents a serious step towards establishing areas of national regulation where it is (and it is not) legitimate for Article 34 TFEU to intervene.

Discuss.

3. Free movement of capital has long been overshadowed by the development of other fundamental freedoms and liberalization of capital took longer to achieve. One of the reasons for this is the fact that capital movements are closely linked to the stability of economic and monetary policy of the Member States.

Discuss how the achievement of Economic and Monetary Union contributed to liberalization of capital movements.

4. Articles 49 and 54 of the Treaty on the Functioning of the European Union (TFEU) explicitly recognise freedom of establishment for companies. However they still do not fully enjoy this freedom.

Discuss with reference to relevant case-law.

UNIVERSITY OF MALTA

FACULTY OF LAWS

ECL 3004 – EU Internal Market Law

Monday 4th June 2018

DURATION OF EXAMINATION: 8.30AM - 10:35 AM

Instructions to Candidates: Answer Question 1 from Section A and any other question only from Section B. All questions carry equal marks.

Answer Question 1 from Section A

1. Zephyrus is a major Greek limousine and chauffeur rental company. It has offices in several Member States and business is good. It would now like to expand to the Maltese market. Thus it decides to export to Malta four of its limousines. However it discovers that Malta imposes an extremely high registration duty on cars (including second-hand cars) which are considered to fall within what is defined as an 'occasions cars' band. This includes luxury and high cc models. It is not contested that at this time Malta does not have any production of, or large rental business for, these types of cars. The Greek company also would like to bring drivers from Greece and Bulgaria but it has been told that in Malta only Maltese drivers are allowed to work as taxi drivers.

Zephyrus decides to write to the European Commission claiming that the Maltese registration duty is in violation of the following Articles of the TFEU: Articles 28, Article 110, Article 34 and Article 45

You are a legal adviser with the Republic of Malta. Please write a memorandum for your Minister on (i) the ways in which EU law may impact on national policy of indirect taxation and free movement of workers, and (ii) whether the Maltese law is in breach of EU law.

Answer any one question from Section B:

2. With reference to case law dealing with the free movement of goods, distinguish between dual burden rules and equal burden rules and explain how this distinction was affected by the Sunday Trading cases and how the Court of Justice of the European Union sought to remedy the situation.

3. In *Luisi and Carbone* the CJEU held that freedom to provide services, as provided by Article 56 TFEU, includes the freedom for recipients of services to go to another Member State, without restriction, in order to receive a service there.

The CJEU has developed, in the context of a series of preliminary rulings, the rights of service recipients, particularly in education and healthcare provision. In the case of the latter, this case law has now been codified in legislation (Directive 2011/24 on the applications of patients' rights in cross-border healthcare (the 'Patients' Directive')).

Discuss.

4. 'Worker status is of immense importance because, if an individual is a worker, she has available the whole range of worker rights contained in the primary and secondary legislation. Whilst it is generally straightforward to establish worker status, there are a number of cases in which a claim to worker status has been challenged'.

Discuss this statement with reference to relevant case-law and legislation.

END OF PAPER

UNIVERSITY OF MALTA

FACULTY OF LAWS

ECL 3004 EU Internal Market Law

Thursday 6th September 2018

Duration of Examination - 10.00AM - 12:05PM

Instructions to Candidates: Answer Question 1 from Section A and any other question from Section B only. All questions carry equal marks.

Section A

Answer Question 1

- (i) Pedro, a Spanish national and recovering alcoholic, has been living in Sweden for almost two years. He is offered a job as a waiter, working ten hours per week at his friend's restaurant, "for as long as he needs to get back on his feet". After two months, Pedro leaves the restaurant and starts a university course in catering. He applies for a maintenance grant from the Swedish authorities, but his application is refused on the grounds that he has not resided within the national territory for at least five years.
- (ii) Gerard (a French citizen living in Paris) marries Kylie (an Australian national who had entered France on a tourist visa three years earlier and decided to stay without obtaining permission from the French authorities). The couple moved to the UK, where Gerard becomes employed as a school language assistant. Kylie attends an anti-war demonstration in London. Scuffles break out and several policemen are injured. Kylie is arrested as she tries to leave the demonstration, and immediately put on a plane back to Australia.
- (iii) Jan is a Dutch national living in Austria, who applies to work as a ticket inspector with the state railway company. His application is rejected on the grounds that, in situations of emergency, ticket inspectors may be called upon to exercise statutory powers of detention, so only Austrian nationals are eligible for employment in such posts. The same day, Jan receives a letter from his Dutch private insurance company, informing him that his life insurance policy has been invalidated because he no longer habitually resides within the Netherlands.

