

# Compulsory Past Papers

LL.B. IV



# **GHAQDA STUDENTI TAL-LIĠI** EXECUTIVE BOARD 2020/2021

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## ABOUT GhSL

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 *GhSL Online Law Journal*.

Moreover, GhSL boasts its own Thesis Library, located at the GhSL office in the Faculty of Laws. Additionally, GhSL 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](mailto: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.



First Year Law  
Compulsory Units Past Papers

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# PRIVATE INTERNATIONAL LAW

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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](mailto:academic@ghsl.org)

UNIVERSITY OF MALTA

FACULTY OF LAWS

DEPARTMENT OF PUBLIC LAW

PBL4007 - PRIVATE INTERNATIONAL LAW

LL.D. I YEAR (2008/9)

Friday, 12<sup>th</sup> June, 2009

9.15A.M. - 12.15P.M.

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ANSWER THREE OF THE FOLLOWING:

1. Under the impact of European Union development, the Private International Law of the Member States is changing its fundamental nature. Discuss.
2. The solution adopted in the Brussels Regulations to jurisdiction and recognition issues in matrimonial causes has solved the more intractable problem raised by divorce in private international law. Discuss.
3. To what extent does the modern regulation of contract still reflect the fundamental freedom recognised to contracting parties in choosing the law to govern their contractual relationship?
4. To what extent is domicile still a viable connecting factor in modern circumstances?
5. A proper balance in the application of the concept of public policy is vital to the correct functioning of the private international law system. Discuss.
6. Mrs V is a British national living with her husband Mr V in Spain. They live there with their three sons, two dogs, a horse and some geese. The sons attend school in England.

Mr V is a resident of Malta. He owns a property in Malta and has business interests in the UK.

Prior to setting up home in Spain, Mrs V resided in England and carried on a business there through a British company. The company has gone into liquidation. One of the creditors is suing Mrs V personally for a claim that was incurred in the course of her dealings through her British company.

On a recent visit to Malta, Mr and Mrs V have sought your advice on various concerns.

In advising Mr and Mrs V

- (a) set out in a detailed manner the relevant points and issues which are necessary for your counsel and advice to address all of their concerns and;
  - (b) set out your advice in a conflicts of law context.
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UNIVERSITY OF MALTA

FACULTY OF LAWS

LLD I YEAR (2008/9)

SEPTEMBER 2009 EXAMINATIONS

EXAMINATION: PBL4007 – Private International Law

DATE: Friday, 11<sup>th</sup> September 2009

TIME: 9.15 am – 12.15 pm

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ANSWER ANY THREE QUESTIONS ONLY

- 1) Private international law is neither truly international nor truly private. Discuss.
- 2) Describe the present obtaining jurisdiction of the Maltese Courts.
- 3) The enforcement of foreign judgements from Courts of States members of the European Union has nearly been rendered automatic under the European Regulations. Discuss.
- 4) Describe the rules governing the validity of marriage under private international law.
- 5) Discuss the role played by public policy in the field of Private International Law.
- 6) The free choice of law rule in contract has become considerably restricted. Discuss.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LLD I YEAR (2009/0)**  
**MAY/JUNE 2010 EXAMINATIONS**

**EXAMINATION:** PBL5014 – Private International Law

**DATE:** Monday, 14th June 2010

**TIME:** 9.15 am – 12.15 pm

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**ANSWER ANY THREE (3) QUESTIONS**

**ALL QUESTIONS CARRY EQUAL MARKS**

1. The modern development of private international law has eliminated the need to resort to ideas of *renvoi* to solve its problems. Discuss.
  2. The modern conditions of Europe have led to the traditional differences between concepts of *domicil* and nationality becoming outdated and substituted by more germane concepts. Discuss.
  3. Describe briefly the rules governing jurisdiction in Malta.
  4. The provisions of Brussels regulations regarding the recognition of decisions in matrimonial causes between members of the European Union have considerably facilitated the application of the law in this area, but at the same time given rise to other problems which have to be faced and solved. Discuss.
  5. What role does classification play in the private international law case?
  6. The parties' freedom of choice of law doctrine in contract is of fundamental importance to the identification of the applicable law only if applied within proper limits. Discuss
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**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LLD I YEAR (2009/0)**  
**SEPTEMBER 2010 EXAMINATIONS**

EXAMINATION: PBL5014 -- PRIVATE INTERNATIONAL LAW  
DATE: FRIDAY 10<sup>TH</sup> SEPTEMBER 2010  
TIME: 9.15 AM – 12.15 PM

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**ANSWER ANY THREE (3) QUESTIONS**

**ALL QUESTIONS CARRY EQUAL MARKS**

1. The application of the foreign law in a case involving a foreign element is conditioned in a variety of ways by the law of the forum. Discuss.
  2. Define the possible defences which may be raised when a person is seeking to enforce a foreign judgement in Malta.
  3. The manner in which we think of Private International Law is changing drastically. Discuss.
  4. Define the main rules which regulate the issue of validity of marriage and illustrate the several complex issues which may arise there from.
  5. Define the rules regulating the area of tort in Private International Law.
  6. Had you been given the task of amending the law of the domicile as applied in Malta and the United Kingdom what changes would you effect, or would you rather abandon the concept altogether.
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UNIVERSITY OF MALTA  
FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
LLD I YEAR (2010/11)  
JUNE 2011

**EXAMINATION:** PBL 5014 - Private International Law  
**DATE:** Monday, 6th June 2011  
**TIME:** 11.45am – 2.45pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Aaron Dalli is a Maltese tax consultant. He needs a new laptop computer for meetings with his clients outside his office, but he also intends to use the laptop for his recreational purposes while at home. Aaron Dalli searches for some offers over the internet and comes across the website of Zeus Corporation Ltd, a company registered in Greece, which sells laptop computers directly to purchasers. The computers are manufactured in Korea. Aaron Dalli fills in the online form on the website of Zeus Corporation Ltd and orders the laptop.

After two weeks the laptop arrives in Malta. The fiscal invoice is accompanied by a document entitled "terms and conditions of sale." It states that the contract of sale is subject to the exclusive jurisdiction of the Greek courts. It also states that the contract is governed by the law of Korea and that any defect in the computer must be notified to Zeus Corporation Ltd within 15 days from receipt of the computer, after which date it is not possible to return it. It also states that if the purchaser is not happy with the terms of the contract he may freely return the laptop within 6 days from the date of receipt and obtain a full refund of his money. Aaron reads the invoice but pays no attention.

Two months later the computer manifests a fault which renders the laptop unusable. Aaron Dalli contacts Zeus Corporation Ltd but is told that it is too late to make a claim since the 15 day period has lapsed. Under the law of Korea Aaron Dalli would have a claim for damages for breach of contract but the provision for notification of the complaint within 15 days would give Zeus Corporation Ltd a complete defence to his claim. Under Maltese and Greek law the provision for notification would be invalid and his claim would be successful. Aaron Dalli would like to avoid overseas

litigation due to the huge costs involved. He is also worried about the 15 day notification period clause to which he had paid no attention.

- i. Advise Aaron Dalli whether he may or may not sue Zeus Corporation Ltd in Malta giving reasons for your answer.
- ii. Advise Aaron Dalli on the law applicable to his claim.
- iii. Assuming that the Maltese Courts have jurisdiction, advise Aaron Dalli on the extent to which Zeus Corporation Ltd may oppose the recognition and enforcement of a Maltese judgment in Greece.
- iv. What would your answer to question (i) be if Zeus Corporation Ltd were not a Greek company but a company registered in Korea?

2. Although foreign law may be the applicable law in a case involving a foreign element, the law of the forum may still play an important role. Discuss the role of the *lex fori* in private international law and the extent to which it enjoys a privileged status in cases involving a foreign element.

3. H is a Maltese national and domiciliary. He meets W, an English domiciliary, who had been married in the United States of America to a husband domiciled in America. She had petitioned for divorce in the United States but these proceedings had not been finalized when she married again H in Malta. Eventually relations soured between H and W and H wants to sue for the nullity of his marriage as he claims his wife was bound by a previous marriage when she married him. W now petitions the Courts of the United States to finalize the former divorce proceedings and the divorce is eventually pronounced by a Court of the United States effective from the date of the first petition for divorce. Advise H on his position and possible remedies.

4. Explain the possible defences which may be raised by a judgment debtor when a person is seeking to obtain the recognition and enforcement in Malta of a foreign judgment obtained from the courts of a State which is not an EU/EEA State.

5. Matthew is a Maltese law student at the University of Malta. Sabrina is an Italian national following a masters degree at the University of Bologna but she comes to Malta for one year to attend an English language course. After six months from her arrival in Malta, Matthew and Sabrina go to the south of France for a holiday. They lease a holiday flat in Nice (France) from a Olivier Bergeau, a Belgian national living in France. They sign the lease agreement which contains a choice of court agreement conferring exclusive jurisdiction on the courts of Belgium. Matthew and Sabrina go to a French beach and they each hire a powerful jet ski personal watercraft. While using the jet skis they crash into each other and are both injured. Matthew believes that Sabrina is at fault because she did not know how to use the jet ski while Sabrina believes that Matthew was negligent since he was driving the jet ski very close to her to show off. The holiday is spoilt and after being both hospitalised for two days, Sabrina and Matthew return to Malta where they require further medical attention.

Assume that French law, Italian law and Maltese law have differing solutions on the issue of responsibility for the accident, recognise different heads of damages and also award different levels of compensation. Matthew's doctor in Malta certifies that he has sustained a 3% permanent disability and Matthew would like to attempt to claim compensation from Sabrina. Matthew also receives a letter from Olivier Bergeau stating that he if he fails to pay the rent within three days, proceedings will be brought against him in Belgium. Matthew comes to you for advice.

- i. Advise Matthew in which courts an action for damages against Sabrina may be instituted.
- ii. Advise Matthew on the law applicable to his claim for damages.
- iii. What would your answer to question (i) be if Sabrina were not an Italian national, but a citizen of India domiciled in India but still following the English language course in Malta.
- iv. Advise Matthew which Courts have jurisdiction in the event that he fails to pay the rent and is sued by Olivier Bergeau.

Before Matthew has taken a decision on how to proceed, Sabrina files an action in the French Courts for a declaration that Matthew is responsible for the accident. Matthew is validly notified in Malta.

- v. What is the effect of such an action, if any, on your answer to question (i) and what do you advise Matthew to do in the circumstances?

6. Write short notes on any three of the following:

- i. the importance of the classification of the cause of action in private international law
  - ii. the doctrine of renvoi in private international law
  - iii. the meaning of the phrase "civil and commercial matters" for the purposes of the Brussels I, Rome I and Rome II Regulations
  - iv. the manner in which foreign law is proved in proceedings having a foreign element brought before the Courts of Malta.
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UNIVERSITY OF MALTA  
FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
LLD I YEAR (2010/11)  
SEPTEMBER 2011

EXAMINATION: PBL 5014 - Private International Law  
DATE: Monday, 5th September 2011  
TIME: 9.15am – 12.15pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. George is a United States national living in Texas. He comes to Malta on holiday to visit his friend Alex, a Maltese national domiciled in Malta. The two friends decide to cross over to Sicily for the weekend with Alex's vehicle. The vehicle is insured with Abacus Insurance plc, a company registered and doing business in Malta. While driving in Sicily, Alex gets distracted and crashes into the parked vehicle of Dominique, a French tourist who is also on holiday in Sicily. The vehicle of Dominique suffers extensive damage and George is severely injured. Maltese law, Italian law and the law of Texas recognise different heads of damages. Italian law and the law of Texas both award moral damages while Maltese law does not. The law of Texas also awards punitive damages. A damages award in this jurisdiction is expected to be two times higher than an award from Italy and three times higher than an award from Malta. While Maltese law and Italian law both recognise that the claimant has a direct action against the insurer of the vehicle causing the damage, the law of Texas only confers an action against the person responsible for the traffic accident. George and Dominique would like to sue for damages.

- i. Advise George whether an action against Alex and Abacus Insurance plc may be brought in Malta or in Italy or in any of the two giving reasons for your answer.
- ii. Advise Dominique whether she has any possibility of instituting an action to recover her damages in her home State, France, giving reasons for your answer.
- iii. Advise George and Raffella on the law which would be applied by a court in the European Union having jurisdiction over their claims for damages

with regard to the issues of responsibility for the traffic accident and the quantification of damages.

George is advised that a court in Texas will assume jurisdiction over his claim for damages and proceeds to sue Alex in Texas. Alex is validly notified but he does not defend the proceedings in Texas. A judgment is given against Alex by a Texas court condemning him to pay \$420,000 for pecuniary and non-pecuniary damages and a further \$50,000 as punitive damages punishing him for his gross negligence.

- iv. Advise Alex whether he may oppose the recognition and enforcement against him of the Texas judgment in Malta giving reasons for your answer.
- v. Would your answer to question (iv) be any different if Alex had defended the proceedings on the merits in Texas but the same judgment was given against him?

2. Analyse the exercise of jurisdiction by the Maltese Courts under Section 742 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) including the sphere of operation of these rules of jurisdiction following Malta's accession to the European Union. Do you think that this provision of law gives adequate consideration to Maltese nationals contracting over the internet with third country nationals not present in Malta?

3. H and C, Maltese domiciled persons, marry in London with a purely catholic ceremony but do not enter into a civil marriage. Let us suppose that in England the civil ceremony is essential for the validity of the marriage. H then returns to Malta and now marries W in accordance with Maltese law. H has children from both marriages. Being of an adventurous nature now H moves over to France and takes up residence with D, a French domiciliary, to whom he bequeaths everything by a will made in France in accordance with English law with which he had become familiar while residing in London. He leaves immovable property in London, Paris and Malta and a considerable world estate. Describe the rights in the estate in such scenario of the following:

- C - the first woman he marries;
- W - his Maltese wife
- D - his French heir;
- His children

4. Discuss (i) the meaning of public policy and the extent to which a Maltese court is at liberty to characterise a legal norm to be of a public policy nature following Malta's accession to the European Union; and (ii) the role that public policy plays in private international law making reference to any applicable legal provisions.

5. Melita Ltd, a Maltese company, sells a machine to Malaga S.R.L, a Spanish company operating in Spain. The contract stipulates that delivery of the machine is to take place at Melita Ltd's premises in Malta and that Malaga S.R.L. will be responsible for all transport arrangements to Spain. 50% of the price is paid upon delivery while the balance is to be paid within one year from the date of the contract. Belgica S.A., a Belgian subsidiary of Malaga S.R.L, and having its principal place of business in Belgium, appears on the contract to guarantee the payment of the price as joint and several surety of Malaga S.R.L. The contract stipulates that the balance of price is to be remitted by the principal debtor or surety by bank transfer to Melita Ltd's bank account in Malta. Malaga S.R.L. alleges that the machine is defective and fails to pay the balance of price on due date. Maltese law and Spanish law confer different remedies in the case of defects in things forming the object of a contract of sale and also have different periods of limitation within which the action may be exercised.

- i. Advise Melita Ltd whether it may bring an action for payment of balance of the price against Malaga S.R.L and Belgica S.A in Malta giving reasons for your answer.

Before receipt of your advice, Malaga S.R.L institutes an action against Melita Ltd in the Spanish courts asking for rescission of the contract of sale.

- ii. Advise Melita Ltd whether the Spanish courts have jurisdiction to hear this action and what options are available to Melita Ltd in the circumstances.
  - iii. Advise Melita Ltd on the law applicable to the contract and whether the issue of limitation also falls to be regulated by the applicable law.
  - iv. What would your answer to questions (i) and (ii) be if the contract contained an exclusive jurisdiction clause in favour of the courts of Spain, and could such a clause have any effect on the applicable law?
  - v. What would the effect of an express choice of law in the contract be? Would a choice of English law by Melita Ltd, Malaga S.R.L and Belgica S.A. be valid?
6. Discuss briefly any three of the following:
- i. the problem of the incidental question in private international law.
  - ii. the extent to which consumers are protected by rules of private international law.
  - iii. the characterisation of an issue as one of substance or procedure and its relevance in cases involving a foreign element.
  - iv. the sphere of operation of the mechanism for the recognition and enforcement of foreign judgments under Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation"). Do not discuss the defences that a judgment debtor may raise.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
LLD I YEAR (2011/12)  
JUNE 2012

EXAMINATION: PBL 5014 - Private International Law  
DATE: Monday, 25th June 2012  
TIME: 10.30am - 1.30pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Alex Refalo, a corporate lawyer habitually resident and domiciled in Malta, buys a holiday home in Umbria, Italy which he intends to enjoy with his family during the holidays. The house needs significant repairs and alterations. He searches for a professional firm of architects over the internet and comes across the website of Gregotti Associati, an Italian firm of architects established in Italy. The website includes the contact details of the firm and Alex Refalo gets in touch with Gregotti Associati by sending a message on the contact form of the website. Subsequently, a meeting is held in Malta with one of the architects of Gregotti Associati to discuss the wishes of Alex Refalo. During the meeting Alex Refalo is asked to sign an engagement agreement with Gregotti Associati. However, the plan, design work and supervision are all done in Italy. The design turns out to be seriously defective and Alex Refalo spends Euro 80,000 in remedial works that need to be carried out to prevent the collapse of the house and he also loses the enjoyment of his holiday home. Under the law of Italy Alex Refalo would be able to sue Gregotti Associati in contract and in tort as he chooses. Under Maltese law his action for damages for professional negligence would be regarded as contractual. The action in contract under Italian law is now time-barred and will therefore fail, but the action in tort is not. The action in contract under Maltese law is not yet time-barred either. Alex Refalo comes to you for advice.

- i. Advise Alex Refalo, with reference to relevant judgments of the European Court of Justice, whether national classifications of a cause of action as "contractual" or "tortious" are conclusive for the purpose of applicable European legislation on private international law.

- ii. Advise Alex Refalo whether he has to sue Gregotti Associati in Italy or whether he may possibly bring proceedings in Malta giving reasons for your answer.
- iii. Advise Alex Refalo on the law applicable to his claim for damages giving reasons for your answer, and advise him also on the issues which will be regulated by the applicable law.

Following receipt of your advice Alex Refalo decides to send a letter to Gregotti Associati threatening them that court action will be taken against them unless they pay damages. Upon receiving this letter, Gregotti Associati file an action in the Italian Courts asking for a declaration that they have completed the works according to the contract and asking the Italian Courts to condemn Alex Refalo to pay their fees amounting to Euro 50,000. Alex Refalo is validly notified with the Italian proceedings.

- iv. Advise Alex Refalo on what he should do in the circumstances including whether he would have any chance of challenging the recognition and enforcement of an eventual Italian judgment in Malta.

Now assume that all reference to Italy or Italian law are references to Country X and to its law, and that Gregotti Associati are only present, resident and domiciled in Country X. Country X is a third State (i.e. not an EU/EEA State).

- v. Advise Alex Refalo whether, in such a scenario, he may possibly sue Gregotti Associati in Malta giving reasons for your answer.

2. "Although foreign law may be the applicable law in a case involving a foreign element, the overriding mandatory provisions of the law of the forum and the public policy of the forum may have an impact on the outcome of a dispute." Discuss this statement with reference to the relevant provisions of Regulation (EC) No. 593/2008 (the "Rome I Regulation") and Regulation (EC) No. 864/2007 (the "Rome II Regulation") but feel free to also make reference to other areas of your studies not falling within the scope of the Rome I and Rome II Regulations. In your answer consider the difference, if any, between the effect of invocation of an overriding mandatory provision of the forum and that of a rule of public policy of the forum.

3. H, a Maltese domiciliary and national, marries W, an English domiciliary, national and resident, in China in a form which, though not valid as to form according to Chinese law is still recognized as valid under English Law. Problems have arisen between the spouses and W has sued H in England for divorce. She has lately been resident for the last six months in England. H asks you for advice on what to do now that he is faced with divorce proceedings in England. What advice would you give H?

4. Discuss the effects of the recognition of a foreign judgment in Malta. Then, with reference to the possible defences which may be raised by a judgment debtor against the recognition and enforcement in Malta of a foreign judgment obtained from the courts of a State which is not an EU/EEA State, proceed to examine

whether, in your opinion, the law strikes a fair balance between the interests of the judgment debtor and the claimant who has brought proceedings abroad.

5. Mr. Smith, a British national domiciled in the United Kingdom, took on lease a private holiday villa in Greece for two weeks from his friend Mr. Vella, a Maltese national domiciled in Malta. The lease agreement contains an exclusive jurisdiction clause in favour of the Maltese Courts. During his stay in Greece, Mr. Smith suffered a very serious accident when he was hit by a speed boat while swimming. The speed boat was driven by Olivier, a French tourist domiciled in France, who had hired it from Bacchus Corporation, a Greek company. When leasing the speed boat to Olivier, Bacchus Corporation acted in breach of Greek law which prohibits the lease of speed boats to persons who are not in possession of a special licence. Moreover, Abacus Corporation, a private company established in Cyprus, which is responsible for ensuring the safety of the private beach in question, failed to prevent Olivier from using the speed boat very close to the shore. Mr. Smith returns to England and is hospitalised there for two months. Due to his injury Mr. Smith fails to pay the rent and is sued in Malta by Mr. Vella for payment of the rent. Greek law confers interest on outstanding rent at the rate of 4% while Maltese law grants interest at the rate of 8%. Mr. Smith would like to bring an action for damages against Olivier, Bacchus Corporation and Abacus Corporation in the English or French Courts since the judicial system in France and England is much faster than that in Greece and Cyprus, and he is told that the English and French Courts also award huge sums of compensation for moral damages which are not recognised in Greece and Cyprus.

- i. Advise Mr. Smith whether he may contest the jurisdiction of the Maltese Courts in the action brought against him for payment of rent and interest giving reasons for your answer, and whether the applicable law on the question of interest would be Maltese law or Greek law.
- ii. Advise Mr. Smith whether the English or French Courts have jurisdiction to hear an action for damages against any or all of the potential defendants (i.e. Olivier, Bacchus Corporation and Abacus Corporation) giving reasons for your answer.
- iii. Advise Mr. Smith on the law applicable to his claim for damages and whether he may therefore recover moral damages.
- iv. Would your answer to question (i), (ii) and (iii) above be different if Mr. Smith was not domiciled in a Member State but was domiciled in a third State (i.e. not an EU/EEA State).

6. Discuss any three of the following:

- i. *Ogden v. Ogden* [1908] P 46 (CA) and how this case helps one understand the importance of the process of classification in private international law.
- ii. Joined Cases C-509/09 and C-161/10 *eDate Advertising GmbH v. X and Olivier Martinez et vs. MGN Limited* (European Court of Justice, 25th October 2010).
- iii. *GIE Pari Mutuel Urbain (PMU) v. Bell Med Ltd et* (Maltese Court of Appeal, 28th September 2007) **OR** *GIE Pari Mutuel Urbain (PMU) v. Zeturf Limited* (Maltese Court of Appeal, 9th January 2007) in relation to

the scope of Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation").

- iv. Three (3) changes proposed by the European Commission in its Proposal of 14th December 2010 for a *Recast Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*.
  - v. The notion of domicile under British common law.
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UNIVERSITY OF MALTA

FACULTY OF LAWS

DEPARTMENT OF PUBLIC LAW

LLD I YEAR (2011/12)

SEPTEMBER 2012

EXAMINATION: PBL 5014 - Private International Law

DATE: Friday, 14th September 2012

TIME: 9.15am – 12.15pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Joseph Ciantar, a Maltese-domiciled accountant, reads an advert in a Maltese magazine and decides to purchase a new computer for his office. He fills in the order form contained in the magazine and sends it to Athena Corporation, a company registered in Greece, which sells its computers directly to purchasers. The computers are manufactured in Korea. After two weeks the computer arrives in Malta. The invoice which accompanies it states that the contract of sale is subject to the exclusive jurisdiction of the Greek Courts. It also states that the contract is governed by the law of Korea and that any defect in the computer must be notified to Athena Corporation within 15 days from receipt, and that if the purchaser is not happy with the terms of the contract he may return it within 3 days from the date of receipt and obtain a full refund of his money. Joseph Ciantar reads the invoice but pays no attention.

One month later the computer manifests a fault which renders the computer unusable and unrepairable. Joseph Ciantar calls Athena Corporation but he is told that it is too late to lodge a complaint. As a matter of Korean law, Joseph Ciantar would have a claim for damages for breach of contract but the provision for notification of the complaint within 15 days would be upheld and would give Athena Corporation a complete defence to Joseph Ciantar's claim.

Joseph Ciantar cannot meet the costs of overseas litigation and would like to sue in Malta. He is also worried about the 15 day notification period provision to which he had paid no attention. Joseph Ciantar comes to you for advice. Advise him on the private international law aspects raised by this factual scenario, in particular whether he may sue in Malta and whether Korean law would be the applicable law.

2. Analyse the rules of jurisdiction which are to be applied by the Maltese Courts in civil and commercial matters where the defendant is not domiciled in a Member State (i.e. the defendant is domiciled in a third State). In your answer consider also whether any of the provisions of Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation") continue to be relevant in so far as jurisdiction over defendants not domiciled in a Member State is concerned.

3. Henry is a successful Maltese banker working for an American (US) bank in London. He has a house in Malta and in Gozo where he comes for holidays regularly. One year he meets Lara in Sannat. She is a Canadian fashion model residing in Paris. They court for a year or so, seeing each other as often as their punishing work schedules permit in Europe and the US. Eventually they decide to marry in Malta. They then purchase property in California but live essentially separate lives as neither of them have given up their profession. They also continue to maintain their other homes in London, Paris, Malta and Gozo.

One year into his marriage Henry finds out that his spouse is already married to Sheikh Zangitti, a UAE national resident in Paris. He confronts his wife who admits to have been economic with her past. She claims that the Sheikh means nothing to her anymore. She also claims to have married the first time in Paris according to the religious form of the Sheikh's religion and is currently pregnant.

Henry has sought your advice. Identify the issues which need to be determined by conflict of law rules and write a reasoned opinion advising Henry of the most effective way in which he may enforce his rights and discharge his duties.

4. Discuss, with reference to the possible defences that may be raised, the extent to which a judgment debtor may be in a better position to oppose the recognition and enforcement in Malta of a foreign judgment coming from a third State when compared to a foreign judgment coming from a Member State of the European Union.

5. Elisa Green, a 75 year old English woman, goes on holiday to Malta with her partner Andrew Ciantar. Andrew Ciantar is a Maltese national but has been living in England for two years after meeting Elisa Green in Malta. Elisa Green had worked in Malta for many years but the couple decided to move to England since Andrew's family dislike Elisa. However the couple visit Malta five times each year. This time, before coming to Malta the couple leased a vehicle over the internet from Charlie's Rent-a-Car Limited, a company registered in Malta. The vehicle is registered in Malta and is insured by Protection Insurance Co. Ltd, an insurance company registered in Malta. On their way to Mellicha beach, Andrew Ciantar loses control of the vehicle and Elisa Green is injured. Her injuries are not serious but on return to England she feels a pain in her back and she is hospitalised for further examination. While in a private hospital in England Elisa contracts MRSA, a serious infection caused by bacteria in hospitals. Elisa Green suffers serious complications as a result of the infection. She is kept in hospital for three weeks at a cost of £30,000 but she remains with a permanent disability requiring future medical care and assistance at an expected cost of £40,000 per year. Soon after the accident, the relationship between

Elisa and Andrew turns sour and Andrew returns definitively to Malta. One year after Andrew's establishment in Malta, Elisa Green contacts an English law firm and wants to claim compensation.

