

# Fiscal Legislation Associated with Immovables II

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Papers**

M. Adv.



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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.



PAST PAPERS

# FISCAL LEGISLATION ASSOCIATED WITH IMMOVABLES I



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Fenech  
& Fenech  
ADVOCATES

**What skills do law firms look for in accepting students for work experience?**

Landing work experience or enrolling in a vacation scheme in a law firm are undoubtedly the first steps towards developing skills that will eventually assist in the recruitment rat race.

However good grades - although undeniably important - are not in themselves sufficient in indicating you have the raw material required to succeed and today's competitive environment means that law firms are on the lookout for students that distinguish themselves head and shoulders above their class mates in terms of attitude, initiative, competence, practical skill and outlook.

Given that work experience is commonly viewed as a stepping stone to a training contract, it is important to know what to focus on during student life and how to show case it in preparing an application for acceptance for work placement or a vacation scheme:

#### **Teamwork**

Forming part of a law firm means spending more time with your colleagues than you do with family and friends. You may also find yourself working on a large project involving several areas of law which would entail you collaborating with partners and associates within different departments to those you are directly assigned to.

Add to this work pressure, tight deadlines and hectic schedules and the importance of being a team player will win you significant brownie points in your work environment. These skills can be built on and refined through membership and direct involvement in student organisations, while sport - and we are here not referring to time spent on a cross trainer - is the prime example of how you can hone your team skills.

#### **Analytical skills**

One of the main culture shocks in entering the work environment is that it is not enough to be able to cite entire paragraphs of legal text from memory - you need to know how to apply them to cases in practice. It is true that it is only by working that one learns how to become a lawyer, however the possession of analytical skills and the ability of looking at a situation from a 360 degree angle distinguishes a mediocre lawyer from a brilliant one.

How to hone these? Some are naturally more gifted than others; however participation in moot court and mock trial competitions, legal debate sessions and making a conscious effort to focus on the facts of case law when preparing for exams will go a long way in training your brain to be more analytical.

### **An international outlook**

Today's work environment is predominantly international. Even those areas which were traditionally associated with local litigation, such as civil and family law, have been distinctly tinged with an international flavour due to the application of EU and cross border legislation. Interest in foreign cultures including language is a definite plus point when working in a law firm that deals with foreign clients on a daily basis. Participation in student bodies which allow the opportunity of exchange trips and organisation of events overseas stand out in an application as a welcome advantage.

### **Commercial know-how**

This is a tricky one and entails a maturity that often comes with work experience itself. However developing as early as possible your general knowledge of what is happening in the country you live in and in the world around you can serve as a valuable tool in sniffing out new markets to target. It can also help you notice developments in legislation which will ultimately translate in the provision of new legal services to clients. Reading up on local and international news is one way of keeping abreast with current affairs, while tying these up with existing and emerging legal sectors in article writing, assignments and dissertations significantly raises the quality of the material you produce.

### **Impeccable writing**

Though obvious, the bad use of the written language and the inclusion of spelling mistakes render even the most star-studded application, together with its author, look sloppy and careless. Take time to draft your application properly, checking spelling when in doubt. This will indicate to the reader whether you have the necessary writing skills and eye for detail which are crucial in working in a law firm. The review of legal documents and agreements requires precision since even the slightest mistake or oversight can prove costly to your client and ultimately, your career.

### **Organisational skills**

Employment with a law firm is not limited to the carrying out of legal work per se, there are clients to manage, meetings to organise and social events to help out in. Highlight your involvement and experience in organising student events and work events during your summer job experience as a student since these tend to stand out to a potential recruiters' attention.



UNIVERSITY OF MALTA  
LLD First Year - Diploma of Notary Public  
FISCAL LIABILITY ON NOTARIAL DEEDS

24th January 2001

1300 to 1310

10 minutes allocated for students to review the paper, and to plan their answers. Students may not start writing their answers during this time.

1310 to 1410

1 hour allocated for candidates to answer the paper.

Answer all questions. You may answer in English or Maltese.

1. Mary Borg, wife of Carmelo, passed away on the 19th November 2000. She bequeathed her immovable properties in terms of her last will. The properties, values, beneficiaries, and other relevant details, follow:

Property	Deceased's share	Value of the full share in full ownership	Beneficiary	Other details
House at Safi	$\frac{1}{4}$	55,100	Carmelo (her husband, aged 62 years), in usufruct; and Leone (her son) and Jane (her daughter) in bare ownership	Ordinary residence of the deceased, of her husband Carmelo, and of Leone. Between the ages of 60 and 70, the value of the usufruct is deemed to be 20% of the value of the full ownership. Leone is a Canadian citizen. Jane lives elsewhere at Malleha.
House at Qrendi	$\frac{3}{4}$	35,550	In usufruct in favour of Leone (her son); in bare ownership in favour of Jane (her daughter)	Ordinary residence of Leone, aged 43. Between the ages of 40 and 50, the value of the usufruct is deemed to be 40% of the value of the full ownership.

Calculate the duty payable on the deed of declaration *causa mortis*, which is being published today the 24<sup>th</sup> January 2001. Give brief relevant explanations for your methodology.

2. Anthony Abela, a Maltese citizen, is the owner of a large plot of land at Naxxar, valued Lm23,250. Claudia Bianco, an Italian citizen, is the owner of a small flat at Qawra, valued Lm28,750.

Anthony Abela and Claudia Bianco agree to exchange the two properties.—The deed of exchange is published today the 24<sup>th</sup> January 2001.

Anthony Abela intends to establish the flat at Qawra as his future sole ordinary residence. Anthony Abela does not own any other immovable property.

Claudia Bianco intends to build a terraced two-storey house on the plot of land at Naxxar. She will eventually establish her sole, ordinary residence at this new house at Naxxar.

Anthony Abela inherited  $\frac{1}{2}$  undivided share of the plot of land in 1996. He purchased the remaining  $\frac{1}{2}$  in 1998 from his sister.

Claudia Bianco had established her sole ordinary residence at the flat in Qawra in 1995. She purchased  $\frac{1}{4}$  share of this flat in 1995 from her aunt. She purchased another  $\frac{1}{4}$  share of the flat in December 1998 from her uncle. She inherited a third  $\frac{1}{4}$  share from her uncle in January 1999. Finally Claudia Bianco acquired the remaining  $\frac{1}{4}$  share in June 1999, by title of donation from her mother.

Discuss with reference to the *Immovable Property (Acquisition by Non-Residents) Act (Chapter 246)*. Calculate (a) the duty payable in terms of the *Duty on Documents and Transfers Act (Chapter 364)*, and (b) the liability from the point of view of provisional capital gains tax, indicating the amount of provisional capital gains tax payable.

UNIVERSITY OF MALTA

LLD First Year - Diploma of Notary Public

NS002 - FISCAL LIABILITY ON NOTARIAL DEEDS

23<sup>rd</sup> January 2002      1300 to 1310      10 minutes allocated for students to review the paper, and to plan their answers. Students may not start writing their answers during this time.

1310 to 1410      1 hour allocated for candidates to answer the paper.

Answer all questions. You may answer in English or Maltese.

1. Anna Abela, wife of George, passed away on the 19th September 2001. She bequeathed her immovable properties in terms of her last will. The properties, values, beneficiaries, and other relevant details, follow.

Property	Deceased's share	Value of the full share in full ownership	Beneficiary	Other details
House at Marsa	1/4	55,500	<ul style="list-style-type: none"> <li>In usufruct in favour of George (her husband, aged 62 years);</li> <li>In bare ownership in favour of Leone (her son) and Jane (her daughter), in equal shares between them</li> </ul>	<ul style="list-style-type: none"> <li>Ordinary residence of the deceased, of her husband George, and of her son Leone.</li> <li>Between the ages of 60 and 70, the value of the usufruct is deemed to be 20% of the value of the full ownership.</li> <li>Leone is a Canadian citizen; Jane lives elsewhere at Melleha.</li> </ul>

(a) Calculate the duty, if any, which is payable on the deed of declaration *causa mortis*. The deed is being published today the 23<sup>rd</sup> January 2002. Give brief relevant explanations for your methodology.

(b) What procedures, if any, does Leone have to follow under the Immovable Property (Acquisition by Non-Residents) Act?

2. John Callus and his sister Catherine Callus inherited one-half (1/2) undivided share of a field from their aunt Gaetana, who passed away in 1995. Her immovable property was duly declared in 1995, and the duty *causa mortis* was paid.

In 1997 John Callus and Catherine Callus (who were both still unmarried) purchased the other one-half (1/2) undivided share of this field.

They have now prepared a plan of partition:

- Plot 1 – valued Lm34,500, will be assigned to John Callus. He intends to construct his future sole ordinary residence on that plot of land. At present John resides in a rented flat, and he does not own any other immovable property.
- Plot 2 – valued Lm34,500 will be assigned to Catherine. Catherine already owns a flat where she resides. Catherine has no immediate specific intention on how to utilise plot 2.

(a) Calculate the duty, if any, which is payable on the deed of partition which is being published today. Give brief explanations for your methodology.

(b) Calculate the provisional capital gains tax, if any, which is payable on the deed. Give brief explanations.

September 2003

Section C - Fiscal Legislation (60 marks)

C1

- Youssef Mubarak is a citizen of Lebanon. He was born in Lebanon in 1975 and resided there continuously with his parents until he was 18 years old. In 1993 he moved to France to pursue his studies and training. He came to Malta for the first time in January 1999 to take up a job as an I.T. network engineer with a firm at Victoria, Gozo. He rented a flat at Nadur Gozo, and he has been residing there since then. As a matter of fact since he arrived here in January 1999 he only travelled abroad once a year, each time during the whole month of August, to visit members of his family.
- Jane Camilleri is a Maltese citizen. She was born in Adelaide, Australia in 1978. In 1989 she accompanied her parents back to Gozo, and she has since resided at Ghajnsielem, Gozo. She has only been abroad on short holidays which were never longer than three weeks in any particular year.
- Youssef Mubarak and Jane Camilleri are planning to get married in June 2006.
- They have made all necessary arrangements to purchase an apartment at Munxar, Gozo, where they intend to establish their matrimonial home. The price for the apartment is Lm57,500. Youssef Mubarak and Jane Camilleri will purchase it in equal shares (one half share each). They do not own any other immovable property, whether in Malta or abroad.
- The notarial deed of purchase will be published on 1st November 2005.

Question C1.a Advise Youssef Mubarak and Jane Camilleri whether they, or any one of them, should obtain a permit under the Immovable Property (Acquisition by Non-residents) Act. Answer only: (a) neither one nor the other requires a permit, or (b) both require a permit, or (c) one of them (indicating who) requires a permit. In addition, give a brief explanation (based on the law) to justify your answer.

Question C1.b Calculate the stamp duty (duty on documents and transfers) payable on the deed of purchase. Your answer should include very brief notes reflecting your methodology and calculation.

C2 John Zammit acquired a bakery in three stages. (a) He inherited one-half ( $\frac{1}{2}$ ) undivided share from his uncle Carmelo who died in 1945. The  $\frac{1}{2}$  share was then (in 1945) valued Lm450. (b) He purchased one-fourth ( $\frac{1}{4}$ ) undivided share from his aunt Gaetano in 1989 for the price of Lm6,000. (c) He received the remaining one-fourth ( $\frac{1}{4}$ ) undivided share by title of donation from his father Nazzarano in 2004. On the 2004 deed of donation the  $\frac{1}{4}$  share was valued Lm12,000.

The premises consist of three large, interconnected rooms which have been used by John Zammit exclusively for the production and sale of bread and cakes throughout the past 60 years. John Zammit retired in June 2005, and has now agreed to sell the bakery. The price for the premises (the immovable property) has been set at Lm55,750. The deed of sale will be finalised on the 15th September 2005.

Question C2 What amount of provisional capital gains tax, if any, is payable on the deed of sale? Explain briefly.

Please go to the next page

**C3** Carmen Cachia passed away on the 14th June 2005. She was not married. She was survived by her brother John Cachia and her niece Josephine Sammut (the latter being the daughter of Carmen's pre-deceased sister Mary Sammut). In terms of her last will, Carmen Cachia bequeathed the general usufruct of her estate in favour of her brother John Cachia (aged 63 – value of usufruct, linked to the beneficiary's age, is calculated at 20% of the value of the full ownership); and she appointed her niece Josephine Sammut as her sole universal heir. The deceased had one immovable property. Further details appear below.

Description	Value of the full share	Deceased's share	Other remarks
House at Hamrun	Lm44,400	$\frac{3}{4}$ - three-quarters	Residence of (i) the deceased and (ii) her brother John Cachia. N.B. Josephine Sammut resided elsewhere at Qormi.

**Question C3.** The declaration *cause mortis* will be published today the 5th September 2005. Calculate the duty, if any, which is payable by each one of the two beneficiaries. Explain briefly.

**Section D Drafting (20 marks)**

**D1** A preliminary promise of sale/promise of purchase agreement (*konvenju*) is drawn up today. The sale by public deed will be finalised in two years' time.

**Question D1** Draft only the provision in the agreement which reflects that two years' term.

**D2** Anthony Axdag is a widower (his wife pre-deceased him).

In colloquial terms he insists that when he passes away his motor-car will belong exclusively to his son John. All other assets should belong to his four children, Anthony, John, Paulina and Stefania, in equal shares. Above all, his sons and daughters should ignore anything which they received gratuitously from their father during his life-time.

**Question D2** Draft only the appropriate dispositions in Anthony's will and testament, reflecting the issues indicated in the previous paragraph.

11<sup>th</sup> June 2004

Section C - Fiscal Legislation: (60 marks)

Paul Brincat died on the 20th March 2004. The only immovable real rights which belonged to him consisted of nine-tenths (9/10) undivided share of a house (1, St Publius Street, Floriana), where he used to reside before he passed away. The whole share in full ownership of this house is valued Lm55,750.

The deceased's two heirs are his two children, in equal shares between them: (i) Bernard Brincat, a citizen of Malta who has resided in France for the past seventeen years, and (ii) Carmen Caruana, a citizen of Malta who always resided together with her father at Floriana.

1. Upon the opening of succession, and in order to inherit the property at Floriana, are the heirs required to carry out any procedure in terms of the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246), as amended by Act IX of 2003? Explain your answer briefly and to the point.
2. Calculate the tax, in terms of the Duty on Documents and Transfers Act (Chapter 364), which is paid on the declaration causa mortis published today, giving brief but appropriate explanations.

The two heirs have reached an agreement whereby Carmen Caruana will sell her 9/20 undivided share in the property at Floriana to her brother Bernard Brincat, for the price of Lm27,875.

3. Is any procedure required under the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246), as amended by Act IX of 2003, for the sale by Carmen Caruana to Bernard Brincat? Explain your answer briefly and to the point.
4. (a) In terms of law, is any Provisional Capital Gains Tax payable on the deed of sale? Give a brief explanation for your answer.  
  
(b) If your answer is in the affirmative, you are required to calculate the amount payable as Provisional Capital Gains Tax, at the normal rate. Would there be grounds for a different rate at which provisional capital gains tax might be paid? How would that be achieved?

Section D - Drafting: (20 marks)

Anna and John Bonello are married. They have two children. This evening (Friday 11th June 2004) they will draw up their will *unica charta*.

1. Draft only the disposition whereby the pre-deceased spouse bequeaths to the surviving spouse the maximum permissible according to the law in force today. You are required to identify that maximum in terms of shares and/or real/personal rights.

Anna and John Bonello have been informed that the law might be changed in the future, and that a predeceased spouse might be permitted to bequeath a larger share and/or more significant real/personal rights to the surviving spouse.

2. Draft only a second disposition, as an exception to the previous disposition, and conditional upon a future change in the law, whereby the predeceased spouse would in that case bequeath to the surviving spouse the maximum which would be permissible by law.

Which of the following is the effective date of the charge? (a) 20 April 2005 or (b) 24 May 2005 or (c) 3 June 2005.

B40. Land is registered in the name of X with title number 18000321. By a deed of Notary of 15 May 2005, B gave X a loan of Lm5,000 so that X could purchase a small car. As a guarantee, X constituted a charge in favour of B over the said land with title 18000321. The notary applied for the registration of the charge in the Land Registry on 27 May 2005 and on 6 June 2005 the Land Registrar registered the charge on the said title. Which of the following is the effective date of the charge? (a) 15 May 2005 or (b) 27 May 2005 or (c) 6 June 2005.

B41. Two special hypothecs on the same property are registered on the same day in the Public Registry. Hypothec 1 is registered at 8 am while Hypothec 2 is registered at 10 am. Which of the following is correct? (a) Hypothec 1 ranks first or (b) Hypothec 2 ranks first or (c) Hypothec 1 and Hypothec 2 have equal ranking.

B42. Applications for the registration of two charges (in this case both equivalent to special hypothecs) on the same land are entered in the day-book as follows: Charge 1 at 8 am with progressive number 1234 and Charge 2 at 10 am with progressive number 1250. Which of the following is correct? (a) Charge 1 ranks first or (b) Charge 2 ranks first or (c) Charge 1 and Charge 2 have equal ranking.

B43. A caution is equivalent to a title which is guaranteed. (a) True or (b) False.

B44. Land registered with a guaranteed title is subject to all overriding interests for a period of ten years from effective date of the guaranteed title. (a) True or (b) False.

B45. A Bill currently before Parliament proposes to repeal the Public Registry Act and the Land Registration Act and establish one Central Registry for the registration of all acts and titles. (a) True or (b) False.

June 2005

Section C Fiscal Legislation (60 marks)

C1. John Borg and his wife Carmen Borg are the owners of a large flat at Marsascalea valued Lm53,575, which they utilised only during the summer months, given that their ordinary residence is at Zabbar.

Albert Zammit and his wife Maria Zammit are the owners of a large warehouse at Zejtun, valued Lm44,275.

The two properties will be exchanged. Albert and Maria Zammit will pay an amount of Lm9,300 to John and Carmen Borg.

Albert and Maria Zammit will establish their sole ordinary residence at the flat at Marsascalea.

All four persons are Maltese citizens. They were born in Malta. In addition, they have always resided here in Malta. Throughout their lifetime all four persons have only been abroad on brief holidays, which never exceeded 5 weeks in any year.

Question C1.1 Calculate the stamp duty (duty on documents and transfers) payable on the deed of exchange. Your answer should include very brief notes reflecting only your methodology and calculation.

Question C1.2 What amount of provisional capital gains tax, if any, is payable on the deed of exchange? Explain briefly.

C2. Giovanni Abdilla inherited a plot of land in 1955. He has now decided to donate it (now valued Lm42,750) to his daughter Catherine Abdilla. Catherine has already applied for a development permit to build a modest ground-floor house there. She intends to move to

at newly-built house, and establish her sole, ordinary residence there, in about 18 months' time.

Catherina Abdilla is an Australian citizen. She is not a citizen of Malta. She was born in Melbourne, Australia in 1970. She resided there till January 2003. She arrived in Malta for the first time in February 2003. She has resided uninterruptedly at Msida since then, except for a four-month study period in Lyon, France, between June and October 2004.

**Question C2.1** Advise Catherina Abdilla whether or not she must obtain a permit under the Immovable Property (Acquisition by Non-residents) Act. Answer Yes/No. Give a brief explanation (based on the law) to justify your answer.

**Question C2.2** What amount of provisional capital gains tax, if any, is payable on the deed of donation? Explain briefly.

**Q3** George Galea passed away on 14 January 2005. In terms of his last will, George Galea bequeathed the general usufruct of his estate in favour of his wife Carmen Galea (aged 65 - value of usufruct, linked to the beneficiary's age, is calculated at 20% of the value of the full ownership); and he appointed his two children Pauline and Peter as universal heirs. The deceased had one immovable property. Further details appear below:

Description	Value of the full share	Deceased's share	Other remarks
House at Dingli	Lm77,500	$\frac{3}{4}$ - three-quarters	Residence of (i) the deceased, (ii) his wife Carmen, and (iii) his daughter Pauline

**Question C3** The declaration *causa mortis* will be published today 6 June 2005. Calculate the duty, if any, which is payable by each one of the three beneficiaries. Explain briefly.

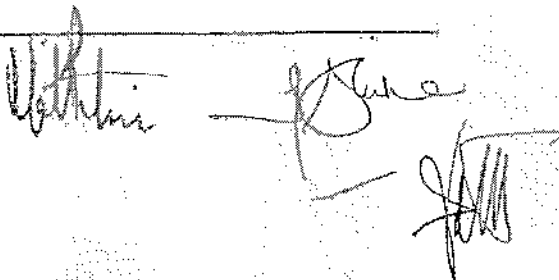
#### Section D Drafting (20 marks)

**D1** Following the amendments to the Civil Code introduced by Act XVIII of 2004, there is now an inversion of the presumption as to whether one testator may or may not alter a will *unica charta* insofar as his/her succession would be concerned.

**Question D4** Draft an article which reflects the principle of reciprocity in a will *unica charta*, indicating the circumstances permissible by law when the surviving spouse will forfeit the bequest from the predeceased spouse.

**D5** Two individuals conclude a preliminary promise of sale/promise of purchase agreement, of immovable property. The parties have agreed on the price - Lm40,000. A payment of Lm1000 is effected at the time when the preliminary agreement is signed. The remainder will be paid when the public deed of sale is published.

**Question D5** Draft that part of the preliminary agreement where the parties establish the price. Draft also a statement reflecting the payment effected on the preliminary agreement, and the undertaking in respect of the remainder of the price, as indicated in the previous paragraph.



June 2006

Section C Fiscal Legislation (60 marks)

Section C Part 1 - Duty on Documents and Transfers Act  
Immovable Property (Acquisition of by Non-Residents) Act

1 June 1965 Georgina Gatt was born at Birzebbugia, Malta. She acquired Maltese nationality/citizenship by birth, given that her parents and grand-parents were all born in Malta.

1 December 1967 Georgina Gatt, then 2½ years old, accompanied her parents who emigrated to Melbourne, in Australia. Georgina lived in Australia uninterruptedly till 1999.

1 February 1999 Georgina Gatt travelled to Milan, Italy. There she was employed for an indefinite period teaching the English language. She continues to reside and work there to this day. Since then she has travelled to Malta regularly, invariably spending here one week during the Christmas holidays, another week during the Easter holidays, and approximately 2 months during the summer holidays.

1 March 2006 Fortunata Gatt, who was Georgina's grand-mother, passed away. Fortunata Gatt then resided at number 5, Triq San Gwann, Birzebbugia. In terms of her Will, Fortunata Gatt bequeathed her one-fourth (¼) undivided share of this house in favour of Georgina Gatt.

5 June 2006 Georgina Gatt has just arrived in Malta for a few weeks.

Today she will conclude the declaration *causa mortis* in respect of the legacy which she received from her grand-mother. An architect has advised her that the value of the full share of the house is Lm57,500.

In addition she has also approached her uncle Philip Gatt, who is the other co-owner of the house. She agreed to purchase the remaining three-fourths (¾) undivided share of the same house at 5, Triq San Gwann, Birzebbugia from him, undertaking to pay him the price of Lm43,125 for his ¾ share. Philip Gatt had inherited his share of the house from his father in 1990. Georgina Gatt and Philip Gatt intend to conclude this sale in December 2006.

In both cases (the declaration *causa mortis* and the December purchase) she will tell the Notary that she intends to make use of the house for her accommodation during her regular but brief holidays in Malta.

Georgina Gatt is not married. She does not own any other immovable property.

**Question C1** Is Georgina Gatt a "resident of Malta" or a "non-resident person" for the purposes of the Immovable Property (Acquisition by non-Residents) Act? You are required to explain very briefly, by linking any relevant facts listed above to legal criteria.

**Question C2** Does Georgina Gatt require an AIP permit in relation to the legacy of ¼ undivided share of the house at 5, Triq San Gwann, Birzebbugia which devolved in her favour from her grand-mother Fortunata Gatt? You are required to explain your answer briefly.

**Question C3** Will Georgina Gatt require an AIP permit to purchase ¾ undivided share of the house at 5, Triq San Gwann, Birzebbugia from her uncle Philip Gatt? You are required to explain your answer briefly.

**Question C4** Calculate the duty payable by Georgina Gatt on the Declaration causa mortis (¼ share of the house at 5, Triq San Gwann, Birzebbugia). The deed of declaration will be published today 5 June 2006 in the evening. Write brief notes to explain your calculation.