Advise Pedro, Kylie and Jan as to their rights under EU law.

Section B

Answer any one question:

2. Advocate General Sharpston has held that the introduction of Union citizenship by the Maastricht Treaty "recognised the essential role of individuals, irrespective of whether or not they were economically active, within the newly created Union. Each individual citizen enjoys the rights and owes duties that together make up a new status - a status which the Court declared in 2001 was 'destined to become the fundamental status of nationals of the Member States'." (Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi* [2010] OJ 90/15, Opinion of Advocate General Sharpston, paragraph 68 citing Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31)

Discuss the notion of EU citizenship with reference to case-law and to the relevant legislation.

3. What type of defenses can one bring against Article 34 TFEU?

4. The notion of creating a monetary union within the EU has a long history.

Explain the development of monetary union and its significance to the free movement of capital.

END OF PAPER

University of Malta

Faculty of Laws

June 2019 Examination Session

ECL3004 EU INTERNAL MARKET LAW

Date: Monday 3rd June 2019

Duration of Examination: 10:00AM - 12:05 PM

INSTRUCTIONS TO STUDENTS:

Answer Question 1 and any other question only. All questions carry equal marks.

Section A

Answer Question 1

Jack and Jill are happily married living in Ireland. Jack is a Irish national while Jill is an Australian national. Both are accountants, Jack has a degree from Australia while Jill has a degree from Ireland. During their honeymoon some time back, they visited Malta and fell in love with the island. After some successful years in Ireland where they have formed a family, practiced their profession and even own a successful business, their temptation to settle in Malta proved to be too great. In fact they come to Malta for a short stay and want to contact a local lawyer to plan their move.

Jill is particularly worried that their child a 6 year old boy will have no access to education and social security. Also she is afraid that as she does not know Maltese she would not be able to find a job.

The couple own a business of importing 'Tam Tum' biscuits from Australia into Ireland. Jack would like to bring some biscuits already imported into Ireland to Malta for resale. However he is worried that he cannot advertise the new biscuits in Malta because the Maltese authorities ban the advertisement of biscuits on health grounds. He thinks this is unfair given that the local biscuit manufacturer called 'Deserta' is well known locally and need no advertising. Also he is worried that the new health tax of 10% on his biscuits would ruin his chances of competing as the local 'Deserta' does not suffer this tax because of a classification issue which he thinks is unfair.

Jack and Jill are in despair. On the one hand they really want to come to Malta. On the other hand they have an uphill battle resolving their legal issues.

Please advise them as to what is their position under EU law.

Section B

Answer any ONE (1) question from the below:

2. The judgement in Keck Case-292/92 represents a serious step towards establishing areas of national regulation where it is (and it is not) legitimate for Article 34 TFEU to intervene.

Discuss.

3. The European Court of Justice of the European Union sought to give the definition of worker and the concept of employment a wide interpretation on the basis that free movement of workers is one of the foundations of the EU. Discuss.

4. Discuss the free movement of capital and its special position among other fundamental freedoms.

**University of Malta
Faculty of Laws**

September 2019 Examination Session

ECL 3004 EU INTERNAL MARKET LAW

Date: Friday 6th September, 2019

Duration of Examination: 8:30AM - 10:35AM

INSTRUCTIONS TO STUDENTS:

Answer Question 1 and ANY other question only.

All questions carry equal marks.

Section A

Answer Question 1

Pantagonia Construction plc is a company registered in Spain owned by a joint Argentinian and Spanish consortium. Its headquarters are in Madrid and its staff consist mainly of Argentinian and Spanish workers all licensed to work in both Argentina and in Spain. It works mainly in the construction of schools. Building material is brought mainly from Argentina and from Italy into Spain and then after careful inspections on the building material, they are sent to the construction sites scattered across the EU. Pantagonia Construction plc is interested in submitting a tender to build two schools in Malta. Considering the position of EU law, please advise the company on the following matters:

- a) Does the Spanish company have a right to submit a tender or should it consider setting up a branch or a subsidiary in Malta?
- b) The company would like to bring its workers based in Spain to Malta. What are the rights of the i) Argentinian and ii) Spanish workers mentioned above in Malta and does it make a difference if the i) Argentinian and ii) Spanish workers are directly recruited in Malta instead of Spain?
- c) A charge is imposed by Malta on the import of building material from Spain.
- d) Imported construction material from Spain is taxed higher than local Maltese construction material
- e) Concrete from Spain is prohibited because it is considered inferior to Maltese concrete unless it is accompanied by a certificate that proves its strength. There is no

EU harmonized rule that makes a certificate of origin a requirement and there is no such Spanish law about a certificate for concrete. However, Malta makes it a criminal offence not having a certificate of origin accompanying a bag of concrete as a result of a number of construction site accidents that happened recently.

Section B

Answer any ONE (1) question from the below:

2. Explain how Directive 38/2004/EC contributes to the free movement of persons.
3. With reference to case-law distinguish between dual burden rules and equal burden rules and explain how this distinction was affected by the Sunday Trading cases and how the Court of Justice of the European Union sought to remedy the situation.
4. Explain by reference to case-law of the Court of Justice of the European Union the meaning of the second paragraph of Article 110 TFEU.



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**FACULTY OF LAWS
DEPARTMENT OF EUROPEAN AND COMPARATIVE LAW
JUNE/JULY 2020 EXAMINATION SESSION**

ECL3004 EU INTERNAL MARKET LAW

Friday, 26th June 2020

Examination time: 08:30AM – 10:30AM + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone: 2340 3251; 2340 2786

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

You may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

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Background – The Malta Disneyland story:

It's a world of laughter, a world of tears
It's a world of hopes and a world of fears
There's so much that we share
That it's time we're aware

It's a small world after all

Indeed, it's a small world, after all! Covid-19 wreaked havoc all over the world in particular in Europe. The European Commission decided to help the Member States and businesses to invest in industries that help improve the people's mood. So Eurodisney Europe plc, a company registered in France, decided to invest more as the demand post-Covid-19 will increase so that people will feel refreshed after months in lockdown. The European Commission, through its Mood-20 financing budget which will draw money from existing funds, made it possible for Eurodisney Europe plc in France to enter into a partnership with a Member State to launch a second Disney theme park in Europe.

After intense competition, Malta was chosen as the Member State to enter into a partnership with Eurodisney Europe plc. After careful Environmental Impact Assessments in full compliance with EU and local laws, it was decided to turn the Magħtab landfill, and the surrounding area into a Mediterranean theme park with all the famous Disney rides of the Magic Kingdom, three fully-catered resorts, a multi-story underground carpark and a tunnel underneath the project from which the main thoroughfare to the North of the island will pass to avoid the resort. The residents of Malta are thrilled, in the upcoming months and years, the 2020 lockdown will transform into magical adventures, Mt Magħtab becomes a happy, exciting Thunder Mountain, there will be jobs for all including lawyers!

The two applicable funds which Malta tapped are the European Regional Development Fund (ERDF) and the Cohesion Fund (CF) The first aims to promote investment and correct the main regional imbalances of the European Union. ERDF contributes to reducing the gap between the levels of development of the various regions and the extent to which the least favoured regions are lagging behind the EU average. The second the CF aims to strengthen the economic and social cohesion in the Union, in the interest of promoting sustainable development, particularly in the domains of trans-European transport networks and the protection of the environment. As this is indirect (decentralised) funding, the EU funds are left in the hands of the Maltese state to be processed under the final supervision of the Court of Auditors, (70% EU funds, 30% local funds). The project started and is well advanced. Meanwhile, Eurodisney Europe plc applied directly to the European Commission's Mood-20 funds which are direct funds (centralised) administered directly by the Commission.

Finally, the operation of the Eurodisney Malta was entrusted to a Maltese registered company called Malta Disneyland plc.

Instructions

You have now qualified as a lawyer with specialised knowledge about the EU Internal Market legislation. Congratulations!

Having read and understood the background story above, several different clients are calling at your office, to advise them about the way of how they should go about addressing their grievances. **Please answer all ten short questions below, taking into consideration the applicable background information given above.**

Please note, all ten questions (and sub questions) below carry equal marks. Some are very easy; some require the application of your knowledge on EU Internal Market Law and may require more thinking than actual writing. Your advice to the parties should be limited to the Internal Market laws and principles that need to be considered to address your client's grievances. Please **write in brief respecting the word limit** per question as indicated. No marks are awarded for longer answers than the stated word count. Remember, clients have a lot to say, but not all info they give is relevant to address their needs!