Assume that under Maltese law it is arguable that there is no link of causation between the accident and the fact that Elisa contracted MRSA. However, under English law it is arguable that the link of causation is not broken since Elisa only required further examination in hospital as a result of the accident. Moreover, the damages that may be awarded under English law for the damages sustained by Elisa Green are expected to be higher than those awardable under Maltese law.

Andrew and Protection Insurance Company Limited come to you for advice and want you to advise:

- i. where proceedings may be brought, in particular whether proceedings may be brought against them in England?
- ii. what the applicable law would be, in particular on the issues of responsibility and damages?
- iii. assuming that the English Courts have jurisdiction, the procedure according to which an eventual English judgment may be enforced in Malta and whether it is possible to appeal from a decision declaring an English judgment to be enforceable in Malta.

6. Write short notes on any three of the following:

- i. the role of the *lex fori* in private international law
- ii. the problem of the incidental question in private international law.
- iii. the status and proof of foreign law in proceedings having a foreign element brought before the Courts of Malta.
- iv. Case C-281/02 *Andrew Owusu v. Jackson and others* (European Court of Justice, 1 March 2005)
- v. Case C-116/02 *Erich Gasser GMBH v. MISAT Srl* (European Court of Justice, 9 December 2003)

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
LLD I YEAR (2012/13)  
JUNE 2013

**EXAMINATION:** PBL 5014 - Private International Law

**DATE:** Monday, 3rd June 2013

**TIME:** 11.45am - 2.45pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Horizon Services Limited ("Horizon") is a company incorporated in Malta. It has a website whereby it offers investment opportunities to persons resident in the European Union and Canada. Most of its clients are ordinary persons who are encouraged to invest their savings by the promise of attractive rates of return. Horizon is based solely in Malta and has no office, branch, subsidiary or employees outside Malta. The contracts it concludes with investors are stated to be subject to the laws of Malta and the exclusive jurisdiction of the Maltese Courts.

A regulatory authority of the Canadian Province of Ontario considers that Horizon is acting in breach of Canadian legislation designed to protect small scale investors. It asserts regulatory jurisdiction over Horizon on the ground that its clients are physically resident in their territory. Upon the application of the Canadian Authority, a Canadian Court orders Horizon to pay a civil penalty of \$250,000 to the Authority on the ground that it is operating without a licence and acting in breach of Canadian laws designed to protect investors. Horizon was validly notified with the judicial proceedings in Canada but had ignored them.

In the meantime a German investor who has lost all his savings as a result of an investment made with Horizon, brings judicial proceedings in Germany claiming damages from Horizon on the ground that it failed to inform him on the risks relating to the investment and that his contract with Horizon contravenes German consumer protection legislation which cannot be derogated from by the parties.

- i. Advise Horizon whether it has any defences against a demand for the enforcement of the Canadian judgment in Malta giving reasons for your answer.
- ii. Explain, giving reasons for your answer, whether your answer to question (i) would be any different if all references to Canada were references to France and the fine is imposed on Horizon by the French Courts upon an application by a French regulatory authority.
- iii. Advise Horizon whether it may contest the jurisdiction of the German Courts and whether it may rely on Maltese law as opposed to German law.

2. "Access to justice in the EU is overall unsatisfactory in disputes involving defendants from outside the EU. With some exceptions, the current Regulation only applies where the defendant is domiciled inside the EU. Otherwise jurisdiction is governed by national law. The diversity of national law leads to unequal access to justice for EU companies in transactions with partners from third countries..."<sup>1</sup> Discuss this statement with reference to the rules of jurisdiction which are applied by the Maltese Courts in civil and commercial matters where the defendant is not domiciled in a Member State. In your answer consider also which provisions of Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation") continue to be relevant in so far as jurisdiction over defendants domiciled in third countries is concerned.

3. Although foreign law may be the applicable law in a case involving a foreign element, the law of the forum may still play an important role. Discuss this statement with reference to the importance of the characterisation of rules of law in cases involving a foreign element. In your answer consider whether, if at all, the entry into force of Regulation (EC) No. 593/2008 (the "Rome I Regulation") and Regulation (EC) No. 864/2007 (the "Rome II Regulation") has reduced the ability of EU courts to apply the *lex fori* in cases involving a foreign element.

4. W, a British national and domiciliary, had married H, an English divorcee, and had subsequently purchased property in Malta as a residence. They had for some years resided in Malta, when H, having become seriously ill went back to England to take care of his health. He died in England disposing of his estate in favour of his surviving wife and leaving nothing to his daughter from the first marriage. This has happened fifteen years ago. The widow is now in need of money and seeks to sell the Maltese property. The daughter from the first marriage suddenly wakes up to her rights and claims that she has a share in the estate of her late father. Y is seeking to acquire the property from W and is now surprised to find that the daughter from the first marriage is claiming that the widow cannot transfer good title to him. Y comes to you for advice. Advise Y.

<sup>1</sup> Commission Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, 14<sup>th</sup> December 2010.

5. Kelly Shaw is an English actress habitually resident in England. She comes to Malta for two months to take part in a film. She is accompanied by her boyfriend Brad Green, an English national resident in England. While in Malta they attend a party but are involved in an accident on the way back home. Brad drinks too much and loses control of his leased vehicle. The vehicle is registered in Malta and it is insured by La Valette Insurance Ltd, a Maltese insurance company. Kelly is hospitalised in Malta and is now considering suing for damages. English law allows a reduction in the damages payable to the victim on the ground that she should not have accepted to be driven in a vehicle when knowing that the driver was drunk while Maltese law does not admit any such reduction. However English law allows the victim more heads of damage than those available under Maltese law. Brad also leased a villa in Malta for their two month stay from Eric Briggs who is domiciled and resident in England. Brad causes damage to the villa while in a state of intoxication. There is no jurisdiction clause or choice of law clause in the contract of lease.

Two days after the accident an Italian magazine produced by an Italian publisher publishes an article which states that at the time of the accident Kelly Shaw was drunk and that she regularly makes use of cocaine when attending parties. Kelly considers this article to be defamatory. 200,000 copies of the magazine are sold in Italy and 20,000 copies are sold in England. Only 50 copies are sold in Malta. Kelly would like to sue the Italian publisher for all the damages sustained to her reputation worldwide but would like to avoid suing in Italy to avoid further attention by the Italian media.

- i. Advise La Valette Insurance Ltd in which courts Kelly Shaw may bring proceedings in respect of the accident, and whether there is any risk of it being sued in England and whether it should defend an action in England giving reasons for your answer.
- ii. Advise Kelly Shaw on the law applicable to her claim for damages in respect of the accident giving reasons for your answer.
- iii. Advise Eric Briggs which courts have jurisdiction to hear his claim and which law will regulate his claim for damages against Brad Green giving reasons for your answer.
- iv. Advise Kelly Shaw, giving reasons for your answer, in which courts she may bring her claim against the Italian publisher for damage to her reputation and whether there are any consequences flowing from her desire not to sue in Italy.

6. Discuss the legal provisions concerning the validity and effect of jurisdiction clauses and choice of law clauses in commercial contracts. Include in your answer an analysis of whether the rules in Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation") may enable litigants acting in bad faith to delay the resolution of the dispute in the agreed forum.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**DEPARTMENT OF PUBLIC LAW**  
**LLD I YEAR (2012/13)**  
**SEPTEMBER 2013**

**EXAMINATION:** PBL 5014 - Private International Law  
**DATE:** Monday, 2nd September 2013  
**TIME:** 9.15am -- 12.15pm

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**ANSWER ANY THREE (3) QUESTIONS**

**ALL QUESTIONS CARRY EQUAL MARKS (ALL PARTS OF EVERY QUESTION  
CARRY EQUAL MARKS)**

1. Mark Borg, a Maltese citizen and domicilee, needs a new industrial printer for his printing business. He searches over the internet and comes across the website of Apollo Corporation Ltd, a company registered in Greece, which sells printers with the specifications he requires across the EU. The printers are manufactured in Korea. Mark Borg sends an e-mail to Apollo Corporation Ltd to order the printer and also transfers EUR 50,000 representing 80% of the price. The balance is payable within 6 months.

After three weeks the printer arrives in Malta. The fiscal invoice is accompanied by a document entitled "terms and conditions of sale." It states that the contract of sale is subject to the exclusive jurisdiction of the Greek courts. It also states that the contract is governed by the law of Korea and that any defect in the printer must be notified to Apollo Corporation Ltd within 30 days from receipt of the printer, after which date it is not possible to return it. It also states that if the purchaser is not happy with the terms of the contract he may freely return the printer within 7 days from the date of receipt and obtain a full refund of his money. Mark Borg reads the invoice and the attached terms but pays no attention.

Three months later the printer manifests a fault and it results that the printer had a latent defect making it unfit for use. Mark Borg would like to rescind the sale and have the price returned to him. He contacts Apollo Corporation Ltd but is told that it is too late to make a claim since the 30 day period has lapsed. Under the law of Korea the provision for notification of the complaint within 30 days gives Apollo Corporation Ltd a complete defence to the claim.

- i. Advise Mark Borg whether he may or may not sue Apollo Corporation Ltd in Malta giving reasons for your answer, and the extent to which Apollo Corporation Ltd would be able to oppose the recognition and enforcement of a Maltese judgment in Greece.
- ii. Advise Mark Borg on the law applicable to his claim.
- iii. What would your answer to question (i) be if Apollo Corporation Ltd were not a Greek company but a company registered in Korea?

Before Mark Borg decides what action to take, Apollo Corporation Ltd brings an action in Greece against him for payment of the remaining 20% of the price. Mark Borg is served with the writ and comes to you for advice.

- iv. Advise Mark Borg what he should do now.

2. "There is a well-established and almost universal principle that the courts of one country will not enforce the penal and revenue laws of another country" (Dicey & Morris). Discuss this rule and other instances where the Courts may refuse the application or enforcement of foreign law.

3. European instruments on private international law state that they are applicable "*in civil and commercial matters*." Explain the meaning and relevance of this phrase with close reference to the relevant judgments of the European Court of Justice and the Maltese Courts.

4. Kayne and Max are United States citizens from Texas, US. Kayne comes to Malta to visit his cousin Max for 4 weeks. One year ago Max married a Maltese woman and is living in Malta in an immovable property acquired with his wife, though the couple intend moving to Texas as soon as possible. During Kayne's stay in Malta, Kayne and Max decide to go to Sicily for a weekend by the beach. They each hire a powerful jet ski personal watercraft. While using the jet skis they crash into each other and are both injured. Max believes that Kayne is at fault because he did not know how to use the jet ski while Kayne believes that Max was negligent when driving the jet ski. The holiday is spoilt and after being both hospitalised for two days, Max returns to Malta while Kayne flies to Texas where they both require further medical interventions. They both end with a permanent disability. US law, Italian law and Maltese law have differing solutions on the issue of responsibility for the accident, recognise different heads of damages and also award different levels of compensation. Compensation according to the law of Texas would be four times higher than that awarded by a Maltese or Italian Court and a Texas court may also grant punitive damages to punish the wrong doer for negligence. Maltese law considers Max to be still domiciled in Texas, US.

- i. Advise Max whether he may sue Kayne in Malta and whether Kayne may sue him in Malta giving reasons for your answer.
- ii. Advise Max on the law applicable to the claim in the event that proceedings for damages are brought in Malta giving reasons for your answer.

Before Max has decided what to do, Kayne brings proceedings against Max in Texas, US. Max is duly served with the proceedings but ignores them. The Texas Court gives judgment ordering Max to pay Kayne \$200,000 as compensation for the physical injury and another \$60,000 as punitive damages.

- iii. Advise Max whether the Texas judgment may be recognised in Malta and eventually enforced over his immovable in Malta giving reasons for your answer.
- iv. Explain, giving reasons, whether your answer to question (iii) would be any different if the Maltese Courts had already rejected a claim by Kayne against Max in previous proceedings brought in Malta on the ground that Kayne was responsible for the accident.

5. *"In cases which involve a question of private international law, the court is called upon to decide whether a given state of facts, or a rule of law and the right resulting therefrom, falls into some particular category or conception e.g. procedure, succession, capacity, movables, immovables, form, contract, tort etc."* Discuss this statement.

6. H, originally an English domiciliary, has married W, also initially an English domiciliary in London. Both H and W were previously married to Italian nationals and H had divorced in France while W had divorced in Italy. W had a daughter B, from her first marriage. Some time after his second marriage H bought a property in Gozo which both he and his wife on several occasions used as their residence. W fell ill and spent the last months of her life in London. After her death, H continued to reside for most of his time in the Gozo property. B has brought an action in the Gozo courts against H with claims on her mother's estate. H has come to you for advice to defend the claim. Advice H keeping in mind the several possible contingencies.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
LLD I YEAR (2013/14)  
JUNE 2014

EXAMINATION: PBL 5014 - Private International Law  
DATE: Monday, 16th June 2014  
TIME: 11.45am - 2.45pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS.

1. Analyse the extent of the jurisdiction of the Maltese Courts to give judgment on claims in tort in respect of events giving rise to damage occurring in Malta and outside Malta with reference to the rules of jurisdiction in the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) and Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation"). In your answer also examine, with reference to the relevant judgments of the European Court of Justice, the meaning which the Maltese Courts are to attribute to the phrase "claim in tort" and in which circumstances are such judgments to be taken into consideration.

2. Safe Bet Limited is a Maltese company. It offers betting opportunities in relation to international sports competitions by means of a new mobile application which its customers may download on their mobile phone wherever in the world they may be. One of the terms and conditions for use of the mobile application is that the customer's relation with Safe Bet Limited is governed by Maltese law and that all disputes are subject to the exclusive jurisdiction of the Maltese Courts. Safe Bet Limited is based solely in Malta and has no offices, branches or subsidiaries outside Malta.

Olivier Barnier, a customer in France who has lost all his savings when placing bets with Safe Bet Limited through the mobile application, brings judicial proceedings in France claiming damages from Safe Bet Limited on the ground that the service provided contravenes French legislation for the protection of gamblers which cannot be derogated from by the parties.

According to German law, betting contracts with customers resident in Germany are formally invalid unless preceded by a standard warning in German. There is no such requirement under Maltese law. Sabrina Merkel, a customer habitually resident in Germany who also lost a considerable sum of money after placing bets on her phone, wants to bring an action for a declaration that her contract with Safe Bet Limited is formally invalid as it was not preceded by the warning together with a claim for restitution of all the money she has lost.

A regulatory authority in the United States considers that Safe Bet Limited is acting in breach of its legislation as it is offering betting services without a license. Upon an application of the regulatory authority, a Court in the United States orders Safe Bet Limited to pay a penalty of \$500,000 to the US regulatory authority on the ground that it is operating in its jurisdiction without a license. At the same time, a Swedish Court condemns Safe Bet Limited to pay EUR 1,000,000 as damages to a Swedish state monopoly responsible for the regulation of betting in Sweden for breach of its exclusive license to offer betting services in Sweden. Robert Smith, an American citizen, also obtains a judgment from a court in the United States ordering Safe Bet Limited to refund to him the money he has lost when placing bets on his mobile phone.

Safe Bet Limited had been validly notified with all the proceedings brought against it.

- i. In relation to the claim brought by Olivier Barnier, advise Safe Bet Limited on what it should do, including whether it may contest the jurisdiction of the French Courts and whether it may rely on Maltese law as opposed to French law giving reasons for your answer. [25%]
  - ii. In relation to the claim brought by Sabrina Merkel, advise Safe Bet Limited whether her contract will be considered to be formally invalid giving reasons for your answer. Will the answer be the same if proceedings are brought in Malta and not in Germany? [25%]
  - iii. Advise Safe Bet Limited whether it has any defences against a demand for the enforcement in Malta of the United States judgments obtained by the US regulatory authority and by Robert Smith giving reasons for your answer. [25%]
  - iv. The Swedish state monopoly makes an application before the First Hall Civil Court for the enforcement in Malta of the Swedish judgment under Chapter III of Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation"). Advise Safe Bet Limited whether it may raise any defence against such an application giving reasons for your answer. [25%]
3. Analyse concisely the following three (3) issues:
- i. the privileged role of the *lex fori* in private international law;
  - ii. the status and proof of foreign law in proceedings having a foreign element brought before the Courts of Malta; and
  - iii. the changes made by Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") with respect to the procedure for the recognition and enforcement of foreign judgments.

4. Joseph Busuttil is a Maltese financial adviser working for an American company in London. He has his own house in Malta where he comes for holidays regularly. On one of these holidays he meets Lara Black in Sliema. She is a Canadian fashion model habitually resident in Paris. They court for a year or so, seeing each other as often as their work schedules permit. Eventually Lara and Joseph get married in Malta. They then purchase a property in California and a flat in Gozo in their joint names but live essentially separate lives as neither of them have given up their profession. They also continue to maintain their other homes in London, Paris and Malta.

One year into the marriage Lara gets pregnant and moves to live in their flat in Gozo. A few months later, Joseph finds out that Lara had already been married to Sheikh Zangitti, a UAE national resident in Paris. He confronts his wife who admits to have been economic with her past. She claims that the Sheikh means nothing to her anymore. She also claims to have married the first time in Paris according to the religious form of the Sheikh's religion.

Joseph Busuttil is thinking of ending the marriage with Lara, but would like custody over the child after it is born and would also like to protect his rights to the properties. He seeks your advice. Identify the issues which need to be determined by conflict of law rules and write a reasoned opinion advising Joseph of the most effective way in which he may enforce his rights and discharge his duties. Indicate also whether the Maltese Courts would have jurisdiction to hear a case against Lara in relation to their marriage.

5. Brenda Ball is an Irish make-up artist domiciled in Dublin, Ireland. She enters into a three year contract of employment with Best Movies Limited, a company established in Ireland. The contract is said to be governed by English law and contains a choice of court agreement in favour of the English courts. Brenda habitually carries out her work in Dublin, but occasionally she is required to travel. Brenda is sent to Malta for one week to assist with the production of a film. Best Movies Limited arranges for her transport in Malta by means of an e-mail exchange with Attard Transport Limited, a Maltese company operating minibuses. One of the e-mails says that the agreement is subject to Irish law and to the jurisdiction of the Irish Courts. On one of the trips back to the filming location, the driver of the minibus Simon Muscat gets distracted and loses control of the minibus. Brenda Ball is injured. Brenda Ball brings proceedings in Ireland against two defendants: (i) against Best Movies Limited for breach of contract in failing to provide for her safety while requiring her to travel for work purposes; and (ii) against the driver of the minibus Simon Muscat for driving negligently. The claim in contract will fail in terms of Maltese and English civil law, but it will succeed in terms of Irish law. The claim for negligence against the driver will succeed in terms of Maltese law, English law and Irish law, but under English law and Irish law it would be possible for Brenda to also claim damages for discomfort and suffering. The minibus is insured with the Maltese company Mdina Insurance Agency Limited, an insurance agent in Malta of Medina Corporation, an insurance company established in Qatar. Simon Muscat is validly notified in Malta with the Irish proceedings.

- i. Discuss whether the Irish Courts have jurisdiction against the defendants Best Movies Limited and Simon Muscat giving reasons for your answer, and advise Simon Muscat what he should do in the circumstances. [25%]
  - ii. Advise on the law applicable to the claim/s for damages brought by Brenda Ball against the defendants Best Movies Limited and Simon Muscat and her possibilities of success giving reasons for your answer. [25%]
  - iii. Advise whether the jurisdiction of the courts of the Member States against Medina Corporation is regulated by Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation") and advise Brenda Ball whether she could have also sued Medina Corporation, and in which courts. [20%]
  - iv. Attard Transport Limited is concerned that it may be sued for damages in Ireland by Best Movies Limited for failing to provide a safe service. It contends that it never consented to the jurisdiction clause and to choice of law clause in the e-mail exchange. How is the allegation concerning the invalidity of the jurisdiction clause to be resolved under Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation"), and what is the solution provided under Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation")? How is the allegation concerning the invalidity of the choice of clause law to be resolved under Council Regulation (EC) No. 593/2008 (the "Rome I Regulation")? [30%]
6. Discuss the notion of habitual residence and its importance to the conflict of laws with particular reference to the instruments of private international law applicable to Malta which make use of this notion.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**DEPARTMENT OF PUBLIC LAW**  
**LLD I YEAR (2013/14)**  
**SEPTEMBER 2014**

**EXAMINATION:** PBL 5014 - Private International Law  
**DATE:** Monday, 1st September 2014  
**TIME:** 10.30am - 1.30pm

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**ANSWER ANY THREE (3) QUESTIONS**

**ALL QUESTIONS CARRY EQUAL MARKS.**

1. Analyse the extent of the jurisdiction of the Maltese Courts to give judgment on contractual claims in respect of contracts to be performed in Malta and outside Malta with reference to the rules of jurisdiction in the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) and Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation"). In your answer also examine, with reference to the relevant judgments of the European Court of Justice, the meaning which the Maltese Courts are to attribute to the phrase "matters relating to a contract" and in which circumstances are such judgments to be taken into consideration.
  
2. Mr. Smith, a United States national domiciled in Texas took on lease a private holiday villa in Umbria, Italy for two months from his friend Mr. Vella, a Maltese national resident and domiciled in Malta. The lease agreement contains an exclusive jurisdiction clause in favour of the Maltese Courts. When he arrives in Umbria Mr. Smith considers that the villa does not meet the standards he was promised by Mr. Vella and he therefore leases a luxurious villa from third parties at a rent which is three times higher than that agreed with Mr. Vella. Mr. Smith also refuses to pay the rent to Mr. Vella. Mr. Smith brings proceedings against Mr. Vella in Texas, United States to recover the rent he has paid to lease alternative accommodation in Umbria together with damages for the anxiety caused to him and his wife on his arrival in Umbria. Under Italian law and Maltese law such damages would not be recoverable. Mr. Vella has just been notified with the proceedings brought against him by Mr. Smith. He believes that the villa was precisely as he had promised to Mr. Smith and says that he had also sent him pictures via e-mail. Answer the following questions giving reasons for your answer.

- i. Advise Mr. Vella whether he should or should not contest the action in Texas and on the consequences of his decision. [25%]
- ii. Advise Mr. Vella whether he may now bring proceedings against Mr. Smith for payment of the rent, and where such an action may be brought. [25%]
- iii. Which law would the court of a Member State apply to the respective claims of the parties and which issues would the applicable law regulate? [25%]
- iv. What would your answer to question (i) be if Mr. Smith were a United States national but domiciled in France and proceedings were brought against Mr. Vella in Italy instead of Texas? [25%]

3. *"In cases which involve a question of private international law, the court is called upon to decide whether a given state of facts, or a rule of law and the right resulting therefrom, falls into some particular category or conception e.g. substance or procedure, succession, capacity, movables, immovables, form, contract, tort etc."*  
Discuss this statement.

4. H, an English domiciliary married W, a Maltese wife, in the London registry in the United Kingdom. After some time they purchased a property in Malta with a view to establishing themselves there. However the commitments of the husband never really allowed this to happen and saving for occasional visits the property never becomes their permanent residence. They had of this marriage three children. In later years H met a French woman and proceeded to ask for divorce from his Maltese wife in the French Courts which he duly obtains. They eventually marry in Italy where they settle down. When H dies he leaves everything to his second French wife by a will written in his hand in Italy. The first wife and the children who have in the meantime settled in Malta in the house originally bought by H and W, and this with the consent of H, come to you for advice. Advise them.

5. Samantha is a Dutch female student who comes to Malta to attend an English language course at a school in Malta operated by English Services Limited, a Maltese company which promotes its services at Samantha's private school in the Netherlands. English Services Limited provides the teaching but arranges for her accommodation with a host family in Malta, John and Valerie Dalli. While residing in the residence of the Dallis, Samantha slips on some wet paint which Mr. Dalli had spilled while painting the kitchen and she seriously injures her back. She is unable to attend her classes for the rest of her stay in Malta. She alleges that spouses Dalli fed her pasta each day and provided her with a room in their humid basement in conditions which are very different from those advertised by English Services Limited in the Netherlands. Samantha returns to the Netherlands and would like to bring proceedings against both English Services Limited and Mr. and Mrs. Dalli. She entered into no written agreement with John and Valerie Dalli but had signed a contract with English Services Limited. The contract has no choice of law clause but contains various references to provisions of the Dutch Civil Code.

English Services Limited is insured by London Insurance Corporation plc, an English insurer. The insurance contract is governed by English law and contains a jurisdiction clause in favour of the English Courts. Upon receiving a claim from English Services Limited in connection with the above accident, London Insurance Corporation plc brings

an action in England for a declaration that the insurance contract is void on grounds of non-disclosure of a material fact. English Services Limited is notified with the English proceedings but ignores them. A judgment is given by the English Courts declaring the insurance policy to be null and void. English Services Limited would like to bring proceedings in Malta against London Insurance Corporation plc to recover any amount it may be compelled to pay to Samantha.

- i. Advise whether the Dutch Courts have jurisdiction to entertain Samantha's claims against English Services Limited and spouses Dalli giving reasons for your answer. [34%]
  - ii. Advise on the law applicable to Samantha's claims giving reasons for your answer. [33%]
  - iii. Advise on the effect which recognition of the English judgment would have in Malta, and whether English Services Limited may raise any defence against the recognition in Malta of the English judgment obtained by London Insurance Corporation plc [33%].
6. Discuss the relevance and sphere of application of the notion of domicile as a connecting factor in Maltese private international law including any applicable European Union private international law regulations.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
LL.D. 1 YEAR (2014/15)  
JUNE 2015 EXAMINATIONS

EXAMINATION: PBL5014 – Private International Law

DATE: Friday 19<sup>th</sup> June 2015

READING TIME: 8.30am – 8.35am

DURATION OF EXAM: 8.35am - 11.35am

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS.

1. *“The process of determining the legal category into which the claim (cause of action) falls may be important for both jurisdictional and applicable law purposes.”*  
Discuss whether you agree with this statement and whether a Maltese court is free to carry out such a process solely by reference to Maltese law.
  