**Question C5** Calculate the duty (in terms of the Duty on Documents and Transfers Act) which will be payable by Georgina Gatt in December 2006 on the deed of purchase of ¾ share of the house at 5, Triq San Gwann, Birzebbugia. Write brief notes to explain your calculation.



September 2006

**Section B Registration of Acts and Titles (60 marks)**

- Answer ONE question from Part One of this Section and ONE question from Part Two of this Section.

You are to bear in mind, if and where applicable, the amendments to the Land Registration Act that have not yet come into force.

**Section B Part One**

Answer ONE question only:

B.1.1 Consider the laws which are inapplicable with regard to land registerable in the Land Registry. (45 marks)

B.1.2 Compare and contrast the nature and effects of a title and a guaranteed title. (45 marks)

B.1.3 What are "overriding interests"? What is their effect on a guaranteed title? Discuss briefly four of the overriding interests listed in the law. (45 marks)

**Section B Part Two**

Answer ONE question only:

B.2.1 Distinguish between compulsory and declaratory registration areas. (15 marks)

B.2.2 What is a caution against first registration of title to land? How is such a caution lodged with the Land Registrar? What remedy does the cautioner have against a decision of the Land Registrar in relation to such a caution? (15 marks)

**Section C Laws of Direct Relevance to Notarial Practice (60 marks)**

**Section C Part One**

Mrs Mary Brown and her sister Mrs Carmen Black are British citizens. They were born in London, in the UK, and they lived there continuously, except for very brief holidays in Malta, which never exceeding three weeks in duration in any particular calendar year. In Malta they used to stay with their maternal grandmother at Birzebbugia.

Their grandmother passed away on 15 July 2006. Mrs Smith and Mrs Black have been informed that their grandmother left a Will, and that she bequeathed by title of legacy her only immovable property, which consisted of the full share (1/1) of her residence, a two-storey modest house, to Mrs Smith and Mrs Black, in equal shares between them.

Question C.1.1: Do the two beneficiaries need to obtain an AIP permit to sanction the devolution *causa mortis* of the house at Birzebbugia, which occurred upon their grandmother's death? Explain briefly by reference to legal criteria arising from

Sept 2006

Fiscal  
legislation

## Sept 2006 - Fiscal legislation

the Immovable Property (Acquisition by non-residents) Act and any other related legislation.

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The house at Birzebugia has been valued Lm48,500.

Question C.1.2: Calculate the Duty, if any, under the Duty on Documents and Transfers Act, which Mrs Mary Brown and Mrs Carmen Black will pay on the deed of declaration *causa mortis* which will be published today 4 September 2006. Write very brief notes to explain your answer.

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Mrs Brown and Mrs Black have been advised by an architect that it is possible for them to partition the house at Birzebugia, thereby converting it into two small holiday flats for their one month-long, future holidays in Malta. The ground-floor flat will be assigned to Mrs Brown, while the first floor flat will be assigned to Mrs Black. The deed of partition will be finalised on 1 December 2006.

Question C.1.3: Do the two co-partitioners need to obtain an AIP permit before proceeding with the publication of the deed of partition of the two flats at Birzebugia? Explain briefly by reference to legal criteria arising from the Immovable Property (Acquisition by non-residents) Act and any other related legislation.

Question C.1.4: Calculate the Duty, if any, under the Duty on Documents and Transfers Act, which Mrs Mary Brown and Mrs Carmen Black will pay on the deed of partition which is scheduled to be published on 1 December 2006. Write very brief notes to explain your answer.

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### Section C Part Two

Mr John Gatt purchased a plot of land in 1990 for the price of Lm15,000. Although he had planned to build a house for his own residence at that site, he never constructed anything. In 2006 he decided to sell this plot of land for the sum of Lm85,250.

Question C.2.1: Calculate the Property Transfer Tax payable by Mr John Gatt on the deed of sale.

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*Please go to the next page*

Section D Drafting (20 marks)

Mr Joseph Zammit made a Will in 1990. He does not want to revoke that Will. He only wants to bequeath a car, a Volkswagen Beetle, to one of his children, Mr Paul Zammit. Mr Joseph Zammit knows that he owns only one-half ( $\frac{1}{2}$ ) undivided share of that car; nevertheless, Mr Joseph Zammit wants to bequeath the full-share of the car all the same to his son Paul. The future beneficiary of the car (Mr Paul Zammit), was already nominated as a co-heir in the 1990 Will; and he will eventually get the car over and above his share as co-heir.

Question D.1: Draft an introductory paragraph, and a concluding paragraph, for this particular Will which will be published today 4 September 2006, to indicate that the previous Will made in 1990 is not being revoked, and that today's Will must be read in conjunction with the previous Will.

Question D.2: Draft the appropriate provision/s to give effect to the devolution by succession of the car in favour of Mr Paul Zammit.

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UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year Students – 2006 – 2007 – May – June Special Session 2007

CYL 4014 – Fiscal Laws Associated with Immovable Property (4 Credits)

30 May 2007

14:15 to 15:15

1 hour allocated for candidates to answer the test paper.

- You are required to answer all questions. You may answer in English or in Maltese.
- During the test candidates are not allowed to have any mobile phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

SECTION ONE

Carmen Cachia, then a widow, died on 3 February 2007. The immovable properties belonging to the deceased, their respective values, the beneficiaries according to her last will, and other relevant details, follow:

Property	Deceased's share	Value of the full share	Beneficiaries	Other details
House at Lija	Two-fifths (2/5)	Lm52,750	Her son <u>Joseph Cachia</u> in full ownership	<ul style="list-style-type: none"> <li>Residence of the deceased Carmen Cachia</li> <li>Her son Joseph resides elsewhere</li> </ul>
Flat at Qawra	One-half (1/2)	Lm52,750	Her daughter <u>Anna Psaila</u> in full ownership	Residence of Anna Psaila

Question 1: Calculate the duty payable by the two beneficiaries on the deed of declaration *causa mortis*, which is being published today 30 May 2007. You are requested to write brief notes to explain your calculations.

SECTION TWO

Stephen Smith and his sister Mary Smith are UK citizens. They have been officially informed that they are not entitled to Maltese nationality.

They were born in Liverpool in the UK. They have always resided there.

In 1998 a very distant relative died, and she bequeathed a small house at Marsascala to Stephen Smith and Mary Smith jointly, in equal shares between them. Then the full share of the house was valued Lm850.

In December 2006 Stephen Smith visited Malta for the first time following the death of the tenant who used to occupy the house. He decided to retire permanently in Malta and to reside at the house at Marsascala. He agreed to purchase his sister's half share of the house. Stephen will pay his sister Lm37,750 as the price for her half share. It is envisaged that this sale will be concluded towards the end of June 2007.

Question 2: Stephen Smith has been informed that, despite his foreign nationality, there are various reasons which entitle him at law to purchase the half share of the house from his sister. Indicate all these reasons, and discuss them very briefly in relation to the purchase outlined in this Section.

Question 3: Calculate the Property Transfer Tax payable by Mary Smith on the deed of sale (which will be published at the end of June 2007) in terms of the Income Tax Act. Write brief notes to explain your calculations. State whether this tax is provisional or final.

June 2007

Section C Fiscal Legislation (60 marks)

C.1

Giovanna Caruana died on 3 March 2007. She was survived by her husband and her only son. The sole immovable property belonging to the deceased, its value, the beneficiaries according to her last will, and other relevant details, follow:

Property	Deceased's share	Value of the full share	Beneficiaries	Other details
House at Hamrun	2/5	Lm76,750	(a) her husband Paul then 65 years old, <i>in usufruct</i> ; (b) her son John (then 21 years old), <i>in bare ownership</i>	On the date of death, both the deceased and the two beneficiaries (Paul and John) resided at the house in Hamrun

Value of the usufruct as a percentage of the value of the full ownership:

Age of the usufructuary	Percentage of the value of full ownership
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

Question C.1: Calculate the duty payable on the deed of declaration *causa mortis*, which is being published today 8 June 2007. Write very brief notes to explain your workings.

Fiscal legislation 2  
C.2

Peter Portelli was born at Pieta' in 1970. He resided at (i) Mellieha between 1970 and 1989, (ii) Madrid, Spain between 1989 and 2000; and (iii) Barcelona, Spain between 2000 and 2006. Peter Portelli is a citizen of Malta.

Angélica Rivera was born at Madrid, Spain in 1969. She resided in Spain between 1969 and 2006. She was on holiday in Malta in June/July 2006; and she returned to Malta in November 2006. Angélica Rivera is a citizen of Spain.

Both Peter Portelli and Angélica Rivera have permanent jobs in Malta. All their belongings are now in Malta, and they intend to reside in Malta indefinitely. Given that they are now residing in leased property and that they do not own any place of habitation, they have decided to purchase a house at Gudja, in equal shares between them, for the price of Lm88,750.

Peter Portelli and Angélica Rivera intend to get married to each other in December 2007.

The deed of acquisition of the house at Gudja will be published at the end of September 2007.

Question C.2: Advise whether Peter Portelli and/or Angélica Rivera require a permit under the Immovable Property (Acquisition by Non-residents) Act. Give a brief explanation (based on law) to justify your answer.

C.3 (Continuation of facts from above)

Peter Portelli and Angélica Rivera will purchase the house at Gudja from Stephen Mifsud. The latter has been residing in the house from 1990 till this day. He inherited one-half ( $\frac{1}{2}$ ) undivided share of that house in 1990 (value then attributed to that half was Lm15,000). He purchased the other one-half ( $\frac{1}{2}$ ) undivided share of the house from his cousin in December 2005 for the price of Lm30,000 (in respect of this latter half).

Stephen Mifsud has been advised that the price paid by him in 2005 was too low to consider the optional capital gains tax regime.

**Question C.3:** Calculate the Property Transfer Tax, if any, which is payable by Stephen Mifsud when he will sell the house at Gudja at the end of September 2007 for the price of Lm88,750. Write very brief notes to explain your workings.

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Section D Drafting (20 marks)

D.1 (Continuation of facts from above)

**Question D.1:** On the basis of the facts outlined in C.3 draft the declaration which will be made in the deed of sale in connection with the Property Transfer Tax liability of Stephen Mifsud.

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D.2 (Continuation of facts from above)

**Question D.2:** Draft a paragraph to indicate on the deed of sale (to be published in September 2007) that the price is Lm88,750, and that the payments on account of the price have or will be made in the following manner:

- Lm4,000 – already paid in May 2007
- Lm74,750 – payable on the deed of sale; and
- Lm10,000 – payable on 1 October 2008, without interest

September 2007

Section C Fiscal Legislation (60 marks)

Carmen Zerafa passed away on 1st June 2007. She was not married and had no children.

Her two sole heirs, in equal shares between them, are two distant relatives, namely (i) Pauline Callus and (ii) John Smith.

Pauline Callus is a citizen of Malta. She was born in Victoria Gozo in 1970. She has been residing together with the deceased in Triq il-Kapuccini, Victoria, Gozo since 1990. She has only travelled abroad for very brief holidays, never exceeding two weeks in any calendar year.

John Smith was born in Manchester, UK, in 1962. He has always resided in the UK. Indeed, he has never travelled outside the UK. He is a citizen of the UK (a member state of the European Union). He is not a citizen of Malta.

Additional details about the property follow:

Property	Deceased's share	Value of the full share	Beneficiaries	Other details
House at Triq il-Kapuccini, Victoria, Gozo	3/5	Lm82,750	<u>Pauline Callus</u> and <u>John Smith</u> , in equal shares between them	On the date of death the deceased <u>Carmen Zerafa</u> and <u>Pauline Callus</u> (one of the beneficiaries) resided at this house. The other beneficiary <u>John Smith</u> resided in Manchester, UK.

Question 1 – Calculate the Duty, if any, under the Duty on Documents and Transfers Act, which Pauline Callus and John Smith will pay on the deed of declaration *causa mortis* which will be published today 6th September 2007. Write very brief notes to explain your answer.

Question 2 – Does John Smith require an AIP permit to sanction the devolution *causa mortis* of the house at Victoria, Gozo which occurred upon the death of Carmen Zerafa on 1st June 2007? Explain by reference to legal criteria arising from the Immovable Property (Acquisition by Non-Residents) Act and any other related legislation. Inter alia you are expected to indicate (i) whether John Smith is a "non-resident person", and (ii) whether this devolution qualifies under some exemption under the Immovable Property (Acquisition by Non-Residents) Act.

Please turn over

(Continuation)

John Smith (abovementioned) has recently negotiated to sell his 3/10 undivided share in the house at Triq il-Kapuccini, Victoria to Pauline Callus (also abovementioned). As already indicated, Pauline Callus resides at this house. She intends to continue residing there. She owns no other immovable property.

The deed of sale will be published in December 2007.

John Smith will receive Lm24,825 as the price for that 3/10 share. Pauline Callus will pay the vendor (i) Lm2,000 on the preliminary agreement, (ii) Lm12,825 on the deed of sale, and (iii) Lm10,000 within a maximum of five years from the date of the deed of sale. No interests will be paid on the balance of the price.

Question 3 – Calculate the Duty (under the Duty on Documents and Transfers Act) payable by Pauline Callus on the deed of sale.

#### Section D Drafting (20 marks)

Question 4a – Draft paragraph/s for the deed of sale referred to above (to be published in December 2007), indicating the price, and the payments (made, and to be made) in respect of the price.

Question 4b – A house is being sold by a person who resided in it from 1970 till this present day. He purchased that house in 1965. He has been advised that, on the basis of these facts, he is not liable to pay Property Transfer Tax (under the Income Tax Act). However, to benefit from this exemption, the vendor and the notary must make appropriate declarations in the deed of sale. Draft these declarations.



UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year Students – 2007 – 2008 – January Session 2008

CVL 4014 – Fiscal Laws Associated with Immovable Property (4 Credits)

23 January 2008

09:15 to 10:15

1 hour allocated for candidates to answer the examination paper.

- You are required to answer all questions. You may answer in English or in Maltese.
- During the test candidates are not allowed to have any mobile phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

Section A – 25 marks

In terms of an Exemption Order published in 2007 [Exemption from Payment of Duty on Documents and Transfers Order (SL 364.01)] a surviving spouse stands to benefit if he/she inherits from the predeceased spouse a dwelling house which was previously the ordinary residence of the predeceased spouse. This Exemption refers to successions occurring on or after 16 October 2007.

- (1) Is this an absolute exemption? Are there any circumstances in which the surviving spouse would have to pay any related duty *causa mortis*?
- (2) With specific reference to the 2007 Exemption Order, and in circumstances where the conditions of that Exemption Order apply, is there a legal dead-line within which the surviving spouse is bound to make a declaration *causa mortis* following the death of the predeceased spouse?
- (3) What consequences, if any, would the surviving spouse suffer if he/she were to make the declaration after the lapse of the dead-line which you indicate as your answer to the previous question?

Section B – 50 marks

Martin Mallia is a Maltese citizen. He was born at Siggiewi on 1 June 1970 and resided there continuously together with his parents for 3 years. In July 1973 he accompanied his parents to Switzerland (which is not an EU State), where they resided continuously till September 2004. Martin Mallia returned to Malta in January 2006, and he resided in Malta continuously since then (except for brief holidays abroad which never cumulatively exceeded 6 weeks in any calendar year).

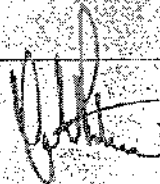
His fiancée Albina Lambert (a citizen of Switzerland) visited Malta in March 2006, and subsequently started to reside in Malta from July 2006 onwards.

Martin Mallia and Albina Lambert plan to get married to each other in May 2008, and to reside permanently in Malta.

On 15 September 2007, Martin Mallia and Albina Lambert signed a preliminary agreement to purchase a house at Mosta (outside any AIP special designated area) for the price of Lm78,750 (now equivalent to €183,438.16). The preliminary agreement envisages that the deed of sale will be published on 15 April 2008 (before the date of their marriage). Martin Mallia and Albina Lambert will establish their sole ordinary residence at this house.

- (1) Calculate the provisional duty of documents (in Maltese liri – Lm) which Martin Mallia and Albina Lambert paid when the preliminary agreement was signed on 15 September 2007.
- (2) Advise Martin Mallia and Albina Lambert whether any one or both of them should apply for a permit under the Immovable Property (Acquisition by Non-Residents) Act, giving brief reasons based on law.

Please Turn Over



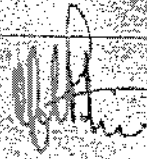
Section C – 25 marks

Joseph Galea resided continuously at 2, Main Street, Siggiewi from the date when he was born (15 October 1955) till the date when he sold the house on 1 June 2007 for the price of Lm85,500.

He inherited three-fourths ( $\frac{3}{4}$ ) undivided share of this house from his aunt Maria Galea who died on 1 October 2000. In the declaration *causa mortis* concluded on 1 February 2001 Joseph Galea attributed a value of Lm51,000 in respect of the  $\frac{3}{4}$  share (based on a value of Lm68,000 for the full share).

Joseph Galea purchased the remaining one-fourth ( $\frac{1}{4}$ ) undivided share of the house from his cousin on 15 February 2005 for the price of Lm20,000.

- (1) Assuming that Joseph Galea did not consider a possibility to opt for a capital gains tax regime, was he liable to pay any Property Transfer Tax on the deed of sale which was concluded on 1 June 2007? If your answer is in the affirmative, calculate the amount (in Maltese liri – Lm) which he should have paid.
- (2) Did Joseph Galea have a choice to opt to a tax liability under the capital gains tax regime? If your answer is in the affirmative, and assuming that the only deductions availed by him referred to the above-mentioned values of the acquisitions (ignoring any notarial expenses and duty on documents paid in 2001 and 2005 respectively), calculate (in Maltese liri – Lm) the maximum capital gains tax liability of Joseph Galea under the Income Tax Act.



September 2008

Question 2 - (50 marks)

On 20 August 2007 Nazzarena Sammut passed away. In terms of her last will her estate was to be enjoyed in usufruct by her husband George Sammut (who was then 63 years old). Moreover, she appointed her daughter Maria Sammut (who was then 35 years old) as her sole heir.

The only immovable property owned by the deceased consisted of one-third (1/3) undivided share of the house at number 10, St Mary Street, Mqabba. The full share of the house was then valued Lm93,500.

On the date of death Nazzarena Sammut (the deceased), George Sammut (the usufructuary) and Maria Sammut (the heir) resided at that house at Mqabba.

The declaration *causa mortis* was finalised and published on 15 December 2007.

**Question:** Calculate the duty which was paid on the deed of declaration *causa mortis*. Write very brief notes to explain your workings.

Extract from *Subsidiary Legislation 364.06*

Second Schedule

Value of the usufruct as a percentage of the value of the full ownership:

Age of the usufructuary	Percentage of the value of full ownership
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

June 2009

**Section C Fiscal Legislation associated with Immovables (50% of the total marks)**

**Part C1 – Causa Mortis Declaration**

John Brown, a citizen of Canada, established his permanent residence in Malta in 1985. John Brown died testate on 1 March 2009. He was survived by his wife Catherine Brown, and his two children Mary Brown and Albert Brown (all three also citizens of Canada). The only immovable properties belonging to the deceased; their values, the beneficiaries according to his last will, and other relevant details, follow:

Property	Deceased's share:	Value of the full share	Beneficiaries	Other details
House at Attard	Owner of one-half (½) undivided share of this house.	€185,750	He bequeathed his one-half (½) share in full ownership to his wife <u>Catherine Brown</u> .	On the date of death, the deceased <u>John Brown</u> and his wife <u>Catherine Brown</u> resided permanently at this house in Attard.
Flat at Qawra	Owner of the full share of this flat.	€92,750	The flat devolved in favour of his two universal heirs, namely his daughter <u>Mary Brown</u> and his son <u>Albert Brown</u> (in equal shares), subject to a life-long usufruct in favour of his daughter <u>Mary Brown</u> .	On the date of death, <u>Mary Brown</u> was 62 years old, and she had been residing permanently at this flat at Qawra since 2001.  On the same date, <u>Albert Brown</u> was 60 years old, and resided permanently at Toronto, Ontario, Canada.
Garage at Qawra	Owner of one half (½) undivided share of this garage	€32,500	He bequeathed his one-half (½) share in full ownership to his son <u>Albert Brown</u> .	Details of <u>Albert Brown</u> appear above.

The value of the usufruct is determined as a percentage of the value of the full ownership:

Age of the usufructuary	Percentage of the value of full ownership
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

The declaration *causa mortis* was published on 1 June 2009.

**Answer BOTH questions C1a and C1b (38% of the total marks)**

**C1a:** Calculate the duty *causa mortis* payable by (a) Catherine Brown, (b) Mary Brown, and (c) Albert Brown. Write brief notes to explain.

**C1b:** State concisely, in a maximum of 15 lines, the date/s and/or circumstances when the duty *causa mortis* is payable by the respective beneficiaries.

## Part C2 – Drafting of Declarations

The Immovable Property (Acquisition by Non-Residents) Act (referred hereunder as the AIP law) envisages a number of declarations which must be made in the deed of transfer/acquisition.

Answer BOTH questions C2a and C2b (12% of the total marks)

### Scenario C2-a

Anthony Attard is a Maltese citizen, and has been residing continuously in Malta for the past 50 years. He is single, and has no children.

Josephine Attard is a citizen of New Zealand, where she was born. She is not entitled to Maltese citizenship. She has been residing in Malta only since 15 September 2006. Josephine's father and Anthony Attard are brothers.

Today (9 June 2008) Anthony Attard transfers by title of donation a small, one-car garage to his niece Josephine Attard.

**C2-a:** For the purposes of the AIP law draft the declaration which is to be made in the deed (donation of garage) being published today.

### Scenario C2-b

Maria Natale is an Italian citizen. She has been residing at a house in Marsascala since 15 March 2001, having inherited that house the previous year. Throughout the past 8 years she has only travelled abroad for brief holidays during the month of August of each year.

Today (9 June 2009) she purchases a small field in the outskirts of Zabbar, trusting that she will manage to grow some vegetables for herself.

**C2-b:** For the purposes of the AIP law draft the declaration which is to be made in the deed (purchase of field) being published today.

September 2009

Section C

Fiscal Legislation associated with Immovables – (50 marks)

Part C1 – Causa Mortis Declaration

Chiara Cassano and her niece Antonia Cassano, both Italian citizens, visited Malta for the first time in April 2005. Some months later they established their permanent residence in Malta. As a matter of fact in October 2005 they purchased an apartment at Qawra, in equal shares between them.

Chiara Cassano drew up a will in Malta in December 2008. She established a life-time usufruct over her share in the apartment at Qawra in favour of her niece the above-mentioned Antonia Caputi. Further, she appointed as her three universal heirs, in equal shares, her three nieces: (i) the above-mentioned Antonia Cassano, (ii) Alfreda Cassano and (iii) Stefania Cassano. The latter two reside in Naples Italy, and they are both Italian citizens.

Chiara Cassano died on 15 July 2009. On that date Chiara Cassano and Antonia Cassano resided at the apartment at Qawra.

On 15 July 2009 Chiara Cassano (the deceased) was 75 years old. The respective ages of the beneficiaries follow in brackets: Antonia Cassano (62 years old), Alfreda Cassano (59 years old), and Stefania Cassano (55 years old).

The only immovable properties which belonged to the deceased Chiara Cassano were (a) her half share in the apartment at Qawra, and (b) a garage at Bugibba (located just over 1 kilometre away from the apartment at Qawra).

Other details follow:

Property	Deceased's share:	Value of the full share
Apartment at Qawra	Owner of one-half (½) undivided share of this apartment.	€205,750
Garage at Bugibba	Owner of the full share of this garage.	€35,750

The value of the usufruct is determined as a percentage of the value of the full ownership:

Age of the usufructuary	Percentage of the value of full ownership
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

The declaration *causa mortis* is published today 9 September 2009.

**Question C1:** Calculate the duty *causa mortis payable by each beneficiary*. Write brief notes to explain your calculations. Further, explain briefly the legal norms that have been applied. (38 marks)

## Part C2 – Drafting of Declarations

The Immovable Property (Acquisition by Non-Residents) Act (referred hereunder as the AIP law) and the Income Tax Act (referred hereunder as the ITA law) envisage a number of declarations which must be made in the deed of transfer/acquisition.