5. Having advised the architect with success, Walt Disney International Cooperation invites you for a conference and a tour to the Disney resort in Orlando, Florida. As a world-renowned construction lawyer with knowledge of the Internal Market legislation, you are given a 10-minute speaking spot to discuss what are **equal burdens**, **dual burdens** and **selling arrangements** and explain how these terms contributed to the building on the EU Internal Market as regards free movement of goods.

In five points explain the difference between these terms and how they contributed to the building of the EU internal market. (Max 400 words)

a) _____

b) _____

c) _____

d) _____

e) _____

9. Your popularity as an Internal Market lawyer has reached new heights. Now it is the turn of the University to invite you to give a lecture to the LL.B students on the notion of discrimination in the Internal Market. What would be your main 5 points? (400 words)

a) _____

b) _____

c) _____

d) _____

e) _____

10. After the lecture, you go home to have a rest. Your 10-year old kid comes singing: "It's a world of laughter, a world of tears, It's a world of hopes and a world of fears, There's so much that we share, That it's time we're aware, It's a small world after all". This is the song you kid heard on the gentle boat ride at Eurodisney Malta, the previous week-end which cannot go away. With a smile, your kid takes your notes and asks you some questions. After impressing the students, you grab this opportunity to impress your kid. How would you reply to these simple questions in the space provided? (300 words)

a) What is a customs duty?

b) What are the mandatory requirements?

c) What was the Bosman case C-141/93 about?

d) What was the Alpine Investments BV case C-348/93 about?

e) What is the difference between EMU and the Euro?



Third Year Law
Compulsory Units Past Papers.

Introduction to PRIVATE INTERNATIONAL LAW

If you require any further information, have any suggestions or find any mistakes in this publication, do not hesitate to contact us on academic@ghsl.org

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3rd YEAR
MAY/JUNE 2015 EXAMINATIONS

EXAMINATION: PBL 3010 - Introduction to Private International Law

DATE: FRIDAY 19TH JUNE 2015

READING TIME: 8.30AM - 8.35AM DURATION OF EXAMINATION: 8.35AM - 10.35AM

Choose any **TWO** of the following Questions.

All Questions and sub-questions carry **EQUAL** marks.

1. To what extent would you think that the Brussels Regulations on jurisdiction mark a distinct improvement on the previously obtaining situation?
2. Although the *lex fori* is the starting point for the process of classification, foreign rules should never be applied out of their natural context. Discuss.
3. Sir Otto Kahn-Freund described domicile as being "a superannuated concept". Explain the merits and demerits of domicile and habitual residence as connecting factors for personal law issues.
4. Examine concisely any three of the following concepts of private international law:
 - a. the incidental question
 - b. the doctrine of renvoi
 - c. the distinction between substance and procedure
 - d. the exclusion of foreign law
 - e. the proof of foreign law

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B HONS.3rd YEAR
SEPTEMBER 2015 SESSION OF EXAMINATIONS

EXAMINATION: PBL3010 –Introduction to Private International Law

DATE: Tuesday 1st September 2015

Reading Time: 10.00AM – 10.05AM

DURATION OF EXAMINATION: 10.05AM – 12.05PM

Choose any **TWO** of the following Questions

All questions and sub-questions carry **EQUAL** marks

1. To what extent is the principle “actio sequitur forum rei” still followed in the jurisdictional framework of the Brussels Regulations?

2. The sources of Maltese private international law are closely linked with Maltese political history. Discuss.

3. Explain the role played by the concept of public policy in private international law.

4. Examine concisely any three of the following concepts of private international law:
 - a. the acquisition of a domicile of choice
 - b. connecting factors in the classification process
 - c. the role of the lex fori in matters of procedure
 - d. double renvoi
 - e. habitual residence

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3rd YEAR
JANUARY 2016 EXAMINATIONS

EXAMINATION: PBL3010 – Introduction to Private International Law

DATE: Thursday 21st January 2016

READING TIME: 10.00AM – 10.05AM

DURATION OF EXAMINATION: 10.00AM – 12.05AM

INSTRUCTIONS TO STUDENTS:

: Choose any TWO of the following Questions:

All questions carry EQUAL marks

1. Why is the term 'Private International Law' more appropriate for this subject than 'Conflict of laws' or 'Comparative Law'?
2. Compare and contrast 'Habitual Residence' with both domicile and nationality as personal connecting factors in private international law.
3. Conflicting classifications of the cause of action as well as of an applicable rule of law are not always best resolved by sole and exclusive reference to the *lex fori*. Discuss.
4. The European Union's stint for over a decade at unification of private international law norms has rapidly overtaken the age old efforts of both the Hague Conference and those of Unidroit put together. Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B HONS. 3rd YR / MA ADVOCACY PREPARATORY PROGRAMME
June 2017 EXAMINATIONS

EXAMINATION: PBL3010 --Introduction to Private International Law

DATE: Friday 23rd June 2017

DURATION OF EXAMINATION: 10.00AM – 12.05PM

Choose any TWO of the following Questions

All questions carry EQUAL marks

1. Neither the term 'Private International Law' nor 'Conflict of Laws', is an adequate description of the whole spectrum covered by this subject regulating cross-border lawsuits. Discuss.
2. 'Habitual Residence' is a better personal connecting factor than both 'Nationality' and 'Domicil'. Discuss.
3. The problem of Classification prevails in spite of the numerous recent EU Regulations on cross-border lawsuits. Discuss.
4. The strong bias for the 'lex fori' excludes the application of foreign law in a number of cases. Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS

EXAMINATION: PBL3010 –Introduction to Private International Law

DATE: Saturday 2nd September 2017 DURATION OF EXAMINATION: 8.30AM – 10.35AM

INSTRUCTIONS TO STUDENTS:

Choose any **TWO** of the following Questions

All questions carry **EQUAL** marks

1. Since the term 'Private International Law' covers both Jurisdiction and Recognition and Enforcement of Foreign Judgements is it a better title for this subject than 'Conflict of Laws' or are its sub-terms 'private', 'international', 'international law' and 'law' misleading?
2. Discuss the traditional advantages and disadvantages of 'Domicil' and 'Nationality' as personal connecting factors in Private International Law in contrast with the EU's increasing recent preference for 'Habitual Residence'.
3. Should Classification of the facts of a case or of a rule of law applicable to it always be according to the 'lex fori'?
4. In which cases is the application of foreign law excluded? And if it is not excluded what would amount to valid proof of foreign law?

University of Malta
Faculty of Laws
May/June 2018 Examinations

PBL3010 – Introduction to Private International Law

Monday 18th June 2018

Duration of examination: 8:30am – 10:35am

INSTRUCTION TO STUDENTS:

Choose ANY TWO (2) of the following questions. ALL questions carry equal marks.

1. "Conflict of Laws" is far more descriptive of this subject than "Private International Law" which is misleading. Discuss.

2. By re-classifying the cause of action or a rule of law the smart lawyer can swing the judge to pass judgement in his client's favour. Is this inevitably the case? Discuss with reference to cases.

3. To what extent have the Brussels Regulations on Jurisdiction changed our rules on jurisdiction in the Code of Organization and Civil Procedure?

4. Compare and contrast Habitual Residence as a personal connecting factor with Domicil and Nationality in Private International Law.

University of Malta
Faculty of Laws

PBL3010 – Introduction to Private International Law

Date: Friday 14th September 2018

Duration of Examination: 8:30am– 10:35am

INSTRUCTIONS TO STUDENTS:

Answer ANY TWO (2) questions. All questions carry equal marks.

1. Maltese Private International Law is in need of Parliamentary intervention to address various gaps which have not been harmonised by European Union Law. Discuss in the context of the sources of Maltese Private International Law.

2. In Private International Law there are several notions which have been defined by case law. A case that clearly illustrates the importance of classification is *Ogden vs. Ogden* (1904). Explain the salient issues discussed in the case and give your opinion on the conclusions thereof.

3. Some features of the Maltese concept of domicile need to be reformed in order for it to properly achieve its role as a connecting factor in today's world. Discuss.

4. Examine **any two** of the following concepts of private international law:
 - a. Double renvoi
 - b. The proof of foreign law
 - c. The incidental question
 - d. The role of public policy

University of Malta
Faculty of Laws

June 2019 Examination Session

PBL3010 INTRODUCTION TO PRIVATE INTERNATIONAL LAW

Date: Saturday 1st June 2019

Duration of Examination: 8:30AM - 10:35AM

INSTRUCTIONS TO STUDENTS:

Choose any **TWO (2)** of the following questions.