2. Elizabeth Price was staying at the Grand Hotel in Qawra which is owned and operated by Refalo Properties Limited, a Maltese company. Refalo Properties Limited is insured with Best Insurance Underwriters Ltd, an English insurer. Elizabeth booked her accommodation at the Grand Hotel through a well known website displaying hotel accommodation offers all over Europe. While exiting the hotel, she slipped on a carpet and fell down the stairs. Elizabeth complained that the carpet was overhanging a step giving her a false sense of security. As a result of the accident, Elizabeth fractured her hip and sustained a permanent disability. Two and a half years after the accident she seeks compensation by means of a letter sent by her English solicitor to Refalo Properties Limited. Under Maltese law, the period of prescription for an action for damages in tort is two years while a contractual action is barred by the lapse of five years. Under English law there is a three year limitation period in both cases. The heads of damage under English law are wider than those allowed under Maltese law and the quantification of each head of damages is also expected to be higher under English law. Both Maltese law and English law do not allow the claimant to file a direct action against the insurer in circumstances such as those arising in this case. Refalo Properties Limited informs Best Insurance Underwriters Ltd about the legal letter it has received from Elizabeth Price but

the insurer repudiates liability for breach of policy conditions by the insured and brings an action against Refalo Properties Limited before the English Courts for a declaration that it has no liability under the insurance policy. Refalo Properties Limited comes to you for advice and requests a reasoned legal opinion on the following issues:

- i. Advise Refalo Properties Limited whether Elizabeth Price may bring court proceedings in England in respect of the injury she has sustained [35%]
- ii. Advise Refalo Properties Limited whether it may defeat the claim of Elizabeth Price on the ground that it is time-barred, and whether liability and the assessment of damage would be regulated by Maltese law or English law [35%]
- iii. Advise Refalo Properties Limited whether an English judgment declaring that there is no liability under the insurance policy would be enforceable in Malta and what it should do once it is notified with the proceedings filed against it by Best Insurance Underwriters Ltd. Would your answer be any different if the policy of insurance contained a clause stating that all disputes between the insurer and the insured are subject to the jurisdiction of the English Courts? [30%]

3. Discuss the extent to which it may be possible for a judgment debtor, in proceedings for the recognition and enforcement of a foreign judgment in Malta, to raise a defence relating to the jurisdiction of the foreign court which gave the judgment. Your answer is to deal both with foreign judgments coming from European Union and foreign judgments coming from third States (i.e. States not forming part of the European Union and the European Economic Area).

4. Pulse Limited is a company registered in Malta which provides advertising space on its websites to online gaming companies around the world. After extensive negotiations and numerous trips by the managing director of Pulse Limited to the offices of Ceka s.r.o., a company established in the Czech Republic (EU), the parties have formulated a draft agreement stating the terms and conditions of the proposed supply of advertising space. The draft contract also contains a clause stating that in the event of a dispute, the parties will submit to the exclusive jurisdiction of the courts of England which was identified by the parties as a neutral forum. The draft contract contains no provision on the applicable law. Ceka s.r.o. suddenly refuses to sign the contract. Pulse Limited would like to claim compensation from Ceka s.r.o. for all the expenses it has incurred but is unsure of its chances of success since Czech law, English law and Maltese law have different solutions on the admissibility of such a claim. Pulse Limited signs a contract for the provision of advertising space with Obama LLC, a company established in Oregon (USA). This contract contains no jurisdiction clause and no choice of law clause. Obama LLC considers that the advertising space provided by Pulse Limited was not provided in a prominent area of the website, in breach of the agreed terms, and refuses to pay.

- i. Advise Pulse Limited on the law applicable to its claim for compensation against Ceka s.r.o. and the issues which would be regulated by the applicable law [40%]
- ii. Advise Pulse Limited whether it may sue Obama LLC in Malta and the law which would be applied by a Maltese court to determine whether Obama LLC has a good defence to refuse to pay. [30%]

Obama LLC sues Pulse Limited in the courts of Oregon for lost profits arising from breach of contract. Pulse Limited considers that it respected the terms of the contract and raises a defence to this effect in the courts of Oregon. Judgment is given against Pulse Limited ordering it to pay damages to Obama LLC quantified in accordance with US law and awarding interests on the sum due as damages at the rate of 12% per annum until the date of effective payment.

- iii. Advise Pulse Limited whether the US judgment obtained by Obama LLC may be recognised and enforced in Malta [30%].

5. Discuss the changes made by Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") in so far as the rules concerning jurisdiction agreements are concerned and the extent to which it modifies or confirms the case law of the European Court of Justice with respect to Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation") and the Brussels Convention. In your answer indicate also whether Article 25 of the Brussels I Recast Regulation applies to choice of court agreements conferring jurisdiction on the Maltese Courts between persons not domiciled in a Member State.

6. H, a Maltese national has married W, an English domiciliary, in accordance with the civil law of Malta. They have become habitually resident in France where they have lived for a considerable number of years. On a trip to Italy H meets W2, divorces his first wife in England but before he manages to marry W2 he dies of a heart attack in Italy. He has however before his decease left a will made in Italy in his hand leaving all his worldly goods to W2. He has left a considerable estate with immovables in England, Italy and Malta and other movables. These have been purchased mainly during his first marriage. Samantha, his daughter from the first marriage together with her mother is seeking your advice. Advice on whether they can claim any share to the estate clearly identifying the issues which need to be resolved and in accordance with which law.

UNIVERSITY OF MALTA

FACULTY OF LAWS

DEPARTMENT OF PUBLIC LAW

LLD I YEAR (2014/15)

SEPTEMBER 2015

EXAMINATION: PBL 5014 - Private International Law

DATE: Tuesday, 1st September 2015

READING TIME: 10.00 am – 10.05 am

DURATION OF EXAMINATION: 10.05 am – 01.05 pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS.

1. "Although foreign law may be the applicable law in a case involving a foreign element, the law of the forum may still play an important role." Discuss the role of the *lex fori* in private international law and the extent to which it enjoys a privileged status in cases involving a foreign element after the entry into force of Regulation (EC) No. 593/2008 (the "Rome I Regulation") and Regulation (EC) No. 864/2007 (the "Rome II Regulation").

2. Mario Facciol is a successful computer programmer domiciled in Malta. He undertook to develop a programme for Erst GmbH, a very large German company, which is to be used in a new device which will be launched on the European market. The development of the programme was carried out in Malta, but a number of technical meetings were held at the premises of Erst GmbH in Germany. Soon after developing the programme for Erst GmbH, Mario Facciol developed a similar programme which he sold to a competitor of Erst GmbH. According to Erst GmbH, Mario Facciol had agreed to work exclusively for it and he could, therefore, neither develop nor sell a similar programme to its competitor. Mario Facciol does not agree with this interpretation of the agreement and argues that it cannot be concluded that it contained an exclusive undertaking on his part. Erst GmbH refuses to pay the balance of price due to Mario Facciol and also institutes proceedings in Germany against him. Erst GmbH claims that damages are to be awarded to it in tort in terms of Section 823(2) of the German Civil Code.

The agreement between Mario Facciol and Erst GmbH does not contain a choice of court agreement and choice of law clause. It is drafted in the English language but contains various references to provisions of the German Civil Code (BGB). Mario Facciol fears his financial ruin and requests your reasoned legal opinion on the following issues:

- i. Advise Mario Facciol whether he may contest the jurisdiction of the German Courts [35%]
- ii. Advise Mario Facciol on the law applicable to the claim of Erst GmbH against him including whether German law will regulate the interpretation of the contract [35%]
- iii. Advise Mario Facciol on what he could do to attempt to recover the balance of price due to him from Erst GmbH. [30%]

3. *"The jurisdiction of the court of origin may not be reviewed. The test of public policy may not be applied to the rules relating to the jurisdiction of the court of origin."* Discuss whether you agree with this statement with reference to the rules concerning the recognition and enforcement of foreign judgments in Malta. Your answer is to deal both with foreign judgments coming from European Union and foreign judgments coming from third States (i.e. States not forming part of the European Union and the European Economic Area).

4. Frank Dimech is a car dealer established in Malta. He purchased a motor vehicle from the website of Best Cars Limited, an English company, for a very good price with the intention of re-selling it at a profit. Best Cars Limited cancelled the sale on account of damage allegedly sustained by the vehicle during preparations for its delivery to Malta. Frank Dimech considers that this is just an excuse to avoid the sale on account of the exceptionally low sale price, and wants to bring an action to enforce the contract. The general terms and conditions for internet sales accessible on the website of Best Cars Limited contain a clause conferring exclusive jurisdiction on the English Courts in the event of a dispute between the parties. In order to conclude the sale Frank Dimech had to agree to the general terms and conditions for internet sales after clicking on a hyperlink which opens a window containing the said terms and conditions. It is possible to print and save the terms and conditions but Frank Dimech pays no attention to them. Frank Dimech comes to you for advice and requests a reasoned legal opinion on the following issues:

- i. Advise Frank Dimech whether he may bring proceedings against Best Cars Limited in Malta and the law applicable to the claim [30%]
- ii. Would your answer to question (i) be any different if Frank Dimech acquired the vehicle for his own personal use? [30%]

Rebecca Petite, who is domiciled in France but studying English in Malta, visits the showroom of Frank Dimech with Thibault, her French boyfriend who is habitually resident in France. They go for a test drive with one of the vehicles around the block. Thibault loses control of the vehicle and Rebecca is seriously injured. It results that the brakes of Frank's vehicle were defective, but it is clear that Thibault was also overspeeding and

driving dangerously. As it is unclear who is to be held responsible for the damage, Rebecca sues both Thibault and Frank Dimech for damages in France.

- iii. Advise Frank Dimech whether the French Courts have jurisdiction against him and whether damages will be quantified in accordance with French law or Maltese law [40%].

5. Analyse the scope and sphere of application of Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") with close reference to the judgments of the European Court of Justice and the Maltese Courts in relation to the scope and sphere of application of its predecessors Council Regulation (EC) No. 44/2001 (the "Brussels I Regulation") and the 1968 Brussels Convention.

6. W, a British national and domiciliary, had married H, an English divorcee. They subsequently moved to Malta and H purchased property in Malta as a residence. They had for some years resided in Malta, when H, having become seriously ill went back to England to take care of his health. He died in England disposing of his English and Maltese estate in favour of his surviving wife and leaving nothing to his daughter from the first marriage. The will is in a form recognised by English law but not Maltese law. H died fifteen years ago. The widow is now in need of money and seeks to sell the Maltese property which she has been occupying for many years. The daughter from the first marriage suddenly wakes up to her rights and claims that she has a share in the estate of her late father. W is surprised to find that the daughter from the first marriage is claiming that she cannot transfer good title to the property to a prospective purchaser. W comes to you for advice. Advise W clearly identifying the issues which need to be resolved and in accordance with which law.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**DEPARTMENT OF PUBLIC LAW**  
**LL.B. HONS. 4<sup>TH</sup> YEAR 2015/2016**

**EXAMINATION:** PBL 4013 - PRIVATE INTERNATIONAL LAW  
**DATE:** Monday, 6<sup>th</sup> June 2016  
**READING TIME:** 10.00 am - 10.05 am  
**TIME:** 10.05 am - 1.05 pm

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**ANSWER ANY THREE (3) QUESTIONS**

**ALL QUESTIONS CARRY EQUAL MARKS**

1. George is a Canadian national living in Ottawa, Canada. He comes to Malta to marry his girlfriend Alexandra, a Maltese national domiciled in Malta, with the intention of settling down in Malta. The couple go to Rome for their honeymoon and stay with Petra, a friend of Alexandra. Petra is Maltese national who has been working in Rome for 3 years. In Rome Petra has a vehicle which is insured with Premier Insurance, a company registered in Qatar but which has an agency in most Member States of the European Union including Malta. While driving the newly married couple around Rome, Petra gets distracted and crashes into the parked vehicle of Bella, a Dutch tourist who is also on holiday in Rome. The vehicle of Bella suffers extensive damage and George is severely injured. He is admitted to Ospedale Cioffi, a private hospital in Italy. While in hospital George contracts MRSA, a serious infection caused by bacteria in hospitals. George suffers serious complications as a result of the infection. He is kept in hospital for three weeks at a cost of EUR 30,000 but remains with a permanent disability requiring future medical care and assistance at an expected cost of EUR 50,000 per year. The laws of the different countries mentioned above recognise different heads of damages and also have different solutions on whether the link of causation between the accident and the MRSA infection is broken. There are also different solutions on the nature of the action against Ospedale Cioffi.

- i. Advise George whether an action against Petra and Ospedale Cioffi may be brought in Malta giving reasons for your answer. [25%]
- ii. Advise George on the law which would be applied to determine his claims for damages against Petra and Ospedale Cioffi. [25%]

- iii. Advise Bella whether she has any possibility of instituting an action to recover her damages in her home State, Holland, giving reasons for your answer. [25%]

George has settled down with his wife Alexandra in Malta. He is advised that a Court in Canada will assume jurisdiction over his claim for damages against Petra and proceeds to sue Petra in Ottawa. Moreover he is also advised that the Canadian court will also find Petra responsible for the serious complications as a result of the MRSA infection and will condemn her to pay damages in the region of \$500,000 for pecuniary and non-pecuniary damages, and a further \$50,000 for future medical costs until he lives.

- iv. Advise George about his chances of enforcing an eventual Canadian judgment in Malta against Petra and her insurer giving reasons for your answer. [25%]

2. Analyse the rules regulating the jurisdiction of the Maltese Courts and the rules regulating the applicable law in the case of claims concerning immovable property and tenancies of immovable property situated in Malta and outside Malta. Examine also whether a foreign judgment concerning an immovable situated in Malta may be recognised and enforced in Malta.

3(a). Henry is a successful Maltese banker working for an American (US) bank in London. He has a house in Malta and in Gozo where he comes for holidays regularly. During one of his holidays he meets Lara in Sannat. She is a Canadian fashion model residing in Paris. They court for a year or so, seeing each other as often as their punishing work schedules permit in Europe and the US. Eventually they decide to marry in Malta. They then purchase property in California but live essentially separate lives as neither of them have given up their profession.

One year into his marriage Henry finds out that his spouse is already married to Sheikh Zangitti, a UAE national resident in Paris. He confronts his wife who admits to have been economic with her past. She claims that the Sheikh means nothing to her anymore. She also claims to have married the first time in Paris according to the religious form of the Sheikh's religion.

Henry has sought your advice. Identify the issues which need to be determined by conflict of law rules and write a reasoned opinion advising Henry of his options. [50%].

And

(b) Discuss the scope and main features of EU Regulation 2201/2003 ("the Brussels II bis Regulation") [50%].

4. "Although foreign law may be the applicable law in a case involving a foreign element, the overriding mandatory provisions of the law of the forum and the

public policy of the forum may have an impact on the outcome of a dispute." Discuss this statement. In your answer consider also the difference, if any, between the effect of invocation of an overriding mandatory provision of the forum and that of a rule of public policy of the forum.

5. Malita Ltd, a Maltese company, sells machinery to Cordoba S.R.L, a Spanish company operating in Spain. The contract stipulates that delivery of the machine is to take place at Malita Ltd's premises in Malta and that Cordoba S.R.L. will be responsible for all transport arrangements to Spain. 50% of the price is paid upon delivery while the balance is to be paid within one year from the date of the contract by bank transfer to Malita Ltd's bank account in Malta. The contract of sale contains no jurisdiction clause and no clause on the applicable law. It is signed in Madrid. Contemporaneously with the signature of the contract of sale, Belgica S.A., a Belgian subsidiary of Cordoba S.R.L, and having its principal place of business in Belgium, appears on a separate contract to guarantee the payment of the price to Malita Ltd as surety of Cordoba S.R.L. Upon the insistence of the director of Cordoba S.R.L, the contract of suretyship is said to be governed by Belgian law but the directors of Malita Ltd refuse the proposed jurisdiction clause in favour of the Belgian Courts. Cordoba S.R.L. alleges that the machinery is defective and fails to pay the balance of the price on due date. Maltese law, Spanish law and Belgian law have different remedies concerning the rights of the purchaser in the case of defects in things forming the object of a contract of sale. There are also important differences in so far as the rights of the creditor against the surety are concerned.

- i. Advise Malita Ltd whether it may bring an action for payment of balance of the price against Cordoba S.R.L and Belgica S.A in Malta giving reasons for your answer. [25%]
- ii. Advise Malita Ltd on the law which will regulate its claims against Cordoba S.R.L and Belgica S.A giving reasons for your answer. [25%]

Before receipt of your advice, Cordoba S.R.L institutes an action against Malita Ltd in the Spanish courts asking for a rescission of the contract of sale. Malita Ltd is notified with the proceedings.

- iii. Advise Malita Ltd on the consequences flowing from this and what it should do in the circumstances, giving reasons for your answer. [25%]
- iv. What would your answer to questions (i) and (ii) be if the contract of sale contained an exclusive jurisdiction clause in favour of the courts of Spain [25%]

6. Discuss the changes made by Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") to the rules concerning (i) the jurisdiction of the courts of a Member State over third State defendants (i.e. persons not domiciled in a Member State) and (ii) jurisdiction or choice of court agreements.

UNIVERSITY OF MALTA

FACULTY OF LAWS

DEPARTMENT OF PUBLIC LAW

L.L.B. HONS. 6<sup>TH</sup> YEAR 2015/2016

EXAMINATION: PBL 4013 - Private International Law

DATE: Thursday, 1<sup>st</sup> September 2016

READING TIME: 8.30 am - 8.35 am

TIME: 8.35 am - 11.35am

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Giorgia Rossi is an Italian national habitually resident in Italy. She is married to Alexander, a Maltese national domiciled in Malta. Giorgia comes to Malta for a holiday with her Italian friend Alessia and the two friends stay in a holiday home in Qawra which Alessia has rented over the internet from Ian, an English domicilee, for a period of two weeks. The lease contract contains a clause stating that all disputes shall be governed by English law and are subject to the exclusive jurisdiction of the English Courts. One evening, Alessia decides to cook dinner in the holiday home in Qawra. She negligently leaves the gas flowing without a flame, causing an explosion. Giorgia is killed and Ian's holiday home is severely damaged. Alessia returns to Italy, Alexander moves back to Malta, and Ian flies to Malta too to ascertain the damage to his property. According to Giorgia's last will and testament, which is valid for all purposes of law, her sole universal heir is her Maltese husband Alexander. According to Article 1046 of the Maltese Civil Code, in the case of a death claim, damages are due only to the heirs of the victim, and a claim only exists for *damnum emergens* and *lucrum cessans*. However, according to Articles 2043 and 2059 of the Italian *Codice Civile*, members of a deceased person's family, including the parents of the deceased, are entitled in their own right to compensation in respect of non-material damage, even though they are not heirs. The parents of Giorgia, Mr. and Mrs. Rossi, are domiciled in Italy but habitually resident in Greece.

- i. Advise Mr. and Mrs. Rossi whether they have a claim against Alessia for damages suffered as result of the death of their daughter Giorgia. [33.3%]

- ii. Advise Alexander whether he may bring proceedings for damages in Malta, and whether the damages due to him would be established and quantified according to Maltese law or Italian law. [33.3%]
- iii. Advise Ian on the courts which have jurisdiction to hear his claim for damage due to him under the rental contract, and whether an English judgment or a Maltese judgment awarding him such damages would be enforceable against Alessia in Italy. [33.3%]

2. Analyse the extent of the jurisdiction of the Maltese Courts to give judgment on contractual claims, in cases where performance under the contract is to take place in Malta and outside Malta, with reference to the rules of jurisdiction in the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) and Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation"). In your answer examine also the meaning of a *claim in contract* with reference to relevant judgments of the European Court of Justice.

3. Discuss the changes made by Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") with respect to the procedure for the recognition and enforcement of foreign judgments, and contrast this procedure with that for the recognition and enforcement of foreign judgments under EU Regulation 2201/2003 ("the Brussels II bis Regulation") and the Code of Organisation and Civil Procedure.

4. Analyse the following two (2) issues:

- i. the privileged role of the *lex fori* in private international law; [50%] and
- ii. the status and proof of foreign law in proceedings having a foreign element brought before the Courts of Malta [50%].

5. Bet Now Limited is a Maltese company owned by Greek shareholders who are also its directors. It offers betting opportunities in relation to international sports competitions by means of a new mobile application which its customers may download on their mobile phone wherever in the world they may be. One of the terms and conditions for use of the mobile application is that the customer's relation with Bet Now Limited is governed by Greek law but all disputes are said to be subject to the exclusive jurisdiction of the Maltese Courts. Bet Now Limited is based solely in Malta and has no offices, branches or subsidiaries outside Malta.

Nico, a customer in France who has lost all his savings when placing bets with Bet Now Limited through the mobile application, brings judicial proceedings in France claiming damages from Bet Now Limited on the ground that the service provided contravenes French legislation for the protection of gamblers which cannot be derogated from by the parties.

According to German law, betting contracts with customers resident in Germany are formally invalid unless preceded by a standard warning in German. There is no such requirement under Greek law and Maltese law. Sabrina, a customer habitually resident in Germany who also lost a considerable sum of money after placing bets on her phone, wants to bring an action for a declaration that her contract with Bet Now Limited is formally invalid as it was not preceded by the warning together with a claim for restitution of all the money she has lost.

A regulatory authority in the United States considers that Bet Now Limited is acting in breach of its legislation as it is offering betting services without a license. Upon an application of the regulatory authority, a Court in the United States orders Bet Now Limited to pay a penalty of \$2,000,000 to the US regulatory authority on the ground that it is operating in its jurisdiction without a license. At the same time, a Swedish Court condemns Bet Now Limited and its directors to pay EUR 1,000,000 as damages to a Swedish state monopoly responsible for the regulation of betting in Sweden for breach of its exclusive license to offer betting services in Sweden. Robert Smith, an American citizen, also obtains a judgment from a court in the United States ordering Bet Now Limited to refund the money he has lost when placing bets on his mobile phone.

Bet Now Limited and its directors have been validly notified with all the proceedings brought against them.

- i. In relation to the claim brought by Nico, advise Bet Now Limited whether it may contest the jurisdiction of the French Courts and whether it may rely on Greek law as opposed to French law. [25%]
  - ii. In relation to the claim brought by Sabrina, advise Bet Now Limited whether her contract will be considered to be formally invalid. Will the answer be the same if proceedings are brought in Malta and not in Germany? [25%]
  - iii. Advise Bet Now Limited whether it has any defences against a demand for the enforcement in Malta of the United States judgments obtained by the US regulatory authority and Robert Smith. [25%]
  - iv. The Swedish state monopoly makes an application before the First Hall Civil Court under Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") for the enforcement in Malta of the Swedish judgment. Advise Bet Now Limited and its directors whether they may raise any defence against such an application. [25%]
6. To what extent have changes in the law over the last two decades rendered the recognition of status in private international law more certain?

UNIVERSITY OF MALTA

FACULTY OF LAWS

DEPARTMENT OF PUBLIC LAW

LL.D. I 2016/2017

**EXAMINATION:** PBL 5014 - Private International Law

**DATE:** Monday, 19<sup>th</sup> June 2017

**TIME:** 10.00 am - 1.05 pm

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Giovane Limited is a Maltese company which acts as a distributor in Malta. It is informed by the supplier Bella Moda S.r.l., a company established in Italy, that the distributorship agreement between the parties is terminated with immediate effect. Giovane Limited is informed that Bella Moda S.r.l. intends to open its own outlets in Malta. Giovane Limited wishes to bring court proceedings in Malta with the following claims: (i) a claim that Bella Moda S.r.l. was in breach of its obligations under the distributorship agreement as it was providing it with products of inferior quality to that stipulated in the distributorship agreement; and (ii) a claim for damages in tort on the ground that Bella Moda S.r.l. had acted in bad faith when it promised Giovane Limited that it would remain its sole distributor in Malta, and that on the basis of such promise, Giovane Limited had entered into a five year lease agreement with third parties for the opening of another retail outlet in Malta. The distributorship agreement contains the following clause: "*Disputes arising from this agreement shall be subject to the exclusive jurisdiction of the Italian Courts.*" There is no choice of law clause. Advise Giovane Limited which court or courts have jurisdiction to take cognisance of each of these claims, and on the law applicable to these claims, giving reasons for your answer. Also advise Giovane Limited on the procedure to enforce an Italian judgment in Malta.

2. European Union instruments on private international law state that they are applicable "*in civil and commercial matters.*" Explain the meaning and relevance of this phrase with close reference to the relevant judgments of the European Court of Justice and the Maltese Courts.

3. Edward is a Maltese member of the European Parliament (MEP) residing in Brussels. Being a Maltese politician, he is well-known in Malta, but also has a network of friends and many work colleagues in Brussels where he has been living for the past four years. Dorian, a Maltese journalist domiciled in Malta, posts an article on his website alleging that Edward is having an affair with a prostitute. Dorian has no presence in, or connection with, Belgium or the United States. Edward is advised that Belgian law allows an action for damages for interference with his right to a private life. He is also advised that since Dorian's website is accessible in the United States, a U.S. Court would exercise jurisdiction to adjudicate upon an action he may decide to institute there against Dorian. Furthermore Edward is advised that in such cases the Belgian Courts would award moral damages in the region of EUR 50,000 while the U.S. Courts would also award punitive damages if Dorian is unable to prove the truth of the allegations contained in the article. Edward sues Dorian for damages in the Belgian Courts for interference with his right to a private life. Two weeks later he also files another action against Dorian in the United States for defamation. Dorian is validly notified in Malta with both sets of proceedings. Advise Dorian on what he should do in the circumstances, including whether the eventual judgments from the Belgian and US Courts would be enforceable in Malta against him.

4. Discuss the Maltese private international law rules to determine the validity of marriage and those dealing with the recognition in Malta of foreign judgments on divorce coming from a third State (i.e. from the courts of a State not forming part of the European Union).

5. Matthew is a Maltese law student at the University of Malta. Sabrina is an Italian national following a masters degree at the University of Bologna but she comes to Malta for one year to attend an English language course. After six months from her arrival in Malta, Matthew and Sabrina go to the south of France for a holiday. They lease a holiday flat in Nice (France) from Olivier Bergeau, a Belgian national living in France. They sign the lease agreement which contains a choice of court agreement conferring exclusive jurisdiction on the courts of Belgium. Matthew and Sabrina go to a French beach and they each hire a powerful jet ski personal watercraft. While using the jet ski they crash into each other and are both injured. Matthew believes that Sabrina is at fault because she did not know how to use the jet ski while Sabrina believes that Matthew was negligent since he was driving the jet ski very close to her to show off. The holiday is spoilt and after being both hospitalised for two days, Sabrina and Matthew return to Malta where they require further medical attention. Assume that French law, Italian law and Maltese law have differing solutions on the issue of responsibility for the accident, recognise different heads of damages and also award different levels of compensation. Matthew's doctor in Malta certifies that he has sustained a 3% permanent disability and Matthew would like to attempt to claim compensation from Sabrina. Matthew also receives a letter from Olivier Bergeau stating that if he fails to pay the rent within three days, proceedings will be brought against him in Belgium. Matthew comes to you for advice.

- i. Advise Matthew in which courts an action for damages against Sabrina may be instituted. [20%]
  - ii. Advise Matthew on the law applicable to his claim for damages. [20%]
  - iii. What would your answer to question (i) be if Sabrina were not an Italian national, but a citizen of India domiciled in India but still following the English language course in Malta. [20%]
  - iv. Advise Matthew which Courts have jurisdiction in the event that he fails to pay the rent and is sued by Olivier Bergeau. [20%]
- v. Before Matthew has taken a decision on how to proceed, Sabrina files an action in the French Courts for a declaration that Matthew is responsible for the accident. Matthew is validly notified in Malta.  
What is the effect of such an action, if any, on your answer to question (i) and what do you advise Matthew to do in the circumstances? [20%]

6. Discuss the rules of jurisdiction which are applied by the Maltese Courts in civil and commercial matters where the defendant is domiciled in a third State (i.e. where the defendant is not domiciled in a Member State of the European Union or the European Economic Area).