Answer **BOTH** questions C2a and C2b – (12 marks)

### Scenario C2-a

Mario Mallia has been residing at 1, Main Street, Mellieha since 1965. For many years this house was tenanted by his father. When his father died in 1978 Mario Mallia was recognised as the tenant. In 1990 Mario Mallia purchased the house from the lessor/owner. Mario Mallia continued to reside at this house till this present day.

Mario Mallia has made arrangements to vacate the house this afternoon. Later this evening he will appear on a public deed to sell the house.

Mario Mallia has been informed that he should be exempt from the payment of Property Transfer Tax under the Income Tax Act.

**C2-a:** For the purposes of the ITA law draft the appropriate declaration which is to be made in the deed of sale being published today.

### Scenario C2-b

In 1973 Giuseppe Micallef donated a house at 1, Triq il-Gnejna, ix-Xaghra, Gozo, to his two nephews John and Patrick, brothers Micallef, in equal shares between them.

John Micallef and Patrick Micallef were born in Australia in the early 1950s. They visited Malta only once, in 1973, when they spent three months with their uncles and aunts in Gozo.

Giuseppe Micallef continued to reside at that house till 2005, when he died.

Both John Micallef and Patrick Micallef have confirmed that they are Maltese citizens.

John Micallef has agreed to purchase from Patrick Micallef the latter's half share in the house at Xaghra, Gozo. The deed of sale will be concluded later today.

John Micallef does not intend to reside in Malta. He will continue to reside in Sydney, Australia. Yet since he is now a pensioner it is easier for him to start travelling to Malta say once every two years, and spend some three months each time in the company of his cousins who reside at Xaghra, Gozo.

John Micallef has been informed that he does not need an AIP permit to purchase the half undivided share from his brother Patrick Micallef.

**C2-b:** For the purposes of the AIP law draft the appropriate declaration which is to be made in the deed being published later today.

University of Malta  
Faculty of Laws  
LLD First Year, Academic Year 2008 – 2009  
CVL4016 – Fiscal Legislation Associated with Immovables  
September 2009 Session – 8 ECTS  
3 September 2009 – 09:15 to 11:15 hours

Candidates are allowed to use calculators; however, they are not allowed to have any mobile phones and/or memory-resident electronic devices.

Answer all questions

Question 1 – 30 marks

Nicholas Navarro is the owner of a flat at Mellieha valued €195,250.

Pauline Pace is the owner of a large garage at Marsa valued €115,550.

Nicholas Navarro and Pauline Pace are both citizens of Malta, aged 24 and 30 respectively. Each one of them was born in Malta, and resided here uninterruptedly, except for brief holidays abroad (of less than 1 month each year) during the past 3 years. Both individuals are single/unmarried. They do not own any other immovable property.

The two individuals agree to exchange today their respective immovable properties; Pauline Pace will also pay an dowry of €79,700 to Nicholas Navarro.

Pauline Pace intends to establish her ordinary residence at the flat in Mellieha. Nicholas Navarro will utilise the garage at Marsa to store merchandise.

Calculate the duty (under the Duty on Documents and Transfers Act) which the parties to the exchange will pay on the deed. Write brief notes to explain your calculation and to identify legal norms that have been applied.

Fiscal legislation 2  
Question 2 – 40 marks

Anthony Axisa, a Maltese citizen, was born in Malta on 1 February 1976. He lived continuously in Malta till 1 February 1979, when he emigrated to Canada together with his parents. He returned to Malta on 10 March 2006, and he has not been abroad since then.

Barbara Brown is a Canadian citizen. She was born in Toronto, Ontario, Canada in 1981, and she lived there continuously till March 2002. She travelled to Malta on 4 April 2002. She resided continuously in Malta since then.

Anthony Axisa and Barbara Brown decided to get married to each other on 21 November 2006. They plan to continue to reside in Malta.

On 1 June 2009 they entered into a preliminary agreement to purchase jointly (in equal shares) an apartment in a block of flats at Zebbug, Malta. The price of the apartment is €120,000. The deed of purchase will be finalised and published on 1 October 2009. They will establish their matrimonial home and their ordinary residence at that flat. They do not own any other immovable property, whether in Malta or abroad.

Will Anthony Axisa and/or Barbara Brown require an AIP permit to purchase the house at Zebbug, Malta?

Explain by reference to legal criteria arising from the Immovable Property (Acquisition by Non-Residents) Act and any other related legislation. Inter alia you are expected to explain (i) whether Anthony Axisa and (ii) Barbara Brown are "non-resident persons".



UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4020 - Fiscal Legislation Associated with Immovables

Monday 1 February 2010, from 09:15 am to 11:15 am (2 hours)

- 
- This paper is divided into two (2) sections. You are required to answer both questions in each section.
  - You ~~must~~ answer the whole paper in ENGLISH.
  - During the examination, candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.
  - It is recommended that candidates apportion their time according to the marks assigned to each section and, in a general way, not more than 60 minutes on section A, not more than 60 minutes on section B.
- 

ANSWER ALL QUESTIONS IN BOTH SECTIONS

Section A - Inter Vivos Transactions - 50% of total marks

Question 1

Catherine Callus used to reside together with her uncle at Gudja. When her uncle died four months ago she inherited from him a warehouse at Marsa, valued €125,750, and a sum of money. However, she must vacate the house at Gudja, which devolved in favour of Catherine's cousins.

Joseph Borg resides in a house at Mqabba, valued €175,250.

These two persons do not own any other immovable properties.

They agree to exchange the two properties.

Catherine Callus will establish her ordinary residence at the house at Mqabba.

On the date of the deed Joseph Borg will vacate the house at Mqabba, move into rented accommodation, and pay an owelty of €49,500 to Catherine Callus. Henceforth he will carry out his business from the warehouse at Marsa.

Calculate the duty which Catherine Callus and Joseph Borg will pay on the deed of exchange, according to the Duty on Documents and Transfers Act. Your calculation should be accompanied with very brief notes to explain the basis of your calculation. (25 marks)

(Turn Over) ...

Question 2

Maria Brincat and her brother John Brincat, both unmarried, have been living in the same house at Floriana for the past thirty years.

John Brincat already owns one-half (1/2) undivided share of this house. The other half (1/2) half share belongs to three distant cousins.

Maria Brincat has agreed to purchase from her distant cousins their half undivided share of the house, for the price of €87,350 (established on the basis of a value of €174,700 for the full share). She will continue to reside at that house. She does not own any other immovable property.

Calculate the duty which Maria Brincat will pay on the deed of purchase, according to the Duty on Documents and Transfers Act. Your calculation should be accompanied with very brief notes to explain the basis of your calculation. (25 marks)

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### Section B – Causa Mortis Transactions – 50% of total marks

#### Question 3

“Under two separate provisions in the Duty on Documents and Transfers Act the law establishes two distinct scenarios where, following the death of a person, his/her surviving spouse does not pay duty causa mortis immediately after the death, in respect of certain immovable property and/or real rights transmitted by the deceased person in favour of his/her surviving spouse.”

Elaborate on this statement, by identifying only the elements which must be satisfied for each one of these two “exemptions”.

Discuss further whether these “exemptions” are absolute or conditional. (10 marks)

(Turn Over) ...

Question 4

Therese Tonna was the full owner of undivided shares in two immovable properties listed below.

She passed away on 14 December 2009. Her succession was regulated by a will. Therese Tonna was survived by her husband Joseph Tonna (then 62 years old), and her two daughters Anna Tonna (then 35 years old) and Christine Tonna (then 33 years old).

Further details regarding the immovable properties, their values, beneficiaries, etc. follow:

<i>Property</i>	<i>Deceased's share:</i>	<i>Value of the full share</i>	<i>Beneficiaries</i>	<i>Residence on the date of death</i>
House at Mosta	Owner of one-third (1/3) undivided share.	€205,750	<u>Joseph Tonna</u> in usufruct <u>Anna Tonna</u> and <u>Christine Tonna</u> , both in bare ownership, and in equal shares between them.	Ordinary residence of: a. the deceased <u>Therese Tonna</u> ; b. her husband <u>Joseph Tonna</u> ; and c. her daughter <u>Christine Tonna</u>
Flat at Birzebugia	Owner of one-fourth (1/4) undivided share.	€135,750	<u>Anna Tonna</u> and <u>Christine Tonna</u> , in full ownership, and in equal shares between them	Ordinary residence of <u>Anna Tonna</u>

The declaration causa mortis will be finalised and published today 1 February 2010.

Calculate the *duty causa mortis payable by each beneficiary according to the Duty on Documents and Transfers Act*. Your calculations should be accompanied with very brief notes to explain the basis of your calculation. (40 marks)

For ease of reference, it is recalled that the value of the usufruct is determined as a percentage of the value of the full ownership:

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CYL4020 – Fiscal Legislation Associated with Immovables

Friday 3 September 2010, from 09:15 am to 11:15 am (2 hours)

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- This paper is divided into two (2) sections. You are required to answer both questions in each section.
  - During the examination, candidates are not allowed to have any mobile phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.
  - It is recommended that candidates apportion their time according to the marks assigned to each section and, in a general way, not more than 60 minutes on section A, and not more than 60 minutes on section B.
- 

**Section A – Inter Vivos Transactions – 50% of total marks**

Question 1

Anna Abela and her cousin Salvina Sant, both unmarried, will purchase, in equal and undivided shares between them, a house at Zurrieq, for the price of €128,300.

Anna Abela and Salvina Sant do not own any other immovable property.

Anna Abela plans to move immediately into the house at Zurrieq and to reside there indefinitely.

On the other hand Salvina Sant will not reside at the house at Zurrieq, because for the next five years she will continue to live in Rome, Italy.

Both Anna Abela and Salvina Sant are Maltese citizens. They qualify as “residents of Malta” under the Immovable Property (Acquisition by Non-Residents) Act, because in the past both of them resided in Malta for a continuous period of at least five years, in terms of that Act.

Calculate the duty which Anna Abela and Salvina Sant will pay on the deed of purchase, according to the Duty on Documents and Transfers Act. Your calculation should be accompanied with brief notes to explain the basis of your calculation. (26 marks)

*(Turn Over) ...*

Question 2

The Duty on Documents and Transfers Act establishes at least five types of inter vivos transfers of immovable property which are exempt from the duty established under that Act.

List any three of these transfers, indicating the precise circumstances in which the exemption is granted. (12 marks)

Question 3

For the purposes of the reduced rate of duty relating to an inter vivos transfer under the Duty on Documents and Transfers Act, in which circumstances would a "garage" qualify as an extension of the "residence"? (12 marks)

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**Section B – Causa Mortis Transactions – 50% of total marks**

Question 4

Article 34 of the Duty on Documents and Transfers Act states: "The duty due in accordance with article 32 on declarations shall be rebated to such extent and in such circumstances as may be prescribed."

In what circumstances, and by how much, would the duty be rebated? (10 marks)

*(Turn Over) ...*

Question 5

Catherine Callus was the full owner of undivided shares in two immovable properties listed below.

She was not married, and her closest surviving relatives were her brother Joseph Callus and her two nieces Maria Callus and Sandra Callus.

Catherine Callus passed away on 15 May 2010. Her succession was regulated by a will.

On the date of death Joseph Callus was 65 years old, Maria Callus was 38 years old, and Sandra Callus was 35 years old.

Further details regarding the immovable properties, their values, beneficiaries, etc. follow:

<i>Property</i>	<i>Deceased's share:</i>	<i>Value of the full share</i>	<i>Beneficiaries</i>	<i>Residence on the date of death</i>
House at Qormi	One-fifth (1/5) undivided share in full ownership	€195,750	<u>Joseph Callus</u> in usufruct <u>Maria Callus</u> in bare ownership.	Ordinary residence of: a. the deceased <u>Catherine Callus</u> ; b. her brother <u>Joseph Callus</u> ; and c. her niece <u>Maria Callus</u>
Flat at St Paul's Bay	Owner of one-third (1/3) undivided share in full ownership	€145,750	<u>Maria Callus</u> and <u>Sandra Callus</u> , in full ownership, and in equal shares between them	Ordinary residence of her niece <u>Sandra Callus</u>

The declaration *causa mortis* will be finalised and published today 3 September 2011.

Calculate the duty *causa mortis* payable by each beneficiary according to the **Duty on Documents and Transfers Act**. Your calculations should be accompanied with brief notes to explain the basis of your calculation. (40 marks)

For ease of reference, it is recalled that the value of the usufruct is determined as a percentage of the value of the full ownership:

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4020 – Fiscal Legislation Associated with Immovables - I

Monday 31 January 2011, from 11:45 am to 1:45 pm (2 hours)

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- This paper is divided into two (2) sections. You are required to answer both questions in each section.
  - During the examination, candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.
  - It is recommended that candidates apportion their time according to the marks assigned to each section and, in a general way, not more than 60 minutes on Section A, not more than 60 minutes on Section B.
- 

**Section A – Inter Vivos Transactions – 50% of total marks**

Question 1

Anthony Borg and his wife Catherine Borg donate a house to their grand-son Francis Borg.

This is the first time Francis Borg is acquiring immovable property, and it is his intention to proceed to occupy this house as his ordinary residence. Francis Borg does not need to obtain a permit under the Acquisition of Immovable Property (by Non-Residents) Act.

The parties will attribute a valued of €125,850 to this house. They arrived at this value because the grand-parents bought the land (over which the house is built) some 12 months ago for the price of €55,000; and they spent another €70,850 in costs of construction and other permanent improvement at the same site. They have been advised that more or less costs and values have remained unchanged during the past year.

**Calculate the duty payable by Francis Borg under the Duty on Documents and Transfers Act. Your calculation should be accompanied with very brief notes to explain relevant legal considerations and the basis of your calculation. (35 marks)**

*(Turn Over) ...*

### Question 2

Catherine Camilleri is the owner of a house situated at Naxxar, valued €161,250. Philip Abela is the owner of a flat at Birzebbugia valued €123,550. They do not own any other immovable property.

The two agree to exchange their respective properties; Philip Abela will also pay to Catherine Camilleri an owelty of €37,700.

Philip Abela intends to establish his ordinary residence at the house at Naxxar. Catherine Camilleri will utilise the flat at Birzebbugia as a summer residence, since she is now residing at her aunt's house.

Catherine Camilleri and Philip Abela do not need to obtain a permit under the Acquisition of Immovable Property (by Non-Residents) Act.

Calculate the duty (under the Duty on Documents and Transfers Act) payable by Catherine Camilleri and Philip Abela on the deed of exchange scheduled to be published today. Your calculation should be accompanied with very brief notes to explain to explain relevant legal considerations and the basis of your calculation. (15 marks)

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### Section B – Causa Mortis Transactions – 50% of total marks

#### Question 3

“Article 33 (1) It shall be the duty of every person to whom immovable property is transferred *causa mortis*, (hereinafter in this article referred to as "transferee *causa mortis*" ) to make a declaration of such transfer by means of a public deed within such term as may be prescribed.”

Discuss briefly the words which are underlined in the previous paragraph. Further, what are the consequences if the transferee *causa mortis* does not finalise the declaration within the term prescribed by law? (15 marks)

*(Turn Over) ...*



Question 4

Josephine Gatt was the full owner of undivided shares in two immovable properties listed below.

She passed away on 14 December 2010. Her succession was regulated by a will. Josephine Gatt was survived by her husband Gerald Gatt (then 62 years old), and her two daughters Maria Gatt (then 38 years old) and Stephanie Gatt (then 41 years old).

Further details regarding the immovable properties, their values, beneficiaries, etc. follow:

<i>Property</i>	<i>Deceased's share:</i>	<i>Value of the full share</i>	<i>Beneficiaries</i>	<i>Residence on the date of death</i>
House at Fgura	Owner of one-third (1/3) undivided share.	€135,750	<u>Gerald Gatt</u> in usufruct only; and <u>Maria Gatt</u> and <u>Stephanie Gatt</u> , both in bare ownership, and in equal and undivided shares between them.	Ordinary residence of: a. the deceased <u>Josephine Gatt</u> ; b. her husband <u>Gerald Gatt</u> ; and c. her daughter <u>Maria Gatt</u> .
Flat at Birzebbugia	Owner of one-fourth (1/4) undivided share.	€85,750	<u>Gerald Gatt</u> , <u>Maria Gatt</u> and <u>Stephanie Gatt</u> , in full ownership, in equal and undivided shares.	Ordinary residence of <u>Stephanie Gatt</u>

The declaration causa mortis will be finalised and published today.

Calculate the *duty causa mortis payable by each beneficiary* according to the **Duty on Documents and Transfers Act**. Your calculations should be accompanied with very brief notes to explain relevant legal considerations and the basis of your calculation. (35 marks)

For ease of reference, it is recalled that the value of the usufruct is determined as a percentage of the value of the full ownership:

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

## UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4020 – Fiscal Legislation Associated with Immovables - I

Friday 2 September 2011, from 08:00 am to 10:00 am (2 hours)

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- This paper is divided into two (2) sections. You are required to answer both questions in each section.
  - During the examination, candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.
  - It is recommended that candidates apportion their time according to the marks assigned to each section and, in a general way, not more than 60 minutes on Section A, not more than 60 minutes on Section B.
- 

**Section A – Inter Vivos Transactions – 50% of total marks**Question 1

Christopher Calleja and his fiancée Catherine Camilleri purchase a house at Floriana, today 2 September 2011, for the price of €95,500. They purchase it in equal and undivided shares. It is their intention to proceed to occupy this house at their ordinary residence, soon after their wedding (planned to take place on 15 December 2011).

This is the first time Christopher Calleja is acquiring immovable property. On the other hand, Catherine Camilleri had already acquired the apartment at St Paul's Bay, where she resides at present. She does not plan to alienate that apartment.

Christopher Calleja and Catherine Camilleri do not need to obtain a permit under the Acquisition of Immovable Property (by Non-Residents) Act, in order to purchase the house at Floriana.

Calculate the duty payable by Christopher Calleja and Catherine Camilleri under the Duty on Documents and Transfers Act. Your calculation should be accompanied with brief notes to explain relevant legal considerations and the basis of your calculation (35 marks).

Question 2

According to the Duty on Documents and Transfers Act a deed of partition is considered to be a transfer, and duty under this Act is payable on the value of the immovables which are partitioned. The same Act specifically exempts the payment of duty under this Act in respect of certain partitions. Choose any one of these partitions, and indicate the minimum essential elements which must be satisfied according to law so that a partition of immovables under that type of partition would be exempt from duty under this Act (15 marks).

(Turn Over) ...

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**Section B – Causa Mortis Transactions – 50% of total marks**
**Question 3**

(a) In which circumstances is the surviving spouse fully exempt from paying duty causa mortis in respect of real rights over immovables which he/she inherits from the pre-deceased spouse? (b) In which other circumstances would a surviving spouse inherit real rights over an immovable property from the predeceased spouse, yet the surviving spouse would not pay duty causa mortis in respect of those real rights? In both cases identify the essential elements which must be satisfied according to law (15 marks).

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**Question 4**

Joseph Galea was the full owner of undivided shares in two immovable properties listed below. He passed away on 1 June 2011. His succession was regulated by a will. Joseph Galea was survived by his wife Anna Galea (then 67 years old), his son Mario Galea (then 35 years old) and his daughter Stephanie Galea (then 43 years old).

Further details regarding the immovable properties, their values, beneficiaries, etc. follow:

<i>Property</i>	<i>Deceased's share:</i>	<i>Value of the full share</i>	<i>Beneficiaries</i>	<i>Residence on the date of death</i>
House at Birkirkara	Owner of one-fourth (1/4) undivided share	€125,550	<u>Anna Galea</u> in usufruct only; and <u>Mario Galea</u> and <u>Stephanie Galea</u> , both in bare ownership, and in equal and undivided shares between them.	Ordinary residence of: a. The deceased <u>Joseph Galea</u> ; b. His wife <u>Anna Galea</u> ; and c. His son <u>Mario Galea</u> .
Flat at Mellicha	Owner of one-fifth (1/5) undivided share	€92,500	<u>Mario Galea</u> and <u>Stephanie Galea</u> , in full ownership, in equal and undivided shares.	Ordinary residence of his daughter <u>Stephanie Galea</u>

The declaration causa mortis will be finalised and published later today 2 September 2011.

Calculate the duty *causa mortis* payable by each beneficiary according to the Duty on Documents and Transfers Act. Your calculations should be accompanied with brief notes to explain relevant legal considerations and the basis of your calculation. (35 marks)

(Turn Over) ...

For ease of reference, it is recalled that the value of the usufruct is determined as a percentage of the value of the full ownership:

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LLD I (2011/12)**  
**JANUARY 2012 SESSION OF EXAMINATIONS**

**CVL4020 – FISCAL LEGISLATION ASSOCIATED WITH**  
**IMMOVABLES - I**

MONDAY 30<sup>TH</sup> JANUARY 2012

9.15AM – 11.15AM

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This paper is divided into two (2) sections. You are required to answer both questions in each section.

**EACH SECTION MUST BE ANSWERED ON A SEPARATE SCRIPT**

During the examination, candidates are not allowed to have any mobile phones and / or memory resident electronic devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

It is recommended that candidates apportion their time according to the marks assigned to each section and, in a general way, not more than 60 minutes on Section A, and not more than 60 minutes on Section B.

Section A- Inter Vivos transactions – 50% of the total marks

Question 1

Joseph Borg and Josephine Farrugia are engaged and intend to get married and establish their ordinary place of residence in Malta.

They have set their sights on a quaint three bedroomed maisonette in Marsasala which is priced at €112,360. However they are on a tight budget and their decision to buy will depend heavily on all the accessory costs which they will incur over and above the price. For this reason they have approached you, the notary of their choice to ask you to inform them whether they shall have to pay any monies to the Government for this purchase and, if yes, how much.

After you ask them some routine questions it transpires that:

They are both Maltese citizens, have lived in Malta for all their lives, and do not need a permit to buy this property under the Immovable Property (Acquisition by Non-Residents) Act.

Joseph does not own any other immovable property, however Josephine reveals that she bought a small flat some time ago in Wied il-Ghajn which she intends to keep.

**Calculate the duty (under the Duty on Documents and Transfers Act) which will be paid by Joseph Borg and Josephine Farrugia on the deed of purchase of the maisonette. Your calculations should be accompanied with brief notes to explain relevant legal considerations and the basis of your calculation (35 marks).**

### Question 2

Mario Zahra is the owner of a town house situated in Valletta valued at €142,450. Mariella Vella owns a maisonette in Zurrieq valued at €114,233. Each of them does not own any other immovable property.

The two agree to exchange these properties.

Mario intends to establish therein his place of ordinary residence whilst Mariella is currently a full-time translator in Luxemburg and is ordinarily resident there. She intends to rent the house in Valletta to third parties.

Both parties do not need to obtain a permit under the Immovable Property (Acquisition by Non-Residents) Act.

**Calculate the duty (under the Duty on Documents and Transfers Act) which will be payable by Mario and Mariella on the deed of exchange which is being published today. Your calculation should be accompanied with very brief notes to explain relevant legal considerations and the basis of your calculation (15 marks).**

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### Section B – Devolutions Causa Mortis - 50% of total marks

#### Question 3.

(i) In which circumstances is the surviving spouse fully exempt from paying duty causa mortis in respect of real rights over immovables inherited from the pre-deceased spouse?

(ii) There are other circumstances where a surviving spouse who inherits real rights over immovable property from the pre-deceased spouse might not, at first pay duty causa mortis in respect of those real rights. Identify these circumstances.

In both cases (i) and (ii) identify the essential elements which must be satisfied according to law. (15 marks)

Question 4.

Michael Abela was the full owner of undivided shares in the two immovable properties listed below.

He passed away on the 7<sup>th</sup> December 2011 and his succession is regulated by a will. He is survived by his wife Claire (then 62 years old) and his two daughters Blanche and Charmaine.

Further details regarding the property, values, beneficiaries follow:

Property	Deceased's share	Value of the full share	Beneficiaries	Residence on the date of the death
House at Sliema	Owner of one fourth (1/4) undivided share	€203,450	Claire Abela in usufruct; Blanche Abela and Charmaine Abela in bare ownership in equal shares between them	Ordinary residence of: a. The deceased Michael Abela b. his wife Claire
Flat in Zurieq	Owner of one half (1/2) undivided share	€124,150	Blanche Abela and Charmaine Abela in full ownership in equal shares between them	Ordinary residence of Blanche Abela

The declaration causa mortis is being finalized and published today.