All questions carry equal marks.

Where a question has sub-questions, each sub-question carries equal marks.

1. "In the absence of provisions of private international law in our Code, it is usual for our courts to have recourse to the principles of English law." (Smith vs. Muscat Azzopardi, Maltese Civil Court, 1936). Analyse the relevance of this statement in the light of the historical development of Maltese private international law.
2. The emergence of habitual residence as a personal connecting factor marks the beginning of the end for other personal connecting factors such as domicile and nationality. Discuss.
3. Analyse the sphere of influence of the lex fori in cases with a foreign element.
4. Discuss the private international law techniques utilised in the following court cases:
 - (a) Fiumara v. Newby (Maltese Commercial Court, 1900)
 - (b) Schwebel v. Ungar (Ontario Supreme Court, 1965)



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FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
JUNE/JULY 2020 EXAMINATION SESSION

PBL3010 INTRODUCTION TO PRIVATE INTERNATIONAL LAW Monday 8th June 2020

Examination time: 08:30 – 10:30 + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 3752

Email: laws@um.edu.mt

Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

You may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

You may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

By sitting for this examination, you declare that you are aware of the provisions of the regulations regarding conduct during examinations and you pledge to observe them.

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INSTRUCTIONS TO STUDENTS:

Answer **TWO (2)** of the following questions. All questions carry equal marks.

1. Dicey and Morris state that 'the notion which lies at the root of the concept of domicile is that of permanent home'. Explain the notion of domicile in light of such statement.
 2. 'Choice of law can never be determined before the judge understands the juridical nature of the case being presented before him.' Discuss the different classification theories in light of the latter statement.
 3. The Court of Appeal presided by Chief Justice Silvio Camilleri in the case of *Salvina Xerri et Vs Dr. Richard Sladden pro et* decided on the 15th December 2015 made reference to the judgment delivered by the First Hall Civil Court in the case of *Smith vs Muscat Azzopardi* decided on 4th February 1936.
 - (a) Explain the important legal notions highlighted by the court in the case of *Smith vs Muscat Azzopardi* applicable to Private International Law.
 - (b) Can the *Smith vs Muscat Azzopardi* judgment be considered as a one of the sources of Private International Law? If yes, why and which are the Private International Law sources?
 4. The case of *Schwebel vs Ungar* (1963) [42 DLR (2d) 622 (1964) 48 DLR (2d) 644] can be considered as a landmark judgment, were amongst other issues the Canadian Court had to consider the question of the wife's capacity to marry and the validity of the wife's divorce by Gett.
 - (a) Explain the important legal notions highlighted by the court in the case of *Schwebel vs Ungar* applicable to Private International Law.
 - (b) What is an Incidental Question? (your reply shall be complemented by reference to the applicable case law, if any)
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FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
SEPTEMBER 2020 EXAMINATION SESSION

PBL3010 INTRODUCTION TO PRIVATE INTERNATIONAL LAW Wednesday 9th September 2020

Examination time: 08:30 – 10:30 + 60 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

Telephone : 2340 3251; 2340 3752

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INSTRUCTIONS TO STUDENTS:

Answer **TWO (2)** of the following questions. All questions carry equal marks.

1. *Beaumont & Mc Eleavy* define *renvoi* as "a question of *renvoi* arises where the choice-of-law rules of the forum refer an issue to the courts of another country which, under its rules of choice of law, in turn refers the issue back to the law of the forum or on to the law of a third country." Explain the *Renvoi* Theory in light of such statement.
 2. In *Monterosso Shipping Co. Ltd. vs International Transport Workers Federation (1982)*, Lord Denning MR had this to say: "The right course is to analyse the statute and see whether it negatives the existence of a contract or not. If there is no contract, then there is nothing to enforce. That is substantive law. If there is a contract, but the statute says it cannot be enforced (except in writing or within a stated period) that is procedural law. It is governed by the *lex fori*." In light of this statement distinguish between substance and procedure in Private International Law.
 3. Explain the notion of Domicile as illustrated by the First Hall Civil Court in the case of *Smith vs Muscat Azzopardi* decided on 4th February 1936.
 4. Explain what is tantamount to Public Policy in Private International Law, amongst others by making reference to the case of *Lemenda Ltd vs African Middle East Co. (1988)*.
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