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UNIVERSITY OF MALTA  
FACULTY OF LAWS

EXAMINATION: PBL4013– PRIVATE INTERNATIONAL LAW

Date: Friday 1<sup>st</sup> September 2017

Duration of Examination: 8.30am to 11.35am

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ANSWER ANY THREE (3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Kayne and Max are United States citizens from Texas, US. Kayne comes to Malta to visit his cousin Max for 4 weeks. One year ago Max married a Maltese woman and is living in Malta in an immovable property acquired with his wife, though the couple intend moving to Texas as soon as possible. During Kayne's stay in Malta, Kayne and Max decide to go to Sicily for a weekend by the beach. They each hire a powerful jet ski. While using the jet skis they crash into each other and are both injured. They consider each other at fault for the accident. The holiday is spoilt and after being both hospitalised for two days, Max returns to Malta while Kayne flies to Texas where they both require further medical interventions. They both end up with a permanent disability. US law, Italian law and Maltese law have differing solutions on the issue of responsibility for the accident, recognise different heads of damages, and also award different levels of compensation. Compensation according to the law of Texas would be four times higher than that awarded by a Maltese or Italian Court and a Texas court may also grant punitive damages to punish the wrong doer for gross negligence. Maltese law considers Max to be still domiciled in Texas, US.

- i. Advise Max whether he may sue Kayne in Malta and whether Kayne may sue him in Malta. [25%]
- ii. Advise Max on the law applicable to his claim in the event that proceedings are brought in a Member State of the European Union. [25%]

Before Max has decided what to do, Kayne brings proceedings against Max in Texas, US. Max is duly served with the proceedings but ignores them. The Texas Court gives

judgment ordering Max to pay Kayne \$200,000 as compensation for pecuniary damages, \$ 30,000 for moral damages, and a further \$ 20,000 as punitive damages.

- iii. Advise Max whether the Texas judgment may be recognised in Malta and eventually enforced over his immovable in Malta. [25%]
- iv. Would your answer to question (iii) be any different if the Maltese Courts had rejected a claim by Kayne in previous proceedings brought in Malta on the ground that Kayne was responsible for the accident? [25%]

2. Analyse the rules regulating choice of court agreements (jurisdiction clauses) under Regulation (EU) 1215/2012 (the “Brussels I Recast Regulation”), with close reference to relevant judgments.

3. Two Maltese nationals married and domiciled in Malta have emigrated to Australia with no fixed intention of living there permanently. While in Australia they have fallen out and divorced before an Australian Court. The husband has then returned to Malta and the wife has finally settled in France. The husband wants to remarry a Maltese girl. Write a legal opinion advising the husband. What if the parties had settled and divorced in England rather than Australia - would it have made any difference to your advice?

4. “Although foreign law may be the applicable law in a case involving a foreign element, the overriding mandatory provisions of the law of the forum and the public policy of the forum may have an impact on the outcome of a dispute.” Discuss.

5. Joseph Ciantar, a Maltese-domiciled accountant, reads an advert in a Maltese magazine and decides to purchase a new computer for his office. He fills in the order form contained in the magazine and sends it to Athena Corporation, a company registered in Greece, which sells its computers directly to purchasers. The computers are manufactured in Korea. After two weeks, the computer arrives in Malta. The invoice which accompanies it states that the contract of sale is subject to the exclusive jurisdiction of the Greek Courts. It also states that the contract is governed by the law of Korea and that any defect in the computer must be notified to Athena Corporation within 15 days from receipt, and that if the purchaser is not happy with the terms of the contract he may return it within 3 days from the date of receipt and obtain a full refund of his money. Joseph Ciantar reads the invoice but pays no attention.

One month later the computer manifests a fault which renders the computer unusable and unrepairable. Joseph Ciantar calls Athena Corporation but he is told that it is too late to lodge a complaint. As a matter of Korean law, Joseph Ciantar would have a claim for damages for breach of contract but the provision for notification of the

complaint within 15 days would be upheld and would give Athena Corporation a complete defence to Joseph Ciantar's claim.

Joseph Ciantar cannot meet the costs of overseas litigation and would like to sue in Malta. He is also worried about the 15 day notification period provision to which he had paid no attention. Joseph Ciantar comes to you for advice. Advise him on the private international law aspects raised by this factual scenario, in particular whether he may sue in Malta and whether Korean law would be the applicable law.

6. Discuss the effects of the recognition of a foreign judgment in Malta. Then, proceed to examine the procedure for the enforcement in Malta of a foreign judgment coming from the courts of an EU Member State after the entry into force of Regulation (EU) 1215/2012 (the "Brussels I Recast Regulation") and the rights, if any, available to the judgment debtor in terms of the Regulation.

**University of Malta**  
**Faculty of Laws**  
**May/June 2018 Examinations**

**PBL4013 – Private International Law**

Thursday 31<sup>st</sup> May 2018

Duration of examination: 8:35am – 11:35am

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**INSTRUCTION TO STUDENTS:**

**Answer ANY THREE (3) Questions. ALL Questions carry equal marks.**

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1. LSA is public authority in Liberia responsible for the safety of ships. It opens an office in Birgu, Malta to be able to provide services to ships registered in Liberia while they are in the Mediterranean Sea. Niki is a Liberian national employed by the LSA to work as a safety officer in its office in Birgu. Niki has settled down in Malta where he habitually resides. He has also married Maria, a Maltese citizen, with the intention of settling down permanently in Malta. His contract of employment with the LSA is governed by Maltese law but is subject to the exclusive jurisdiction of the Courts of Liberia. The contract of employment states that Niki's gross salary is EUR 2000 per month. It also contains a clause which says that the LSA cannot be held responsible for any injuries or death suffered by the employee at the work place. The State of Liberia has suddenly enacted an emergency law designed to reduce its public deficit, which law imposes a reduction of 25% in the salary of all officials and employees of public authorities. The reduction is mandatory in nature and applicable also to staff in a private-law employment relationship with a public authority, irrespective of law applicable to the employment contract. The LSA immediately proceeds to cut Niki's salary. Soon after, Niki is also injured while carrying out his duties due to the fact that the LSA did not have sufficient funds to purchase safety equipment for its employees. Niki would like to be paid his full salary and obtain compensation for the injuries he has sustained. He does not want to sue in Liberia as the Liberian Courts will enforce both the reduction in his salary, and the LSA's exemption from liability. He therefore sues in Malta. The LSA has just received Niki's sworn application and comes to you for advice. Advise the LSA, including on whether it could contest the jurisdiction of the Maltese courts and on whether it may rely on the mandatory provisions of the law of Liberia imposing a reduction in Niki's salary and on the clause in the contract of employment exempting the LSA from liability.

2. Mario Fish is a United States (U.S.) national, resident and domiciled in Malta for the last twenty years. He owns a house in Malta and an undivided share in his late mother's estate in the U.S. Mario Fish is a successful programmer and he undertook to develop a phone application for Danke GmbH, a German company. Mario Fish developed the application in Malta, but he physically handed it over to Danke GmbH on an external hard drive in Germany. Soon after developing the application for Danke GmbH, Mario Fish developed a similar application for Pear LLC, a US Corporation which is a competitor of Danke GmbH. Pear LLC manages to launch its new application before Danke GmbH. Danke GmbH claims that Mario Fish had agreed to work exclusively for it and that therefore, he could not develop a similar application for Pear LLC. Mario Fish does not agree with this interpretation of the agreement and argues that it cannot be reasonably held that it contained an implied exclusive undertaking on his part. Danke GmbH refuses to pay the balance of price due to Mario Fish. It institutes proceedings in Germany against Mario Fish in tort, in terms of Section 823(2) of the German Civil Code, for damages suffered in relation to lost sales from the European market. It also files an action for damages against Mario Fish in the United States, claiming damages suffered in relation to lost sales from the U.S. market. In terms of the law of the United States, the U.S. Court has jurisdiction to hear the action against Mario Fish. The agreement between Mario Fish and Danke GmbH does not contain a choice of court agreement and choice of law clause. It is drafted in the English language but contains various references to the provisions of the German Civil Code (BGB). Mario Fish fears his financial ruin and requests your advice. Advise Mario Fish on relevant issues of jurisdiction, applicable law and enforcement of judgments, including on whether he may do anything to recover the balance of price due to him from Danke GmbH.

3. Discuss the role of the *lex fori* in private international law and the extent to which it enjoys a privileged status in cases involving a foreign element after the entry into force of Regulation (EC) No. 593/2008 (the "Rome I Regulation") and Regulation (EC) No. 864/2007 (the "Rome II Regulation").

4a Frank Dimech is Maltese doctor resident in Mosta. He purchased a motor vehicle from the website of Best Cars Limited, an English company, for a very good price with the intention of re-selling it to his mother-in-law at a profit. Best Cars Limited cancelled the sale on account of damage allegedly sustained by the vehicle during preparations for its delivery to Malta. Frank Dimech considers that this is just an excuse to avoid the sale on account of the exceptionally low sale price, and wants to bring an action to enforce the contract. The general terms and conditions for internet sales accessible on the website of Best Cars Limited contain a clause conferring exclusive jurisdiction on the English Courts in the event of a dispute between the parties. In order to conclude the sale, Frank Dimech had to agree to the general terms and conditions for internet sales after clicking on a hyperlink which opens a window containing the said terms and conditions. It was possible to print and save the terms and conditions but Frank Dimech pays no attention to them. Frank Dimech comes to you for advice and requests a reasoned legal opinion on whether he may bring proceedings in Malta against Best Cars Limited and on the law applicable to his claim [50%].

4b. Rebecca Magri, a Maltese national who has been working in France for the last two years, visits the show room of Best Cars Limited in England with Thibault, her French boyfriend who is habitually resident in France. They go for a test drive with one of the vehicles around the block. Thibault loses control of the vehicle and Rebecca is seriously injured. It results that the brakes of the vehicle were defective, but it also results that Thibault was speeding and driving dangerously. As it is unclear who is to be held responsible for the damage, Rebecca wishes to sue both Thibault and Best Cars Limited. Advise Rebecca on the courts which have jurisdiction and on the law applicable to her claim for damages against Thibault and Best Cars Limited [50%].

5. *"The jurisdiction of the court of origin may not be reviewed. The test of public policy may not be applied to the rules relating to the jurisdiction of the court of origin."* Discuss whether you agree with this statement with reference to the rules concerning the recognition and enforcement of foreign judgments in Malta. Your answer is to deal both with foreign judgments coming from European Union and foreign judgments coming from third States (i.e. States not forming part of the European Union nor parties to the Lugano Convention).

6. To what extent have the amendments to the law relating to marriage from 1975 onwards in the area of jurisdiction and recognition of foreign judgments in relation to divorce and nullity suits facilitated the solution of private international law problems in this area of law in Malta. Discuss.

Date: Tuesday 11<sup>th</sup> September 2018

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

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**INSTRUCTIONS TO STUDENTS:**

Answer ANY THREE (3) Questions

ALL Questions carry equal marks.

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1. Horizon Limited (“Horizon”) is a company incorporated in Malta. It has a website whereby it offers investment opportunities to persons resident in the European Union and Canada. It encourages persons to invest their savings by the promise of attractive rates of return. Horizon is based in Malta and has no office, branch, subsidiary or employees outside Malta. Its directors are Greek, but they own an apartment in Malta. The contracts which Horizon concludes with investors are stated to be subject to the laws of Malta and the exclusive jurisdiction of the Maltese Courts.

A regulatory authority of the Canadian Province of Ontario considers that Horizon is acting in breach of Canadian legislation designed to protect small scale investors. It asserts regulatory jurisdiction over Horizon on the ground that its clients are physically resident in its territory. Upon the application of the Canadian Authority, a Canadian Court orders Horizon and its directors to pay a civil penalty of \$500,000 to the Authority on the ground that Horizon is operating in breach of Canadian law and its directors failed to apply for a licence. Horizon and its directors were validly notified with the judicial proceedings in Canada but had ignored them.

A French company considers that Horizon has unlawfully infringed its rights by operating in France without a licence and touting its clients in France. It brings proceedings for damages in the French Courts against Horizon. Horizon defends the proceedings on the merits, but all its pleas are rejected. The French Courts condemn Horizon to pay EUR 650,000 as damages to the French company. Horizon fails to appeal the judgment within 10 days as required by French law of procedure.

In the meantime, a German investor who has lost all his savings as a result of an investment he had made with Horizon, brings judicial proceedings in Germany claiming damages from Horizon on the ground that it failed to inform him on the risks relating to the investment and that the contract contravenes German legislation designed to ensure that ordinary investors are aware of the risks they are entering into. Horizon has acted in conformity with the requirements of Maltese law.

Advise Horizon with respect to all the above claims.

2. "The doctrine of overriding mandatory provisions has retained its function as a general correction mechanism in contemporary European private international law." Discuss this statement.

3. Mario is a Maltese national who has been residing in a town in Germany for the last two years. He teaches English in a German private school, close to the Austrian border, owned and operated by Carcarella GmbH, a German company. Mario organises a school outing to Malta so that his students may visit the neolithic temples of Hagar Qim and Mnajdra. During the outing, one of his students - Gianluca Fiore - loses his life after wandering off and falling off a cliff. Gianluca is an Italian national. His parents moved to Austria soon after he was born and they have now been working in Austria for many years. His other relatives are all in Italy. German law, Austrian law, Italian law and Maltese law have different solutions with respect to who is entitled to claim damages in the case of death. These laws also recognise different heads of damages. The family of Gianluca considers that both Mario and the German school are liable for the death of Gianluca: Mario for failing to supervise him and Carcarella GmbH for failing in its obligation to provide for his safety. Mario is charged before the Maltese criminal courts with the crime of involuntary homicide. He suddenly decides to never return to Germany, but he fears being sued for damages abroad.

Advise Mario whether he may be sued outside Malta, whether his assets in Malta may be frozen in the event that civil proceedings are brought against him in a court outside Malta, and on the rules which will determine who is entitled to sue him for damages.

4. Mr. Smith, a United States national domiciled in France took on lease a private holiday villa in Umbria, Italy for two months from his friend Mr. Vella, a Maltese national resident and domiciled in Malta. The lease agreement contains an exclusive jurisdiction clause in favour of the Maltese Courts. When he arrives in Umbria Mr. Smith considers that the villa does not meet the standards he was promised by Mr. Vella and he therefore leases a luxurious villa from third parties at a rent which is three times higher than that agreed with Mr. Vella. Mr. Smith also refuses to pay the rent to Mr. Vella. Mr. Smith brings proceedings against Mr. Vella in France to recover the rent he has paid to lease alternative accommodation in Umbria together with damages for the anxiety caused to him and his wife on his arrival in Umbria. Under Italian law and Maltese law such damages would not be recoverable. Mr. Vella has just been notified with the proceedings brought against him by Mr. Smith. He believes that the villa was precisely as he had promised to Mr. Smith and says that he had also sent him pictures via e-mail. Mr. Vella does not want to pay anything to Mr. Smith and wants to bring proceedings against Mr. Smith for payment of the rent.

Advise Mr. Vella on issues relating to jurisdiction, applicable law and the enforcement of foreign judgments.

5. "When marriage-related issues arise between couples with diverse backgrounds, questions as to which legal systems and norms should be applied to the relationship naturally follow with various potentially applicable systems frequently conflicting with one another." Discuss.

6. Discuss the legal provisions concerning the validity and effect of jurisdiction clauses and choice of law clauses in commercial contracts.

**University of Malta  
Faculty of Laws**

**June 2019 Examination Session**

**PBL4013 PRIVATE INTERNATIONAL LAW**

**Date:** Thursday 6th June 2019

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

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**INSTRUCTIONS TO STUDENTS:**

Answer ANY THREE (3) questions. All questions carry equal marks.

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1. Sliema Bank plc is a Maltese bank engaged in international banking. It advances a sum of money by way of overdraft to two of its clients, Mark and Matthew Smith, who are Canadian nationals domiciled in Canada. Mark Smith owns a holiday home in Malta while his brother Matthew Smith owns an apartment in Cyprus. Mark and Matthew Smith are in default. Matthew Smith comes to Malta for two weeks and while in Malta he immediately visits the head office of Sliema Bank plc to attempt to renegotiate the terms of his overdraft and obtain further credit. Sliema Bank plc has heard that Mark and Matthew Smith are being investigated for fraud in Canada and that a Canadian bank has also obtained a final judgment against Mark Smith for defaulting on a loan and ordering him to repay the bank the sum of 300,000 Canadian dollars together with interest at 9.5% per annum and judicial costs. Sliema Bank plc would like to immediately recover the sums of money due to it from Mark and Matthew Smith. It is also concerned that if the Canadian judgment is enforceable in Malta, it might not be able to recover its dues from the property which Mark Smith owns in Malta. Advise Sliema Bank plc whether it may bring proceedings against Mark and Matthew Smith in Malta, whether a Maltese judgment against Matthew Smith would be enforceable in Cyprus, and whether the Canadian judgment obtained by the Canadian Bank in Canada is capable of being enforced in Malta. In your answer you should clearly identify the applicable legal provisions.

2. Veduti Limited, a Maltese company, owns a number of boats and sells tickets to tourists to show them around the Maltese islands. Tickets may also be purchased online prior to arrival in Malta. Last month, one of its boats steered by captain Mario Kale, a Romanian national living in Malta, collided at high speed with a reef near Delimara. Four tourists (from Germany, France, Spain and Italy) were seriously injured while another tourist from Romania lost his life. The Romanian tourist had a wife and two children, and he had also been taking care of his elderly parents in Romania who were dependent on him. Some other tourists from Sweden who were unharmed all suffered from shock and have claimed that their holiday in Malta was totally ruined. Mario Kale was a full-time employee of Veduti Limited. It results that he was negligent as he was busy talking on his mobile phone while steering the boat. Both Veduti Limited and Mario Kale are extremely concerned that they will face substantial claims. Advise Veduti Limited and Mario Kale on the courts which would have jurisdiction in respect of each of the claims, whether it is in their interest to defend any claims brought against them in foreign courts, on the law applicable to the claims, and how one is to determine who is entitled to sue for damages in respect of the death of the Romanian tourist.
3. Private international law on marriage in Malta has changed radically since Malta became a Republic. Describe the main influences spearheading this change and the resulting main characteristics of the law in this area.
4. Pulse Limited is a company registered in Malta which provides advertising space on its websites to online gaming companies around the world. After extensive negotiations and numerous trips by the managing director of Pulse Limited to the offices of Ceka s.r.o., a company established in the Czech Republic (EU), the parties have formulated a draft agreement stating that terms and conditions of the proposed supply of advertising space. The draft contract also contains a clause stating that in the event of a dispute, the parties will submit to the exclusive jurisdiction of the courts of England which was identified by the parties as a neutral forum. The draft contract contains no provision on the applicable law. Ceka s.r.o. suddenly refuses to sign the contract. Pulse Limited would like to claim compensation from Ceka s.r.o. for all the expenses it has incurred but is unsure of its chances of success since Czech law, English law and Maltese law have different solutions on the admissibility of such a claim. Pulse Limited also signs a contract for the provision of advertising space with Lisa Limited, a company established in London. This contract contains no jurisdiction clause and no choice of law clause. Pulse Limited omits to display the advertising content of Lisa Limited on its website, in breach of the agreed terms. Lisa Limited threatens to sue not only for a full refund but also for lost profits which it could have made as a result of a successful advertising campaign.

Advise Pulse Limited on jurisdiction and applicable law in respect of the issues it has with Ceka s.r.o. and Lisa Limited.

5. Article 1 of Regulation (EU) No 1215/2012 ("Brussels R Recast Regulation") states that *"it shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii)."* Discuss with reference to relevant judgments.
6. Discuss the legal provisions concerning the validity, effect and efficacy of jurisdiction clauses in commercial contracts.

University of Malta  
Faculty of Laws

September 2019 Examination Session

PBL4013 PRIVATE INTERNATIONAL LAW

Date: Tuesday 3rd September 2019

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

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**INSTRUCTIONS TO STUDENTS:**

Answer **ANY THREE (3)** questions. All questions carry equal marks.

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1. Different meanings have been attached to the term 'habitual residence' which is used in various EU Regulations on private international law. Does this matter?
2. Big Bet Limited is a Maltese company. It offers betting opportunities in relation to international sports competitions by means of a website and a mobile application which enable its customers to place bets wherever in the world they may be. One of the terms and conditions for use of its website and mobile application is that the customer's relation with Big Bet Limited is governed by Maltese law and that all disputes are subject to the exclusive jurisdiction of the Maltese Courts. Big Bet Limited is based solely in Malta and has no offices, branches or subsidiaries outside Malta.

A regulatory authority in Canada considers that Big Bet Limited is operating illegally as it is offering betting services to Canadian residents without a Canadian licence. Upon an application of the regulatory authority, a Court in Canada orders Big Bet Limited to pay the sum of \$800,000 to the Canadian regulatory authority on the ground that it is operating in its jurisdiction without a licence and dismisses the defence of Big Bet Limited that the Maltese licence is sufficient. At the same time, a Swedish Court condemns Big Bet Limited to pay EUR 1,000,000 as damages to a Swedish state monopoly responsible for the regulation of betting in Sweden for breach of its exclusive licence to offer betting services in Sweden. Robert Smith, an American citizen, obtains a judgment from a court in the United States ordering Big Bet Limited to refund to him the money he has lost when placing bets on his mobile phone. Pierre Macron, a customer in France, obtains a judgment from France granting him compensation for his losses on the ground that the service provided by Big Bet Limited contravenes French legislation for the protection of gamblers. Big Bet Limited was validly notified in Malta with all the foreign judicial proceedings. It only contested the proceedings brought against it in Canada but did not appear or respond to the other foreign proceedings.

freely return the printer within 7 days from the date of receipt and obtain a full refund of his money. Mark Borg reads the invoice and the attached terms but pays no attention.

Three months later the printer manifests a fault and it results that the printer had a latent defect making it unfit for use. Mark Borg would like to rescind the sale and have the price returned to him. He would also like to sue for damages as he lost substantial business due to being unable to use the printer. He contacts Apollo Corporation Ltd but is told that it is too late to make a claim since the 30-day period has lapsed. Under the law of Korea the provision for notification of the complaint within 30 days gives Apollo Corporation Ltd a complete defence to the claim.

Advise Mark Borg including in your answer an assessment on whether he may or may not sue Apollo Corporation Ltd in Malta and on the law applicable to his claims.

6. Changing attitudes to marriage have simplified the private international law rules in this area. Discuss.



L-Università  
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FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
JUNE/JULY 2020 EXAMINATION SESSION

PBL4013 PRIVATE INTERNATIONAL LAW

Wednesday 10<sup>th</sup> June 2020

**Examination time: 08:30 – 11:30** + 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](mailto: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 **ANY TWO (2)** Questions. All Questions carry equal marks.

**NOTICE:** ALL ANSWERS MUST BE STRICTLY RELEVANT TO THE ISSUES SET OUT IN THE QUESTIONS BELOW AND SHOULD NOT CONTAIN GENERAL REPRODUCTIONS OF THE LAW, LECTURE NOTES OR OTHER LEGAL MATERIAL. YOUR ANSWERS SHOULD DISPLAY YOUR ABILITY TO APPLY THE LAW TO THE FACTUAL SITUATIONS SET OUT IN THE QUESTIONS, TO GIVE ACCURATE LEGAL OPINIONS AND MAKE EFFECTIVE LEGAL ARGUMENTS.

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1. Pjazza Services Limited ("Pjazza") is a company registered in Malta offering a wide range of financial and consultancy services to enterprises all over the globe. It has no offices abroad except for an office in Paris. It has concluded an agreement with one its clients ABC Corporation ("ABC"), a company established in Toronto for the provision of consultancy services. This agreement contains a jurisdiction clause in favour of the Courts of Toronto to settle all disputes that may arise between the parties. ABC considers that Pjazza has given incorrect advice and brings proceedings in Canada for breach of contract, and in tort, for negligent advice. Pjazza is advised that the cost of defending proceedings in Canada will amount to the value of the claim, and therefore decides to ignore the proceedings. Judgment is given against Pjazza ordering it to pay the sum of 250,000 Canadian dollars in damages together with plaintiff's costs. In the meantime, DEF Incorporated ("DEF"), a United States company, has sued Pjazza in the courts of New York, United States, for mismanagement of its assets. The Court of New York has jurisdiction in terms of US law. Pjazza decides to raise a counter-claim since DEF has not paid Pjazza for the services in question. The Court of New York rejects the counter-claim, gives judgment in favour of DEF and orders Pjazza to pay the sum of 500,000 US Dollars, which is actually 100,000 US Dollars more than what DEF had claimed in its writ of summons. Pjazza contends that the managing director of DEF gave false testimony and also intimidated a witness, but it has lost faith in the US justice system and does not appeal the first court judgment. In the meantime, the French Revenue Department sues Pjazza for unpaid taxes in relation to income which Pjazza generated from the office it has in Paris. Pjazza contests the claim, but the French Court orders Pjazza to pay the sum of Euro 800,000 with interest at the rate of 15% from 1 st January 2016 for failing to pay the amount due on time. Mr Abram, an Israeli national, and Mr Rossi, an Italian national, have just sued Pjazza in Israel and Italy respectively for the payment of commission which they allege was promised to them by the managing director of Pjazza for marketing the services of Piazza in Israel and Italy. Pjazza has substantial assets in Malta but no assets abroad. It has been validly notified with all sets of foreign proceedings. Pjazza would like to know whether all the above judgments delivered against it are enforceable in Malta, what it should do in relation to the Israeli and Italian proceedings which have just been served at its office, and whether Mr Abram and Mr Rossi may issue a precautionary warrant with respect to its assets in Malta while the proceedings abroad are ongoing. Advise Pjazza.

2. A well turned out foreign gentleman comes to your law office seeking advice. He has lived an adventurous life and has amassed great wealth in the process owning several properties among which a property in Xaghra, Gozo, not so recently acquired which he now calls Calypso's Cave. He tells you some of the highlights of his life. When he was young he married an English girl in England which he calls a mistake. Having realized his mistake he quickly amended by making another one, for he married an Italian woman while on holiday in Italy and from that marriage a child was born. He has now revisited Gozo and has fallen desperately in love with a salacious Gozitan woman, again from Xaghra, who is now pregnant with his future child. He tells you that he wants to settle down quietly in Gozo without much unnecessary litigation and provide adequately for his Gozitan love and their offspring, actually more than adequately as he would wish to bequeath to her all he owes. He is however afraid of the rapacious tendencies of his Italian wife and their child as he has yet not settled with them. Outline the relevant private international law issues and the questions you would put to him to elicit the facts necessary to advise him properly, and draft a legal opinion based on the relevant issues you have identified in your questions. In your answer discuss also whether the facts you elicit and the advice tendered would have been the same had the gentleman come to you before Malta's accession to the European Union.
  