Calculate the duty causa mortis payable by each beneficiary according to the Duty on Documents and Transfers Act. Your calculations should be accompanied by very brief explanatory notes. (35 marks)

For ease of reference, the value of the usufruct is determined as a percentage of the value of full ownership:

Age of usufructuary	Percentage of the value of full ownership
Where the usufructuary has not completed 20 years of age:	70 percent
Where the usufructuary has completed	60 percent

20 years of age but not 30 years:	
Where the usufructuary has completed 30 years of age but not 40 years:	50 percent
Where the usufructuary has completed 40 years of age but not 50 years:	40 percent
Where the usufructuary has completed 50 years of age but not 60 years:	30 percent
Where the usufructuary has completed 60 years of age but not 70 years:	20 percent
Where the usufructuary has completed 70 years of age:	10 percent



UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D I 2011/2

SEPTEMBER 2012 SUPPLEMENTARY SESSION

**EXAMINATION: CVL4020 – FISCAL LEGISLATION ASSOCIATED WITH  
IMMOVABLES -1**

**DATE: FRIDAY 7<sup>TH</sup> SEPTEMBER 2012**

**TIME: 9:15AM – 11:15AM**

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This paper is divided into two (2) sections. You are required to answer both questions in each section.

During the examination, candidates are not allowed to have any mobile phones and / or memory resident electronic devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

It is recommended that candidates apportion their time according to the marks assigned to each section and, in a general way, not more than 60 minutes on section A, and not more than 60 minutes on Section B.

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Section A- Inter Vivos transactions – 50% of the total marks

Question 1

Charles Camilleri and Joanne Borg intend to get married and establish their ordinary place of residence in Malta.

After having seen various properties they have found a small house in Birzebbuglia priced at €110,250 which is to their liking. However they are on a tight budget and their decision to buy will depend heavily on all the accessory costs which they will incur over and above the price. For this reason they have approached you, the notary of their choice to ask you to inform them whether they shall have to pay any monies to the Government for this purchase and, if yes, how much.

After you ask them some routine questions it transpires that:

They are both Maltese citizens, have lived in Malta for all their lives, and do not need a permit to buy this property under the Immovable Property (Acquisition by Non-Residents) Act.

Charles already owns a small flat in Sliema which he intends to keep, whilst Joanne a does not own any other immovable property.

**Calculate the duty (under the Duty on Documents and Transfers Act) which will be paid by Charles Camilleri and Joanne Borg on the deed of purchase of the house. Your calculations should be accompanied with brief notes to explain relevant legal considerations and the basis of your calculation (35 marks).**

#### Question 2

Philip Agius is the owner of a terraced house situated in Floriana valued at €156,450. Evelyn Vella owns a maisonette in Pembroke valued at €110,345. Each of them does not own any other immovable property.

The two agree to exchange these properties.

Philip intends to establish therein his place of ordinary residence whilst Evelyn is ordinarily resident in Iceland. She intends to rent the house in Floriana to third parties.

Both parties do not need to obtain a permit under the Immovable Property (Acquisition by Non-Residents) Act.

**Calculate the duty (under the Duty on Documents and Transfers Act) which will be payable by Philip and Evelyn on the deed of exchange which is being published today. Your calculation should be accompanied with very brief notes to explain relevant legal considerations and the basis of your calculation (15 marks).**

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#### Section B – Devolutions Causa Mortis - 50% of total marks

#### Question 3.

##### Case (i)

(i) A husband bequeaths by title of legacy to his wife A, A garage situated in Mellieha in full and absolute ownership; and B. The right of usufruct over a block of apartments throughout the lifetime of the wife.

Over and above the wife exercises her entitlement for the right of habitation in the tenement used as the principal place of residence by the wife at the time of the husband's death which tenement was owned jointly by the husband and wife;

With respect to the above facts are there any circumstances in which the wife is fully exempt from paying duty causa mortis?

Case (ii)

(ii) There are other circumstances where a surviving spouse who inherits real rights over immovable property from the pre-deceased spouse might not, at first pay duty *causa mortis* in respect of those real rights. Identify these circumstances.

In both cases (i) and (ii) identify the essential elements which must be satisfied according to law. (15 marks)

Question 4.

Paul Borg was the full owner of undivided shares in the two immovable properties listed below.

He passed away on the 6<sup>th</sup> June 2012 and his succession is regulated by a will. He is survived by his wife Jean (then 67 years old) and his two daughters Deborah and Annalise.

Further details regarding the property, values, beneficiaries follow:

Property	Deceased's share	Value of the full share	Beneficiaries	Residence on the date of the death
House at Gzira	Owner of one fourth (1/4) undivided share	€201,250	Jean Borg in usufruct; Deborah and Annalise in bare ownership in equal shares between them	Ordinary residence of: a. The deceased Paul Borg b. his wife Claire
Flat in Bugibba	Owner of one half (1/2) undivided share	€114,350	Deborah Borg and Annalise Borg in full ownership in equal shares between them	Ordinary residence of Annalise Borg

The declaration *causa mortis* is being finalized and published today.

Calculate the duty *causa mortis* payable by each beneficiary according to the Duty on Documents and Transfers Act. Your calculations should be accompanied by very brief explanatory notes. (35 marks)

For ease of reference, the value of the usufruct is determined as a percentage of the value of full ownership:

Age of usufructuary	Percentage of the value of full ownership
Where the usufructuary has not completed 20 years of age:	70 percent
Where the usufructuary has completed 20 years of age but not 30 years:	60 percent
Where the usufructuary has completed 30 years of age but not 40 years:	50 percent
Where the usufructuary has completed 40 years of age but not 50 years:	40 percent
Where the usufructuary has completed 50 years of age but not 60 years:	30 percent
Where the usufructuary has completed 60 years of age but not 70 years:	20 percent
Where the usufructuary has completed 70 years of age:	10 percent

UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4020 – Fiscal Legislation Associated with Immovables - I

Thursday 24 January 2013, from 09:15 am to 11:15 am (2 hours)

NOTES – READ CAREFULLY

- This paper is divided into 3 sections. You are required to answer ALL questions in each Section.
- Separate booklets should be submitted for answers to Section A, Section B and Section C, respectively (three booklets in all).
- During the examination, candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices. However, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.
- It is recommended that candidates apportion their time according to the marks assigned to each section.

SECTION A – 25 marks

Charles Camilleri resides together with his parents at Naxxar, in a house belonging to his mother.

Years ago Charles Camilleri purchased from third parties a ground-floor tenement at Floriana, from where he carries out his business activity. On that deed of acquisition he paid duty (under the Duty on Documents and Transfers Act) at the full rate. It should be remarked that to-date Charles Camilleri never acquired any immovable property other than this tenement. Moreover, he has no intention to alienate it in the foreseeable future.

Three years ago John Camilleri, who is the father of Charles, inherited the full share (1/1) of a plot of land situated at Gharghur, then valued €48,750. Subsequently, John Camilleri built a house on this land. Costs of construction and other permanent improvements totalled €98,650.

John Camilleri has now decided to donate the newly-built house at Gharghur (the full share) to his son Charles Camilleri, who will get married in April 2013. Charles Camilleri and his future wife will establish their matrimonial home at this house. The deed of donation will be finalised on 15 March 2013. Charles Camilleri has been advised that he does not need to obtain a permit under the Acquisition of Immovable Property (by Non-Residents) Act.

John Camilleri and Charles Camilleri have consulted the architect responsible for the construction of the house. The architect recommends that the current value of the house can realistically and fairly be based on the value of the land (€48,750), and on the costs of construction (€98,650) – cumulatively €147,400.

Question 1:

Discuss all relevant legal issues for the determination of the duty (under the Duty on Documents and Transfers Act) which is payable on the deed of donation of the house situated at Gharghur. Further, calculate the duty payable by Charles Camilleri under the same law on the deed of donation (25 marks).

Turn Over ...

**SECTION B – 25 marks**

Recently Nicolette Naudi inherited three-fourths ( $\frac{3}{4}$ ) undivided share of a house situated at Zurrieq. The three-quarters share of this house is valued €131,775. This figure is based on a value of €175,700 for the full share ( $\frac{1}{1}$ ) of the property.

Jeanette Jones is the owner of the full share ( $\frac{1}{1}$ ) of bare, shop premises at Naxxar, valued €96,750.

They do not own any other immovable property.

Today (24 January 2013) these two persons will finalise a deed on which they will exchange these two properties. Jeanette Jones will also pay to Nicolette Naudi an oweity of €35,025.

On the same deed Jeanette Jones will purchase the remaining quarter ( $\frac{1}{4}$ ) undivided share of the abovementioned house at Zurrieq from the other co-owner, Anthony Aitard. The agreed price for the quarter share of the house is €43,925.

Jeanette Jones will establish her ordinary residence at the house at Zurrieq. Nicolette Naudi will open a butcher shop at the premises at Naxxar.

Nicolette Naudi and Jeanette Jones have been advised that they do not need to obtain a permit under the Acquisition of Immovable Property (by Non-Residents) Act.

*Question 2:*

Discuss all relevant legal issues for the determination of the duty (under the Duty on Documents and Transfers Act) which is payable on the deed of exchange and purchase. Further, calculate the duty payable on this deed (25 marks).

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Turn Over ...

**SECTION C – 50 marks**

Joseph Borg passed away on 1 November 2012. His succession was regulated by a will. Joseph Borg was survived by his wife Catherine Borg (then 64 years old), his daughter Anna Borg (then 38 years old), and his son Peter Borg (then 36 years old). Details regarding the immovable properties comprised in this succession, their values, beneficiaries, etc. appear in the table below. The declaration causa mortis will be finalised today 24 January 2013.

Property	Deceased's share:	Value of the full share, in full ownership	Beneficiaries	Residence on the date of death
House at Msida	Owner of one-third (1/3) undivided share.	€165,250	Catherine Borg in full ownership	Ordinary residence of: (a) the deceased Joseph Borg; and (b) his wife Catherine Borg.
Flat at Birzebbugia	Owner of four-fifths (4/5) undivided share.	€145,750	Catherine Borg received the deceased's share in usufruct only. His two children Anna Borg and Peter Borg received the bare ownership, equally between them.	Ordinary residence of his daughter Anna Borg. Peter Borg resides elsewhere, at Mellieha.

**Question 3:**

- 3 (a) In the context of this case study, identify the real right or rights which qualify for an exemption from the payment of duty on the deed of declaration causa mortis published today 24 January 2013. Further, elaborate briefly on the essential elements, according to law, which constitute a pre-requisite for such exemption/s in relation to the deed of declaration causa mortis published today. (8 marks)
- (b) Calculate the value/s of the real right/s which qualifies/qualify for an exemption from the payment of duty, as aforesaid. Any value/s under this paragraph should be given in relation to each of the beneficiaries, separately. (4 marks)
- (c) Calculate the duty causa mortis which the beneficiaries might have to pay on the deed of declaration causa mortis published on 24 January 2013. Annotate your calculations briefly, to allow for an understanding of your methodology; however, you are not required to link the calculations with a reference to the legal requirements underlying the basis of your calculations. (18 marks)
- (d) Describe supervening circumstances (by reference to the essential legal requisites) which might give rise to a liability to pay further causa mortis duty by one or more beneficiaries, depending on some future act made by one or more of the beneficiaries. (8 marks)
- (e) Calculate any such further duty causa mortis which one or more of the beneficiaries might have to pay in the future, if that future act/s (described in the preceding paragraph) were to take place. Annotate your calculations briefly, to allow for an understanding of your methodology; however, you are not required to link the calculations with a reference to the legal requirements underlying the basis of your calculations. (12 marks)

Turn Over ...

For ease of reference, it is recalled that the value of the usufruct is determined as a percentage of the value of the full ownership, according to the following schedule:

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed 20 years of age:	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent



UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4020 – Fiscal Legislation Associated with Immovables – I

September 2013 Session

Thursday 12 September 2013, from 09:15 am to 11:15 am (2 hours)

NOTES – READ CAREFULLY

- This paper is divided into 3 sections. You are required to answer ALL three Sections.
- Separate booklets should be submitted for answers to Section A, Section B and Section C, respectively (three booklets in all).
- During the examination, candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices. However, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.
- It is recommended that candidates apportion their time according to the marks assigned to each section.
- STUDENTS MUST CHOOSE TO ANSWER QUESTIONS ACCORDING TO THE TAX REGIME EXISTING BEFORE OR AFTER THE ENACTMENT OF AMENDMENTS INTRODUCED BY ACT III OF 2013. THE DATES (EITHER 15 SEPTEMBER 2012 OR 1 AUGUST 2013) ARE PRECISELY DESIGNED FOR THIS PURPOSE.

SECTION A – 25 marks

Maria Mallia and her brother Mathew Mallia, both unmarried, have been living in the same house at Valletta for the past thirty years.

Mathew Mallia already owns one-half (1/2) undivided share of this house. The other half (1/2) half share belongs to three distant cousins.

Maria Mallia purchased from her distant cousins their half undivided share of the house, for the price of €87,350 (established on the basis of a value of €174,700 for the full share). She continued, and will continue, to reside at that house. She does not own any other immovable property, and she did not need to obtain a permit under the Immovable Property (Acquisition by Non-Residents) Act.

You are requested to double-check the duty paid by Maria Mallia on the deed of purchase.

Choose either Question 1A or Question 1B, and indicate your choice clearly

*Question 1A:* - The deed of purchase was finalised and published on 15 September 2012. Calculate the duty which Maria Mallia paid on that deed of purchase, according to the Duty on Documents and Transfers Act, then in force. Your calculation should be accompanied with very brief notes to explain the basis of your calculation. (25 marks)

OR

*Question 1B:* - The deed of purchase was finalised and published on 1 August 2013. Calculate the duty which Maria Mallia paid on that deed of purchase, according to the Duty on Documents and Transfers Act, then in force. Your calculation should be accompanied with very brief notes to explain the basis of your calculation. (25 marks)

**SECTION B – 25 marks**

Mark Navarro is the owner of a flat at Qrendi valued €190,250. Peter Portelli is the owner of a garage at Marsa valued €125,550. They do not own any other immovable property.

The two agree to exchange their respective properties. Peter Portelli will also pay to Mark Navarro an amount of €64,700. Peter Portelli intends to establish his ordinary residence at the flat in Qrendi. Mark Navarro will utilise the garage at Marsa to store merchandise.

Mark Navarro and Peter Portelli were advised that they did not need to obtain a permit under the Immovable Property (Acquisition by Non-Residents) Act.

Calculate the duty payable by Mark Navarro and Peter Portelli under the Duty on Documents and Transfers Act.

Choose either Question 2A or Question 2B, and indicate your choice clearly

*Question 2A:* - The deed of exchange was finalised and published on 15 September 2012. Discuss all relevant legal issues for the determination of the duty (under the Duty on Documents and Transfers Act) which was payable on that deed of exchange. Further, calculate the duty which was paid on that deed (25 marks).

OR.

*Question 2B:* - The deed of exchange was finalised and published on 1 August 2013. Discuss all relevant legal issues for the determination of the duty (under the Duty on Documents and Transfers Act) which was payable on that deed of exchange. Further, calculate the duty which was paid on that deed (25 marks).

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**SECTION C – 50 marks**

Joseph Zammit died testate. He was survived by his wife Carmen Zammit (then 63 years old), his daughter Anna Zammit (then 34 years old), and his son Pierre Zammit (then 32 years old). Details regarding the immovable properties comprised in this succession, their values, beneficiaries, etc, appear in the table below.

Property	Deceased's share:	Value of the full share, in full ownership	Beneficiaries	Residence on the date of death
House at Msida	Owner of one-third (1/3) undivided share.	€175,250	<u>Carmen Zammit</u> received the deceased's share in usufruct only. His two children <u>Anna Zammit</u> and <u>Pierre Zammit</u> received the bare ownership, equally between them.	Ordinary residence of: (a) the deceased <u>Joseph Zammit</u> , and (b) his wife <u>Carmen Zammit</u> .
Flat at Birzebbugia	Owner of two-fifths (2/5) undivided share.	€135,750	<u>Carmen Zammit</u> received the deceased's share in usufruct only. His two children <u>Anna Zammit</u> and <u>Pierre Zammit</u> received the bare ownership, equally between them.	Ordinary residence of his daughter <u>Anna Zammit</u> . <u>Pierre Zammit</u> resides elsewhere, at Floriana.
Garage at Marsaxlokk	Owner of one-half (1/2) undivided share.	€35,000	<u>Carmen Zammit</u> , <u>Anna Zammit</u> and <u>Pierre Zammit</u> , in equal and undivided shares among them.	

CHOOSE one only of the following two scenarios, indicate your choice at the beginning of your answer, and proceed to answer the question which follows:

SCENARIO 3A – Date of death: 1 June 2012; Date of causa mortis declaration: 15 September 2012

OR

SCENARIO 3B – Date of death: 1 June 2013; Date of causa mortis declaration: 1 August 2013

Question common for either Scenario

**Question 3: Calculate the duty causa mortis which each of the three beneficiaries might have had to pay on the deed of declaration causa mortis. Annotate your calculations briefly, to allow for an understanding of your methodology, including the legal norms that were applied. (50 marks)**

For ease of reference, it is recalled that the value of the usufruct is determined as a percentage of the value of the full ownership, according to the following schedule:

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed 20 years of age.	70 per cent
where the usufructuary has completed 20 years of age but not 30 years:	60 per cent
where the usufructuary has completed 30 years of age but not 40 years:	50 per cent
where the usufructuary has completed 40 years of age but not 50 years:	40 per cent
where the usufructuary has completed 50 years of age but not 60 years:	30 per cent
where the usufructuary has completed 60 years of age but not 70 years:	20 per cent
where the usufructuary has completed 70 years of age:	10 per cent

University of Malta – Faculty of Laws

LLD First Year – Diploma of Notary Public

CVL 4020 – Fiscal Legislation Associated with Immovables – 1

Monday 20<sup>th</sup> January 2014 - 11.45A.M. – 1.45P.M.

This paper is divided into two (2) sections. You are required to answer all questions in each section.

Please answer each section on a different script.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

Section A Inter Vivos transactions 50% of the Total Marks

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Question 1. Joan Busuttil is transferring by title of sale to her daughter Audrey and her husband Peter Camilleri 1/3<sup>rd</sup> of a house which is to be used as spouses' Camilleri ordinary residence valued at €414,959. The land on which the house was built was valued by an architect engaged for the purpose at €290,000 whilst the building cost of the house was €124,959. Joan Busuttil is also transferring the remaining 2/3<sup>rd</sup> of the same property to spouses' Camilleri by title of donation. Calculate the Stamp Duty due on the deed.

35 marks

Question 2.

Calculate the stamp duty due on a deed of transfer of a property, to be used as the purchaser's ordinary residence, by title of temporary emphyteusis for a period of 50 years where the purchaser is paying a consideration of €165,800 and where the initial groundrent of €125 is to be revised upwards every three years by 20% based on the groundrent of the previous year? You should indicate all your mathematical workings. In this regard the following table will be useful.

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

15 marks

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Section B Causa Mortis Transactions 50% of the Total Marks

Question 1. Francis Abela (the decedent) dies on the 10<sup>th</sup> of January 2013 and through his last will he left the usufruct of his estate to his wife Jane who survives him and is aged 75 at the time of the decedent's death, and he nominates his five children as his heirs. The Decedent leaves behind him the following property (A) Three Quarters (3/4) of his residential home in Fgura, the whole of which is valued at €232,937 (half of the property was inherited by him 10 years ago and the other half was bought during his marriage 5 years ago) (B) One half (1/2) of a piece of land in Gozo the whole of which is valued at €20,000. (C) An annual and temporary groundrent of €23.29 for the remaining period of 150 years burdening a block of flats. The decedent leaves the joint and successive usufruct of the land in Gozo to his two sons who are aged 29 and 41 years respectively at the time of the decedent's death. Calculate the stamp duty on the deed of declaration causa mortis of his property which shall be done today. Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table is relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

36 marks

Question 2.

What details should a deed causa mortis necessarily contain?

14 marks

University of Malta Faculty of Laws

LLD First Year – Diploma of Notary Public

CVL 4020 – Fiscal Legislation Associated with Immovables – 1

Saturday 13<sup>th</sup> September 2014

9.15am - 11.15am

This paper is divided into two (2) sections. You are required to answer all questions in each section.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

Section A Inter Vivos transactions 50% of the Total Marks

Question 1. Alfred and Pauline Camilleri are donating to their son Matthew and his wife Josephine a house which is being used as the spouses' ordinary residence. The house was built by spouses Camilleri themselves and has a value of €345,000 whilst the land on which the property was bought has a value of €170,550, and the cost of the construction makes up the difference in value. Calculate the Stamp Duty due on the deed.

35 marks

Question 2.

Calculate the stamp duty due on a deed of transfer of a property, to be used as the purchaser's ordinary residence, by title of temporary emphyteusis for a period of 48 years where the purchaser is paying a consideration of €160,000 and where the initial groundrent of €87 is revisable according to the cost of living index every three years. You should indicate all your mathematical workings. In this regard the following table will be useful.

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

15 marks

**Section B Causa Mortis Transactions 50% of the Total Marks**

Question 1. Josephine Borg hereinafter referred to as "the decuius", died on the 20th January 2013 and through her last will she left to her husband John who was 68 years old at the time of her death (a) the usufruct of the matrimonial home in Marsascala and (b) the usufruct of a garage in St Paul's Bay. She also granted unto her daughter Janice who was 38 years old at the time of her mother's death, the usufruct over another house in Gudja, in which Janice had been living for five years prior to the decuius' death, until such time as the said Janice remains single, and she left as her sole heirs all her 4 children namely the abovementioned Janice, William, Peter and Jane.

The said house in Marsascala has a value of €268,500 and was bought during marriage. The garage in St Paul's Bay, which has a value of €14,500 and the house in Gudja which has a value of €245,000 were both inherited by the decuius from her parents and thus belonged to her alone. The decuius had also inherited from her parents two groundrents over some land namely an annual and temporary groundrent of €11.65 for the remaining period of 75 years over a field and a perpetual groundrent of €30 over another field, which groundrents are also being inherited by the heirs.

Calculate the stamp duty on the deed of declaration causa mortis of her property which shall be done today. Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table is relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

38 marks

Question 2.

On which property and under what conditions would a disabled person not incur tax causa mortis?

12 marks



University of Malta Faculty of Laws  
LLD First Year – Diploma of Notary Public

CVL 4020 – Fiscal Legislation Associated with Immovables – 1

THURSDAY 15<sup>th</sup> JANUARY 2015

10.30AM - 12.30PM

This paper is divided into two (2) sections. You are required to answer all questions in each section.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

Section A Inter Vivos transactions 50% of the Total Marks

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Question 1. Robert Orkwell owned a piece of land worth €535,000 on which he built three apartments and three garages. He is now donating an apartment and a garage to each of his two sons Larry and Andrea, and their respective spouses Nadine and Dorothy. Larry and Nadine are currently living in another house and intend to continue living there whilst Andrea and Dorothy intend to reside in this apartment being donated to them. Robert had spent the sum of €183,482 building this block. What is the Stamp Duty due on the deed?

35 marks

Question 2.

Calculate the stamp duty due on a deed of transfer of a property, to be used as the purchaser's ordinary residence, by title of temporary emphyteusis for a period of 99 years where the purchaser is paying a consideration of €1,400,875 and where the groundrent of €662 is revisable every four years at a rate of 10% each time. You should indicate all your mathematical workings.

The following table is relevant:-

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

15 marks

**Section B Causa Mortis Transactions 50% of the Total Marks**

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Question 1. William Agius, who is a widower, dies on the 10<sup>th</sup> January 2013

He leaves his heirs the following properties:-

1. His residential home, (acquired 10 years ago) valued at €520,000 to his three children Darren, Gordon and Edgar.
2. A summer house in Birzebbugia, valued at €234,000 to his three children Darren, Gordon and Edgar which is being left subject to the joint and successive usufruct of his two sons Darren and Gordon who are 59 and 61 years old at the time of his death
3. A piece of land in Gozo valued at €20,000 but which is also subject to an annual and perpetual groundrent of €742.50, which is left to his three children but which is subject to the usufruct of his other son Edgar who is 57 years old at the time of William's death
4. A temporary groundrent of €158 over another piece of land for the remaining period of 66 years of €158 which is being left to his son Edgar.

