

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L597 - CONVEYANCING AND NOTARIAL PRACTICE

DECEMBER 2019

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

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

(a) Dr Mtwanaomhle Motho, a graduate of Mafikeng Medical School, recently went to a traditional initiation school. This was after men from the area where he has his surgery complained that they would not submit themselves to be treated by an uninitiated "boy".

Following his initiation, Dr Motho literally cheated death after surviving a horrific car crash without even a scratch on his body. That brush with death reminded Dr Motho of the need to make a will disposing of his worldly possessions and donating his mortal remains to the medical school he graduated from. Dr Motho's wife is totally opposed to the idea of donating his body to the Medical School. She told him that she and the family would not "respect that madness; after all, you do not even qualify to make a will." Dr Motho is troubled by his wife's assertion.

- (a) Advise him on whether he is he is qualified to make a will. **14 Marks**
- (b) Briefly discuss the five essential clauses in a will. **10 Marks**
- (c) Within how much time after a person's death should their estate be reported to the office of the Master of the High Court in Lesotho? **1 Mark**

[25 MARKS]

QUESTION 2

(a) Briefly discuss the two requirements set by section 29(1) of the Deeds Registry

Act No. 12 of 1967 (as amended) for registering a mortgage bond that gives preference to future debts secured under such a bond. **5 Marks**

(b) Bohlale recently signed a covering mortgage bond in the sum of One Million

*Panakekane v leset - bone in
biquidator*

Maloti (M1 000 000.00) in favour of Zaka Bank (Pty) Ltd (the Bank) to cover a debt of the same amount he had with the Bank. In the bond, Bohlale put up his Mountain Side Mansion situated on plot number 2019 – 123, City Mafefs, as security

Bohlale subsequently obtained a further loan of Five Million Maloti (M5 000 000.00) from the Bank.

Malozana, a local tycoon, made Bohlale an irresistible offer of Four Million Maloti (M4 000 000.00) for the Mountain Side Mansion. Bohlale immediately repaid the M1 000 000.00 loan secured by the Mountain Side Mansion, and demanded cancellation of the bond so as to enable him to transfer the property to Malozana. The Bank refused to accede to Bohlale's request citing his other indebtedness to it as the reason for refusing to cancel the bond.

Bohlale is aggrieved by the Bank's attitude because he is of the view that the Bank should cancel the bond as "the debt it was meant to cover has been paid in full." Advise him on the correctness of the Bank's position.

20 Marks

[25 MARKS]

QUESTION 3

Ha Ha Ha Ha!!!

Moipehi agreed to rent Ralitša's Joala-bo-Hlasitse business premises for a total period of five years. Motsoere, a local conveyancer, advised the parties to break up the sublease period into two so as to avoid the need to register their agreement and thereby be liable to pay relevant registration fees. Motsoere advised that the parties

divide their agreement into the initial period of two years and six months and the final period of two years and six months.

The rental payable in the first year of the initial period was M50 000.00 (fifty thousand Maloti) escalating at ten percent per annum during the initial period and at twelve percent per annum during the final period. *per month*

After the parties had agreed, Ralitša was approached by Morui who offered to pay double the rental agreed to by Moipehi and Ralitša. Morui told Ralitša to rent back the premises from Moipehi so as to be able to rent them out to Morui. ✓

(a) Advise Moipehi and Ralitša on the correctness of Motsoere's contention that the two parties could avoid registering their agreement by simply breaking up the sub-lease period into two periods of two years and six months each. *5 24*

10 Marks

(b) Advise Ralitša on whether it would be permissible in law for him to rent his own property from his tenant. *Total oil product & petrol*

10 Marks

(c) Calculate the duty payable were Ralitša and Moipehi to register their sub-lease agreement on the same terms as to rental payable and its escalation as presently agreed to by the parties. *1/1000*

5 Marks

[25 MARKS]

QUESTION 4

Discuss the opinion approved in *Ex parte Cheng & Another, Ex parte Cheng & Another, Ex parte Yang & Another* 2004 (1) SA 118 that it is not necessary for parties concluding an ante nuptial contract to appear in person before a Notary Public. *fraudulent interference* ✓

[25 MARKS]

QUESTION 5

Briefly discuss the following legal exceptions and benefits:

- (a) *De duobus vel pluribus reis debendi.* - CO-principals 5 Marks
- (b) *Ordinis seu excussionis.* - benefit of excussion - surety 5 Marks
- (c) *Errore calculi.* 5 Marks
- (d) *Non numeratae pecuniae.* - did not receive the loan
acknowledged
part of debt paid - onus shift 5 Marks
- (e) *Non causa debiti.* 5 Marks

Downer v Dowler
Not privileged

[25 MARKS]

QUESTION 6

Molo Mgani (Mgani) and Molala oa Pere (Pere), both from Pae-La-Itlhatsoa, agreed on the transfer of Mgani's Exclusive Estates property situated on Plot No. 1400-001, Pae-La-Itlhatsoa, to Pere for Fifty Million Maloti (M50 000 000.00).
Mgani appointed a local conveyancer, Born to Suffer, with power of attorney to do all that is necessary in execution of the agreement to transfer the property.

- (a) Draw the power of attorney given by Mgani. 15 Marks
- (b) Calculate the duties payable upon the registration of the transfer of Mgani's property to Pere. 10 Marks

Transfer duty

3% - 4% if more than 10,000

Stamp
Duty

1% - 3% if more than 7,000

[25 MARKS]

20000