3. Michaela Bauer works in the film industry and is domiciled in Munich, Germany. She enters into a two year contract of employment with Heiß Movies GmbH, a company established in Germany. The contract is said to be governed by Irish law and contains a choice of court agreement in favour of the Irish courts. Michaela habitually carries out her work in Germany but she is required to travel a few times a year. Michaela is sent to Malta for one month to work on the production of a new film. Heiß Movies GmbH arranges for her transport in Malta through the website of Mifsud Transport Limited, a Maltese company operating minibuses. On one of the trips back to the filming location, the driver of the minibus, Ivan Mifsud, gets distracted and loses control of the minibus. Michaela Bauer is injured together with three other passengers, one domiciled in Italy, one domiciled in Malta and another domiciled in Ireland but a national of Singapore. Michaela brings proceedings in Germany against two defendants: (i) against Heiß Movies GmbH for breach of contract in failing to provide for her safety while requiring her to travel for work purposes; and (ii) against the driver of the minibus Ivan Mifsud for driving negligently. Prior to that, the Maltese and Italian passengers on the minibus bring proceedings in Malta against Mifsud Transport Limited for failing to provide them with a safe journey, while the Singapore national decides to sue Malta Insurance plc, the insurer of Mifsud Transport Limited, in Ireland where the claimant is resident. All defendants are validly served with the proceedings brought against them. Advise Heiß Movies GmbH, Ivan Mifsud, Mifsud Transport Limited and Malta Insurance plc on jurisdiction issues in relation to the court proceedings they are facing, on the law applicable to the claims for damages brought against them, and on any steps they should take in the circumstances.



L-Università  
ta' Malta

FACULTY OF LAWS  
DEPARTMENT OF PUBLIC LAW  
SEPTEMBER 2020 EXAMINATION SESSION

PBL4013 PRIVATE INTERNATIONAL LAW

Friday 18<sup>th</sup> September 2020

**Examination time: 08:30 – 11:30 + 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](mailto: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.

**NOTICE:** ALL ANSWERS MUST BE STRICTLY RELEVANT TO THE ISSUES SET OUT IN THE QUESTIONS BELOW AND SHOULD NOT CONTAIN GENERAL REPRODUCTIONS OF THE LAW, LECTURE NOTES OR OTHER LEGAL MATERIAL. YOUR ANSWERS SHOULD DISPLAY YOUR ABILITY TO APPLY THE LAW TO THE FACTUAL SITUATIONS SET OUT IN THE QUESTIONS, TO GIVE ACCURATE LEGAL OPINIONS AND MAKE EFFECTIVE LEGAL ARGUMENTS.

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1. Mr Bauer, domiciled in Germany, sells luxury watches. In 2018, he concluded a contract with Mr Vella, domiciled in Malta, pursuant to which the latter undertook to develop and produce fancy luxury cases for the watches of Mr Bauer over a period of five years. Mr Bauer paid all costs relating to the development of the concept for the cases, and is to pay Mr Vella the agreed price for each case which is manufactured and delivered in terms of the contract. Mr Vella has developed and produced the cases in Malta but, according to the contract, all the cases are to be delivered by Mr Vella to Mr Bauer's warehouse in Germany. The contract contains no choice of court clause, and neither does it contain any clause on the applicable law. In addition to the work for Mr Bauer, Mr Vella also developed, in parallel, other cases for watches, which he exhibited in his own name at an international fair in Italy. Mr Bauer submits that, by so doing, Mr Vella breached the terms of their contract. He alleges that Mr Vella had undertaken to work exclusively for him and, therefore, could neither develop nor market similar watch cases during the term of the contract. According to Maltese law, the claim of Mr Bauer is contractual, but Mr Bauer seeks an order from the German Courts that Mr Vella be ordered to stop marketing the cases in question and that damages in tort be awarded to him on the basis of the German Law against Unfair Competition and Paragraph 823(2) of the German Civil Code. He submits that, by his conduct, Mr Vella breached business confidentiality, disrupted his business and committed fraud and breach of trust. Mr. Vella is notified with the German proceedings and comes to you for advice. Advise Mr Vella on issues relating to jurisdiction, applicable law and the enforcement of an eventual German judgment in Malta.

2. Kayne and Max are United States citizens from Texas, United States. Kayne comes to Malta to visit his cousin Max for 4 weeks. One year ago Max married a Maltese woman and is living in Malta in an immovable property he acquired here, though the couple intend to move to the US as soon as their new born child is to start school. During Kayne's stay in Malta, Kayne and Max go to the beach. They each hire a powerful jet ski and while using the jet skis they crash into each other and are both injured. They consider each other at fault for the accident. After being both hospitalised for a few days, Max recovers at home in Malta while Kayne flies to Texas

where he requires further medical interventions. They both end up with a permanent disability. US law and Maltese law have differing solutions on the issue of responsibility for the accident, recognise different heads of damages, and also award different levels of compensation. Before Max has decided what to do, Kayne brings proceedings against Max in Texas, US. Max is duly served with the proceedings and has 30 days to file his defence. If Max does not defend the case in the United States, it is expected that the Texas Court will give judgment against Max ordering him to pay Kayne a substantial amount of damages. Max does not want to lose his immovable in Malta and also wants to recover his own damages from Kayne. Advise Max including on whether the Texas judgment will be enforceable against him in Malta.

3. Mr Bumblebee, the husband, has called you from Sicily for legal advice, as he and his wife are on a brief holiday in their house there before returning to their residence in Gozo. They are a British husband and his Italian wife who have some years back settled in Gozo. The husband has been a very successful English businessman and has acquired several properties in England, some purchased before his marriage and others purchased after. He purchased his Gozitan property after settling in Gozo; only he appeared on the deed of acquisition. He purchased his Italian property sometime after that. He would like to dispose of his estate leaving the enjoyment of the property to his wife and his world estate to his Gozitan friend so disinheriting his children. He needs the advice immediately as he is terminally ill and does not know whether he will arrive in Malta to make the necessary dispositions. Advise Mr Bumblebee.

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Fourth Year Law  
Compulsory Units Past Papers

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# LAW of SUCCESSION

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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](mailto:academic@ghsl.org)

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2009/2010

CVL4003 - The Law of Succession

Monday 31 May 2010 - 08.00 am – 10.00 am

Reply to both questions which carry equal marks

1. Oliver and Karen were the only two children of their married parents Sara and Peter. Whilst together for a cruise to celebrate their silver wedding anniversary, Peter fell seriously ill and made a will on board the cruise liner. He nominated his two children sole universal heirs. Peter died a couple of weeks later.

Karen married Joe and they made an *unica charta*. They nominated each other sole universal heirs with their future children as substitute heirs in all that remained after the death of the survivor amongst them. They had one child Aldo to whom Karen donated her inherited property on the occasion of his marriage but reserved a lifetime usufruct in her favour.

Sara entered into a second marriage with Mike and had one child Maria to whom she donated most of her property. Sara made a will wherein she left her priceless painting to Oliver and Joe jointly, and nominated Karen and Maria, her two other children as her sole universal heirs.

Oliver died after his father. He was followed by his mother Sara and then by Joe, Karen's husband.

Advise the beneficiaries of all their rights of succession to the estates of Peter, Oliver, Sara and Joe.

(continued)

(P. T. O)

2. Anna and Daniel who had two children, Ian and Emma, made an *unica charta* and nominated each other universal heirs.

Soon after Daniel made a secret will wherein he ordered that his descendants will substitute Anna in the entire residue at the time of her death if he predeceased her. He left Anna's precious necklace to their two children and left a sum of money to Alex, another child from his relationship with Roberta, to be paid upon majority.

Daniel got seriously injured and just before his death, he formalised his relationship with Anna and married her.

Anna donated Emma an apartment which she inherited from Daniel. Years later Anna made a will, she left the successive usufruct of a sum of money to Emma and her descendants and then nominated Ian her sole universal heir. Emma predeceased her mother and was survived by one descendant.

Advice all beneficiaries of their rights of succession to the estates of Daniel and Anna respectively under both current law and before the amendments which entered into force in 2005.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2009/2010

**CVL4003 - The Law of Succession**

**Wednesday 01<sup>st</sup> September 2010 - 09.15 am – 11.15 am**

**Reply to both questions which carry equal marks**

1. Tony and Miriam celebrated marriage in Malta and had 3 descendants Anna, Maria, Joe and an adopted child Alex. Tony made a will whereby he left a sum of money to his 4 children in full and final settlement of their reserved portion and nominated his wife Miriam his sole heir.

Tony had another child Marvic from an extra marital relationship with Audrey. Tony modified his will and left a legacy of a substantial sum of money to Audrey who mothered his child Marvic and a legacy of a plot purchased during marriage to Joe with direct substitution favour any descendants only in case of renunciation.

Miriam also made a will. She disinherited Maria for no reason, left a prelegacy of an antique clock to Joe, a prelegacy of a painting to Anna and Joe conjointly and nominated her 3 children Anna, Joe and Alex her sole heirs.

Joe eventually purchased the antique clock from Miriam, Maria got married and had 1 descendant while Anna made a will and appointed her boyfriend her universal heir.

Joe predeceased his parents but was survived by 2 legitimate descendants. Tony died soon after and was followed by Anna and then by Miriam.

Give a reasoned opinion to all beneficiaries of the estates of Tony, Anna and Miriam respectively under both current law and the law before 2005.

(continued)

2. Joseph and Terry got married and had two children, Jake and Ann. They donated two plots of land, one to Jake and another to Ann and to her husband John jointly, over which they eventually constructed their matrimonial home.

Terry made a will and bequeathed a prelegacy of a specified sum of money to Ann and nominated her 2 children heirs. Years later, after the birth of Phill another legitimate child, Terry modified her previous will and bequeathed a prelegacy of a garage to Jake and to Phill jointly and in equal portions.

Jake, who was married and had a child born out of wedlock, predeceased his parents. He was followed by his father Joseph and then by his mother Terry. Ann and Phill both renounced to their father's inheritance but both were married, Ann had 3 descendants and Phill with 1 descendant.

Give all beneficiaries your advice under current law for a partition of the estates of Jake, Joseph and Terry with accrued interests where due.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2010/2011

CVL4003 - The Law of Succession

Friday 03<sup>rd</sup> June 2011 - 09.15 am – 11.15 am

Reply in English to both questions which carry equal marks

1. Mary and Joseph were married with 3 children, Lisa, Victor and Michael. Joseph made a will wherein he left Lisa a legacy of a house purchased during marriage and a sum of money to each of his sons Victor and Michael. He nominated his wife Mary sole heir ordering forfeiture in case of remarriage, with the residue upon death and / or forfeiture to be inherited by his 3 children.

Mary made a secret will which she handed over to her lawyer to deal with in terms of law by virtue of which she nominated her 3 children sole heirs. Joseph died soon after and Lisa, who had 2 descendants, renounced to her father's inheritance saving her reserved portion.

Mary had another child Mandy. She made another will wherein she left her priceless collection of old coins by singular title to Victor and Lisa jointly, she left the usufruct of her movable property to Mandy contingent upon her remaining a spinster and finally she consciously disabled herself from changing her wills under any circumstance.

Eventually Mary donated Victor a house which she had inherited from her predeceased husband Joseph. Victor died childless survived by his spouse. He was followed by his brother Michael and then by Mary, the mother.

Submit your legal opinion to all beneficiaries relative to each of the estates of Joseph, Victor, Michael and Mary respectively.

(continued)

2. Upon marriage, David and Claire made an *unica charta* wherein they reciprocally bequeathed the reserved portion due in terms of law, David nominated his friend Jamie universal heir with the residue upon death to be inherited by his spouse Claire. They had 3 children Anna, Luke and Andy.

Andy made a will wherein he made a number of bequests by singular title. He left a sum of money to one of his nephews to be selected by his heir/s, he left his car to his friend Louis who eventually purchased it from Andy, he left his holiday flat which was burdened with a special privilege to his friend Carina, and finally nominated his brothers and sisters heirs. Years later, another daughter Audrey, was born to Claire and David.

Claire revoked all previous wills and nominated Luke, Anna and Andy joint heirs. She then donated Anna and Paul, Anna's future husband, a plot of land which was then developed and improved into their matrimonial home. They eventually had 2 descendants.

David has now died and is followed by his son Andy. Both Anna and Luke renounce to their brother's inheritance. Jamie has started to dispose of the property he inherited by gratuitous title.

Pushed and largely influenced by her daughter Anna, Claire amended her will and left her a substantial sum of money. Claire has now died.

Advice all beneficiaries of their inheritance rights over the respective estates of David, Andy and Claire both under current law and before the 2005 amendments.

8/11/2011

LLD IYR COMPULSORY

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LLD I YEAR – ACADEMIC YEAR 2010/11  
CVL4003 – THE LAW OF SUCCESSION

MONDAY, 12<sup>TH</sup> SEPTEMBER 2011

10.30A.M. – 12.30P.M

REPLY IN ENGLISH TO BOTH QUESTIONS WHICH CARRY EQUAL MARKS

1. John and Terry, an unmarried couple with one child Charles, made an *unica charta* wherein they reciprocally bequeathed the usufruct of their estate and nominated Charles as their universal heir. They never got married and John died prematurely of a young age. He was survived by his parents, by his female partner Terry and by his son Charles.

Terry contracted marriage with David and had 4 children Joe, Eve, Frank and Helen. On the advice of his friend, David made a will witnessed by his brother and nominated his 4 children as universal heirs in equal portions.

David made an additional will and made 2 bequests by singular title, he left his brother a substantial bank account to dispose of it as instructed by the testator and left one antique painting, of which David had quite a collection, to his lawyer to be selected by the legatee at his sole discretion.

David donated a house to Helen, one of his 4 children and she concurrently renounced to her father's inheritance in the same deed of donation.

Terry has now died and is followed by David her husband.

Submit your opinion in outlining the respective rights and obligations of all beneficiaries relative to the partition of the estates of John, Terry and David under both current law and before Act XVIII of 2004.

2. The amendments introduced by Act XVIII of 2004 reflect a more contemporary reflection to society's perceptions on the rights of succession.

Submit your opinion on this statement by briefly outlining at least 5 of the most important areas of law which have been modified by this piece of legislation.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – 2011/2012

**CVL4003 – The Law of Succession**

**Wednesday 13<sup>th</sup> June 2012 - 09.15am – 11.15am**

**Please reply in English**

**Both questions carry equal marks**

Question (1)

A, a young student made a will and nominated his brothers and sisters heirs. Eventually A married B and had 2 children C and D. A modified his will and left B, his wife 2 legacies namely, the usufruct of his estate on condition that she does not remarry and a substantial sum of liquid cash which he kept at home, substituting his children C and D in the residue still remaining upon her death. A died and his brothers and sisters who all had children, renounced his inheritance.

B married E and had another child F. B went to her notary and made a secret will wherein she left F a painting purchased during her first marriage with A, she left C and D an immovable purchased during her second marriage with E and nominated her 2 children, C and F heirs. Unfortunately, the notary forgot all about this will. Years later, a garden contiguous to this immovable was purchased by B and E.

E has now died and the notary proceeds to register B's secret will in terms of law. Some weeks later B, his wife dies of grief.

Give your opinion relative to the partition of the estates of A, E and B respectively under current legislation and before promulgation of Act XVIII of 2004.

(Continued)

UNIVERSITY OF MALTA

FACULTY OF LAWS

LLD I Year – 2011/2012

CVL 4003 – The Law of Succession

Wednesday 12<sup>th</sup> September 2012 - 09.15am – 11.15am

Reply in English to both questions which carry equal marks

Question (1)

H and W were married in Malta with the community of acquests. They had 4 children, 1, 2, 3 and 4 the latter being adopted. They made an *unica charta* wherein they reciprocally bequeathed an immovable by singular title, left the usufruct of their estate to 4 contingent upon remaining a spinster and nominated all children heirs.

H went on a cruise with his female companion Z and whilst on board, he modified his *unica charta* and made a privileged will. He left the reserved portion to his child 1, a substantial sum of money to Z, whom he was aware was mothering their common child 5 to whom he also left an immovable bought during marriage and confirmed his *unica charta*. H died some weeks after his return to Malta from the cruise.

W remarried E who soon resorted to a number of tactics and artifices in order to make her modify her existing *unica charta*. She gave in and left him the usufruct of her estate. W has now died and 4, her adopted child who had 3 children, renounced to his mother's inheritance without any reservations.

Explain the legal principles involved relative to the partition of the estates of H and W respectively under current legislation and delineate the relative incapacities applicable before the promulgation of Act XVIII of 2004.

(Continued)

Question (2)

M and F were married with 2 children, X and Y. They made an *unica charta* by virtue of which F bequeathed D a painting and E an antique clock. The testators then nominated each other universal heirs and ordered that their 2 children be substituted in the residue still remaining after death of the survivor amongst them.

M died first and F remarried R. F delivered to her Notary a secret will which she had made some months before. She bequeathed R some immovable property which she had purchased with M, her first husband, conditional upon R not remarrying. Another 2 children, A and B were born from this second marriage.

F has now died but the painting which she had bequeathed D had perished whilst E was already in possession of the antique clock as F had already donated it to her.

Outline the legal issues applicable to the estates of M and F and highlight any significant changes between today and before Act XVIII of 2004.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. 1 Year – 2012/2013

CVL 4003 – The Law of Succession

Tuesday 11<sup>th</sup> June 2013 - 09.15am – 11.15am

Reply in English to both questions which carry equal marks

Question (1)

Joe and Katrina, whilst still engaged made an *unica charta* will and nominated each other universal heirs. Years later they got married and after having adopted Amber, they had 3 children Diane, Paul and Jeremy.

Some time later Katrina made a secret will wherein she left a sum of money to one of her nephews to be selected by the heirs, a painting and an antique table to her son Jeremy for services rendered but effective upon 2 years from Katrina's death. Alas, the painting already belonged to Jeremy and the table was destroyed.

After Katrina's death, Joe made a will and whilst leaving Diane the reserved portion, he nominated his other children universal heirs. Paul predeceased his father without a will but was survived by his wife. Joe has now died and after having already partitioned all inherited movables, his heirs wish to renounce due to substantial debts due.

Jeremy dies unmarried and intestate. He is survived by Diane and Amber who both renounce to his inheritance but Amber has one child and Diane has 3.

Give an opinion relative to partition of the estates of Katrina, Paul, Joe and Jeremy under current legislation and before the promulgation of Act XVIII of 2004.

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.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. I Year – 2012/2013

CVL4003 – The Law of Succession

Friday 06<sup>th</sup> September 2013 - 10.30am – 12.30pm

Reply in English to both questions which carry equal marks

Question (1)

Critically analyse five (5) major areas which Act XVIII of 2004 reformed in the law of succession and give your personal appreciation on the adequacy or otherwise of the rights of the surviving spouse.

Question (2)

Joe and Mary were married in Malta and had 2 children, Martin and Ian who was married to Tanya. In 2006, Joe drafted a secret will wherein he revoked all previous wills, he left Martin a legacy of his antique collection of paintings which he had purchased with his wife Mary, he renounced to his right to make any other will and nominated his 2 children sole heirs.

In 2008, Joe and Mary made an *unica charta* wherein each nominated the other spouse sole universal heir with the residue upon the death of the survivor being inherited by all their descendants, born and yet to be born. Anna, another child, was eventually born to Joe and Mary.

Later on in 2010, Joe realised that he forgot his 2006 secret will in a drawer and he then promptly delivered it to his notary.

Ian died first childless and is survived by his wife Tanya, his parents and his direct collaterals. Mary, Ian's mother died years later. At the venerable age of 92, when extremely fragile and vulnerable due to occasional dementia, Joe was convinced by Anna to make another will and nominated her his sole heir.

Joe has now died and his son Martin renounces to everything saving the reserved portion.

Submit your legal analyses to partition the estates of Ian, Mary and Joe respectively today and before Act XVIII of 2004. Indicate also the judicial principles for nullifying a will due to unsoundness of mind / mental disorder.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. I Year – 2013/2014

CVL 4003 – The Law of Succession

Monday 02<sup>nd</sup> June 2014 - 2.15pm – 4.15pm

Reply in English to both questions which carry equal marks

Question (1)

John and Anna were married with 3 children Mark, Eve and Paul. Whilst still a 16 year old, Paul made a secret will which he delivered to his notary wherein he nominated his parents heirs to remunerate them for their care and support. Paul's parents, who accompanied him at the notary also made an *unica charta* under the usual conditions wherein John nominated his wife Anna sole heir whilst she nominated her 3 children heirs with the residue to be inherited by her husband. Years later, another child Adam was born to John and Anna.

Paul has now died and is survived by 2 descendants. His notary also realised that he forgot Paul's secret will in his drawer. Anna dies soon after her son Paul.

After his wife's death, John changed his will. He made two bequests by singular title, he left his friend all movable furniture in the matrimonial home which he shared with his predeceased wife and a garage contiguous to the said matrimonial home to Paul and Adam jointly and in equal shares. Eventually upon the insistence of his children Mark and Eve, he made an additional will and nominated them his sole heirs.

John has now died, Mark and Eve renounce to his inheritance but Mark has one child whilst Eve has three children. The heirs are also reluctant to settle the legacies.

Give an opinion relative to the partition of the estates of Paul, Anna and John under current legislation and before the amendments introduced by Act XVIII of 2004.

Question (2)

Ian and Joan had two children, Sam and Maria who were both donated a plot of land when they got married upon which they both constructed their matrimonial home.

Soon after his marriage, Sam made a will wherein he nominated his wife sole heir with the residue after her death to be inherited by his future children. 3 descendants were eventually born prior to Sam's sudden death. Soon after, his widow donated the matrimonial home to one of her 3 children.

Whilst on a trip on board a cruise liner, Ian got seriously ill. He made a will by virtue of which he nominated all his children heirs. Ian died a couple of weeks after his return to Malta when, unknown to him, Joan was already pregnant with his child Zak.

Joan then remarried and made a will. She left the usufruct of her estate to her daughter Maria contingent upon her remaining a widow and nominated her second husband sole heir on condition that he does not contract another marriage and that the inheritance be effective only upon attainment of his 75<sup>th</sup> birthday.

Joan has now died and she is followed by Zak. Maria renounced to any inheritance due from her brother Zak but she had 1 descendant.

Explain the rights of succession relative to the estates of Sam, Ian, Joan and Zak under current legislation.

UNIVERSITY OF MALTA

LL.D. | Year – 2013/2014

CVL 4003 – The Law of Succession

Tuesday 09<sup>th</sup> September 2014 - 09.15am – 11.15am

Reply in English to both questions which carry equal marks

Question (1)

Mario and Fiona were married with no descendants. Mario made a will wherein he nominated his wife Fiona and his two (2) brothers Alf and Brian, as universal heirs in equal portions of one-third (1/3) undivided share each. Mario also left 3 bequests by singular title, the first was a sum of money to his friend Paola, which sum Mario had previously lent to her, and an antique clock which he had eventually also donated to her. The third was a bequest to another friend Donna by way of discharging her from her debt due to him.

Paola had subsequently contracted other debts with Mario whilst Donna had repaid all her debts in full. Mario has now died however both his brothers Alf and Brian predeceased him. Alf died childless but Brian was survived by his wife and by their two children.

After having remarried, Fiona wrote a secret will which she delivered by hand to a fourth year law student to proceed with it in terms of law. Therein, Fiona nominated Zak as her universal heir and left her second husband Brendan an apartment which she had originally purchased whilst married to Mario her first husband and which also served as her matrimonial home till death.

Fiona has now died and is survived by Brendan and by her mother Phyllis.

Submit your opinion on how to partition the estates of Mario and Fiona respectively under current law and before the amendments introduced by Act XVIII of 2004.

Question (2)

Antonio and Lisa were married with 3 children, Donna, Jeanette and Maria. They made an *unica charta* wherein they reciprocally bequeath the full ownership of their matrimonial home and nominated their 3 children co-heirs conjointly, with  $\frac{1}{2}$  to Donna,  $\frac{1}{4}$  to Jeanette and  $\frac{1}{4}$  to Maria, with right of accretion between them.

Soon after they made an additional will. They left a prelegacy of a right of habitation of their matrimonial home to Donna contingent upon her remaining a spinster, prohibited their co-heirs from accepting their inheritance with the benefit of inventory and imposed a condition that the institution of their 3 children as co-heirs shall commence only upon the attainment of their 25<sup>th</sup> birthday.

Antonio and Lisa eventually donated an apartment to Maria on the occasion of her marriage to David.

Unhappy with his wills, Antonio drafted a secret will, which he signed, sealed and delivered to his notary with instructions to open it upon his death. He left Helena, a friend of his, 2 legacies namely a sum of money to remunerate her for services rendered and a precious painting. He otherwise confirmed both his previous 2 wills.

Maria died first and intestate and was survived by her spouse David, Jeanette died after survived by 3 descendants, Lisa died some years later and Antonio followed his wife some time later with a broken heart.

Advise all claimants of their rights relative to the estates of the late Maria, Jeanette, Lisa and Antonio under present law of succession and before the 2004 amendments.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.D. 1<sup>ST</sup> YEAR  
MAY/JUNE 2015 EXAMINATIONS

EXAMINATION: CVL4003 – The Law of Succession

DATE: MONDAY 1<sup>ST</sup> JUNE 2015

READING TIME: 1:00pm to 1:05pm DURATION OF EXAMINATION: 1:05pm to 3:05pm

Reply in English to Both Question Which Carry Equal Marks

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Question (1)

Maria drafted a secret will which she retained in her desk, by virtue of which she revoked all previous wills and nominated all her descendants yet to be born heirs.

Maria eventually married Martin and had 2 children, Clara and Rita. Maria and Martin made an *unica charta* will by virtue of which they reciprocally nominated each other universal heirs and ordered that the residue after death of the survivor amongst them be inherited by their descendants, born and yet to be born. Years later they had another child Mario who was donated a house on his marriage with Anna.

Whilst on her death bed, Maria handed over to her notary a sealed envelope containing the above secret will with instructions to deal with it in terms of law. Some days later she also made a public will and bequeathed Kurt, a child from an extra marital relationship, all her movable property effective upon attainment of 21 years of age. She died some days later and her son Mario died soon after her with grief.

Some years later, Martin made another will with a number of dispositions. He left his daughter Clara one ring to be chosen by her from amongst the rings belonging to her predeceased mother. He also left his other daughter Rita a necklace from a number of necklaces which also belonged to her predeceased mother. Finally Martin left Anna a substantial sum of money, half of which to be made use of as agreed between them, and the other half to be given to that student who is placed first in the June 2015 exams. Martin has now died.

You are requested to submit a written opinion to all beneficiaries on the legal principles relative to the partitioning of the estates of Maria, Mario, and Martin respectively both under current law and before the amendments introduced by Act XVIII of 2004.

Question (2)

Emma and Karl were married with three children, Thea, Neil and John. Whilst on holiday on board a cruise liner Karl was taken ill and made a will by virtue of which he left his wife Emma sole heir with the residue upon her death to be inherited by his 3 children. Unfortunately he died a couple of weeks later upon his return to Malta.