The declaration causa mortis of William's estate was done on the 10<sup>th</sup> of January 2015. What is the tax due causa mortis? Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table is relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

38 marks

Question 2.

What legal provisions can the Commissioner of Inland Revenue rely upon to ensure the collection of duty due as arising out of Chapter 364 of the laws of MALTA?

12 marks

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.D. 1 Year

SEPTEMBER 2015 SUPPLEMENTARY EXAMINATIONS

EXAMINATION: CYL4020 – FISCAL LEGISLATION ASSOCIATED WITH IMMOVABLES - 1

DATE: SATURDAY 5<sup>TH</sup> SEPTEMBER 2015

READING TIME: 10.00AM – 10.05AM

DURATION OF EXAM: 10.05AM – 12.05PM

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This paper is divided into two (2) sections. You are required to answer all questions in each section.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

Students are to answer each section on a different script.

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Section A Inter Vivos transactions 50% of the Total Marks

Question 1. Robert O'Connell, and his sons Lawrence and Andrew owned a piece of land between them which they had bought for €750,300 when Robert was already a widower. They have now built this property into two apartments and a penthouse at a construction cost of €222,000. In the first part of the relative public deed Robert is donating his share in one of the apartments to his son Larry who intends to use this property as his own ordinary residence, and in the second part of the same deed he is also donating his share in the other apartment to his other son Andrew who lives elsewhere and will not be using this property as his own residence. In a third part of the same public deed Robert, Lawrence and Andrew are also selling the penthouse to their uncle Dino and his wife Wilma at a price of €465,700 who shall be using this property as his own ordinary residence. What is the total Stamp Duty due on the deed on all three transactions?

35 marks

Question 2.

Calculate the stamp duty due on a deed of transfer of a property, to be used as the purchaser's ordinary residence, by title of temporary emphyteusis for a period of 50 years where the purchaser is paying a consideration of €765450 and where the groundrent of €1500 is revisable every five years at a rate of 8% each time. You should indicate all your mathematical workings.

The following table is relevant:-

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

15 marks

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.D. I YEAR**  
**JANUARY 2016 EXAMINATIONS**

**EXAMINATION: CVL4020 – FISCAL LEGISLATION ASSOCIATED WITH IMMOVABLES - I**

**DATE: FRIDAY 29<sup>TH</sup> JANUARY 2016**

**READING TIME: 8.30AM to 8.35AM**

**DURATION OF EXAMINATION: 8.35AM to 10.35AM**

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**INSTRUCTIONS TO STUDENTS:**

This paper is divided into two (2) sections. You are required to answer all questions in each section.

Each section has to be answered on a separate script.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

---

**SECTION A – INTER VIVOS TRANSACTIONS – 50% OF THE TOTAL MARKS**

You should indicate all your mathematical workings/calculations with brief notes to explain relevant legal considerations and the basis of your workings/calculations.

**QUESTION 1 (33 marks)**

Zaren Xerri and his wife Yvonne have decided to sell some of their immovable properties, namely:-

1. a flat in Kirkop worth €160,000;
2. a house together with a garage in Safi, worth €70,000 and €14,000 respectively. Although the garage was rather big - measuring 95 square metres - it was quite a distance – 800 metres - away from the same house;
3. a warehouse in Qrendi worth €200,000;
4. a building plot in Mqabba worth €180,000.

Said spouses Xerri, while speaking to their neighbour Anton Borg, informed him of their decision to sell the said immovables. Anton Borg consulted his 3 brothers Brian and Charlie and Donald, and subsequently informed said spouses Xerri who accepted that he and his said brothers individually intend purchasing the said immovables separately for the said prices, in that:-

1. Anton and his wife Angela intend purchasing, jointly and in equal undivided shares of  $\frac{1}{2}$  each, the said flat for the purpose of eventually establishing therein their sole and ordinary residence; however whereas the flat needed certain refurbishing works to be carried out therein, Anton and Angela are calculating that, within six (6) months from acquiring the flat, Angela would have sold the house owned solely by Angela and which she had acquired before her marriage to Anton and which is currently utilized as the house of residence of both Anton and Angela, and, immediately after the sale by Angela of her house, move into the flat they acquired from the Xerri;
2. Brian – who is not the owner of his present residence whereas he resides in a rented property – intends purchasing the said house and garage to immediately establish his sole and ordinary residence therein;
3. Charlie intends purchasing the said warehouse;
4. Donald – who is not the owner of his present residence whereas he resides in a rented property - intends purchasing the said plot of land for the purpose of eventually constructing thereon a villa as his sole and ordinary residence; Donald is calculating that the villa would be finished and be ready for him to move in within approximately two (2) years from the purchase of the said plot.

The 4 separate deeds of acquisition are to be signed tomorrow.

Calculate the duty due on each of the said 4 acquisitions. Furthermore, indicate in brief the circumstances in which the said Angela may be entitled to an eventual refund of the duty paid by her and the amount of the said refund.

#### QUESTION 2 (17 Marks)

Edgar and his partner Fiona acquired a house in Sliema earlier this year by title of perpetual emphyteusis in the share of  $\frac{2}{3}$  and  $\frac{1}{3}$  respectively. On the deed of acquisition, both Edgar and Fiona declared that they were acquiring the property for the purpose of establishing therein their sole and ordinary residence. Their deed of acquisition included the payment of €1,950 annual and perpetual groundrent, revisable once only after three years from the said deed by an increase of 50% to €2,925, and also the one time payment of a consideration/price of €120,000.

Edgar and Fiona subsequently ended their relationship and they agreed that Fiona sells her  $\frac{1}{3}$  undivided share of the house to Edgar (who is purchasing the said share with the intention of owning his ordinary residence in its entirety).

Calculate the duty payable on the deed of perpetual emphyteusis. Furthermore, also indicate the reasons why Edgar is exempt from payment of duty on the deed of sale.

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#### SECTION B – TRANSFER CAUSA MORTIS DECLARATIONS – 50% OF THE TOTAL MARKS

You should indicate all your mathematical workings/calculations with brief notes to explain relevant legal considerations and the basis of your workings/calculations.

#### QUESTION 3 (38 Marks)

George died on the 25th. October 2014. He was survived solely by his wife Henriette and also by his 2 sons John (who resided in Marsaxlokk) and Ivor (who resided in Zabbar). The said Ivor was 36 years old at the time of his father's death.

At the time of his death, George owned the following immovable properties:-

- a. one half undivided share ( $\frac{1}{2}$ ) of a house in Attard (said  $\frac{1}{2}$  share valued at €150,000). George had owned the same  $\frac{1}{2}$  share of the said house since the 29th. June 2013 and he resided in the said house as his ordinary residence since that very same day of the 29th. June 2013 till the day he died. At the time of George's death, George and his wife Henriette both resided in the same house as their ordinary residence;
- b. the entirety (whole/all) of a flat in Balzan, valued at €70,000;
- c. three fourths ( $\frac{3}{4}$ ) undivided share of an agricultural field in Lija, said  $\frac{3}{4}$  share valued at €30,000;
- d. the entirety (whole/all) of a basement store in Naxxar, valued at €3,000.

In his will George bequeathed to:-

A. his said wife Henriette, his said  $\frac{1}{2}$  share of the said house in Attard in full ownership;

B. his said son Ivor, the right of usufruct over the said flat in Balzan throughout his life time;

C. his said son John, the said  $\frac{3}{4}$  share of the field in Lija in full ownership;

and, subject to all the above, he nominated his said 2 sons Ivor and John as his universal heirs in equal shares between them.

The relative Transfer Causa Mortis Declaration deed was signed on the 4th. January 2016.

Calculate the duty (including interest) payable by Ivor and John on the said Transfer Causa Mortis deed. Also indicate in brief the reason why Henriette is exempt from payment of duty.

NB - The following table is relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

QUESTION 4 (12 Marks)

Outline the legal provisions relating to the reduction (in the lecture slides also indicated as rebate) in tax granted to an heir - who is not a spouse/descendant of the decedent and is not disabled - when the said heir inherits an undivided share of a dwelling house occupied by the said heir as his ordinary residence, in both instances (1) when the said residence is also together with the decedent (as the ordinary residence of both decedent and said heir) and (2) also when the said residence is by the said heir only/by himself (ie the decedent does not reside together with the said heir).

**Section B Causa Mortis Transactions 50% of the Total Marks.**

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**Question 1.** Winston Aquilina died on the 1<sup>st</sup> of June 2012

Through his last will he leaves his half share of the matrimonial home (since this was acquired during his marriage in 2004) as follows to be split as to one half to his wife and the other half of his share between his four children, subject to the usufruct of his wife. The value of the whole of the matrimonial home is €325,000.

The testator also leaves the rest of his property as follows:-

1. He leaves a piece of land worth €2,450,000 to his three sons Damian, Graham and Edward subject to the usufruct of his son Damian who is 60 years old at the time of his death
2. He leaves a farmhouse in Mgarr valued at €612,500 subject to an annual perpetual groundrent of €120 to his daughter Wanda
3. He leaves two annual and perpetual groundrents of €378 and €45 over two properties in Sliema to all his four (4) children.
4. A temporary groundrent of €253 over a house in Sliema for the remaining period of 45 years which is being left to his son Edward.

The declaration causa mortis of William's estate was done on the 1<sup>st</sup> of September, 2015. What is the tax due causa mortis? Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table and the table in Section A of this exam paper may be relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

35 marks

**Question 2.**

Who may be responsible to make declarations causa mortis with regards to a particular inheritance and discuss briefly whether a deed causa mortis may be done by any person who has no interest in the deceased's estate?

15 marks

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.D. I YEAR**  
**SEPTEMBER 2016 EXAMINATIONS**

**CVL4020 – FISCAL LEGISLATION ASSOCIATED WITH IMMOVABLES – 1**

**DATE: FRIDAY 2<sup>ND</sup> SEPTEMBER 2016**

**READING TIME: 10:00AM – 10:05AM**

**DURATION OF EXAMINATION: 10:05AM – 12:05PM**

**INSTRUCTIONS TO STUDENTS:**

This paper is divided into two (2) sections. You are required to answer all questions in each section. Each section has to be answered on a separate script.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

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**SECTION A – INTER VIVOS TRANSACTIONS – 50% OF THE TOTAL MARKS**

You should indicate all your mathematical workings/calculations with brief notes to explain relevant legal considerations and the basis of your workings/calculations.

**QUESTION 1 (33 marks)**

Albert and Adrisana spouses Bezzina have 2 daughters Cettina and Davina and also a son Edwin.

Said spouses Bezzina have decided to donate certain properties throughout their lifetime to their said 2 daughters and son and have also reached an agreement with their said son to sell another property to him.

The donations to the said 3 children are as follows:-

1. to Cettina, a house valued at €350,000 and a garage measuring 23 square metres and 200 metres distant from the said house and having a separate value of €50,000 (the total value of house and garage = €400,000). On the deed Cettina is to declare that she is acquiring said property (house and garage together) for the purpose of establishing therein her sole ordinary residence, this donation being the first ever made for this purpose by the said spouses Bezzina to Cettina (who does not own any immovable property at all);
2. to Davina, a house valued at €300,150. On the deed Davina (whereas she already owns her own house of residence wherein she intends to continue residing and she has no intention of residing in the house donated to her) is not declaring that she is acquiring the said house for the purpose of establishing therein her sole ordinary residence;
3. to Edwin:-
  - a. cash/money, valued at €60,000;
  - and also
  - b. a perpetual directum dominium and relative annual and perpetual groundrent of €96 relating to an immovable property which is not the sole ordinary residence of Edwin.

The said spouses Bezzina are also selling a building plot of land to their said son Edwin for the price of €200,000. Edwin already owns his own ordinary residence, however on the deed Edwin is also to declare that he is acquiring said plot for the purpose of constructing thereon his sole ordinary residence. Edwin estimates that the house to be built by him on the said plot



would be finished and be ready for him to move in as his ordinary residence within approximately six (6) months from the purchase of the said plot.

All the 3 separate deeds of donation and the deed of sale are being signed tomorrow.

Calculate the duty due on each of the said acquisitions.

Please note that:-

1. in the case of the said perpetual directum dominium and relative annual and perpetual groundrent of €96 (3b above) you are also to calculate beforehand the value of same; and
2. one of the transfers to Edwin is completely exempt from payment of duty. You are to indicate the reason why.

Furthermore, indicate in brief the circumstances in which the said Edwin may be entitled to an eventual refund of the duty paid by him in respect of the said sale/plot and the amount of the said refund.

#### QUESTION 2 (17 Marks)

Frank is the owner of a field valued at €50,000, and he has agreed to exchange said field with a stable owned by George valued at €40,000. The deed of exchange was signed yesterday.

Upon acquiring the said stable, Frank intends granting the same stable eventually to a third party by title of temporary emphyteusis for a period of twelve (12) years, and no premium/consideration/price is to be paid, and also the original/initial temporary annual groundrent of €3,000 is to be increased by ten per cent (10%) on the groundrent due immediately before each revision every three (3) years which are to be calculated from the day of the commencement of the emphyteusis.

Calculate the duty paid on the said deed of exchange. Furthermore, also calculate the payment of the duty payable in relation to the deed of temporary emphyteusis under the terms/conditions above indicated envisaged/proposed by Frank.

**SECTION B – TRANSFER CAUSA MORTIS DECLARATIONS – 50% OF THE TOTAL MARKS**

You should indicate all your mathematical workings/calculations with brief notes to explain relevant legal considerations and the basis of your workings/calculations.

**QUESTION 3 (38 Marks)**

Ivan died on the 25th. March 2016. He was survived by his wife Jessie (who was 67 years old when her said husband died) and also by his 2 daughters Kitty and Lora.

At the time of Ivan's death:-

1. Jessie ordinarily resided with her said husband in the dwelling house as all hereunder mentioned/indicated;
2. Kitty had her own separate (not connected with/related to any of the immovable properties hereunder mentioned/indicated) house of ordinary residence;
3. Lora had for the last 6 years immediately prior to/preceding Ivan's death used/occupied the Gozo property hereunder mentioned/indicated as her ordinary residence.

N.B. - All the immovable properties hereunder mentioned/indicated were solely and exclusively owned in full ownership in their entirety (whole/all) by Ivan (and did not form part of the community of acquests existing between him and his said wife Jessie).

In his will Ivan bequeathed to:-

A. his said wife Jessie:-

- i. the dwelling house in which Ivan and Jessie had resided as their ordinary residence for the last 20 years immediately prior to/preceding his death, valued at €200,000; and
- ii. a garage measuring 45 square metres and 800 metres distant from the said house, valued at €40,000; and
- iii. the usufruct over the remainder of his estate, except for the Gozo farmhouse hereunder mentioned which is not subject to the said usufruct;

B. his said daughter Kitty, a flat valued at €80,000;

C. his said daughter Lora, a Gozo farmhouse valued at €160,000 (not subject to Jessie's usufruct);

D. and, subject to all the above, he nominated his said 2 daughters Kitty and Lora as his universal heirs in equal shares between them of the rest of the estate which consisted solely and exclusively of cash/money and Bank monetary deposits not subject to duty.

The relative Transfer Causa Mortis Declaration deed was signed on the 11th. August 2016, well within the 6 month period stipulated by law.

Calculate the duty paid by Jessie and Kitty and Lora on the said Transfer Causa Mortis Declaration deed. Also indicate in brief the reason/s why Jessie is exempt from payment of duty in respect of 2 out of the 3 items bequeathed to her.

NB - The following table is relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

#### QUESTION 4 (12 Marks)

Outline the legal provisions relating to:-

1. the payment (if and/or when/where applicable) of interest to be paid on the relative duty due/payable on a relative Transfer Causa Mortis Declaration deed by the relative declarants in the event of:-

(a) a Declaration/deed made after/not within 6 months but within/not later than 1 year from the death of a deceased person;

and

(b) a Declaration/deed made after/not within 1 year from the death of a deceased person and also in this latter/last/(b) event the maximum amount payable of said interest;

and

2. the exemption/relief from the payment of duty on a Transfer Causa Mortis Declaration deed relating to the dwelling house of ordinary residence of a deceased person and which same house is inherited by descendants in the direct line of the said deceased person (excluding any reference to a transferee causa mortis who is on the Register of Persons with Disability kept by the National Commission Persons with Disability set up in terms of the Equal Opportunities (Persons with Disability) Act).

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**M.A. IN ADVOCACY & NOTARIAL STUDIES**  
**JANUARY 2017 EXAMINATIONS**

**EXAMINATION: CVL5037 Fiscal Legislation Associated with Immovables 1**

**DATE: MONDAY 30<sup>TH</sup> JANUARY 2017**

**READING AND NOTING TIME: 08.30AM TO 08.35AM**

**DURATION OF EXAM: 08.35AM TO 10.35AM**

**WRITING IS PERMITTED DURING THE READING AND NOTING TIME**

This paper is divided into three (3) sections. You are required to answer all questions in each section. Please answer section A on one script and sections B and C on another script.

During the examination, candidates are not allowed to have mobile phone or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

**Section A Inter Vivos transactions 50% of the Total Marks**

Question 1.

Matthea Caruana wants to transfer two adjacent pieces of land (indicated on plans as Land A and Land B) to her two daughters Josephine (married to Malcolm) and Charlene (who is unmarried). Each piece of land is worth €660,000.

Matthea is transferring one undivided half of Land A by title of donation, for the first time ever, to her daughter Josephine, whilst the other undivided half of Land A is being transferred by title of sale to both Malcolm and Josephine, in equal shares between them. Malcolm and Josephine are acquiring all of Land A for the purpose of building their own ordinary residence and they do not own any other immovable property.

Charlene is acquiring all of Land B by title of donation from her mother, but intends to build a house for herself as her own ordinary residence on a divided half of the said land and is building another separate house on the other divided half of the said land and intends to sell it in the future. This is the second donation being made by Matthea Caruana to her daughter Charlene for purposes of ordinary residence, but the first property so donated has already been sold, and Charlene does not own any other immovable property.

What is the total Stamp Duty due on the deed?

35 marks

Question 2.

Calculate the stamp duty due on a deed of transfer of a property, to be used for commercial purposes, by title of temporary emphyteusis for a period of 99 years where the purchaser is paying a consideration of €549,500 and where the annual groundrent of €985 is to be doubled after 8 years and then thereafter shall be increased by the cost of living index. You should indicate all your mathematical workings.

The following table may be relevant:-

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

15 marks

**Section B Causa Mortis Transactions :- 35% of the Total Marks**

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Francesca Bowman died on the 1<sup>st</sup> of November 2015

She leaves the following property to the following persons through her last will

1. The usufruct of her  $\frac{1}{2}$  share of the residential home which she had acquired by title of sale during her marriage, on the 15<sup>th</sup> January 2014, to her husband Zac who was 52 years old at the time of her death. The value of the said residential home in its entirety is €220,000
2. She leaves the ownership of her said  $\frac{1}{2}$  share of the abovementioned residential home to her two children Diana and Charles (who both reside elsewhere), equally between them, as subject to the abovementioned usufruct of her husband Zac.
3. An annual and perpetual directum dominium and groundrent of €400 to her son Charles.
4. The ownership of a piece of land worth €135,000 to her son Charles and husband Zac, equally between them, as subject to the joint and successive usufruct of her grand children Janna and Laura, who were aged 18 and 21 at the time of Francesca's death.

The declaration causa mortis of Francesca Bowman's estate is being done on the 30<sup>th</sup> January, 2017. What is the tax due causa mortis by Zac, Diana, Charles, Janna and Laura? Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table may be relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

35 marks

**Section C Other Provisions:- 15% of the Total Marks**

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The Duty on Documents and Transfers Act provides for several exemptions of tax due to the see-through provisions of the law where a trust has been established. Outline these provisions of law.

15 marks

University of Malta

Faculty of Laws

CVL5037 – Fiscal Legislation Associated with Immovables 1

Date: Tuesday, 5<sup>th</sup> September, 2017

Duration of Exam: 10.00am-12.05pm

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This paper is divided into three (3) sections. You are required to answer all questions in each section.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

**Section A** Inter Vivos transactions 50% of the Total Marks

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Question 1.

Clinton and Christine Camilleri want to donate an apartment to their daughter Graziella and her husband Johann and another apartment to their daughter Elisa. Each apartment is worth €265,000. Johann already owns another apartment which he had acquired as his own ordinary residence prior to his marriage, but nevertheless the property being acquired by Graziella and Johann shall now be used as their own ordinary residence. On the same deed Graziella and Johann are also buying from Clinton and Christine a garage worth €28,450 in equal shares between them. Graziella does not own any other immovable property.

Elisa is acquiring the said flat which is to be used as her own ordinary residence, but she also owns another apartment which she had acquired through her own funds a couple of years previously but which was not acquired as her own ordinary residence. This is the first time that Clinton is actually donating property to his daughters

What is the total Stamp Duty due on the deed?

35 marks

Question 2.

Calculate the stamp duty due on a deed of transfer of a property, to be used for commercial purposes, by title of temporary emphyteusis for a period of 64 years where the purchaser is paying a consideration of €100,000 and where the annual groundrent of €172 is to double every 5 years. You should indicate all your mathematical workings.

The following table may be relevant:-

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

15 marks

**Section B Causa Mortis Transactions :- 35% of the Total Marks**

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Question 3. Alison Buttigieg, unmarried, died on the 10<sup>th</sup> of August 2016

She leaves the following property to the following persons/entity through her last will

1. A Garage to her brother Brian which however is subject to the usufruct of her mother Mary who was 64 years old at the time of her death. The value of the said garage is €55,000
2. She leaves her residential home to her mother Mary, which residence is worth €290,000.
3. An annual and perpetual directum dominium and groundrent of €400 to the institution named Dar it Tama.
4. The ownership of a piece of land worth €225,000 to her brother Brian, as subject to the joint and successive usufruct of her mother Mary and a friend named Mark, who were aged 64 and 45 respectively at the time of Alison's death.

The declaration causa mortis of Alison Buttigieg's estate is being done today. What is the tax due causa mortis by Brian, Mary, Mark and Dar it-Tama? Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table may be relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

35 marks

**Section C Other Provisions:- 15% of the Total Marks**

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Question 4

Outline the legal requirements with regards to the Duty on Documents Act to retain validity of promise of sale agreements after these have been signed, and in particular identify who is responsible to observe same

15 marks

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

**CVL 5037 Fiscal Legislation Associated with Immovables — 1**

**Tuesday 30<sup>th</sup> January 2018**

**Duration of Examination: 8:30am to 10:35am**

This paper is divided into three (3) sections. You are required to answer all questions in each section.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

**Section A** Inter Vivos transactions 50% of the Total Marks

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Question 1

Josephine Bugelli and her brother James own in equal shares between them a piece of land worth €1,870,000 which they want to divide between themselves on a deed of partition so however that the value of the land which was assigned to Josephine is €990,000 and the value of the land assigned by James is €880,000.

By a separate deed of donation, Josephine Bugelli then wants to donate one divided half of the land so assigned to her on the said deed of partition, to her daughter Imelda Bugelli who is unmarried at the time of the said donation, on which property Imelda wants to build a block of flats. Josephine wants to also donate the other divided half of her land, to her daughter Catherine Asciak and her husband Wilfred, who want to build a shop at ground-floor level and a duplex maisonette on top of the said shop, in which maisonette they shall establish their sole ordinary residence. The value of that part of the land destined as a shop and that destined as a duplex maisonette are of equal value. None of the acquirers own any immovable property and this is the first donation being made to all the acquirers on the said deed of donation. What is the Duty due on both the deed of partition and the deed through which both donations are being done?

(35 marks)

Question 2

Calculate the Duty due on a deed of transfer of a property, to be used for residential purposes by the acquirer, by title of temporary emphyteusis for a period of 60 years where the acquirer is paying a consideration of €235,750 and also where the annual groundrent of €655 is revisable every three years by 5% upon each revision. You should indicate all your mathematical workings.



The following table may be relevant: -

The Capitalised Groundrent is to be reduced to: -

- (a) 12% where the term is less than twenty-five (25) years;
- (b) 33% where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) 65% where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) 80% where the term is seventy-five (75) years or more but is less than one hundred (100) years.