His wife Emma married again to Frank and had another child Daniel. She made a will with a number of dispositions. She bequeathed a plot of land to her 2 sons Neil and Daniel jointly and in equal shares between them. She left her husband Frank a house which came from her first marriage to Karl, and a precious painting both of which were bequeathed on condition that he does not remarry. She then left Thea, her daughter, the usufruct of her estate contingent upon her remaining a spinster. Finally Emma nominated Daniel her sole universal heir with right of substitution only if he renounced to her inheritance.

Daniel has now died and is survived by 2 descendants born out of wedlock. His mother Emma died soon after. Unfortunately the precious painting went missing some time after the death of Emma when Frank had already requested its delivery from the heirs.

Advise all possible beneficiaries of their rights relative to the estates of the late Karl, Daniel and Emma under present law and before the amendments introduced from 2005 onwards.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.D. 1<sup>st</sup> YEAR  
SEPTEMBER 2015 EXAMINATIONS

EXAMINATION: CVL4003 – The Law of Succession

DATE: 07<sup>th</sup> September 2015

READING TIME: 10.00am to 10.05am DURATION OF EXAMINATION: 10.05am to 12.05pm

INSTRUCTIONS TO STUDENTS: Reply to both Questions which carry equal marks

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Question (1)

Maria, who could not write, deposited a secret will with her Notary wherein she bequeathed all movable items in her parents' home to her brother Tony and then nominated her parents universal heirs.

Years later Maria married Paul and they made a will *unica charta*. Paul nominated his wife sole heir with the residue upon her death to be inherited by his children yet to be born whilst Maria nominated her future children as her sole heirs with a specific condition that she was to be cared for by them until her death. She also left the usufruct of her estate to her brother Tony so long as he is unmarried. 3 children James, Danny and Roberto were eventually born to Maria and Paul.

Maria's parents died first whilst Paul died after. Whilst Maria was on her death bed, and therefore most vulnerable, under the care of James, he convinced her to modify her will and in fact she nominated him her sole universal heir. James died but was survived by his 2 children. His mother Maria died some months later.

Outline the legal position relative to the succession of the estates of Paul and Maria both before and after the amendments which entered into force in 2005.

Question (2)

Tony died in a tragic traffic accident whilst still a bachelor and without a will. He was survived by his parents John and Jackie, by his grandparents, and by his brother Anthony and his sister Bernie, who both had a number of descendants.

John made a will and nominated his wife Jackie sole universal heir with the residue to be inherited by his children. John dies and his widow, Jackie donated a substantial part of her inherited estate to all her grandchildren. Jackie is now dead and she is survived by her 2 other children, namely Anthony and Bernie, and their respective descendants.

Years later, Max, Jackie's brother died a bachelor and intestate. He was survived by the 2 children of Anthony and by the 4 children of Bernie.

Submit your written legal opinion to all possible beneficiaries on the applicable principles relative to partitioning the estates of Tony, John, Jackie and Max respectively both under current law and before the amendments introduced by Act XVIII of 2004.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.B. HONS 4<sup>th</sup> YEAR & LL.D. I YEAR  
MAY/JUNE 2016 EXAMINATIONS

EXAMINATION: CVL4026 – The Law of Succession

DATE: 14<sup>th</sup> June 2016

READING TIME: 10.00am to 10.05am DURATION OF EXAMINATION: 10.05am to 12.05pm

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**INSTRUCTIONS TO STUDENTS:**

Reply to both Questions which carry equal marks

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**Question (1)**

Donald made a secret will by virtue of which he nominated his future wife and future descendants yet to be born, heirs in equal portions between them. This he promptly delivered to his notary. Alas, unknown to him, he was already the father of a 2 year old child Liza.

Donald eventually married Rose and after having 4 children Sarah, Sean, Luke and Glen, they made an *unica charta* will wherein Rose nominated her husband Donald heir with the residue upon his death to be inherited by their 4 descendants. Donald left Rose a legacy of the full ownership of an apartment which he had inherited jointly with his sister from their parents, the usufruct of a house which he purchased before his marriage, and finally nominated his 4 children sole heirs.

Donald has now died and his notary only delivered his secret will to the Court of voluntary jurisdiction some days later.

Rose made another will wherein she bequeathed Sarah by singular title an antique painting of which she had quite a few, to be chosen by her and an antique furniture which Sarah eventually bought from her mother. Years later, Rose also donated an immovable property to her son Luke on the occasion of his graduation.

Sean has now died whilst still a bachelor and without any descendants and he is followed by his mother Rose.

Advise all possible beneficiaries relative to the estates of Donald, Sean and Rose of all their rights with a view to partitioning their respective estates.

Question (2)

Chris and Mary were married with 2 children, Carla and Mark. They made an *unica charta* will wherein they only left to each other the reserved portion. Chris left a legacy of a tiny one bedroomed apartment used as an occasional weekend retreat to his friends Luca and Elena in equal shares between them and they both nominated their two children as universal heirs without any right of substitution.

When still a 16 year old, Luca made a will by virtue of which he nominated his friend Elena as his universal heir. He has now died and his next of kin are his maternal grandparents, his father and a number of nephews and nieces as his nearest direct collaterals.

Mark also predeceased his parents but he is survived by his wife Ann and by their sole child Jean. He had made a will at a time when he was only temporarily interdicted for a couple of months due to illness by virtue of which he nominated his parents sole heirs.

Chris has now died and Mary, his widow, whilst on board a cruise liner registered in Malta made a privileged will by virtue of which she bequeathed the usufruct of her estate to her daughter Carla contingent upon her remaining unmarried, and then ordered that all the residue of her estate upon death of her heirs will be inherited by Jean, her grandson. Mary dies upon her return to Malta from the cruise.

You are requested to submit a legal opinion on how to partition the estates of Luca, Mark, Chris and Mary respectively.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. HONS. 4<sup>th</sup> YEAR & LL.D. 1<sup>st</sup> Year

SEPTEMBER 2016 EXAMINATIONS

EXAMINATION: CVL4026 – The Law of Succession

DATE: Tuesday 6<sup>th</sup> September 2016

READING TIME: 8:30AM – 8:35AM      DURATION OF EXAMINATION: 8:35AM – 10:35AM

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**INSTRUCTIONS TO STUDENTS:**

Reply to both Questions which carry equal marks

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Question (1)

Hubert and Wendy were married in Malta and had 4 children, Anna, Bridget, Charles & David. They made an *unica charta* will wherein they reciprocally bequeathed to each other the reserved portion established by law to surviving spouses and nominated their 4 children universal heirs in equal portions.

While in the United States, presumably on work, Hubert went for a cruise in the Caribbean with Fiona, his female friend and alas, he got seriously ill. While on board the cruise liner, he made a will whereby he modified his previous will in the sense that he acknowledged his child Elena from his extra-marital relationship with Fiona, and left her the reserved portion, he left Bridget only her reserved portion and disinherited Charles for no reason.

Charles died first and apart from his parents, brothers and sisters, he was survived also by his two descendants. Hubert died 6 months later as a result of his serious illness and Wendy, his surviving spouse, remarried a couple of years later. She made an additional will and left the matrimonial home which was purchased during her previous marriage to her second husband. She also donated an immovable property to Anna and her husband on the occasion of their marriage.

Discuss the principles involved under the law of succession with a view to partition the estates of Charles, Hubert and Wendy respectively.

## Question (2)

Philip and Elizabeth, a childless couple married in Malta, made an *unica charta* will by virtue of which they revoked all previous wills and reciprocally nominated each other as universal heirs. Eventually, both made unilateral modifications to their will without the knowledge of the other spouse.

Elizabeth bequeathed an antique desk purchased during marriage to her friend Amanda, she left Euro 25,000 to her servant Doris for services rendered, and appointed you, the family lawyer, as her testamentary executor.

Philip bequeathed his friend Francesca the matrimonial home which he shared with Elizabeth, with an obligation to pay a small yearly allowance to Doris, and also appointed you as his testamentary executor. Elizabeth has now died.

Subsequently, Philip modified his wills once again, and bequeathed his nephew Paul a legacy of the debt of Euro 250,000 which he had lent him for his business. Philip died soon after, but Paul had in the meantime repaid a substantial part of his debt.

Both Elizabeth and Philip are survived by brothers and sisters, or their descendants, who are all claiming their slice from their respective estates.

You, as the nominated testamentary executor wish to accept your nomination to execute both testators' wishes. Indicate the procedures set out in the law for your confirmation as testamentary executor, and advise all possible beneficiaries of their respective rights and obligations on the estates of Elizabeth and Philip.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. HONS. 4<sup>th</sup> YEAR / MA Advocacy Preparatory Programme

MAY/JUNE 2017 EXAMINATION SESSION

**EXAMINATION: CVL4026 – The Law of Succession**

**Date: Monday 05 June 2017**

**Time of Examination: 10.00 a.m. to 11.05 a.m.**

**Instructions to Students - Reply to the following Question in full.**

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Kevin and Lisa were married in Malta with 3 children Ruth, Anna and Ian. Kevin made a will wherein he left his wife Lisa a legacy of their matrimonial home with all its movable contents together with all the money which they had saved, with the residue upon her death to be inherited by their 3 descendants whom he also nominated as his sole heirs. Kevin and Lisa donated an apartment to Ruth on the occasion of her marriage to Mario. Years later, another child Ondine was born to Kevin and Lisa.

Kevin died suddenly, and his wife Lisa remarried Paul. She made a will by virtue of which she bequeathed a legacy of a right of habitation of a house to her daughter Anna until she remained a spinster, and another legacy of all the movable contents inherited from her late husband, and her car to Ruth, the latter contingent upon placing first in her exams. She then nominated all her 4 children heirs, contingent upon attaining 50 years of age. Years later, Lisa amended her will and ordered that both legacies left to Ruth be bequeathed to her jointly with her brother Ian.

Ian died after his father whilst still a bachelor and without any descendants. His mother Lisa died some time later. Ian's sisters, Ruth and Anna who had children of their own, renounced to their brother's inheritance.

Advise all possible beneficiaries of their legal rights of succession in order to partition the estates of Kevin, Ian and Lisa respectively.

University of Malta  
Faculty of Laws

CVL4026 – The Law of Succession

Date: Thursday, 7<sup>th</sup> September, 2017

Duration of Examination: 10.00am-11.05am

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Reply to the following question in full:

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Chris and Ann, a married couple established in Malta, made an unica charta will in terms of which they reciprocally bequeathed to each other the usufruct of their estate and nominated their future descendants as their universal heirs. They eventually had 2 children, Maria and Jesmond.

Maria married Ray and on the occasion of their marriage, Ann donated to them a plot of land which she had inherited from her parents, on which they eventually constructed their house and established their matrimonial home. Ann also made another will whereby she revoked her previous unica charta will and left a sole bequest by singular title to her dear friend David of some movable furniture which she had bought during marriage.

Ann died suddenly. Chris remarried Helen and they had one daughter, Sandra. Chris revoked his existing unica charta will and instead, he bequeathed an immovable to his spouse Helen which, unknown to him, already belonged to her. Furthermore, he left the usufruct of his estate to his daughter Sandra, contingent upon her remaining a spinster, and nominated Jesmond his sole universal heir, effective upon attainment of 40 years of age.

Chris has now died and Jesmond renounced to his father's inheritance, whether testate or intestate, but he had 2 descendants.

Advise all beneficiaries whether by universal or by singular title, of their legal rights of succession in order to partition the estates of Ann and Chris.

University of Malta  
Faculty of Laws  
June 2018 Examinations

CVL4026 - The Law of Succession

Tuesday 12<sup>th</sup> June 2018

Duration of Examination: 8.30AM – 9.35AM

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**INSTRUCTIONS TO STUDENTS:**

Reply to the below question in full.

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**Mark** and **Alexandra** made an *unica charta* will by virtue of which they revoked any previous wills and nominated each other as sole universal heirs, with the express condition that either party would incur forfeiture in the case of revocation.

Mark eventually made another will by virtue of which he nominated two of his two brothers, Robert and Maurice, as joint universal heirs and bequeathed the usufruct of the matrimonial home and of all of his bank deposits to his wife Alexandra. In addition, Mark left his nephew, Luke, a legacy of the full ownership of a garage, which he had inherited together with his abovementioned brothers, Robert and Maurice. He left his other nephew Lawrence his vintage sports car, on condition that this legacy becomes effective upon the attainment of Lawrence's 25<sup>th</sup> birthday and, finally, he bequeathed to his youngest nephew Liam any watch from his private collection.

Alexandra passed away, survived by her husband Mark and her two siblings, Nadia and Andrew. Mark was so overcome by the bereavement, that he shortly passed away too. Robert and Maurice want to proceed with the sale of the assets that they inherited from Mark, including their brother's former matrimonial home, which had been donated to Alexandra from her parents before her marriage.

**Albert**, Mark's youngest brother, had a less stable life. His first child, Jake, was born from a brief relationship with a teenage partner. Albert eventually went on to meet and marry Elena, from whom he had another three children; Randall, Raymond and Reuben. Throughout their marriage, Albert and Elena occupied, as their matrimonial home, an apartment which Albert had bought shortly before their wedding.

As their life progressed, Albert's patrimony increased in virtue of the inheritance of a substantial amount of money, which he donated immediately to his oldest son Randall in view of the studies which he intended to pursue abroad.

Unfortunately, a number of disagreements with his wife led Albert's marriage into crisis, during which he succumbed to the charm of a younger lady, Cynthia.

Eventually, Albert was suddenly taken away by an illness. A few days after his burial the family's notary confirmed that Albert had died intestate, however, they also received a visit by Cynthia who claimed that she was six months pregnant with Albert's son.

Advise all possible beneficiaries relative to the estates of Mark, Alexandra and Albert under the law as amended by Act XVIII of 2004.

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

**CVL4026 - The Law of Succession**

Date: Monday 3<sup>rd</sup> September 2018

Duration of Examination: 10.00AM – 11.05AM

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**INSTRUCTIONS TO STUDENTS:**

Reply to the below question in full.

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Alan and Betty made an *unica charta* will wherein they nominated each other joint universal heirs. In their will they granted the surviving spouse the power to modify all the contents of their will (*facoltà di variare*) without incurring forfeiture, except for the bequest of the legacy of their summer residence in Marsascula, which would pass onto Alan's only two siblings Annalise and Amber, after the surviving spouse's demise.

Alan passed away, without issue, due to a sudden illness. Shortly afterwards, Betty made a subsequent will wherein she nominated her sisters, Bella and Barbara, as sole universal heirs over her entire estate. After overcoming the stages of grief, Betty met another man, from whom she had a son, Edward.

Eventually Betty fell ill. Towards the end of her illness, when she was bedridden and weak, she made an additional will upon the insistence of her sister Bella, and nominated her as the sole heir to her estate.

Alan's brother, Christian, has also gone through a prolonged period of bereavement.

His eldest son, David, died intestate, survived by his parents, his siblings Darren and Denise, his wife Fiona, four of his children and the three grandchildren born to his predeceased daughter Greta.

His second-born, Darren, died intestate and without issue, shortly after his older brother.

The youngest, Denise, was the last to pass away. She had made a secret will which she delivered to her notary at the age of 16, wherein she left specific dispositions to remunerate her parents, Christian and Catherine, for their care and support. Denise is survived by her two children. Her notary also forgot Denise's secret will in his drawer and only delivered it to the Registrar of the Court of Voluntary Jurisdiction, two weeks after he had received the will from Denise.

Give an opinion relative to the partition of the estates of: (i) Alan, (ii) Betty, (iii) David, (iv) Darren and (v) Denise under current legislation.

University of Malta  
Faculty of Laws

June 2019 Examination Session

**CVL4026 THE LAW OF SUCCESSION**

Date: Friday 21st June 2019

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

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**INSTRUCTIONS TO STUDENTS:**

**Reply to the following question in full.**

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Neil and Maria, a married couple with 3 children, Amy, Sarah and Jan, made an unica charta will by virtue of which they reciprocally bequeathed to each other the non-disposable portions of their respective estates and nominated their 3 children as their universal heirs. Years later they had another child, Anna. They also left 2 bequests by singular title, Neil left his vintage car to Amy and Sarah jointly, whilst Maria left her son Jan the precious and expensive diamond ring which her husband Neil had given to her as a present on their wedding anniversary.

Amy made a will when still a young 16 year old by virtue of which she nominated her mother Maria as her sole universal heir. She has now died and is survived by her paternal grandparents, by her parents, and by her brothers and sisters. Neil, her father dies some months later.

Maria remarried some years after the death of her husband Neil. She modified her unica charta will by means of a secret will which she promptly delivered to her notary. In her secret will she left the conjoint and successive usufruct of her estate to her 2 children Sarah and Jan contingent upon their remaining unmarried. Unfortunately, her notary proceeds to register and deposit her secret will in terms of law only a couple of days after her death.

After Maria's death, Sarah and Jan renounced to their mother's inheritance but reserved their rights to any legacies bequeathed to them. They both had a number of descendants.

Advise all beneficiaries, whether by universal or by singular title, to the estates of Amy, Neil and Maria respectively, of their rights of succession in terms of law.

University of Malta  
Faculty of Laws

September 2019 Examination Session

**CVL4026 THE LAW OF SUCCESSION**

Date: Monday 9th September 2019      Duration of Examination: 11:30AM-12:35PM

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**INSTRUCTIONS TO STUDENTS:**

Reply to the following question in full.

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**Mario** and **Katia** were married with 3 children, **Jasmine**, **Maria** and **Anna**. **Mario** made a will by virtue of which he appointed his above three children as his sole universal heirs and he omitted completely his wife. In his will, he also left his apartment in Gozo by title of legacy to his friend **Sandra**. The Gozo property had been bought by **Mario** before his marriage with **Katia**. However, it was also being used as their matrimonial home.

**Mario** had an extramarital affair, from which another child **Joseph** was born of whose existence he was completely unaware. **Mario** dies soon after the birth of **Joseph**.

**Jasmine** died a spinster a few years after her father **Mario**, without having made a will.

**Katia** also made a will by virtue of which she left, by singular title, any one item out of her collection of original paintings to her niece **Amanda**, to be chosen by her. She also left her other niece **Rachel**, the usufruct of her property in **Sliema** contingent upon **Rachel** remaining unmarried. **Katia** then appointed her 2 surviving children, **Maria** and **Anna**, as her sole universal heirs. During her lifetime, she had also donated her apartment in **Mosta** to **Anna**.

**Katia** has now passed away. **Sandra** is claiming compensation due to the fact that **Katia** and **Mario's** heirs had failed to grant her the vacant possession of the Gozo apartment immediately after the death of **Mario**.

You are requested to submit a legal opinion on how to partition the estates of **Mario**, **Jasmine** and **Katia** respectively together with **Sandra's** claim for compensation.



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

CVL4026 The Law of Succession

Friday, 3<sup>rd</sup> July 2020

**Examination time: 8:30am – 9:30am + 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](mailto: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:

Reply to the following question in full.

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Neil and Emma celebrated marriage in Malta and had 3 children Lara, Amy and Luke.

Neil made a will whereby he left a sum of money to each of his 3 children and nominated his wife Emma his sole heir.

Years later, Neil modified his will. He bequeathed an antique clock to Amy, and a plot of land purchased during marriage to Luke with vulgar substitution, in favour of any descendants born and yet to be born, solely in case of renunciation.

Emma also made a will. She disinherited Amy without stating a reason, she left 2 pre-legacies, namely a painting to Lara and Luke conjointly, and a garage she had inherited from her parents to her 2 sisters jointly, as to one half undivided share each. She then nominated her 2 children, Lara and Luke, her sole heirs. Alas, one of Emma's sisters died suddenly, soon after.

Neil and Emma also donated another plot of land to Luke and his spouse jointly, over which they eventually constructed their matrimonial home. Amy eventually purchased the antique clock from her father. She married John and had 1 descendant.

Luke predeceased his parents but was survived by 2 descendants. His father Neil died soon after. Emma died some years later.

Amy is contesting her father's will and wants her reserved portion.

She also renounced without reservation to any claim over her mother's inheritance.

Submit your advice to each of the respective beneficiaries of the estates of Luke, Neil, and Emma.



L-Università  
ta' Malta

FACULTY OF LAWS  
DEPARTMENT OF CIVIL LAW  
SEPTEMBER 2020 EXAMINATION SESSION

CVL4026 The Law of Succession

Thursday, 10<sup>th</sup> September 2020

Examination time: 10:00am – 11:00am + 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](mailto: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.***

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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.

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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.

**INSTRUCTIONS TO STUDENTS:**

Reply to the following question in full.

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**David** and **Emma**, a couple married in Malta, made an unica charta will in terms of which they reciprocally bequeathed to each other one-half undivided share of their estate and left the other one-half to their future descendants to be divided in equal portions between them. They eventually had 3 children: **Andrew**, **Benjamin** and **Chris**.

Andrew married Victoria, and on the occasion of their marriage, David donated to them a parcel of land upon which they eventually built their matrimonial home.

Emma made a will whereby she revoked her previous unica charta will and left a valuable watch to her sister **Eve**. She had purchased this watch during her marriage to David. She also left her niece, **Ella**, the usufruct of her property in Gozo, contingent upon Ella remaining unmarried and left, also by singular title, any one item out of her collection of jewellery to her other niece, **Emily**. Finally, Emma appointed her three children as heirs, although Benjamin would only inherit on the condition that he would have attained 40 years of age.

David died suddenly and Emma remarried Frank. They had one daughter, **Gabrielle**.

Chris has now passed away whilst still a bachelor but with one descendant, **Cameron**.

Emma died some time later. At the time of her passing, Benjamin was only 35 years old and Ella had married Henry.

Advise all possible beneficiaries of their legal rights of succession in order to partition the estates of **David**, **Chris** and **Emma** respectively.



First Year Law  
Compulsory Units Past Papers

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# LAW of GUARANTEES

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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](mailto:academic@ghsl.org)

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LLD I (2010/11)  
JUNE 2011 SESSION OF EXAMINATIONS  
CVL4002 – THE LAW OF GUARANTEES

WEDNESDAY 1<sup>ST</sup> JUNE 2011

9.15AM – 10.15AM

ANSWER THE FOLLOWING QUESTION (100%)

PLEASE REPLY IN ENGLISH

Your client has come to your office with the following searches:

- (1) – 1980 - €23,000 – Favour A - Balance of price for sale of property - GH and SP on property at Zabbar;
- (2) – 1990 - €70,000 – Favour B – Warranty of peaceful possession due to sale of property at Gozo – GH;
- (3) – 1991 - €83,000 – Favour C – Loan – GH and SH on property at Hamrun;
- (4) – 1995 - €90,000 – Favour D – Loan for construction – GH and SP on property at Mellieha for costs of construction of property at Valletta;
- (5) – 2000 - €9,000 – Favour E – the vendor for balance of price – SP on property at Sliema;
- (6) – 2006 - €100,000 – Favour F – a contractor for costs of construction – GH and SP on property at Gudja;
- (7) – 2009 - €80,000 – Favour G - Interdicted individual as tutor to administer his property and to render an account of his administration – GH;
- (8) – 2011 - €180,000 – Favour H – Loan – GH and SH over property at Hamrun

The GH under (3) and (6) above were waived in so far as these affect the properties at Sliema and Gudja, the SP at (5) above was registered after 8 months from completion of works whilst the properties at Hamrun were sold.

Give an interpretation on the relative ranking of the above liabilities and advise what needs to be done in order to enable:

- (i) X obtain a first ranking SP for an outstanding balance of price on property being purchased by your client in Gozo;
- (ii) Y, a building contractor to obtain a first ranking SP for the construction of another floor on your client's property at Sliema; and
- (iii) Z, a lender, a first ranking GH and SH over your client's property at Gudja for a loan of €100,000 required for his business.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – Academic Year 2010/2011

**CVL4002 – The Law of Guarantees**

Friday 09<sup>th</sup> September 2011 - 08.00am – 09.00am

Please reply in English

Your client's searches reveal the following hypothecs and privileges against him:

- (1) – 1978 - €90,000 – Favour Vendor A – SP on property purchased at Zejtun for outstanding balance of price;
- (2) – 1993 - €75,000 – Favour Purchaser B – Warranty of peaceful possession granted for sale of property at Mellieha – GH;
- (3) – 1996 - €90,000 – Favour C a Contractor – GH and SP on property at Valletta for costs of construction and improvements;
- (4) – 1999 - €85,000 – Favour D – Debt due – GH and SH on property at Sliema;
- (5) – 2000 - €80,000 – Favour Vendor E – balance of price still due – GH and SP on property at Mosta purchased by your client;
- (6) – 2006 - €110,000 – Favour Contractor F – costs of construction – GH and SP on your client's property at Zejtun;
- (7) – 2009 - €200,000 – Favour G – Loan – GH and SH over the Sliema property.

The GH at (4) and (5) was waived on the properties at Zejtun and Valletta, the SP at (6) was registered after 3 months from completion of works whilst the property at Valletta was sold.

Give an interpretation into the ranking of the above 7 creditors and advise the requisites established by law for:

- (i) H, a vendor to obtain a first ranking SP for balance of price due by your client on property being purchased by him at Gozo;
- (ii) I, a building contractor to obtain a first ranking SP for construction works and improvements on your client's property at Mosta; and
- (iii) J, a lending institution, a first ranking GH and SH over your client's property at Sliema for a loan of €210,000 for personal requirements.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL. D. I Year – 2011/2012

**CVL4002 – The Law of Guarantees**

**Thursday 31<sup>st</sup> May 2012 - 1.00pm – 2.00pm**

**Please reply in English**

You have been presented with the following searches of X, an individual:

- (1) – 1982 - Favour A – GH and SH on property at M'Scala - €60,000 indebtedness;
- (2) – 1998 – Favour B – GH and SH on property at St. Julians - €80,000 debt due;
- (3) – 2001 - Favour C an architect – GH and SP on property at Mellieha - €85,000 expenses for planning consultancy and supervision of improvements;
- (4) – 2001 – Favour D – SP on the property at Mellieha - €95,000 cost of materials for reconstruction;
- (5) – 2002 – Favour E – GH and SP on property purchased at Mosta - €200,000 residue of price;
- (6) – 2004 - Favour F – GH and SP on the property at Mosta - €90,000 costs of construction;
- (7) – 2005 - Favour estate of G – GH - €700,000 warranty to administer property and to render an account;
- (8) – 2005 - Favour H – GH and SH over the M'Scala property - €250,000 loan.

The GH at (3) and (5) were waived on the property at M'Scala, this same property at M'Scala was sold in 2006 whilst the SP at (6) was registered more than 6 months after completion of works.

Give your interpretation into the ranking of the above inscriptions and advise on the necessary legal requisites in order to enable:

- (i) H at (8) above - obtain a first ranking on M'Scala; and
- (ii) I - a building contractor to obtain a first ranking SP for construction works and improvements on the property at Mosta; and
- (iii) J - a first ranking GH, SH and SP for a loan of €210,000 to enable X carry out reconstruction works over his property at Mellieha; and
- (iv) K – procure appropriate hypothecary security as a creditor with a favourable court judgment against X for €70,000 indebtedness.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. I Year – Academic Year 2012/2013

**CVL4002 – The Law of Guarantees**

**Thursday 30<sup>th</sup> May 2013 - 09.15am – 10.15am**

**Please reply in English**

Malcolm's searches reveal these hypothecs and privileges registered against him:

- (1) – 1963 - Favour Creditor A – €65,000 Debt due – SH on property at Iklin
- (2) – 1989 - Favour Lender B – €220,000 Loan – GH and SH over the Iklin property
- (3) – 1996 - Favour Vendor C – €90,000 balance of price due – GH and SP on property at Msida purchased by Malcolm
- (4) – 2002 - Favour Vendor D – €100,000 balance of price due – SP on property at Sliema purchased by Malcolm
- (5) – 2003 - Favour Purchaser E – €490,000 price of the above Iklin property sold – GH as warranty for peaceful possession and warranty against latent defects
- (6) – 2009 - Favour Contractor F – €110,000 costs for construction of additional floor on Malcolm's property at Sliema – GH and SP on property at Sliema
- (7) – 2013 - Favour Vendor G - €165,000 outstanding balance of price - SP on property purchased by Malcolm at Marsascalea

The SP at (6) was registered after 2 months from completion of works and the property at Iklin was sold in 2003. In 2010 Malcolm also pledged his collection of gold coins to Purchaser E as further warranty for peaceful possession.

Give an interpretation into the ranking of the above creditors, advise E, the owner (and third party in possession) of the Iklin property, on his ranking as he is facing a hypothecary action from A and B and indicate the legal requisites for:

- (i) Vendor H to obtain a first ranking SP for balance of price on property being purchased by Malcolm in Gozo; and
- (ii) Bank I to obtain a first ranking GH and a first ranking SH over Malcolm's property at Sliema for a €200,000 loan for his business requirements.

**UNIVERSITY OF MALTA**

**FACULTY OF LAWS**

**LL.D. I Year – Academic Year 2012/2013**

**CVL4002 – The Law of Guarantees**

**Wednesday 4<sup>th</sup> September 2013 - 10.30am – 11.30am**

**Please reply to the following question in English**

Anna's searches reveal these hypothecs and privileges registered against her:

- (1) – 1981 - Favour creditor A – €70,000 admission of indebtedness – GH
- (2) – 1995 - Favour lender B – €45,000 Loan – GH and SH over property at Mellieha
- (3) – 2000 - Favour vendor C – €80,000 balance of price – GH and SP on property at Mosta purchased by Anna
- (4) – 2001 – Favour trader D - €50,000 costs of and supply of materials for construction – GH and SP on property at Mellieha
- (5) – 2002 - Favour contractor E – €80,000 costs for construction of 2 additional floors on Anna's property at Mosta
- (6) – 2002 - Favour purchaser F – €300,000 price of the above property at Mellieha – GH warranty for peaceful possession
- (7) – 2011 – Favour estate of the late G – €500,000 value of estate - GH as warranty to administer property and to render an account as testamentary executor
- (8) – 2013 - Favour vendor H - €165,000 outstanding balance of price - SP on property purchased by Anna at Msida

The SP at (3) was registered 4 months from date of purchase whilst the improvements by contractor E at (5) above were carried out on the property at Mellieha. In 2002 Anna also granted lender B a pledge on her 10,000 Lombard Bank Malta plc shares as additional security for the loan.

Give an interpretation into the ranking of all the above and advise F as owner of the Mellieha property on his position at law. Indicate also the legal requirements for:

- (i) Lender I to obtain a first ranking GH and a first ranking SH over the property of Anna at Mosta for €25,000 loan for the purchase of a car; and
- (ii) Vendor J to obtain a first ranking SP for the balance of price on property being purchased by Anna at Marsascala.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. I Year – 2013/2014

**CVL4002 – The Law of Guarantees**

**Friday 06<sup>th</sup> June 2014 - 9.15am – 10.15am**

**Please reply to the following question in English**

Simon owned a number of properties. His searches reveal the following hypothecs and privileges registered against him:

- (1) – 1983 - Favour A – €30,000 Loan – GH
- (2) – 1985 - Favour B – €50,000 Loan – SH over property at Fgura
- (3) – 2002 - Favour vendor C – €150,000 balance of price – GH and SP on property at Gozo
- (4) – 2003 – Favour supplier D - €40,000 costs for the supply of materials for construction – GH and SP on property at Mosta
- (5) – 2004 - Favour builder E – €80,000 - SP on penthouse at Simon's property in Mosta for costs of construction
- (6) – 2008 - Favour vendor F - €120,000 outstanding balance of price - SP on property purchased by Simon at Msida
- (7) – 2011 – Favour minor child G – €70,000 value of inheritance - GH as warranty to administer property and to render an account upon majority
- (8) – 2013 – Favour H – €40,000 debt – GH and SH on property at Msida

Vendor C at (3) above postponed his GH in favour of H limited to the property at Msida. The materials supplied by D at (4) were never used for the property at Mosta whilst E registered the SP at (5) 3 months from completion of works. In 2007, Simon sold his property at Fgura to Natalino.

Give an interpretation into the ranking of all the above and advise Natalino on his position at law as B is seeking a remedy for money still due. Indicate also the legal requirements for:

- (i) Bank I to obtain a first ranking GH and a first ranking SH over Simon's property at Gozo for a loan of €30,000; and
- (ii) Vendor J to obtain a first ranking GH and SP for the balance of price on his property at Paola to be purchased by Simon.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.D. I YEAR  
MAY/JUNE 2015 EXAMINATIONS

EXAMINATION: CVL4002 – THE LAW OF GUARANTEES

DATE: MONDAY 8<sup>TH</sup> JUNE 2015

READING TIME: 2.30PM – 2.35PM

DURATION OF EXAM: 2.35PM – 3.35PM

**INSTRUCTIONS TO STUDENTS:**

- Reply to the following question in full
- Students may use a calculator

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The searches of Maria reveal these hypothecs and privileges registered against her:

- (1) - 1985 - Favour A – €25,000 Loan – General Hypothec and Special Hypothec over her property at Sliema
- (2) - 1987 - Favour B – €40,000 Loan – Special Hypothec over her property at Lija
- (3) - 1999 - Favour C an architect – Special Privilege for €15,000 consultancy fees for the future construction of an additional floor on Maria's property at Sliema
- (4) - 2001 – Favour D a supplier of goods - €30,000 cost of sanitary ware supplied to Maria – General Hypothec and Special Privilege on her property at Sliema
- (5) - 2006 - Favour E a vendor – €90,000 balance of price – General Hypothec and Special Privilege on property at Mosta purchased by Maria
- (6) - 2010 - Favour Anna - €120,000 price of property purchased by her at Sliema – General Hypothec as warranty for peaceful possession
- (7) - 2011 - Favour vendor F - €80,000 balance of price due – Special Privilege on property at Marsascala purchased by Maria
- (8) - 2014 – Favour G – €30,000 debt – General Hypothec and Special Hypothec on her property at Lija

In 2010, Maria sold her property at Sliema to Anna at (6) above when A, C and D still had outstanding debts in their favour. Supplier D and Vendor E at (4) and (5) above postponed their respective general hypothecary rights in favour of G but only in so far as these concern the property at Lija.

Furthermore, C at (3) above registered his Special Privilege more than 2 months from when works were completed whilst the sanitary ware supplied by D at (4) were diverted for use at Maria's property in Lija. Give an interpretation into the ranking of the above hypothecs and privileges against each property. Advise Anna, A, C and D of their respective positions at law with respect to the Sliema property and indicate the legal requirements for:

- (i) Lender H to obtain a first ranking Special Hypothec over Maria's property at Marsascala for a debt of €40,000; and
- (ii) Bank I to obtain a first ranking special privilege on Maria's property at Lija for a loan of €70,000 to enable her to carry out improvements and construct a penthouse.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.B. HONS 4<sup>th</sup> YEAR & LL.D. I YEAR**  
**MAY/JUNE 2016 EXAMINATIONS**

**EXAMINATION: CVL4025 – The Law of Guarantees**

**DATE: 17<sup>th</sup> June 2016**

**READING TIME: 10.00 am to 10.05am DURATION OF EXAMINATION: 10.05am to 11.05am**

**INSTRUCTIONS TO STUDENTS: Reply to the question in full**

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Your client has come to your office with the following searches:

- (1) 1986 - €65,000 – Favour vendor A - Balance of price for purchase of property - GH and SP on property at Zabbar;
- (2) 1990 - €60,000 – Favour B – Warranty of peaceful possession due to sale of property at Gozo – GH;
- (3) 1996 - €85,000 – Favour C – Loan – GH and SH on property at Hamrun;
- (4) 1998 - €100,000 – Favour D – Loan for construction – GH and SP on property at Mellieha for costs of construction of property at Valletta;
- (5) 2000 - €29,000 – Favour E – the vendor for balance of price – SP on property at Sliema;
- (6) 2003 - €26,000 – Favour F – a contractor for costs of construction – GH and SP on property at Gudja;
- (7) 2006 - €180,000 – Favour G – Loan – GH and SH over same property at Hamrun.

The GH under (3) and (6) above was waived in so far as these affect the properties at Sliema and Gudja, the SP at (5) above was registered after 8 months from completion of works whilst the property at Hamrun was sold in 2006. In 2013 your client granted lenders C and G at (3) and (7) above, a pledge for 40,000 Euro as additional security for their loans.

Give an interpretation on the relative ranking of the above liabilities and advise C and G on their position at Law. Indicate also the legal requisites in order to enable X to obtain a first ranking SP for an outstanding balance of price on property being purchased by your client in Gozo; Y, a building contractor to obtain a first ranking SP for the construction of another floor on your client's property at Sliema; and Z, a lender, a first ranking GH and SH over your client's property at Gudja for a loan of €100,000 required for his personal requirements.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.B. HONS. 4<sup>th</sup> YEAR & LL.D. 1<sup>st</sup> Year**  
**SEPTEMBER 2016 EXAMINATIONS**

**EXAMINATION: CVL4025 – The Law of Guarantees**

**DATE: Friday 2<sup>nd</sup> September 2016**

**READING TIME: 8:30AM – 8:35AM**

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

**INSTRUCTIONS TO STUDENTS: Reply to the question in full**

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You have been presented with the following searches of your client:

- (1) – 1987 - €25,000 – Favour A - Balance of price for sale of property - GH and SP on property at Zejtun;
- (2) – 1992 - €270,000 – Favour B – Warranty of peaceful possession due to sale of property at Saint Julians – GH;
- (3) – 1996 - €85,000 – Favour C – Loan – GH and SH on property at Hamrun;
- (4) – 1999 - €190,000 – Favour D – Loan for construction – GH and SP on property at Msida for costs of construction of property at Floriana;
- (5) – 2005 - €130,000 – Favour E – the vendor for balance of price – SP on property at Sliema;
- (6) – 2009 - €120,000 – Favour F – a contractor for costs of construction – SP on property at Zebbug;
- (7) – 2012 - €90,000 – Favour G - Interdicted individual as tutor to administer his property and to render an account – GH;
- (8) – 2015 - €180,000 – Favour H – Loan – SH on the same property at Hamrun

The GH under (3) above was waived from the properties at Sliema and Zebbug, the SP at (6) above was registered after 2 months from completion of works whilst the property at Hamrun was sold by your client in 2006.

Give an interpretation on the ranking relative to the above liabilities with respect to each creditor and each property and guide C and H on their position at law. Furthermore, advise your client what is required of him in order to enable vendor Y, to obtain a first ranking SP for an outstanding balance of price on property being purchased by him in Gozo, building contractor Z to obtain a first ranking SP for the construction of another floor on his property at Sliema, and a Bank, to have a first ranking GH and SH over your client's property at Zebbug for a loan of €100,000.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.B. HONS. 4<sup>th</sup> YEAR / MA Advocacy Preparatory Programme**  
**MAY/JUNE 2017 EXAMINATION SESSION**

**EXAMINATION: CVL4025 – The Law of Guarantees**

**Date: Monday 29 May 2017**

**Time of Examination: 10.00 a.m. to 11.05 a.m.**

**Instructions to Students - Reply to the following Question in full.**

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The searches of Kevin reveal the following hypothecs and privileges registered against him:

- (1) – 1988 - €80,000 – Favour Vendor A – SP on property purchased by Kevin at Zejtun for a balance of price outstanding;
- (2) – 1998 - €70,000 – Favour Purchaser B – GH as warranty of peaceful possession for sale of property at Mellieha;
- (3) – 2001 - €90,000 – Favour Contractor C – GH and SP on property at Valletta for costs of construction and improvements;
- (4) – 2005 - €180,000 – Favour Creditor D – Debt due – GH and SH on property at Sliema;
- (5) – 2010 - €80,000 – Favour Vendor and Contractor E – GH and SP on property purchased by Kevin at Mosta for €45,000 balance of price outstanding and €35,000 expenses for reconstructions and repairs;
- (6) – 2013 - €110,000 – Favour Contractor F – GH and SP on Kevin's property at Zejtun for costs incurred in the construction of an additional floor;
- (7) – 2016 - €200,000 – Favour G – Loan – GH and SH over Kevin's property at Sliema.

The SP at (6) was registered a number of months after Kevin refused to pay the contractor due to failure to complete works, whilst the property at Valletta was sold in 2008. Give an interpretation into the ranking of the above 7 creditors with respect to each property and advise C on all his rights at law as substantial interests agreed upon have accrued and he thinks that Kevin is planning to dispose of his immovable properties due to financial difficulties.

Please indicate the legal requisites for H, a lender to obtain a SP to pay a balance of price due by Kevin to the vendor on property being purchased at Gozo, and I, a building contractor to obtain a first ranking SP for construction works and improvements to Kevin's property at Mosta. Furthermore advise J, who obtained a favourable Court judgment against Kevin for €70,000 on how she should adequately secure her credit in order to avoid remaining a simple creditor and K together with his lawyer either to get paid for the price outstanding of various movables purchased by Kevin and / or for their recovery.

**University of Malta  
Faculty of Laws**

**CVL4025 – The Law of Guarantees**

Date: Monday, 4<sup>th</sup> September, 2017

Duration of Examination: 10.00am-11.05am

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**Reply to the case study below:**

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Maria's registered liabilities reveal the hypothecs and privileges indicated below:

- (1) – 1988 - €80,000 – Favour vendor A – SP on property at Sliema purchased by Maria for an outstanding balance of price;
- (2) – 1999 - €90,000 – Favour contractor B – SP on property at Floriana representing costs of construction of and improvements to an additional floor;
- (3) – 2005 - €170,000 – Favour purchaser C – GH as Maria's warranty of peaceful possession for sale of her property at (1) above in Sliema;
- (4) – 2006 - €120,000 – Favour creditor D – GH and SH on property at Msida for debt due by Maria;
- (5) – 2016 - €110,000 – Favour vendor and contractor E – GH and SP on property at Mosta purchased by Maria for €60,000 balance of price and €50,000 expenses for reconstructions and repairs;
- (6) – 2017 - €200,000 – Favour creditor F – GH and SH over Maria's property at Birkirkara as security for a loan;

The SP at (5) for costs of reconstruction and repairs favour E was registered a number of months after Maria failed to pay the contractor due to non-completion of works, the property at Msida was sold in 2008 and Maria has now run into huge financial difficulties.

You are requested to give an interpretation into the ranking of the above 6 creditors with respect to each property and advise each individual creditor on legal remedies and possible avenues. Sliema has developed serious structural damages whilst Maria refuses to pay E notwithstanding that all outstanding works were completed to her satisfaction a couple of weeks ago.

Advise G on how to obtain hypothecary security for a favourable Court judgment against Maria for €50,000, indicate to H, Maria's servant her ranking for wages still due to her and the ranking of I, the seller of some movable antiques which were sold to Maria on credit.

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

**CVL4025 - The Law of Guarantees**

Friday 8<sup>th</sup> June 2018

Duration of Examination: 8.30AM – 9.35AM

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**INSTRUCTIONS TO STUDENTS:**

**Reply to the below question in full.**

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A&A Real Estate Limited own a number of properties. The company's searches reveal the following notes of hypothecs and privileges registered against it:

1. 1987 – Favour A - €20,000 Loan – GH
2. 1989 – Favour B - €50,000 Loan – SH over property in Marsascala
3. 1994 – Favour C - €75,000 Loan – GH and SH on property in Paola.
4. 1998 – Favour D – €60,000 – Loan for construction – GH, SH and SP on property in St. Paul's Bay for costs of construction on property in Birgu.
5. 2005 – Favour E – €100,000 – Loan for construction and finishing costs on property in St. Julian's – SP on property in St. Julian's.
6. 2007 – Favour F – €200,000 – Loan for further works on property in Birgu – GH, SH and SP on property in Birgu.
7. 2011 – Favour G – €180,000 Loan – GH and SH over property in Paola.

The GH in (3) was waived in so far as it affected the property in Birgu. In 2013, A&A sold its property in Marsascala to X Limited. Moreover, the SP in (5) was registered three months from the client's last withdrawal from their banking facility.

Advise your clients in view of the fact that:

- i. A&A has not settled its dues with B despite the end of the repayment period and B is now threatening action;
- ii. A&A also has substantial arrears on its loan with E, who is similarly contemplating legal action against the company;
- iii. Lender F wants to rank first with respect to the property held in Birgu since A&A have approached him to take out another loan;
- iv. Bank Z has requested a first ranking GH and a first ranking SH on the property in Paola for a separate facility of €500,000 which it will make available to A&A;
- v. A&A would like to obtain hypothecary security for a favourable Court judgment against P Properties Limited for €40,000.

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

**CVL4025 - The Law of Guarantees**

Date: Friday 14<sup>th</sup> September 2018

Duration of Examination: 10AM – 11.05AM

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**INSTRUCTIONS TO STUDENTS:**

**Reply to the below question in full.**

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Modern Property Ltd is a Maltese company dealing in real estate. The company's searches reveal the following notes of hypothecs and privileges registered against it:

- (1) 1994 – Favour Vendor A - €20,000 – SP on land purchased by Modern Property Ltd in Attard for balance of price outstanding
- (2) 1995 – Favour Purchaser B - €50,000 – GH warranty of peaceful possession for sale of property in Birkirkara
- (3) 1997 – Favour Bank C - €75,000 Loan – GH and SH and SP for purchase of property in Cospicua.
- (4) 1998 – Favour Bank D – €60,000 – Loan for construction – GH, SH and SP on property in Birzebbugia
- (5) 2005 – Favour E – €280,000 – Loan for purchase (€200,000) and finishing costs (€80,000) on property in Victoria, Gozo – GH and SP on property in Victoria, Gozo
- (6) 2010 – Favour F – €500,000 – Loan for further works on property in Cospicua – GH, SH and SP on property in Cospicua.
- (7) 2011 – Favour G – €100,000 Loan – GH and SH over property in Luqa.

With regard to (5), SP was registered within two months of contract with respect of purchase price, however, as to the sum loaned for the finishes, the SP was registered 12 months after completion of works. In 2013, Modern Properties Ltd sold its property in Luqa to Z Developments Ltd.

P is now running into financial difficulties although it still owns a building in Mosta. Modern Properties want to know whether there is any particular safeguard offered to them by the law.

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- a) Modern Properties Limited has asked what will happen to the hypothecated property in Luqa following its transfer to Z Developments.
  - b) Modern Properties is also asking you the status of Creditor E with respect to the property in Victoria, Gozo.
  - c) Modern Properties is also seeking to refinance some of its projects through XY Bank Ltd, which has, however, requested to rank first with respect to the properties in Cospicua and Birzebugia. The company would like to accede to XY Bank Ltd's request and is demanding your advice regarding which course to follow.
  - d) With respect to the property in (1), Modern Properties have been approached by the legal representatives of Ms. Abela, a lady who claims that she has the right of use and habitation over the property owned by Modern Properties in Attard.

Modern Properties have, in their favour, a GH for the warranty of peaceful possession against vendor P Limited.

P Limited is running into financial difficulties although it appears that it still owns a building in Marsa.

Modern Properties are asking you whether there is any course of action that they can pursue in order to secure their rights with respect to P Limited, in the case Ms. Abela's claims are confirmed.

- e) The director of Modern Properties has, in his personal capacity, sold a car to R. He is seeking advice on rights on how to get paid for price outstanding or its recovery.

University of Malta  
Faculty of Laws

June 2019 Examination Session

**CVL4025 THE LAW OF GUARANTEES**

**Date:** Thursday 13th June 2019

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

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**INSTRUCTIONS TO STUDENTS:**

**Reply to the Case-study below in full.**

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ETHAN has the following hypothecs and privileges registered against him:

1. 1988 – €75,000 - Favour creditor A – GH and SH on property at Rabat as hypothecary security for a debt due;
2. – 1989 - €90,000 – Favour vendor B – SP on property at Mosta purchased by Ethan representing the balance of price outstanding;
3. – 1997 - €80,000 – Favour contractor C – SP on same property at Mosta for costs for improvements on existing property and construction of an additional floor;
4. – 2010 - €380,000 – Favour purchaser D – GH in support of warranty of peaceful possession granted by Ethan for sale of his property at (1) above in Rabat;
5. – 2013 - €120,000 – Favour creditor E – GH and SH on property at Balzan as security for a sum of money borrowed by Ethan;
6. – 2016 - €140,000 – Favour vendor / contractor F – GH and SP on property at Gozo purchased by Ethan for €90,000 balance of price and €50,000 for construction;
7. – 2018 - €200,000 – Favour creditor G – GH and SH over Ethan's property at Balzan and Birkirkara as security for a loan;

The Balzan property at (5) above over which creditor E had a SH was sold by judicial auction to Nathan in 2016. Furthermore, the SP at (6) for costs of construction favour F was registered 3 months after completion as Ethan alleges shoddy workmanship and insists on remedial action.

Give an interpretation into the ranking of the above 7 hypothecary creditors with respect to each property and advise each one of them on legal remedies and possible avenues as Ethan is unable to honour his debts and is also facing bankruptcy.

University of Malta  
Faculty of Laws

September 2019 Examination Session

**CVL4025 THE LAW OF GUARANTEES**

Date: Friday 13th September 2019

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

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**INSTRUCTIONS TO STUDENTS:**

**Reply to the Case-study below in full.**

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Paul, a property speculator who owned a number of properties, had substantial causes of preference. His public registry searches reveal the following hypothecs and privileges registered against him:

1. – 1988 – Favour A – €30,000 Loan – GH
2. – 1990 – Favour B – €50,000 Loan – SH over Paul's property at Fgura which was sold to Anna in 2018
3. – 2002 – Favour Vendor C – €150,000 balance of price outstanding – GH and SP on property purchased by Paul in Gozo
4. – 2006 – Favour Supplier D - €160,000 costs for the supply of materials for construction – GH and SP on Paul's project of 6 apartments and 1 penthouse at Mosta
5. – 2007 – Favour Builder E – €60,000 - SP solely on Paul's penthouse in Mosta representing costs of construction and related expenses
6. – 2008 – Favour Vendor F - €120,000 outstanding balance of price - SP on property purchased by Paul at Msida
7. – 2018 – Favour Creditor G – €40,000 Admission of indebtedness – GH and SH on same property at Msida

Vendor C at (3) above postponed his GH solely in favour of G, and limitedly to Paul's property at Msida. The materials for construction provided by Supplier D at (4) above were never used for Paul's property at Mosta but for other projects being undertaken by Paul. Furthermore Builder E registered the SP at (5) above more than 2 months from completion of works on the penthouse. In 2018, Simon sold his property at Fgura to Anna without disencumbering the property.

Give an interpretation into the ranking of all the above 7 creditors on each of the properties belonging to Paul.

Furthermore, advise on the following:

(i) Creditor B and Anna on their respective position at law and remedies available to both;

(ii) The legal requirements for Bank H to obtain a first ranking GH and a first ranking SH over Paul's property at Gozo for a loan of €140,000; and

(iii) Vendor I to obtain a first ranking GH and SP for the balance of price still outstanding on his property at Marsascala being purchased by Paul.



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

CVL4025 The Law of Guarantees

Wednesday, 24<sup>th</sup> June 2020

Examination time: 8:30am – 9:30am + 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](mailto: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:

Reply to the Case-study below in full.

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Jurgen, in business, has the following privileges and hypothecs registered against him:

- (1) 1991 – €85,000 - Favour creditor A – GH and SH on property at Msida for a debt due;
- (2) - 1992 - €75,000 – Favour B vendor – SP on property at Mellieha purchased by Jurgen for balance of price still due;
- (3) – 2001 - €185,000 – Favour contractor C – SP on same property at Mellieha above representing costs incurred for construction of additional floors;
- (4) – 2008 - €120,000 – Favour creditor D – GH and SH on property at Attard as security granted by Jurgen for a loan;
- (5) – 2010 - €380,000 – Favour purchaser E – GH in support of warranty of peaceful possession granted by Jurgen for sale of his property at (1) above in Msida;
- (6) – 2013 - €120,000 – Favour F – GH and SP on property at Xaghra, Gozo purchased by Jurgen for €90,000 balance of price and €30,000 for finishing works;
- (7) – 2016 - €200,000 – Favour creditor G – GH and SH over Jurgen’s property at Vittoriosa as security for a loan;
- (8) – 2019 - €130,000 – Favour vendor H – SP over Jurgen’s property at Birkirkara representing balance of price outstanding;

The property at Msida in (1) and (5) above was sold by Jurgen in 2010;

The property at (7) above in Vittoriosa was purchased by Maria through a judicial sale by auction in 2017 whose act of adjudication was registered at the public registry in July 2018;

The SP at (6) above for works was registered 4 months after completion of works;

The SP at (8) above favour H was registered 3 months after purchase;

The creditor at (4) above waived his GH on the properties at Xaghra, Gozo and Mellieha.

Submit an interpretation into the ranking of each of the above 8 privileged and hypothecary creditors with respect to each property and advise each one of them on any legal remedies available against Jurgen, at a time when his liabilities exceed the value of this assets.

Furthermore, advise also on the following:

Creditor B whose credit has accrued substantial interests seeks remedies as a secured privileged creditor over Jurgen's property at Mellieha which is being sold later on in 2020;

Purchaser E and Maria who are facing court action from Jurgen's hypothecary creditors alleging prior ranking rights and outstanding interests in terms of law;

Vendor H who seeks legal remedies as a secured creditor over Jurgen's property at Birkirkara;

Paul, another creditor for the price outstanding on sale of expensive jewellery items sold to Jurgen some months ago who is facing ranking issues with all privileged and hypothecary creditors; and

Chris, the *Dominus* of the property at Xaghra, Gozo for substantial ground-rent still due by Jurgen who is now also removing all movables with which the tenement is furnished.

First Year Law  
Compulsory Units Past Papers

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# Selected Topics in **LETTING and HIRING**

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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](mailto:academic@ghsl.org)

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.B. III YEAR  
CVL3001 - LETTING AND HIRING  
JANUARY 2006

WEDNESDAY 25<sup>TH</sup> JANUARY 2006

8.00 AM -- 9.30 AM

Answer any two questions

1. Examine the obligations of the Lessor in a Contract of Lease;

2. Discuss the rights and obligations of Lessee in a Contract of Lease.

3. Examine the grounds which in terms of Cap 69 of the Laws of Malta entitle a Lessor to request the Rent Regulation Board not to renew the lease.