(15 marks)

**Section B Causa Mortis Transactions: - 35% of the Total Marks**

---

Question 3

Matthea Camilleri died on the 10th of August 2016 and is survived by her 3 children, Carla, Emma and Valentina

She bequeathes the following property, owned entirely by her, to the following persons through her last will

- a. The ownership of a house, used as her own ordinary residence, and a 15sq.m. garage in which she regularly parks her car, which are 560 metres apart. Both properties were acquired by her in 2014. These properties were bequeathed to her three children Carla, Emma and Valentina in equal shares between them. The value of the house is €235,000 and the garage is valued separately at €35,000
- b. The joint and successive usufruct to her children Carla and Emma (who were respectively aged 28 and 31 at the time of her death) of a piece of agricultural land worth €120,500. The ownership of the said land was left to the said Carla and Emma and her other daughter Valentina. Emma is regrettably disabled, and is registered on the Register of Persons with Disability kept by the National Commission Persons with Disability.
- c. A temporary groundrent of €26, being received for the remaining period of 75 years from the original emphyteutical concession, to her daughter Valentina.
- d. A house worth 250,000 to her daughter Valentina, provided that Valentina does not fail University fiscal law exams which are to be taken on the 30th of January, 2018.

The declaration causa mortis of Matthea Camilleri's estate is being done on the 5th January, 2018. What is the tax due causa mortis by all her children? Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table may be relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

(35 marks)

**Section C Other Provisions: - 15% of the Total Marks**

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Question 4

The Duty on Documents and Transfers Act creates rules with regards to the registration of promises of sale agreements but also provides for certain exceptions to be made in certain circumstances. Outline these rules and exceptions.

(15 marks)

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

**CVL5037 - Fiscal Legislation Associated with Immovables — 1**

**Date:** Thursday 13<sup>th</sup> September 2018      **Duration of Examination:** 8:30am to 10:35am

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**INSTRUCTIONS TO STUDENTS:**

This paper is divided into three (3) sections. You are required to answer all questions in each section.

During the examination, candidates are not allowed to have mobile phones or memory resident devices; however candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

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**Section A: Inter Vivos transactions (50% of total marks)**

Question 1

Josephine Attard wants to transfer by title of donation, for the first time ever, a flat and a garage to her daughter Maxine and her husband Max. The said garage is to be found in an adjacent block and measures 50 sq.m. the said flat is valued at €500,000 and the said garage is valued at €55,500. Malcolm and Josephine Maxine and Max are acquiring the said flat for the purpose of their own ordinary residence and they do not own any other immovable property.

Josephine Attard is also donating to her other daughter Charlene a piece of Land worth €422,000 over which Charlene intends building a maisonette at groundfloor level to be used as her own ordinary residence and three other flats on top of same and intends to sell them in the future. This is also second donation being made by Josephine Attard to her daughter Charlene for purposes of ordinary residence, but the first property so donated has already been sold, and Charlene does not own any other immovable property.

What is the total Stamp Duty due on the deed?

(35 Marks)

## Question 2

Calculate the stamp duty due on a deed of transfer of a property, to be used as an ordinary residence by title of perpetual emphyteusis where the purchaser is paying a consideration of €754,000 and where the annual groundrent of €380 is to double every four years. You should indicate all your mathematical workings.

The following table may be relevant:-

The Capitalised Groundrent is to be reduced to:-

- (a) twelve per centum (12%) where the term is less than twenty-five (25) years;
- (b) thirty-three per centum (33%) where the term is twenty-five (25) years or more but is less than fifty (50) years;
- (c) sixty-five per centum (65%) where the term is fifty (50) years or more but is less than seventy-five (75) years;
- (d) eighty per centum (80%) where the term is seventy-five (75) years or more but is less than one hundred (100) years.

(15 marks)

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## **Section B: Causa Mortis Transactions (35% of total marks)**

### Question 3

Ashanat Onanbon dies on the 1<sup>st</sup> of June 2016

She leaves the following property to the following persons through her last will

- a. The usufruct of her residential home which she had acquired by title of sale during her marriage, on the 15<sup>th</sup> January 2013, to her husband Karm who was 40 years old at the time of her death. The value of the said residential home is €159,000
- b. She leaves the ownership of the abovementioned residential home to two of her children Karl and Emmanuel, equally between them, as subject to the abovementioned usufruct of her husband Karm.
- c. She leaves two annual and perpetual groundrents worth €28.50 and €65 to her other son Ronald.
- d. The ownership of a one third share of another house worth €1,050,000 to all her children and her husband as to one quarter share each, equally between them, as subject to the joint and successive usufruct of her sons Ronald and Emanuel, who were aged 15 and 21 at the time of her death.

The declaration causa mortis of Francesca Bowman's estate is being done on the 30<sup>th</sup> September, 2018. What is the tax due causa mortis by all the beneficiaries of her estate? Outline your calculations with brief notes to explain relevant legal considerations and the basis of your calculations.

The following table may be relevant:-

- where the usufructuary has not completed twenty years of age: seventy per cent
- where the usufructuary has completed twenty years of age but not thirty years: sixty per cent
- where the usufructuary has completed thirty years of age but not forty years: fifty per cent
- where the usufructuary has completed forty years of age but not fifty years: forty per cent
- where the usufructuary has completed fifty years of age but not sixty years: thirty per cent
- where the usufructuary has completed sixty years of age but not seventy years: twenty per cent
- where the usufructuary has completed seventy years of age: ten per cent

(35 marks)

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### **Section C: Other Provisions (15% of total marks)**

#### Question 4

The Duty on Documents and Transfers Act provides for an exemption on duty when a Business is shutting down. What are the conditions necessary for the said exemption to be availed of?

(15 marks)



## 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.

7<sup>th</sup> September 2004

**Section C - Fiscal Legislation: (60 marks)** - Today two properties will be exchanged by their respective owners. An onwalty of Lm4,000 will be paid.

**Marsascala flat**

- Valued Lm53,550.
- Present owner – Jane Gatt, a Maltese citizen. She is not married. She was born in Malta in 1950. She resided in Malta uninterruptedly since then except for a three year long absence between 1976 and 1979.
- Jane Gatt made use of the Marsascala flat as a summer apartment. Throughout the year she resided at another house at Zabbar. She sold the Zabbar house in May 2004. She intends to establish her sole, ordinary residence at the house at Safi which she acquires by title of exchange. Jane Gatt owns no other immovable property.

**Safi house and adjoining garage**

- Valued Lm57,550.
- Present owners – Maurice and Mary Green.
- Maurice Green is a citizen of Ireland. He was born in Ireland in 1960. He resided there till 1989. In 1990 he married Mary in Malta. He resided in Malta uninterrupted since 1992, except for very brief holidays abroad which never exceeded 3 weeks in any given year.
- Mary Green is a citizen of Malta. She was born at Valletta in 1958. She resided in Malta since then, except for an absence of two years between 1990 and 1992, soon after she married Maurice Green.
- Maurice and Mary Green own no other immovable property.

**Question C1:** In relation to the deed of Exchange only, comment on the applicability of the provisions of the Acquisition of Immovable Property (by Non-Residents) Act, Chapter 246, vis-à-vis (a) Jane Gatt who acquires the property at Safi, and (b) Maurice and Mary Green who acquire the property at Marsascala.

**Question C2:** Calculate the duty payable on the deed of exchange, under the Duties on Documents and Transfers Act, Chapter 364. Give brief explanations.

**Root of title (continued):**

**Marsascala:** Jane Gatt inherited 1/3 of the flat from her mother who died in 1990. She acquired another 1/3 by title of donation from her sister in 1995. She purchased the remaining 1/3 from her other brother in 2003.

**Safi:** This property has been the ordinary residence of Maurice and Mary Green since 1995. Mary Green inherited 1/4 of the property in 1993. Mary and Maurice Green purchased another 1/2 of the property in 1995. Mary Green inherited the remaining 1/4 of the property in 2003.

**Question C3:** Calculate the provisional capital gains tax payable on the deed of exchange. Give brief explanations.

**Section D - Drafting: (20 marks)** - Draft only the following provisions which will appear in a will *unica charta*:

- (i) A paragraph to cancel all prior wills
- (ii) A bequest by the predeceased spouse to the surviving spouse, of 1/2 ownership and 1/2 in usufruct
- (iii) Exemption from the duty of collation



June 2006

**Section C Part 2 - Property Transfer Tax and Capital Gains Tax**

20 May 1975 John Borg was born in 1975 at 2, Triq il-Kbira, Naxxar. He resides in this house uninterruptedly till this day.

15 October 2002 John Borg inherited one-half (½) undivided share of this house from his mother. In the declaration *causa mortis* this one-half share was valued Lm22,000.

1 February 2004 John Borg purchased the other one-half (½) undivided share of this house from his father, for the price of Lm24,000.

5 June 2006 John Borg sells the house today for the price of Lm58,500.

**Question C6** Calculate the Property Transfer Tax payable by John Borg on the deed of sale published today, in terms of article 5A of the Income Tax Act. Write brief notes to explain your calculation.

John Borg has been informed that his overall tax liability could be much lower than the default Property Transfer Tax, if he were to make a declaration to the Notary during the publication of the deed. The Notary would then record that declaration in the deed. In that case, John Borg would make a provisional payment of capital gains tax.

**Question C7** (i) With reference to this particular case only, indicate the legal criteria which permit John Borg to opt for capital gains tax instead of property transfer tax.

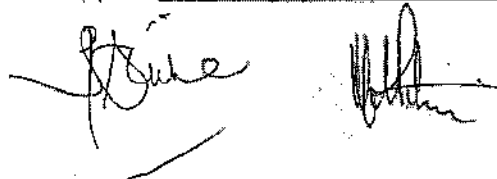
(ii) Calculate the Provisional Capital Gains Tax payable on John Borg on the deed of sale if he were to make that declaration. You should limit yourself to the provisional tax aspect only. Write brief notes to explain your calculation.

**Section D Drafting (20 marks)**

Paul Portelli is planning to draw up a Will today to distribute his assets following his death. He insists that his daughter Francesca should be the sole owner of all his computer equipment, with all related hardware, software and data, including any future additions and modifications till the date of his death. Anything else should be shared equally among Paul Portelli's three children, namely Joseph, Maria and Francesca. In the event that any one of the named beneficiaries were to predecease their father, their respective children should be entitled to step in as beneficiaries instead of the pre-deceased person/s.

**Question D1** You are required to draft the following three provisions ONLY, making use of appropriate legal terminology:

- (a) An article to ensure that today's Will cancels any previous Will;
- (b) An article to provide for computer-related equipment (as above); and
- (c) An article to regulate the rest of the testator's estate.



UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year Students - 2005 - 2006 - June Special Session 2006

CVL 4014 - Fiscal Laws Associated with Immovable Property (4 Credits)

2006

14:15 to 15:15

1 hour allocated for candidates to answer the test paper.

are required to answer all questions. You may answer in English or in Maltese.

During the test candidates are not allowed to have any mobile phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in this paragraph.

**1A - AIP and Duty Inter Vivos**

1997

Saviour Scicluna was born at Floriana, Malta. He acquired Maltese nationality by birth, given that his parents and grand-parents were all born in Malta.

1969

Saviour Scicluna, then still 1½ years old, travelled together with his parents to Canada. His parents have worked and resided there till this present date.

Saviour Scicluna resided together with his parents and never travelled out of Canada till 1 July 2002. He never renounced his Maltese nationality, and he never acquired a nationality of any other country.

2002

Saviour Scicluna arrived in Malta to visit his cousins. Initially he planned to stay here for three months; but eventually he remained in Malta uninterrupted till 1 October 2004.

September 2002

He accepted a two year contract of employment as manager of a hotel operating at St Paul's Bay.

October 2004

Saviour Scicluna returned to Toronto, Canada, and resided there uninterrupted till the end of January 2006.

February 2006

Saviour Scicluna accepted a three year contract of employment as manager of a hotel operating in Taormina, Sicily, Italy. He established his residence in Sicily, but started travelling to Malta almost every two weeks, each time staying in Malta for some 4 or 5 days.

15 September 2006

Saviour Scicluna concludes a deed of purchase of an apartment at Trig San Gwann, Naxxar, for the price of Lm52,650. He intends to stay at this apartment during his brief, regular visits to Malta (but his principal residence will continue to be in Sicily).

15 September 2006

Saviour Scicluna signs a preliminary promise of purchase agreement, to acquire a garage in the same block of apartments at Trig San Gwann, Naxxar, for the price of Lm6,750. The sale is scheduled to be concluded on 15 September 2006.

The persons who sell the apartment are not the same individuals who will sell the garage to Saviour Scicluna.

Question 1

Does Saviour Scicluna require an AIP permit to purchase the apartment at Naxxar today?

Question 2

Should Saviour Scicluna apply for an AIP permit to purchase the garage at Naxxar?

In your answers to questions 1 and 2 you should explain briefly by reference to legal criteria arising from the Immovable Property (Acquisition by non-residents) Act and any other related legislation.

Question 3

Calculate the duty payable today by Saviour Scicluna on the public deed of purchase of the apartment at Naxxar in terms of the Duty on Documents and Transfers Act.

Question 4

Calculate the duty which Saviour Scicluna will pay on 15 September 2006 on the public deed of purchase of the garage at Naxxar in terms of the Duty on Documents and Transfers Act.

In your answers to questions 3 and 4 write brief notes to explain your calculations.

Please turn over ...

**Section B – Duty causa mortis**

Antonia Attard passed away on the 15 April 2006. She is survived by her husband Alfred Attard and two children Francesca and David. In terms of her will, she bequeathed a general life-long usufruct in favour of her husband Alfred Attard, aged 62, and she appointed her two children as universal heirs.

Antonia Attard's estate consists of a two-thirds ( $\frac{2}{3}$ ) undivided share of a house at number 1, Main St. Zabbar, valued Lm66,700.

On the date of death Antonia Attard was residing at that house together with her husband Alfred Attard and daughter Francesca. Her son David resided elsewhere.

The value of a life-long usufruct bequeathed to a beneficiary aged 62 is calculated at 20% of the value of the full ownership.

The deed of declaration *causa mortis* is published today 1 June 2006.

**Question 5 - Calculate the duty *causa mortis*, if any, which is payable by the three beneficiaries: Alfred Attard, Francesca Attard and David Attard. Write brief notes to explain your answer.**

**Section C – Property Transfer Tax**

Carmelo Cauchi and his wife Rita Cauchi sell the apartment in Triq San Gwann, Naxxar, today for the price of Lm52,560.

Initially they rented the apartment in December 1990.

They have been residing there uninterruptedly since January 1991. They vacated the apartment only yesterday (31 May 2006).

*Root of title of the apartment:*

August 1995 Rita Cauchi inherited the full ownership of one-third ( $\frac{1}{3}$ ) undivided share from her father. The  $\frac{1}{3}$  share was valued Lm7,500 in the relative declaration *causa mortis* published in December 1995.

December 2001 Rita Cauchi inherited the full ownership of another one-third ( $\frac{1}{3}$ ) undivided share from her uncle. The  $\frac{1}{3}$  share was valued Lm9,000 in the declaration *causa mortis* published in March 2002.

January 2004 Carmelo and Rita Cauchi purchased the remaining one-third ( $\frac{1}{3}$ ) undivided share from Rita's father, for the price of Lm10,500 (in respect of the said  $\frac{1}{3}$  share).

**Question 6 Calculate the property transfer tax, if any, which is payable today 1 June 2006 by the vendors Carmelo Cauchi and Rita Cauchi.**

*In your answer to question 6 write brief notes to explain your calculations.*

UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year Students – 2005 – 2006 – September Special Session 2006

CVL 4014 – Fiscal Laws Associated with Immovable Property (4 Credits)

1 September 2006

09:15 to 10:15 am

1 hour allocated for candidates to answer the test paper.

- You are required to answer all questions. You may answer in English or in Maltese.
- During the test candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

**Section A**

Mrs Mary Smith, a British citizen, visited Malta for the first time in July - August 1999. She was then here on holiday for four weeks. During that 1999 holiday she decided to purchase a modest ground-floor maisonette at Marsascala. She intended to return every summer, to spend longer holidays here. She applied for, and obtained, an AIP permit, transferred funds to Malta, and eventually finalised the deed of purchase of the maisonette in December 1999.

Since 1999 Mrs Smith has been visiting Malta regularly, spending not more than 6 weeks in summer and another 2 weeks at Christmas time. She intends to continue following this pattern in the future.

This summer (i.e. in 2006) she decided to purchase a garage which lies immediately adjacent to her maisonette, in the same street at Marsascala. The price of the garage will be Lm15,250. The garage is not subject to any ground-rent. She intends to store various personal belongings in the garage. In due course she might decide to buy a car, and garage it there. At present the maisonette is the only immovable property owned by Mrs Mary Smith in Malta.

**Question 1** – Does she need to obtain an AIP permit for the acquisition of the garage? *Explain briefly by reference to legal criteria arising from the Immovable Property (Acquisition by non-residents) Act and any other related legislation.*

**Question 2** – Calculate the Duty which Mrs Mary Smith will pay on the deed of purchase, in terms of the Duty on Documents and Transfers Act. *Write very brief notes to explain your calculations.*

**Section B**

The seller of the abovementioned garage at Marsascala is Mr John Bugeja. He had purchased this garage in 1995 for the price of Lm4,000; and he will sell it now for the price of Lm15,250.

**Question 3** – Calculate the Property Transfer Tax payable by Mr John Bugeja on the deed of sale.

**Section C**

Josephine Abdilla died on 15 June 2006. Then she resided at 2, Main Street, Zabbar. She had two daughters, Carmen Abdilla (who then resided with the deceased in the same house at Zabbar), and Mary Pace (who then resided elsewhere, at Floriana).

Josephine Abdilla owned one-half ( $\frac{1}{2}$ ) undivided share of the house at Zabbar.

Josephine Abdilla left a Will, bequeathing her half share in the house in equal shares between her two daughters Carmen and Mary.

The full share of the house at Zabbar has been valued at Lm92,500. Consequently the deceased's share is valued Lm46,250.

**Question 4** – Calculate the duty payable by Carmen Abdilla and by Mary Pace, on the deed of declaration causa mortis which will be published today 1 September 2006. *Write very brief notes to explain your answer.*

UNIVERSITY OF MALTA  
LLD First Year  
DRAFTING OF NOTARIAL DEEDS

CVL 4009

4 September 2006 0915 to 1015

During the test, candidates are not allowed to have any mobile 'phones and/or memory-resident electronic devices.

Candidates may answer the test paper in ENGLISH or MALTESE.

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Mr Joseph Zammit made a Will in 1990. He does not want to revoke that Will. He only wants to bequeath a car, a Volkswagen Beetle, to one of his children, Mr Paul Zammit. Mr Joseph Zammit knows that he owns only one-half ( $\frac{1}{2}$ ) undivided share of that car, nevertheless, Mr Joseph Zammit wants to bequeath the full share of the car all the same to his son Paul. The future beneficiary of the car (Mr Paul Zammit), was already nominated as a co-heir in the 1990 Will, and he will eventually get the car over and above his share as co-heir.

Question D.1: Draft an introductory paragraph, and a concluding paragraph, for this particular Will which will be published today 4 September 2006, to indicate that the previous Will made in 1990 is not being revoked, and that today's Will must be read in conjunction with the previous Will.

Question D.2: Draft the appropriate provision/s to give effect to the devolution by succession of the car in favour of Mr Paul Zammit.

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UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year Students – 2007 – 2008 – September Special Session 2008

CVL 4014 – Fiscal Laws Associated with Immovable Property (4 Credits)

01 September 2008 09:15 to 10:15

1 hour allocated for candidates to answer the test paper.

- You are required to answer all questions. You may answer in English or in Maltese.
- During the test candidates are not allowed to have any mobile phones and/or memory-resident electronic devices; however, candidates are allowed to use calculators that are not otherwise excluded in terms of this paragraph.

**Question 1 - (50 marks)**

Victor Vella resided at 15, Main Street, Zabbar from 15 January 1980 to 15 December 2007.

Initially he occupied the house by title of lease, and he paid rent on a regular basis to the three co-owners Alfred, Antonia and Angela, brother and sisters Attard, who resided at Ghajnsielem, Gozo.

Victor Vella purchased this house in three stages, as follows:

Date	Seller	Share	Price for the share purchased
30 June 1985	Alfred Attard	1/3	Lm3,600
1 April 2003	Antonia Attard	1/3	Lm12,000
15 September 2006	Angela Attard	1/3	Lm18,000

On 15 December 2007 (before the Euro-changeover) Victor Vella sold the house to Gaetana Gauci, for the price of Lm114,000. He moved out of the house that same day.

Victor Vella was advised to focus entirely on the Property Transfer Tax regime, and not to consider the Capital Gains Tax regime.

**Question:**

- Consider whether Victor Vella was liable to pay any Property Transfer Tax on the deed of sale which was finalised on 15 December 2007. Your answer should be accompanied with a brief explanation of the salient legal criteria for any liability and/or exemption.
- Further, if you conclude that Alfred Vella was liable to pay any Property Transfer Tax, you should calculate the correct amount which he paid on 15 December 2007.

TURN OVER

**UNIVERSITY OF MALTA**  
**Faculty of Laws**  
**LLD First Year**  
**DRAFTING OF NOTARIAL DEEDS - CVL 4009**  
**September Special Session 2008**

9th September 2008 – 1 hour

During the test, candidates are not allowed to have any mobile phones and/or memory-resident electronic devices.

**Answer ALL questions**

**D1** A person sells a house which he had purchased in 1989. He resided at that house from February 1990 till this present day. He has been advised that, on the basis of these facts, he is not liable to pay Property Transfer Tax (under the Income Tax Act). However, to benefit from this exemption, appropriate declarations must be made in the deed of sale. **Draft these declarations.** (30 marks)

**D2** On an inter vivos deed of acquisition the purchaser factually qualifies to pay part of the duty (under the Duty on Documents and Transfers Act) at the reduced rate of 3.5%. However, to benefit from this reduced rate, appropriate declarations must be made in the deed. **Draft these declarations.** (30 marks)

**D3** Draft provisions of a Will, using correct legal terminology, to reflect only the following bulleted issues, which are here expressed in lay-man's language. (40 marks)

- This will be the testator's only Will to regulate his succession.
- The testator's daughter Pauline will receive the ownership of his motor car, over and about her share from the remainder of his assets.
- The testator directs that his three children Agnes, Anthony and Pauline will share the rest of his estate equally, ignoring any previous gratuitous gifts.

Do not draft the opening and conclusion of the will.

University of Malta

Faculty of Laws

LLD First Year, Academic Year 2008 – 2009

CVL4016 – Fiscal Legislation Associated with Immovables

May/June 2009 Session – 8 ECTS

29 May 2009 – 13:00 to 15:00 hours

Candidates are allowed to use calculators; however, they are not allowed to have any mobile phones and/or memory-resident electronic devices.

Answer all questions

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Three Acquisitions:

- John Abela and Maria Debono bought a house at Lija on 15 March 2009 for the price of €225,250. They acquired it in equal and undivided shares between them. They plan to establish their matrimonial home there, in view of their intention to get married to each other on 1 August 2009.
- John Abela (alone) entered into a preliminary agreement to purchase a small summer apartment at Qawra, for the price of €78,540. The deed of purchase was finalised on 30 April 2009.
- John Abela inherited a field at Naxxar from his paternal uncle who died on 15 May 2009.

Background:

John Abela

John Abela was born in 1982 in Melbourne Australia where he resided till November 2005. Early in 2005 his parents died in a traffic accident. Being the only child, and having completed his tertiary education in I.T., John Abela decided to take some time off. He travelled to Malta on 15 November 2005 to meet his relatives for the first time.

John Abela is an Australian citizen. In addition, he obtained Maltese nationality in 2006. He was given a Maltese passport in July 2006.

When he arrived in Malta for the first time in November 2005 John Abela thought that he would stay in Malta for a few months only. He spent a few weeks in a hotel, and then moved into leased accommodation. Early in 2008 he decided that he would settle down permanently in Malta, having by then secured a permanent employment with a Maltese I.T. company. Accordingly he obtained long leave of absence from his job, and travelled to Melbourne Australia on 1 March 2008. There he shipped some of his belongings to Malta, and sold other belongings, including the only immovable property in Australia – the house in Melbourne – which he had inherited from his parents. Eventually he transferred all his money in Australia to his bank account in Malta, and he returned to Malta on 25 June 2008. Apart from this trip to Australia, John Abela resided in Malta continuously since 15 November 2005.



Maria Debono

Maria Debono is a Maltese citizen. She was born in Malta in 1983. She has always resided in Malta, except for a period of 14 months which she spent together with her elder sister in Glasgow, Scotland, UK between October 2004 and November 2005.

Apart from the immovables mentioned in this paper, John Abela and Maria Debono did/do not own any other immovable property.

**Question 1 (40 marks) – Immovable Property (Acquisition by Non-Residents) Act**

- (a) Did John Abela and/or Maria Debono require an AIP permit to purchase the house at Lija?
- (b) Was John Abela expected at law to apply for, and obtain, an AIP permit before purchasing the apartment at Qawra?
- (c) Did John Abela require an AIP permit to sanction the devolution *causa mortis* in his favour of the field at Naxxar, following the death of his uncle?

In each case (a), (b) and (c) explain by reference to legal criteria arising from the Immovable Property (Acquisition by Non-Residents) Act and any other related legislation. Inter alia you are expected to indicate (i) whether John Abela and (ii) Maria Debono are "non-resident persons".

**Question 2 (30 marks) – Duty on Documents and Transfers Act (continuation)**

- (a) Calculate the duty (under the Duty on Documents and Transfers Act) which was paid by John Abela and Maria Debono when they purchased the house at Lija.
- (b) Calculate the duty (under the Duty on Documents and Transfers Act) which was paid by John Abela on the deed of purchase of the apartment at Qawra.

**Question 3 (30 marks) – Property Transfer Tax (continuation)**

John Abela and Maria Debono purchased the above-mentioned house at Lija on 15 March 2009 for the price of €225,250 from Saviour Said, who had been residing in the house since 1980. He acquired the property as follows:

	Share	Title	Date	Value/Price of Share
i.	One-half (1/2)	Purchase	31 July 1995	Lm20,500 = € 47,752.16
ii.	One-fourth (1/4)	Succession	16 January 2007	Lm17,500 = € 40,764.03
iii.	One-fourth (1/4)	Purchase	18 September 2008	€45,000

Saviour Said has decided to avoid opting for any capital gains tax regime, even if circumstances allowed him to do so.

Calculate the Property Transfer Tax which was paid by Saviour Said on the deed of sale of the house at Lija in terms of the Income Tax Act. Write brief notes to explain your calculations.

Comment specifically by reference to the law, as to whether Property Transfer Tax is provisional or final. What are the implications?

September 2009

**Question 3 – Property Transfer Tax**

**Question 3a – 15 marks**

In 1998 Claude Calleja and his sister Christine Calleja purchased a flat at Mellieha in co-ownership for the price of Lm30,000 (now €69,881.20) (in respect of the whole). Throughout the past 11 years they only spent the summer months there. During the rest of the year they continued to reside with their parents.

Claude Calleja has now agreed to sell his half undivided share in this flat to his sister Christine Calleja for the price of €70,000 (in respect of the one-half undivided share). The sale will be concluded today 3 September 2009.

Is Claude Calleja exempt from paying Property Transfer Tax? If this is the case, explain the basis for the exemption.

On the other hand, if there is no exemption, (i) calculate the Property Transfer Tax payable by Claude Calleja. Moreover, (ii) if the law allows for some option, indicate what other tax regime might be applicable, and elaborate on the conditions at law which constitute the basis for that option. Do not proceed to calculate the tax payable under the other tax regime.

**Question 3b – 15 marks**

George Gerada owned a house at Mqabba. He resided there together with his only son Saviour Gerada.

George Gerada died on 1 January 2009. Saviour Gerada was the sole heir of his father.

His son Saviour Gerada paid the duty causa mortis on 1 June 2009.

Saviour Gerada continued to reside in the house till today.

Later today he will sell the house.

Saviour Gerada has been informed that, if a number of conditions were satisfied, he would be exempt from paying Property Transfer Tax.

List all the essential conditions which should have been satisfied for an exemption from Property Transfer Tax.

UNIVERSITY OF MALTA  
Faculty of Laws  
LLD First Year - Diploma of Notary Public  
Notarial Legislation - CVL4021  
May - June 2010 Session  
Tuesday 8 June 2010, from 09:15 to 10:15 hours

Answer all four questions

Students are advised to apportion their time proportionately according to the marks allocated to each question.

1. *Certain "non-resident persons" are entitled to acquire a "primary residence" regardless of the provisions of article 4 of the Immovable Property (Acquisition by Non-Residents) Act, Chapter 246 of the Laws of Malta.*

Question 1 (a): Define briefly (i) the "primary residence" in the above-mentioned context; and (ii) the sub-category of "non-resident persons" entitled to acquire a primary residence, as aforesaid. [20 marks]

Question 1 (b): Outline very concisely the essential legal basis for the statement in italics (above). [30 marks]

2. *No property transfer tax is payable when a property had been owned and occupied for a certain number of years before the transfer (hereinafter referred to as the "relevant period"). An extension of this exemption has been granted to specific persons who inherited a place of habitation during the said relevant period.*

Question 2: Identify all the essential elements which must be satisfied for a person to qualify for this exemption, if he/she inherited the immovable during the relevant period. [25 marks]

3. *Donations of immovables made in favour of certain physical persons (individuals) are exempt from property transfer tax, by reason of the relationship between the donor and the donee.*

Question 3: Identify the said relationship between the donor and the donee. [12.5 marks]

4. *The law establishes two distinct circumstances when property transfer tax is chargeable at "12% of the excess, if any, of the transfer value over its acquisition value."*

Question 4: Which are the two cases established by law when property transfer tax is chargeable at 12% of the excess, as aforesaid? [12.5 marks]

UNIVERSITY OF MALTA  
Faculty of Laws  
LLD First Year - Diploma of Notary Public  
Fiscal Legislation Associated with Immovables - 2- CVL4021  
September 2010 Session  
Monday 6 September 2010, from 09:15 to 10:15 hours (1 hour)

Answer both questions *students may make use of a calculator.*

Students are advised to apportion their time proportionately according to the marks allocated to each question.

Question 1 (50 marks) – Immovable Property (Acquisition by Non-Residents) Act

Christopher Catania will purchase a house at Lija in November 2010. He will then start residing regularly at this house.

*Background:*

Christopher Catania was born in 1982 in Melbourne Australia. He is an Australian citizen. In addition, he obtained Maltese nationality in 2002. He was given a Maltese passport in June 2002.

Christopher Catania resided in Melbourne Australia till November 2004.

When he arrived in Malta for the first time in November 2004 Christopher Catania thought that he would stay in Malta for a few months only. He spent a few weeks in a hotel, and then moved into leased accommodation. In 2008 he decided that he would settle down permanently in Malta, having by then secured a permanent employment in Malta. He obtained long leave of absence from his job in Malta, and travelled to Melbourne Australia on 1 December 2008. There he shipped some of his belongings to Malta, and sold other belongings, including the only immovable property in Australia – the house in Melbourne – which he had inherited from his parents. Eventually he transferred all his money in Australia to his bank account in Malta, and he returned to Malta on 20 March 2009. Apart from this trip to Australia, Christopher Catania resided in Malta continuously since November 2004.

Apart from the immovables mentioned in this paper, Christopher Catania does not own any other immovable property, whether in Malta or abroad.

**Question:** Will Christopher Catania require an AIP permit to purchase the house at Lija? Explain by reference to all relevant legal criteria arising from the Immovable Property (Acquisition by Non-Residents) Act and from any other related legislation. Inter alia, examine whether Christopher Catania is a “non-resident person”.

Question 2 (50 marks) – Property Transfer Tax

John Zammit has been residing at 1, Main Street, Mellieha since 1980. For many years this house was tenanted by his father. When his father died in 1978 John Zammit was recognised as the tenant. John Zammit acquired the ownership of the house in three stages, as indicated below. John Zammit continued to reside at this house till this present day.

1990 – 15 January	John Zammit inherited 1/3 undivided share of the house from his aunt	In the declaration causa mortis following the death of John's aunt, the 1/3 share of the house was valued at the equivalent of €27,000
2005 – 25 May	John Zammit purchased 1/2 undivided share of the house	The 1/2 undivided share was bought for the price of €45,000
2009 – 20 February	John Zammit inherited 1/6 undivided share of the house from his uncle	In the declaration causa mortis following the death of John's uncle, the 1/6 share of the house was valued €16,000

John Zammit has made arrangements to vacate the house this afternoon. Later this evening he will appear on a public deed to sell the house for the price of €125,000.

John Zammit has decided not to opt for Capital Gains Tax.

**Calculate any Property Transfer Tax (under the Income Tax Act) payable by John Zammit on the deed of sale of the house at Mellieha. Your calculations should be accompanied by appropriate explanations.**

UNIVERSITY OF MALTA  
Faculty of Laws  
LLD First Year - Diploma of Notary Public  
CVL4021 – Fiscal Legislation associated with Immovables – 2  
May – June 2011 Session  
Friday 10 June 2011, from 09:15 to 11:15 hours (2 hours)

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- Candidates are not allowed to have any mobile phones and/or memory-resident electronic devices.
  - Candidates are allowed to use simple calculators.
  - Students are advised to apportion their time according to the marks allocated to each question.
- 

Answer all five questions

Part ONE

*Immovable Property (Acquisition by Non-Residents) Act, Chapter 246 of the Laws of Malta*

Question 1 – 36 marks out of 100

Charles Caruana is a Maltese citizen. He was born in Malta on 15 December 1970. He lived continuously in Malta till 1 August 1975, when he emigrated to Australia together with his parents. He resided uninterruptedly in Melbourne Australia till 2006. On 15 January 2006 he travelled back to Malta, this time with his fiancée Barbara Brown. From 15 January 2006 onwards Charles Caruana lived continuously in Malta, except for a training session undertaken in Rome, Italy between 1 November 2009 and 28 February 2010.

Barbara Brown is a citizen of Australia. She was born in Melbourne Australia on 20 November 1975. She travelled to Malta on 15 January 2006. She has lived in Malta since then, except for a 10-day holiday in Rome, Italy in December 2009.

On 10 May 2011 Charles Caruana and his fiancée Barbara Brown bought a first-floor flat at Qawra, St Paul's Bay, for the price of €85,000. They purchased the flat in equal and undivided shares between them. This flat is located outside a special designated area. It forms part of a block of two flats, having one common entrance. The ground-floor of the block consists of a number of garages.

Charles Caruana and Barbara Brown plan to get married to each other on 15 August 2011. They will establish their matrimonial home at this flat situated at Qawra.

*Question 1 - Explain by reference to legal criteria arising from BOTH (a) the Immovable Property (Acquisition by Non-Residents) Act, AND (b) any other EU-related legislation, whether Charles Caruana and/or Barbara Brown required an AIP permit to purchase the flat at Qawra. Inter alia you are required to explain whether, according to Chapter 246, (i) Charles Caruana and (ii) Barbara Brown were considered as "non-resident persons" on the date of the deed of purchase – 10 May 2011 – 36% of the marks*

Question 2 – 7 marks out of 100

*(Continuation of the facts outlined above in Question 1)*

Charles Caruana and Barbara Brown will purchase a garage underlying the same block of apartments at Qawra, St Paul's Bay, for the price of €15,000. They have signed a preliminary agreement, and will finalise the deed purchase on 30 June 2011, that is to say before the date of their marriage. They will purchase the garage in equal and undivided shares.

*Question - Are there any further considerations, in addition to your answer to Question 1, regarding the capacity of Charles Caruana and Barbara Brown to purchase the garage, taking into consideration both (a) the Immovable Property (Acquisition by Non-Residents) Act, AND (b) any other EU-related legislation? - 7% of the marks*

**Question 3 - 7 marks out of 100**

*(Continuation of the facts outlined above in Question 1)*

Charles Caruana and Barbara Brown also plan to redeem the annual and perpetual ground-rent of €20 burdening the flat, for the price of €400. They contacted the owners/recipients of the ground-rent, and they agreed to conclude the deed of redemption in October 2011, that is to say after the date of their marriage.

*Question - Are there any further considerations, in addition to your answer to Question 1, regarding the capacity of Charles Caruana and Barbara Brown to redeem the ground-rent, taking into consideration both (a) the Immovable Property (Acquisition by Non-Residents) Act, AND (b) any other EU-related legislation? - 7% of the marks*

**Part TWO**

*Property Transfer Tax*

**Question 4 - 20 marks out of 100**

John Sammut resides in a house which he inherited from his mother who passed away on 15 November 2009.

*Question - Assuming that he sells and vacates the house today 10 June 2011, what are the minimum essential elements which must be satisfied according to law, so that the alienation will be regulated by Property Transfer Tax (article 5A of the Income Tax Act), and yet he will be fully exempt from paying any Property Transfer Tax? In relation to each element you are expected to specify the precise minimum period to which each element must apply. - 20% of the marks*

**Question 5 - 30 marks out of 100**

Maria Mamo is single and has no children. She resides at Qormi, in a house which belongs to her. She also owns another small, vacant house at Floriana, valued €75,000. She is considering whether to donate this house to her nephew Joseph Mamo and his wife Catherine Mamo, in equal and undivided shares between them.

*Taking into consideration the root of title indicated in the table below, calculate the Property Transfer Tax, if any, which would be payable on a deed of donation, if this were to be published today? - 30% of the marks*

Root of Title of the house at Floriana:

1985 - 15 January	Maria Mamo inherited 1/3 undivided share of the house from her aunt	For succession duty purposes, following the death of Maria's aunt, the 1/3 share of the house was given a value equivalent to €30,000
2003 - 12 April	Maria Mamo purchased 1/6 undivided share of the house	The 1/6 undivided share was bought for a price equivalent to €10,000
2009 - 20 July	Maria Mamo inherited 1/2 undivided share of the house from her uncle	In the declaration causa mortis following the death of Maria's uncle, the 1/2 share of the house was valued €68,000

UNIVERSITY OF MALTA  
Faculty of Laws  
LLD First Year - Diploma of Notary Public  
CVL4021 – Fiscal Legislation associated with Immovables – 2  
September 2011 Session  
Wednesday 7 September 2011, from 08:00 to 10:00 hours (2 hours)

- Candidates are not allowed to have any mobile phones and/or memory-resident electronic devices.
- Candidates are allowed to use simple calculators.
- Students are advised to apportion their time according to the marks allocated to each question.

Answer all four questions

Part ONE - Immovable Property (Acquisition by Non-Residents) Act, Chapter 246, Laws of Malta

Question 1 – 36 marks out of 100

Paola Parisio is an Italian citizen, and she is single. He was born in Catania, Sicily, Italy on 15 December 1970. She never travelled to Malta prior to this year (2011).

On 6 March 2011 Paola Parisio inherited from Maria Scerri, her maternal aunt (i) one-third (1/3) undivided share of a house at number 6, St Paul Street, St Paul's Bay, and (ii) the full share (1/1) share of a garage at number 45, Main Street, Naxxar.

Paola Parisio travelled to Malta on 1 August 2011, to finalise the declaration causa mortis.

During her brief stay in Malta she decided to retain the house at St Paul's Bay, for holiday purposes only (a presence in Malta of not more than 4 months each year), and she decided:

- (a) to purchase one-half (1/2) undivided share of the house at St Paul's Bay, for the price of €45,000 (in respect of the one-half share), from Stephanie Scerri (the latter having been another co-heir of the late Maria Scerri), and
- (b) to acquire, by title of exchange, the remaining one-sixth (1/6) undivided share of the same house at St Paul's Bay, valued €15,000 (in respect of the one-sixth share), from Joseph Borg (who is a co-owner of the property at St Paul's Bay, but not a co-heir of the late Maria Scerri); and to transfer to the said Joseph Borg, on the same deed of exchange, the garage at Naxxar, valued €15,000 (in respect of the full (1/1) share).

The deed of purchase and the deed of exchange will be finalised on 15 December 2011.

**Question 1 - Explain by reference to legal criteria arising from BOTH (a) the Immovable Property (Acquisition by Non-Residents) Act, AND (b) any other EU-related legislation, whether Paola Parisio required/requires an AIP permit:**

- i. to inherit the 1/3 share of the house at St Paul's Bay from her aunt on 6 March 2011;
- ii. to purchase 1/2 share of the same house at St Paul's Bay from Stephanie Scerri;
- iii. to acquire, by title of exchange, the remaining 1/6 share of the house at St Paul's Bay from Joseph Borg.

**Inter alia you are required to explain whether, according to Chapter 246, Paola Parisio is considered as a "non-resident person" on 6 March 2011, and on 15 December 2011 – 36% of the marks**



**Question 2 – 14 marks out of 100**

**Question 2 –** By reference to the Immovable Property (Acquisition by Non-Residents) Act, in which circumstances is a “non-resident person” explicitly entitled to acquire immovable property in Malta by title of donation, without requiring a permit – 14% of the marks.

**Part TWO - Property Transfer Tax****Question 3 – 20 marks out of 100**

Julian Abela and Catherine (then Cachia) purchased a house at Gudja, in equal and undivided shares, on 1 June 2003. They started residing at this house soon after they got married to each other on 15 December 2003.

On 15 May 2010 Julian Abela and Catherine Abela (nee<sup>s</sup> Cachia) finalised a deed of personal separation. On that deed, Julian transferred the ownership of his half share in the house to Catherine Abela. On that same date, Julian Abela moved out of the house, while Catherine Abela continued to reside there.

**Question 3 –** Assuming that Catherine Abela sells and vacates the house today 7 September 2011, what are the minimum essential elements which must be satisfied according to law, so that the alienation will be regulated by Property Transfer Tax (article 5A of the Income Tax Act), and yet she will be fully exempt from paying any Property Transfer Tax? In relation to each element you are expected to specify the precise minimum period to which each element must apply [i.e. date from when, and date up to when] – 20% of the marks

**Question 4 – 30 marks out of 100**

Anna Zammit is single. She has been residing at a house at Floriana ever since she was born in 1961. She acquired the ownership of the house in stages, as indicated below. She will sell the house for the price of €90,000, and she will vacate it, later today 7 September 2011.

**Taking into consideration the root of title indicated in the table below, calculate the Property Transfer Tax, if any, which would be payable by Anna Zammit, on a deed of sale which will be published today? – 30% of the marks**

Root of Title of the house at Floriana:

1985 – 15 September	Anna Zammit inherited 1/2 undivided share of the house from her uncle	For succession duty purposes, following the death of her uncle, the 1/2 share of the house was assigned a value equivalent to €35,000
2003 – 12 April	Anna Zammit purchased 1/6 undivided share of the house	The 1/6 undivided share was bought for a price equivalent to €14,000
2009 – 6 May	Anna Zammit inherited 1/4 undivided share of the house from her aunt	For succession duty purposes, following the death of her uncle, the 1/4 share of the house was assigned a value of €21,000
2010 – 20 July	Anna Zammit purchased 1/12 undivided share of the house from her cousin	The 1/12 undivided share was bought for the price of €7,000

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LLD I (2011/12)  
JUNE 2012 EXAMINATIONS

**EXAMINATION:** CVL4021 – FISCAL LEGISLATION ASSOCIATED WITH  
IMMOVABLES - 2  
**DATE:** TUESDAY 19<sup>TH</sup> JUNE 2012  
**TIME:** 9:15AM – 11:15AM

Answer all five questions

NB – Write answers to Part 1 on one script and the answers of Part two on another separate script.

Part One

Question 1 – 36 marks out of 100

Dean Borg is a 35 year old Maltese citizen. When he was two years of age his family emigrated to Canada where he resided uninterruptedly till 2006. In February 2006 he travelled back to Malta and has since then continuously lived in Malta.

Elisa Smith is a Canadian citizen, who was born in Ontario on the 1<sup>st</sup> April 1982, she came over to Malta once in the summer of 2002 for three weeks holiday and after that has been residing uninterruptedly in Malta since January 2008.

On the 20<sup>th</sup> day of August 2011 whilst still unmarried Dean and Elisa bought a maisonette in Swieqi for the price of €150,000. They bought the maisonette in equal shares between them. The maisonette is situated outside a special designated area, and is subject to an annual perpetual groundrent of €30.

Dean Borg and Elisa Smith plan to get married to each other on the 21<sup>st</sup> September 2012 and intend to establish their matrimonial home in this maisonette situated in Swieqi.

**Question 1 – Explain by reference to legal criteria arising from BOTH (a) The Immovable Property (Acquisition by non Residents) Act, AND (b) any other EU-related legislation, whether Dean Borg and/or Elisa Smith required an AIP permit to purchase the maisonette in Swieqi. Inter alia you are required to explain whether according to Chapter 246 (i) Dean Borg and (ii) Elisa Smith were considered “non-resident persons” on the date of the deed of purchase - 20<sup>th</sup> day of August 2011 – 36% of the marks.**

Question 2 - 7 marks out of 100

*(Continuation of the facts outlined above in Question 1)*

Dean Borg and Elisa Smith also redeemed the annual and perpetual groundrent of €30 burdening the maisonette for the price of €500, they did this by means of a public deed dated the 30<sup>th</sup> September 2011.

	Share	Title	Date	Value declared/price of share
i.	One half (1/2)	Purchase	22 <sup>nd</sup> January 1985	€12,000
ii.	One fourth (1/4)	Succession	18 <sup>th</sup> May 1990	€6,000
iii.	One fourth (1/4)	Succession	4 <sup>th</sup> April 2005	€70,000

Calculate the property transfer tax which was paid by Joseph Formosa in terms of the Income tax Act and write brief notes to explain your calculations.

**Question – are there any further considerations in addition to your answer in question 1, regarding the capacity of Dean Borg and Elisa Smith to redeem the said groundrent taking into consideration both (a) the immovable Property (Acquisition by non Residents) Act, AND (b) any other EU-related legislation? - 7% of the marks**

**Question 3 – 7 marks out of 100**

During their family planning conversations Dean Borg and Elisa Smith admitted that they had fallen in love with the island of Malta so much that they would have liked not only to live here but also to die and be buried here. For this reason they made an application with the Local Department of Health to acquire a grave site in Santa Marija Addolorata Cemetery. These applications take their time to be processed and they have come to you as notary to ask you if it makes any difference if they acquire this grave site before or after their marriage.

**Question – Briefly advise this couple taking into consideration both (a) the Immovable Property (Acquisition by non Residents) Act, AND (b) any other EU-related legislation. - 7% of the marks**

**Part Two – Property Transfer Tax**

**Question 4 - 20 marks out of 100**

James Vella and Emily Caruana bought a house in Sliema in equal shares between them on the 20<sup>th</sup> January 2004, they got married on the 10<sup>th</sup> February 2004 and started residing in this house on the 20<sup>th</sup> May 2004 when the workers had finished carrying out certain improvements to the property. Although married Emily Caruana decided to retain her maiden surname as was her right according to the Civil Code.

Sadly on the 23<sup>rd</sup> June 2010 James Vella and Emily Caruana signed a deed of personal separation on which deed the share of the house belonging to Emily was assigned to James, on the very same day Emily moved out of the house whilst James continued to use the house as his sole place of ordinary residence.

**Question 4 – James Vella was offered a very advantageous price for the house and has come over to your office to see what the property tax implications are before deciding whether to accept to sell or not. Advise him as to what are the minimum essential elements which must be satisfied according to law, so that the sale will be regulated by Property Transfer Tax (Article 5A of the Income Tax Act) and yet James will be fully exempt from paying any Property Transfer Tax. In relation to each element you are expected to specify the precise minimum period to which each element must apply (i.e. date from when and date up to when) - 20% of the marks**

**Question 5 - 30 marks out of 100**

Donald Grech purchased a house in Gzira on the 11<sup>th</sup> March 2012 for the price of €300,000 from a certain Joseph Formosa. The vendor, Joseph Formosa, had never resided in the said property and he had acquired the said property as follows:

UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4021 – Fiscal Legislation associated with Immovables – 2

June 2013 Session

Thursday 20 June 2013, from 10:30 to 12:30 hours (2 hours)

NOTES – READ CAREFULLY

- This paper is divided in 3 sections. You are required to answer ALL questions in each Section.
- Separate booklets should be submitted for answers to Section A, Section B and Section C, respectively (three booklets in all).
- During the examination, candidates are not allowed to have any mobile phones and/or other memory-resident electronic devices. However, candidates are allowed to use very simple calculators that are not otherwise excluded in terms of this paragraph.
- It is recommended that candidates apportion their time according to the marks assigned to each section.