4. Consider the provisions of the Civil Code relative to (i) the termination of a lease and (ii) assignment of the lease and (iii) sublease;

5. Examine (i) the nature of a Contract of Works (Locatio Operis) and (ii) the basis and responsibilities for termination of a Contract of Works.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
B.A. III YEAR / LL.D. QUAL.  
MAY/JUNE SESSION 2006  
CIVIL LAW

THURSDAY 1<sup>ST</sup> JUNE, 2006

1.00pm – 4.15pm

Answer any one question from Section A, any one question from Section B and any one question from Section C. In all therefore attempt three questions. You may answer either in the Maltese or in the English Language.

The paper carries a maximum mark of one hundred.

Section A

1. Explain any three grounds for annulment of a marriage.

(34 marks)

-0-

2. Review the provisions of the Civil Code relative to the (i) the letting of things in a contract of lease and the rights and obligations of both (ii) the Lessor and the Lessee.

(11, 23 marks respectively)

-0-

3. Explain the essential internal requisites of Contract as they emerge from the Civil Code.

(34 marks)

-0-

Section B

4. Consider the obligations of the usufructuary.

(34 marks)

-0-

5. (a) Explain the requirements of the *actio pauliana*.

(23 marks)

- (b) Examine the warranty of latent defects in the Contract of Sale.

(11 marks)

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.B. III YEARS  
JANUARY 2008  
CVL3001 – LETTING AND HIRING

WEDNESDAY 23<sup>RD</sup> JANUARY, 2008

11.45AM – 1.15PM

Answer any two questions

1. Consider the notion of and requirements of a contract of lease in terms of the Civil Code.
2. Outline and explain the grounds of dissolution of a lease.
3. Which are the grounds for non renewal of a lease in terms of Chapter 69.
4. List and explain the obligations of the lessee as set out in the Civil Code.
5. Distinguish between subletting and assignment and explain its implications both in terms of the Civil Code and of Chapter 69.

UNIVERSITY OF MALTA  
FACULTY OF LAW  
LLB III  
SEPTEMBER 2008  
CVL3001 – LETTING AND HIRING

MONDAY, 1<sup>ST</sup> SEPTEMBER 2008

9.15AM – 10.45AM

Answer any two questions.

1. Explain the notion of as well as the requirements of a contract of lease in terms of the Civil Code.
2. List and explain the obligations of the lessee as set out in the Civil Code.
3. Outline and explain the grounds for dissolution of a lease.
4. Distinguish between subletting and assignment, and explain its implications both in terms of the Civil Code and of Chapter 69.
5. Which are the grounds for non renewal of a lease in terms of Chapter 69.

UNIVERSITY OF MALTA  
FACULTY OF LAW  
LLB III  
JANUARY 2009  
CVL3001 – LETTING AND HIRING

MONDAY, 19<sup>TH</sup> JANUARY 2009

9.15AM – 10.45AM

Answer any TWO questions

1. Examine the rights and obligations of the Lessor in the contract of Lease.
2. Which are the rights and obligations of the Lessee in the contract of Lease.
3. Consider the provisions of the civil code relative to (i) sublease and assignment of lease (ii) termination of the lease.
4. Examine the grounds for non renewal of the lease in terms of the Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta.
5. Discuss the grounds for dissolution of a contract of works in terms of the civil code.

UNIVERSITY OF MALTA  
FACULTY OF LAW  
LLB III YEARS  
SEPTEMBER 2009  
CVL 3001 - LETTING AND HIRING

Tuesday 1<sup>st</sup> September, 2009

8.00am – 9.30am

Answer any TWO questions, each question carries equal marks

1. Examine the meaning of and requisites of a contract of lease.
2. Discuss the rights and obligations of the Lessor under a contract of lease.
3. Review the provisions of the civil code relative to subletting and assignment of lease.
4. Consider the method and procedure for increase or rent or variation of conditions of a lease by the Lessor under the Reletting of Urban Property (Regulation) Ordinance, (Chapter 69) of the laws of Malta.
5. Examine and discuss the provisions of the civil code relative (i) to the liability of the architect and the contractor under a contract of works and (ii) the grounds for dissolution of a contract of works.



Third Year Law  
Compulsory Units Past Papers

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# INDUSTRIAL LEGISLATION

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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](mailto:academic@ghsl.org)

University of Malta  
Faculty of Laws  
End of Semester Assessment

January 2004 Session

BA Legal and Humanistic Studies – Year III  
Public Law – Industrial Legislation Credit

Time:

Date:

YOU ARE REQUIRED TO ANSWER TWO QUESTIONS.

1. What are the particulars which the employer must provide to the employee upon commencement of employment?
2. How does the Employment and Industrial Relations Act, 2002 regulate the termination by the employer of a contract of service on the grounds of a good and sufficient cause?
3. Outline the provisions of the Employment and Industrial Relations Act, 2002 on:
  - (a) probation;
  - (b) the period of notice required to be given upon termination of employment.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.B. III YEAR  
PBL3001 – INDUSTRIAL LEGISLATION I  
JANUARY 2006

MONDAY 23<sup>RD</sup> JANUARY 2006

1.00 PM – 2.00 PM

Choose any ONE of the following questions:

1. Write short notes on three of the following:

- (a) The circumstances which constitute a “trade dispute”;
- (b) The composition and competence of the Employment Relations Board (E.R.B.);
- (c) The conditions for the lawful imposition of fines by an employer;
- (d) The main principles regarding protection of maternity in employment;
- (e) Harassment as a form of discriminatory treatment.

2. Describe the principal recognized conditions of employment under the Employment and Industrial Relations Act, 2002, and explain how these become applicable to the various categories of employed persons.

3. Discuss the legal notion of redundancy as a mode of termination of employment both in the individual as well as in the collective context.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEARS

PBL3001 -- INDUSTRIAL LEGISLATION I

MONDAY 3<sup>RD</sup> SEPTEMBER 2007

9.15AM TO 10.15AM

Choose any ONE of the following questions:

1. Discuss the notion of "*good and sufficient cause*" in the context of lawful termination of employment.
2. Explain, by reference to current legislation applicable in Malta, the legal position of part-time employees.
3. To what extent can one claim that persons subjected to victimisation are effectively protected by the laws in force?

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

FRIDAY, 25<sup>TH</sup> JANUARY, 2008

9.15 a.m. – 10.15 a.m.

Choose any ONE of the following questions:

1. Discuss the rationale behind the *Organisation of Working Time Regulations, 2003*, (Legal Notice 247/03). How does that legal instrument strive to balance the duration of an employee's engagement at the place of work with that employee's need to enjoy adequate rest?
2. Compare and contrast the legal position obtaining between fixed-term contracts of employment and contracts of employment of an indefinite duration.
3. Discuss briefly the main legal issues of Employment Law dealt with by the Maltese Courts or Tribunals in *three* of the following judgments:
  - (a) *Joseph Ellul vs Joseph Rossignaud noe* (Court of Appeal, 27<sup>th</sup>. April, 1964) *per* Mamo, Gouder, Flores jj.;
  - (b) *General Workers' Union vs Messrs. A. Buttigieg Limited (Luqa Airport Buffet)* (Malta Arbitration Tribunal, 18<sup>th</sup>. November, 1970) *per* Caruana Curran j., Baldacchino, Farrugia;
  - (c) *Margaret Camilleri et vs The Cargo Handling Co. Ltd.* (First Hall Civil Court, 3<sup>rd</sup>. October, 2003) *per* Sciberras j.;
  - (d) *Malta Shipyards Limited vs General Workers' Union* (Court of Appeal, 1<sup>st</sup>. December, 2006) *per* DeGaetano, Magri, Mallia jj.;
  - (e) *Joseph Baluci vs Bernardine Mizzi noe* (Civil Court, First Hall, 3<sup>rd</sup>. July, 2003) *per* Mallia j.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 - INDUSTRIAL LEGISLATION I

WEDNESDAY, 3<sup>RD</sup> SEPTEMBER, 2008 9.15 a.m. - 10.15 a.m.

Answer any ONE of the following questions:

1. "The main recognized conditions of employment under the Employment and Industrial Relations Act, 2002, strive to provide a comprehensive protection to the employee in all aspects of that employee's contract of service". Discuss this statement.
2. Which rules does Maltese employment law apply to ensure the enjoyment and protection of an employee's wage?
3. Outline the principal legal grounds safeguarding the pregnant employee under Maltese Law.

UNIVERSITY OF MALTA

FACULTY OF LAWS

PBL 3001 – INDUSTRIAL LEGISLATION I

Friday 30<sup>th</sup> January 2009, 9.15 a.m. – 10.15 a.m.

Answer any **ONE** of the following questions:

1. Discuss the notion of the contract of employment. In doing so distinguish between a contract of service and a contract for services.
2. Compare and contrast all the following forms of employment:
  - (a) part-time and full-time;
  - (b) fixed-term and indefinite; and
  - (c) individual and collective.
3. What are the functions of the Employment Relations Board and how is it regulated by law? Distinguish between the procedure for the drawing up of national standard recommendations and sectoral regulation recommendations.
4. Write short notes on any three of the following conditions of employment:
  - (a) formation of the contract of employment;
  - (b) information to employees;
  - (c) working hours and overtime;
  - (d) holidays and leave.
5. How are wages protected? How is the Guarantee Fund regulated by law?
6. Write short notes on equal treatment in employment with specific reference to any three of the following:
  - (a) direct and indirect forms of discrimination;
  - (b) positive discrimination;
  - (c) victimisation;
  - (d) “perpetrators” of discrimination;
  - (e) harassment;
  - (f) procedure for redress.
7. Maltese industrial legislation law regulates the termination of employment. Explain this statement in the light of all of the following:
  - (a) probation;
  - (b) redundancy, whether unfair or collection; and
  - (c) dismissal with reference to the concept of “good and sufficient cause”.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

FRIDAY, 5<sup>TH</sup> FEBRUARY, 2010

9.15 a.m. – 10.15 a.m.

Choose any ONE of the following questions:

1. Discuss, with reference to local and foreign case-law, the notions of direct and indirect discrimination in employment.
2. Compare and contrast the prescribed conditions of employment applicable to children and young persons under the *Young Persons (Employment) Regulations, 2003* (L.N. 440/2003) to those applicable to adult employees under the *Organisation of Working Time Regulations, 2003* (Legal Notice 247/03).
3. Write short notes as to the legal position under Maltese Labour Law in *three* of the following:
  - (a) The functions of the Employment Relations Board in promoting legislation affecting conditions of employment at both sectoral as well as national levels;
  - (b) The notion of a contract of service as distinct from a contract of works (*appalt*);
  - (c) The principal rules applicable to the giving of notice to the other party in terminating an employment contract;
  - (d) The main features relating to the protection of wages;
  - (e) The legal protection accorded to a “whistle-blower” under employment law.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

FRIDAY, 28<sup>TH</sup> JANUARY, 2011

9.15 a.m. – 10.15 a.m.

Choose any ONE of the following questions:

1. State briefly the basic requisites which set into operation the Guarantee Fund, and outline the procedure to be followed in order to enable a successful claim on the Fund (L.N. 432/2002).

2. Discuss, in the light of established general principles, the main elements of victimisation as a form of discrimination.

3. Compare the legal situation obtaining between fixed-term contracts of employment and indefinite contracts of employment as regards (i) applicable conditions, (ii) duration and (iii) termination.

OR

With reference to relevant European Court of Justice Case-Law, outline the main principles established with regard to “on-call duty” (Dir. 104/93EC).

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

FRIDAY, 27<sup>TH</sup> JANUARY, 2012

9.15 a.m. – 10.15 a.m.

All questions carry equal marks. Every paragraph in question 3 carries equal marks. Choose any ONE of the following questions:

1. Were you to advise a prospective employee on being offered work under a contract for a term certain or under an indefinite term contract, which would you recommend? Provide reasons for your preference.
2. Outline the principal rules applicable to the giving of notice to the other party in terminating an employment contract.
3. Write short notes on three of the following:
  - (a) The major principles regulating the implementation of the Guarantee Fund in terms of Maltese employment law (L.N. 432/02 – S.L. 452.84);
  - (b) The conditions for the operation of the “opt-out clause” under the Organisation of Working Time Regulations (L.N. 247/03 – S.L. 452.87);
  - (c) Indirect discrimination in employment;
  - (d) The powers vested in the Employment Relations Board in recommending proposed legislation;
  - (e) The notion of a contract of service as distinct from a contract of works (*appalti*)

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

TUESDAY, 11<sup>TH</sup> SEPTEMBER, 2012 9.15 a.m. – 10.15 a.m.

All questions carry equal marks. Every paragraph in question 3 carries equal marks. Choose ONE of the following questions:

1. Discuss the principal areas of protection accorded to pregnant employees under Maltese employment law (L.N. 439/03 – S.L. 452.91)
  
2. Discuss, with reference to local and foreign case-law, the notions of direct and indirect discrimination in employment.
  
3. Write short notes on three of the following:
  - (a) The circumstances which constitute a “*trade dispute*”;
  - (b) The notion of a “*good and sufficient cause*” in cases of unlawful termination of employment;
  - (c) The conditions for the lawful imposition of fines by an employer;
  - (d) The protection accorded by law to employed young persons (L.N. 440/2003);
  - (e) Harassment as a form of discriminatory treatment.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

FRIDAY, 1<sup>st</sup> FEBRUARY 2013

9.15 a.m. – 10.15 a.m.

All questions carry equal marks. Every paragraph in question 3 carries equal marks. Choose any ONE of the following questions:

1. Discuss the protection which the law provides employees with in regard to victimisation.
2. What criteria do Maltese law and case-law identify to determine that an engagement to render a service is one of employment, as distinct from other modes of rendering a service?
3. Write short notes on three of the following:
  - (a) The circumstances under which an employee's wages may be attached;
  - (b) The binding effects of a collective agreement under Maltese employment law;
  - (c) An employee's maximum average weekly working time as regulated by Legal Notice 247 of 2003 (S.L. 452.87);
  - (d) The rights which Maltese employment law guarantees to the part-time worker (L.N. 427/02 – S.L. 452.79);
  - (e) The legal notion of redundancy as a mode of termination of employment.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

WEDNESDAY, 4<sup>TH</sup> SEPTEMBER, 2013

9.15 a.m. – 10.15 a.m.

All questions carry equal marks. Every paragraph in question 3 carries equal marks. Choose any ONE of the following questions:

1. Discuss the circumstances which the Employment and Industrial Relations Act 2002 does **not** accept as being just and sufficient to warrant the dismissal of an employee.
2. Outline the differences and legal implications between contracts of employment of an indefinite nature and contracts of employment for a fixed term.
3. Write short notes on **three** of the following:
  - (a) The functions of the Employment Relations Board in promoting legislation affecting conditions of employment at both sectoral as well as national levels;
  - (b) The notion of a contract of service as distinct from a contract of works (*appalti*);
  - (c) The principal rules applicable to the giving of notice to the other party in terminating an employment contract;
  - (d) The main features relating to the protection of wages;
  - (e) The legal protection accorded to a “whistle-blower” under employment law.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEAR

PBL3001 – INDUSTRIAL LEGISLATION I

FRIDAY, 31<sup>st</sup> JANUARY 2014

9.15 a.m. – 10.15 a.m.

All questions carry equal marks. Every paragraph in question 3 carries equal marks. Choose any ONE of the following questions:

1. Outline the principal features prescribed under Maltese employment law as being the recognised conditions of employment regarding working hours, leave and overtime.

2. Discuss the legal notion of redundancy as a mode of termination of employment both in the individual as well as in the collective context.

3. Write short notes on any three of the following:

(a) The rules applicable under Maltese employment law to ensure the enjoyment and protection of an employee's wage;

(b) The legal position regarding the termination of contracts of service of a fixed duration;

(c) The salient features of the Regulations relating to temporary agency workers (S.L. 452.106);

(d) The elements which render an employee's disclosure of information a "*protected disclosure*" for the purposes of the Protection of the Whistleblower Act, 2013 (Chap 527);

(e) The criteria prescribed at law concerning probationary employment.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
BACHELOR OF LAWS (LL.B.) HONOURS III YEARS  
MAY-JUNE 2015 SESSION OF EXAMINATIONS  
PBL 3017 – INDUSTRIAL LEGISLATION  
WEDNESDAY, 24 JUNE, 2015  
Reading time: 10.00 a.m. – 10.05 a.m.  
Duration of Exam: 10.05 a.m. – 11.05 a.m.

All questions carry equal marks.

Write an essay on any ONE of the following topics:

1. Discuss the nature of the employment contract especially in the light of Legal Notice 44 of ~~2015~~ <sup>2012</sup> and Legal Notice 45 of ~~2015~~ <sup>2012</sup>.
2. Which are the relevant sections of the law relating to family members? Propose new amendments.
3. What would you term an unlawful industrial action?

**UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.B. HONS. III YEAR  
PBL3017 –INDUSTRIAL LEGISLATION**

**TUESDAY 1<sup>st</sup> SEPTEMBER, 2015**

**Reading Time: 8.30AM – 8.35AM**

**Duration Time: 8.35AM – 9.35AM**

**ALL QUESTIONS CARRY EQUAL MARKS:**

**Write an essay on one of the following topics:**

- 1. Describe the various types of employment contracts found in Maltese law and if you are the employer which type of contract would you give your employee?**
- 2. The probation period is mandatory under Maltese law. Explain how it works and if is there room for improvement.**
- 3. Maternity leave and parental leave are rights given to the employee. How can an employer balance these rights without disrupting the workplace?**

**UNIVERSITY OF MALTA**

**FACULTY OF LAWS**

**LL.B. HONS. 3<sup>RD</sup> YEAR**

**PBL3017 – INDUSTRIAL LEGISLATION**

**FRIDAY, 24<sup>th</sup> JUNE 2016**

**Exam time: 10.05 a.m. – 12.05 p.m.  
(Reading time: 10.00 – 10.05 a.m.)**

**Answer TWO questions, one from each Section of the paper. Each question, and the sub-questions in question 2, carry equal marks.**

**Section A – Conditions of Employment**

1. Discuss the how Maltese employment law guarantees the enjoyment of the contract of service and the security and health conditions of employees who are pregnant, have given birth or have chosen to adopt a child. (50 marks)
2. Write short notes on any **THREE** of the following:
  - (a) Outline the main rules applicable in cases of redundancy;
  - (b) Explain the notion of “a good and sufficient cause” to justify dismissal from employment;
  - (c) What constitutes ‘victimisation’ of an employee (art. 28 of Chap. 452) and what does the law understand by ‘occupational detriment’ (art. 2 of Chap 527);

- (d) “Wages payable to an employee may not be attached” (art. 13(2) of Chap. 452). Explain the principle and discuss the exceptions;
- (e) The major principles regulating the implementation of the Guarantee Fund in terms of Maltese employment law (L.N. 432/02 – S.L. 452.84);
- (f) The rules relating to the giving of notice in termination of employment. (50 marks)

### **Section B – Industrial Legislation**

- 3. Discuss the legal personality of a validly registered trade union under Maltese law, and outline the powers and duties which such personality confers on the same union. (50 marks)
- 4. Outline the issue of the impartiality and fair hearing in proceedings before the Industrial Tribunal, in view of recent judicial pronouncements by the Maltese Constitutional Court (50 marks)

**UNIVERSITY OF MALTA**

**FACULTY OF LAWS**

**LL.B. HONS. 3<sup>RD</sup> YEAR**

**PBL3017 – INDUSTRIAL LEGISLATION**

**FRIDAY, 2<sup>ND</sup> SEPTEMBER 2016**      Exam time: 8.35 a.m. – 10.35 a.m.  
(Reading time: 8.30 a.m. – 8.35 a.m.)

Answer **TWO** questions, one from each section of the paper. Each question, and the sub-questions in questions 1 and 4, carry equal marks.

**Section A – Conditions of Employment**

1. Compare the legal situation obtaining under Maltese Law between fixed-term contracts of employment and indefinite contracts of employment as regards (i) applicable conditions, (ii) duration and (iii) termination of the contract. (50 marks)
2. Which rules does Maltese employment law apply to ensure the enjoyment and protection of an employee's wage? (50 marks)

**Section B – Industrial Legislation**

3. Discuss the elements required by Maltese Law relating to the validity, efficacy and formalities of voluntary settlements in regard to trade disputes. (50 marks)

4. Write short notes on any **THREE** of the following:
- (a) Trade-union recognition;
  - (b) What does Maltese Law understand by “*trade dispute*”?;
  - (c) The binding effects of collective agreements;
  - (d) The rules required for the registration of a trade-union or an employers’ association (art. 50(2) of Chap. 452);
  - (e) The major principles regulating immunity from liability to workers engaged in lawful industrial action. (50 marks).

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LL.B. HONS. 3<sup>rd</sup> YEAR/ LL.B. 3<sup>rd</sup> YEAR with L.P.

JUNE 2017 EXAMINATIONS

EXAMINATION: PBL3017 - INDUSTRIAL LEGISLATION

DATE: Monday 26<sup>th</sup> June 2017

DURATION OF EXAM: 10.00AM TO 12.05PM

Choose any two questions. Question 3 has four parts carrying equal marks. If question 3 is chosen then all four parts have to be answered

1. Discuss the salient features of Legal Notice 413 of 2016 on Trade Union Recognition. (50 marks)
2. Our Industrial Tribunal and Court of Appeal (inferior jurisdiction) have repeatedly determined that a breach by the employer of the *audi alteram partem* principle gives rise to an unfair dismissal. Discuss (50 marks)
3. A) Discuss the protection of wages regulated by the EIRA (12.5 marks)  
B) When are probationary periods and notice of termination of employment applicable? (12.5 marks)  
C) Discuss the guarantee fund (12.5 marks)  
D) What rights does a teleworker have and what obligations does the employer have towards a teleworker? (12.5 marks)
4. Discuss the right to participate in industrial action, and restrictions to the same. (50 marks)

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September 2017 EXAMINATIONS

EXAMINATION : PBL3017 - Industrial Legislation

DATE : 7th September 2017

DURATION OF EXAMINATION: 10.00 AM to 12.05 PM

INSTRUCTIONS TO STUDENTS : Choose any TWO (2) of the following questions - All questions carry equal marks.

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- 01 In what way, if any, does the Maltese legislator attempt to protect employees in the case of insolvency of their employer?
- 02 *'The Industrial Tribunal has often been accused of being partial mainly because the way it is composed'*. How far do you consider this statement to be correct, if at all, especially in view of recent amendments?
- 03 *'One of the main concerns of industrial legislation is the protection of wages'*. Discuss how the law goes about protecting wages and discuss ways in which the law may improve to protect wages especially in the case of when wages are not paid for a particular period of time.
- 04 *'The functions of the Employment Relations Board are largely of an advisory nature'*. Discuss these functions and give your views as to whether these functions may in any way be improved upon for the benefit of the employment sector in Malta.

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May/June 2018 Examinations

PBL3017 – Industrial Legislation

Friday 22<sup>nd</sup> June 2018

Duration of Examination: 8:30am-10:35am

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**INSTRUCTIONS TO STUDENTS:**

Answer **TWO (2)** questions, **ONE (1)** from **EACH SECTION** of the paper. Each question carries **EQUAL** marks.

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**Section A – Conditions of Employment**

1. Discuss the principal issues involved in the computation of hours of work regarding employees on “*on-call duty*” as well as the conditions prescribed by Maltese law regarding the “*opt-out clause*” relating to overtime work under the Organisation of Working Time Regulations (L.N. 247/03 – S.L. 452.87). (50 marks)

2. “*It will take a very courageous person to brave the legal niceties and pitfalls of Act VIII of 2013. This flawed law still distrusts whistleblowers and is reluctant to extend the full protection of the law to them. Today, whistleblowing in Malta remains a dangerous, risky, unrewarded and thankless vocation*” (Fabri). Discuss this statement in the light of the provisions of the Employment and Industrial Relations Act 2002 (Chapter 452) and the Protection of the Whistleblower Act 2013 (Chapter 527). (50 marks)

### **Section B – Industrial Legislation**

3. What qualifies as a '*trade dispute*' under Maltese law? Discuss the elements required by Maltese Law relating to the validity, efficacy and formalities of voluntary settlements in regard to trade disputes. (50 marks)
  
4. What protection does Maltese law grant to trade union officials and workers who resort to lawful industrial action? (50 marks).

University of Malta  
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PBL3017 – Industrial Legislation

Date: Wednesday 12<sup>th</sup> September 2018

Duration of Examination: 10:00am – 12:05pm

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**INSTRUCTIONS TO STUDENTS:**

Answer **TWO (2)** questions, **ONE (1)** from **EACH SECTION** of the paper. Each question carries equal marks.

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**SECTION A – Conditions of Employment**

1. Which criteria does Maltese Law adopt to determine that a service rendered by a person to another is one of employment, as distinct from other forms of service? (50 marks).
2. Discuss the remedies and protection which Maltese Employment Law grants to employees with regard to their unpaid wages in case of the employer's insolvency (50 marks).

**SECTION B – Industrial Legislation**

3. How correct is the notion that, under the Maltese Law, a collective agreement is a contract having effect only between an employer and a recognised trade-union? (50 marks).
4. The right to resort to industrial action is curtailed by strict legal requirements and, in some instances, is altogether denied to certain categories of workers. Explain the legal requirements and comment on the excluded categories (50 marks).

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June 2019 Examination Session

**PBL3017 INDUSTRIAL LEGISLATION**

Date: Friday 28th June 2019

Duration of Examination: 10:00AM - 12:05PM

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**INSTRUCTIONS TO STUDENTS:**

Answer TWO (2) questions, ONE (1) from each section. Each question carries equal marks.

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**SECTION A - Conditions of Employment**

1. To what extent does Maltese Employment Law intervene to protect the employee as the more vulnerable party to the contract of service? Illustrate your arguments by reference to relevant legislation. (50 marks)
2. Outline the principles which the law applies to safeguard the employees' contracts of service in the case of a transfer of the business or undertaking employing them. Referring to local and foreign case-law, explain what constitutes a "transfer" of a business or of an undertaking for the purpose of Employment Law. (50 marks)

**SECTION B - Industrial Legislation**

3. *"It is the opportune to consider the collective agreement as an outcome of collective bargaining. It may be best described as a product and an effect of a process or a cause, which is in essence the process of industrial relations and collective bargaining"* (Greenland). Discuss this statement in the light of the nature and effects of a collective agreement under Maltese law. (50 marks)
4. Explain the legal position of a public officer in Malta with respect to freedom of association, settlement of trade disputes and recourse to industrial action in contemplation or furtherance of a trade dispute. (50 marks)

Furthermore, advise on the following:

Vendor B and contractor C seek legal remedies as secured privileged creditors over Ethan's property at Mosta which is being sold later this year in 2019;

Nathan is facing court action from Ethan's creditors alleging prior ranking rights;

Jake, another creditor who is secured by a pledge over Ethan's expensive gold watch, is also facing action from the other hypothecary creditors; and

Emma is seeking some form of security for a Court judgment against Ethan for €63,000.