**Section A - Immovable Property (Acquisition by Non-Residents) Act**

**No 1** (36 marks out of 100)

Article 4 (1) of "Immovable Property (Acquisition by Non-Residents) Act (hereinafter referred to as "Chapter 246" establishes categorical limitations on the capacity of non-resident individuals to acquire immovable property in Malta. Articles 4 (2), 5 and 6 establish a number of exceptions to the broad, general rule originating from article 4 (1). Yet it is said that Chapter 246 is not comprehensive and exhaustive, and that there are other exceptional circumstances in which certain non-resident individuals are entitled to acquire immovable property in Malta without a permit.

Your answers to the questions below should focus on the exceptions which do not arise from Chapter 246 (hereinafter referred to as the "additional exceptions"), in the context of physical persons acquiring immovable property in Malta.

Questions:

- 1 (a) Who are the individuals/physical persons who can rely on "additional exceptions" which do not arise from Chapter 246 of the Laws of Malta? What would their characteristics be? (6 marks)
- 1 (b) In which circumstances (not specifically envisaged as exceptions in Chapter 246) would these individuals be entitled to acquire immovable property without obtaining a permit? (12 marks)
- 1 (c) Identify the legal basis for these "additional exceptions". How do you reconcile the apparent conflict with Chapter 246, which claims to be comprehensive and exhaustive? (12 marks)
- 1 (d) In the aforesaid additional exceptional cases, are these non-resident individuals obliged to make any related declaration in the deed of acquisition? (6 marks)

**No 2** (14 marks out of 100)

Extract from Article 2 of Chapter 246: "*In this Act, unless the context otherwise requires – (omissis) – "resident of Malta" means an individual who is:*

- (a) a citizen of Malta or another Member State who has been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition;
- (b) the spouse, of whatever nationality and wherever resident, of a citizen of Malta or another Member State where such spouses are acquiring together on the same deed."

Question 2: Comment on the words in *italics* (specifically, paragraph (b) of the definition of "resident of Malta") in the context of Chapter 246 of the Laws of Malta. (14 marks)

**Section B - Property Transfer Tax (a)**

**No 3** – 20 marks out of 100

Stefania (then Camilleri) and John Sammut purchased a house at Floriana, in equal and undivided shares between them, in March 2003, for a price now equivalent to €90,000. These two persons married each other on 15 December 2003, and thereupon they established their residence at this house. At one stage relations between the two spouses deteriorated to a point of no return. On 29 February 2012 they entered into a deed of personal separation, in terms of which John Sammut transferred his share of the house to Stefania Sammut, and he vacated that house that same day. Stefania Sammut continued to reside at that house till today.

Later on today 20 June 2013 Stefania Sammut will vacate the house where she resides at Floriana, and she will sell it for the price of €120,000.

**Question 3** – (a) What are the essential elements which must be satisfied according to law, so that the alienation will be regulated by Property Transfer Tax (article 5A of the Income Tax Act), and (b) what are the minimum essential elements which must be satisfied according to law so that the vendor Stefania Sammut will be fully exempt from paying any Property Transfer Tax? In relation to “(b)” (i.e. latter part of the question), you are expected to specify the precise minimum period to which each element must apply [i.e. date from when, and date up to when]. (20 marks)

**Section C - Property Transfer Tax (b)**

**No 4** – 30 marks out of 100

Catherine Cremona, who is single and has no children, today donates a field, valued €90,000, to her nephew Daniel Dalli and his wife Dorothy Dalli, in equal shares between them.

The foot of title follows:

1990	January 15	She inherited 1/4 undivided share of the field from her uncle	For succession duty purposes, following the death of her uncle, the 1/4 share of the field was then given a value equivalent to €10,000 (based on a value of €40,000 for the full share)
1992	August 17	She acquired 1/4 undivided share of the field by title of exchange from her cousin	The 1/4 undivided share was then given a value equivalent to €12,000 (based on a value of €48,000 for the full share)
1995	September 30	She acquired 1/6 undivided share of the field by title of donation from her mother	The 1/6 undivided share was then given a value equivalent to €9,000 (based on a value of €54,000 for the full share)
2011	March 12	She inherited 1/3 undivided share of the field from her mother	In the declaration causa mortis following the death of her mother, the 1/3 share of the field was valued €29,000 (based on a value of €87,000 for the full share)

Catherine Cremona has been advised to focus on the Property Transfer Tax regime, and not to consider the Capital Gains Tax regime.

**Question 4** – Calculate the Property Transfer Tax, if any, which is payable on the deed of donation. Your calculations should be accompanied with brief notes to explain the rationale and legal basis of your approach. (30 marks)

UNIVERSITY OF MALTA

Faculty of Laws

LLD First Year - Diploma of Notary Public

CVL4021 - Fiscal Legislation associated with Immovables - 2

September 2013 Session

Friday 13 September 2013, from 09:15 to 11:15 hours (2 hours)

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**NOTES - READ CAREFULLY**

- This paper is divided in 3 sections. You are required to answer ALL questions in each Section.
  - Separate booklets should be submitted for answers to Section A, Section B and Section C, respectively (three booklets in all).
  - During the examination, candidates are not allowed to have any mobile phones and/or other memory-resident electronic devices. However, candidates are allowed to use very simple calculators that are not otherwise excluded in terms of this paragraph.
  - It is recommended that candidates apportion their time according to the marks assigned to each section.
- 

**Section A - Immovable Property (Acquisition by Non-Residents) Act**

**No 1** (36 marks out of 100)

**Questions:**

- 1 (a) What is the meaning given at law to the term "primary residence" in the context of an acquisition of immovable property in Malta? (8 marks)
  - 1 (b) Who are the individuals who can rely entirely on the "primary residence" as the sole basis of their capacity to acquire immovable property in Malta? (8 marks)
  - 1 (c) Identify the legal basis for this basis. (14 marks)
  - 1 (d) Apart from the "primary residence" purpose, are there any other analogous purposes (which rely on the same legal basis not directly originating from Chapter 246 of the laws of Malta) for which the same category of persons can acquire other immovable property without a permit? (6 marks)
- 

**No 2** (14 marks out of 100)

**Questions:**

- 2 (a) In which circumstance is a "non-resident person" entitled to redeem ground-rent without obtaining a permit under article 67 (7 marks)
- 2 (b) Are there any restrictions on the capacity of a "non-resident person" to acquire immovable property in Malta by title *causa mortis*, under Chapter 246 of the laws of Malta? (7 marks)

/ Turn Over

**Section B - Property Transfer Tax (a)**

**No 3** – 20 marks out of 100

George Galdes (GG) and his wife Josephine Galdes (JG) had been residing together at 1, Main Street, Attard, since they married each other in 1970. They had previously purchased the house, in equal and undivided shares between them, in 1969, for a price then equivalent to €14,000. George Galdes was still residing there when he died on 1 June 2012. In terms of his last will he bequeathed his half share in the house in favour of his wife Josephine Galdes. Josephine Galdes continued to reside at this house till today.

Later on today 13 September 2013 Josephine Galdes will vacate the house at Attard, and she will sell it for the price of €120,000.

**Question 3** – What are the minimum essential elements which must be satisfied according to law so that the vendor Josephine Galdes will be fully exempt from paying any Property Transfer Tax? The student is expected to specify the precise minimum period to which each element must apply [i.e. date from when, and date up to when]. (20 marks)

**Section C - Property Transfer Tax (b)**

**No 4** – 30 marks out of 100

Pauline Pace, who is single and has no children, today sells a field, for the price of €96,000, to her cousin Alfred Abela and his wife Anna Abela, in equal shares between them.

The root of title follows:

1990	December 5	She inherited 1/4 undivided share of the field from her uncle	For succession duty purposes, following the death of her uncle, the 1/4 share of the field was then given a value equivalent to €11,000 (based on a value of €44,000 for the full share)
1991	June 17	She purchased 1/4 undivided share of the field from her aunt	The 1/4 undivided share was then purchased for a price then equivalent to €11,000 (based on a value of €44,000 for the full share)
1996	April 3	She acquired 1/6 undivided share of the field by title of donation from her mother	The 1/6 undivided share was then given a value equivalent to €10,000 (based on a value of €60,000 for the full share)
2011	December 2	She inherited 1/3 undivided share of the field from her mother	In the declaration causa mortis following the death of her mother, the 1/3 share of the field was valued €30,000 (based on a value of €90,000 for the full share)

Pauline Pace has been advised to focus on the Property Transfer Tax regime, and not to consider the Capital Gains Tax regime.

**Question 4** – Calculate the Property Transfer Tax, if any, which is payable on the deed of sale. Your calculations should be accompanied with brief notes to explain the rationale and legal basis of your approach. (30 marks)



**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LLD I (2013/14)**  
**MAY/JUNE 2014 EXAMINATION SESSION**

**STUDY-UNIT:** CVL4021 – Fiscal legislation Associated With  
Immovables - 2

**CREDIT VALUE:** 4ECTS

**DATE:** MONDAY 30<sup>th</sup> JUNE, 2014

**TIME:** 9.15a.m -11.15a.m.

**INSTRUCTIONS TO CANDIDATES**

- This paper is divided in 2 sections. Answer all questions.
- Each question carries the marks indicated in the parenthesis. It is recommended that students apportion time according to the marks assigned to each question.
- During the examination, you are not allowed to have any mobile phones and/or memory-resident electronic devices.
- A simple calculator may be used, if required.
- Questions may be answered in bullet form or in paragraph form.
- Each section is to be answered on a separate booklet. (Two booklets in total)
- This exam paper contains 5 pages in total.

**SECTION A: Immovable Property (Acquisition by Non-Residents) Act**

**Question 1: (40 marks out of 100)**

Tom and his childhood friend Anita have decided to establish a business activity in Malta. Tom is a Swiss national who lived for ten years of his childhood in Italy. Anita is a French national, once married to a South African gentleman. They are also considering the possibility of acquiring separate primary residences in Malta.

(i) Would Tom and Anita qualify as 'residents' in terms of Chapter 246 of the Laws of Malta? Please give your detailed reasons for your replies. (8 marks)

(ii) What would be required for either of them to establish their primary residence in Malta? Define 'primary residence' in terms of Chapter 246 of the Laws of Malta. (8 marks)

(iii) Anita inherited a garage from her Maltese uncle a few years back. This garage is subject to an annual and perpetual groundrent of 20 EUR. Explain the implications of Article 4(2), Chapter 246 to the redemption of the groundrent. (5 marks)

(iv) What difficulties, if any, do you envisage for Tom and Anita to acquire property for the fulfillment of business activities in Malta? (6 marks)

(v) Would it be possible for them to acquire property for business purposes via a Maltese registered company? Explain the requirements at law for a company to qualify as a 'resident' in terms of Chapter 246 of the Laws of Malta. (6 marks)

(vi) Jacob is a friend of Tom and Anita. He has a Maltese passport albeit he never lived in Malta during his lifetime. His wife, Martha, is a Chinese national. They would like to acquire an unconverted townhouse in the Gozitan village of Munxar valued at 93,000 EUR to establish therein their primary residence. They intend to carry out extensive conversion works. Explain the implications of the above in terms of Chapter 246 of the Laws of Malta. (7 marks)

**Question 2:** (10 marks out of 100)

Article 5 of Chapter 246 of the Laws of Malta establishes a list of exceptions to the general rule laid down by Article 4.

- (i) Explain three of the exceptions listed in Article 5. (6 marks)
- (ii) What are the obligations of the Notary publishing a deed in which an exception outlined in Article 5 applies? (4 marks)
- 

**SECTION B Property Transfers Tax**

**Question 3:** (30 marks out of 100)

Upon the death of his uncle on the 21st November, 1992, Robert Psaila inherited a house in Valletta. Upon the declaration *causa mortis*, the house was valued at the Maltese Lira equivalent of Euro450,000. Robert Psaila married Lilliana nee' Mercieca on the 25th November, 2005, upon which date the newly-weds established their matrimonial home in the house in Valletta. A pre-nuptial Agreement had been entered into before celebration of the marriage pursuant to which the house in Valletta remained paraphernal property to Robert Psaila. From this marriage, Robert and Lilliana Psaila had a daughter, Marie Angie on the 14th February 2009. On the 21st December, 2013 Robert Psaila entered into a contract with his niece Jessica Meilaq and her boyfriend Jesmond Caligari whereby he donated to them jointly the house in Valletta in view of their wedding due to be celebrated on the 7th July, 2014. On the 20th January, 2014 Jessica Meilaq and Jesmond Caligari, jointly acquire a garage measuring 69 square meters located 550 meters away from the house in Valletta. This garage has a value of Euro55,000.

- (i) Briefly explain the regime under the Income Tax Acts applicable with respect to:
- (a) Robert Psaila on the 21st November, 1992
  - (b) Robert Psaila on the 25th November, 2005
  - (c) Lilliana Psaila (nee Mercieca) on the 25th November, 2005
  - (d) Robert Psaila on the 21st December, 2013
  - (e) Jessica Meilaq on the 21st December, 2013

(f) Jesmond Caligari on the 21st December 2013.

(18 marks)

(ii) Please also advise Jessica Meilaq and Jesmond Caligari on their potential tax position as transferors in the event that they decide to sell to a third party the house and garage in Valletta in one and the same deed after the lapse of 8 years from the date of acquisition (assuming they start residing in the house in Valletta upon celebrating their marriage).

(12 marks)

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**Question 4: (20 marks out of 100)**

Michael Sapiano decided to incorporate a company with the name of Sapiano Woodworks Limited for the purpose of conducting his business activities in the field of furniture manufacture. The Company was formed with a share capital of Euro 60,000 divided into 60,000 shares having a nominal value of €1 each. Each share carries one vote. The Company was incorporated with 2 shareholders being Michael Sapiano (59,999 shares) and his wife Magdeleine Sapiano (1 share). Michael Sapiano was the sole director of the Company. The Company never distributed any dividends to the shareholders, and any surplus distributable profits were invested in different pieces of immovable property that the company rented out to third parties, thereby generating an alternative source of revenue into the Company.

Michael Sapiano had three sons and each one of them joined the Company as a carpenter at different instances in the Company's history. Each one of the sons became increasingly involved in the day-to-day management of the Company as time went by. Upon Michael Sapiano's retirement, the business activities of the Company were taken over by the three sons who were appointed to the Board of Directors of Sapiano Woodworks Limited.

The newly appointed Board members decided upon a new marketing strategy to promote their newly launched furniture models. Towards meeting the significant expenditure of this marketing strategy the Board of Directors identified one of the properties acquired by the Company in the year 1988 for sale to third parties and also resolved that a fresh investment into the Company was required. As a result, the property was sold on the 30th March, 2014 for sale proceeds of €250,000. Furthermore 60,000 new shares having a nominal value of €1 each were issued and allotted equally between the three brothers. Each share carried one voting right. Unfortunately the new product line and marketing strategy failed to deliver the

projected returns and the Company ran into financial difficulties. Intent on saving the Company from financial ruin, the Sapiano brothers managed to secure a fresh investment of €100,000 from Mr. Seguna into the Company against the issuance of 100,000 shares having a nominal value of €1 and each carrying 1 vote per share.

(i) Is the sale of the immovable property regulated by the immovable property taxes regime or the capital gains tax regime and what is the tax rate applicable to the transfer value of the sale. (10 marks)

(ii) Briefly explain how the value shifting provisions apply to the above circumstances, providing motivations to your answers. (5 marks)

(iii) In the scenario where subsequent to the issuance of shares to Mr. Seguna, please identify the applicability or otherwise of the de-grouping provisions in the event that Sapiano Woodworks Limited were to transfer another piece of immovable property to another company in which Mr. Seguna is the majority shareholder. (5 marks).

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UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LLD I (2013/14)  
SEPTEMBER 2014 SUPPLEMENTARY SESSION OF EXAMINATIONS

STUDY-UNIT: CVL4021 – Fiscal Legislation Associated With  
Immovables - 2

CREDIT VALUE: 4ECTS

DATE: WEDNESDAY 3<sup>RD</sup> SEPTEMBER 2014

TIME: 10.30am – 12.30pm

INSTRUCTIONS TO CANDIDATES

- This paper is divided in 2 sections. Answer all questions.
- Each question carries the marks indicated in the parenthesis. It is recommended that students apportion time according to the marks assigned to each question.
- During the examination, you are not allowed to have any mobile phones and/or memory-resident electronic devices.
- A simple calculator may be used, if required.
- Questions may be answered in bullet form or in paragraph form.
- Each section is to be answered on a separate booklet. (Two booklets in total)
- This exam paper contains 5 pages in total.

**SECTION A: Immovable Property (Acquisition by Non-Residents) Act**

**Question 1: (40 marks out of 100)**

Lee and Kira are both Chinese, married in China, and they have lived in Malta since the 1<sup>st</sup> July, 2000. For the past 14 years they have always rented property in Malta. They now intend to purchase a residence in Malta. They have chosen a property which they intend to purchase that consists of a second floor maisonette in Birkirkara including its overlying airspace. The asking price for the said property is 120,000 EUR. They would also like to consider the possibility of acquiring a business premises in Malta. They already own a business premises in Italy.

(i) Is it possible for Lee and Kira to purchase the maisonette according to Chapter 246 of the Laws of Malta? Give the reasons for your answers. (9 marks)

(ii) Lee and Kira would like to know whether it would be possible for them to purchase a garage in two years' time. They intend to sign a promise of sale now and complete the final deed in two years' time. This garage is situated within three hundred metres from the said maisonette. What procedure would apply in terms of Chapter 246 of the Laws of Malta for the purchase of the said garage? (8 marks)

(iii) Vanda is a Hungarian friend of Lee and Kira. She has lived most of her life in France, where she worked as an artist. She would like to relocate to Malta. She has found an apartment in Zabbar, valued at 100,000 EUR which she is interested to purchase. Explain what limitations, if any, would apply for Vanda to purchase this Zabbar apartment to establish therein her primary residence in terms of Chapter 246 of the Laws of Malta (8 marks)

(iv) What difficulties, if any, do you envisage for Lee and Kira to acquire property for the fulfillment of business activities in Malta? (3 marks)

(v) Would it be possible for Vanda to acquire a property for the fulfillment of her business activity? She is also considering the possibility of setting up a company for this purpose. Define the requirements for a 'resident' company in terms of Chapter 246 of the Laws of Malta. (5 marks)

(vi) Mirko is a Chinese friend of Lee and Kira. He purchased a property in a Special Designated Area in Malta two years ago. He is now considering the possibility to purchase a character home in Rabat, Gozo. The latter will be his secondary home. Explain if this is possible in terms of Chapter 246 of the Laws of Malta. (7 marks)

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**Question 2:** (10 marks out of 100)

Article 2 of Chapter 246 of the Laws of Malta provides a list of definitions that are crucial for the interpretation of the Immovable Property (Acquisition by Non-Residents) Act.

- (i) Explain the definition of a 'non-resident person' in Article 2. (2marks)
  - (ii) When is a trust considered a 'resident' in terms of Article 2? (6 marks)
  - (iii) Can a 'resident person' have more than one 'secondary residence' at any one time in terms of Chapter 246 of the Laws of Malta? (2 marks)
- 

**SECTION B** Property Transfers Tax

**Question 1:** (36 marks out of 100)

Henry Grima received a large sum of money by inheritance from his late grandmother. He invested the funds inherited in the purchase of an apartment in Marsascala on the 12th June, 1992 and established his residence at this apartment. Throughout 1993 Mr. Grima purchased 5 garages of different dimensions in various locations. These garages were rented out to third parties and Mr Grima derived rental income therefrom.

Mr. Grima continued to invest in property and on the 9th July 1997 bought a new apartment and underlying garage in a new complex in Ta' I-bragg. Mr. Grima established his residence from 1997 onwards at this new apartment and retained the garage for personal use. Mr. Grima further increased his portfolio of properties by purchasing a villa in Attard on the 22nd November, 2000, a maisonette in Swatar on the 7th January, 2004 and another apartment in Sliema on the 24th March 2007. On the 5th September, 2013 Mr. Grima also inherited from his late father a villa in



Madliena (this villa had been owned and occupied by Mr Grima's father for more than 5 years prior to his demise in 2013).

In 2013, Mr. Grima sold all his properties apart from the apartment in Marsascala where he re-established his residence. The proceeds of the sales of these properties were invested in a large piece of land over which Mr. Grima constructed a block of 22 apartments and 22 underlying garages in Qawra.

A. Please identify which provisions of the Income Tax Acts apply to the different property transfers effected by Mr. Grima in 2012 that is :

- (i) the 5 garages purchased in 1993; (3 marks)
- (ii) the apartment and underlying garage purchased on the 9th July, 1997; (3 marks)
- (iii) the villa purchased on the 22nd November, 2001; (3 marks)
- (iv) the maisonette purchased on the 7th January, 2004; and (3 marks)
- (v) the apartment purchased on the 24th March 2007. (3 marks)
- (vi) the villa inherited from his late father on the 5th September 2013. (3 marks)

B. The block of apartments and garages in Qawra was completed by June 2014 and Mr. Grima decided to retain one of the top floor apartments together with a garage for himself and sell the apartment in Marsascala. Please advise Mr. Grima on the tax implications of selling the apartment in Marsascala in 2014 and establishing his residence in the Qawra apartment. (10 marks)

C. The entire block of apartments and garages was designated as a Special Designated Area in terms of the Immovable Property (Acquisition by Non-Residents) Act. Mr. Grima intends to sell the different apartments and garages within the block. Does Mr. Grima qualify for any one of the optional exclusions in terms of Article 5A ITA? Are there any consequences that Mr. Grima should be aware of when making his tax planning considerations? (8 marks)

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**Question 2:** (14 marks out of 100)

Papermate Company Limited is a leading wholesaler of stationery products and office equipment. They have a warehouse in Marsa where all merchandise is stored before distribution to various outlets across Malta and Gozo, as well as stocking different professional offices.

Over the last 5 years, Papermate Company Limited has experienced an increase in business owing to an increasing market share and the importation of more equipment and merchandise due to increased local market demand. The warehouse in Marsa, owned since inception of the business, is no longer large enough to cater for their storage and stocking requirements and the Board of Directors have taken the decision to purchase a new larger warehouse which is estimated to cater for their requirements for the next 10 years. The purchase price will be funded through a bank loan. The short-term intention is that the bulk of the loan will be repaid out of the sale proceeds upon disposal of the warehouse in Marsa.

- (i) Is Papermate Company Limited entitled to an optional exclusion or a mandatory exemption under Article 5A ITA. (4 marks)
- (ii) What is the tax treatment of the disposal of the original warehouse sold by Papermate Company Limited. Please state the applicable principles. No taxation workings are required. (6 marks)
- (iii) Does Papermate Company Limited benefit from the same tax treatment if it were to transfer the second warehouse without replacing it with a new warehouse for the same purposes within one year from the disposal? (4 marks)
-

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

EXAMINATION: CVL4021 – Fiscal Legislation Associated with Immovables - 2

DATE: TUESDAY 23<sup>rd</sup> JUNE 2015

READING TIME: 10:00AM – 10:05AM

DURATION OF EXAM: 10:05AM – 12:05PM

INSTRUCTIONS TO CANDIDATES

- This paper is divided in 2 sections. Answer all questions.
- Each question carries the marks indicated in the parenthesis. It is recommended that students apportion time according to the marks assigned to each question.
- During the examination, you are not allowed to have any mobile phones and/or memory-resident electronic devices.
- A simple calculator may be used, if required.
- Questions may be answered in bullet form or in paragraph form.
- Each Section is to be answered in a separate booklet. (Two booklets in total)
- This exam paper contains 5 pages in total.

## SECTION A: Immovable Property (Acquisition by Non-Residents) Act

### Question 1: (40 marks out of 100)

Marcus, a Slovakian national and his wife Joanne, a Turkish national have been living in Italy for the past 10 years where they have established their main residence. Marcus works as an electrical engineer in Italy and Joanne has been raising their two children.

During their last visit to Malta, they visited Gozo and they fell in love with a house of character in the quaint village of Sannat, valued at 250,000 EUR. They are thinking of purchasing this house jointly as a summer house where they will spend two summer months every year.

(i) What is the procedure applicable for Marcus and Joanne to be able to purchase the property in Sannat in terms of Chapter 246 of the Laws of Malta? Please give your detailed reasons for your replies. (8 marks)

(ii) Marcus and Joanne have also inquired about the possibility of moving permanently to Malta and establishing their main residence in a palazzo in Birgu. They are considering this step after they would have acquired the property in Sannat. What would be required for them as a married couple to establish their primary residence in Malta and purchase the property in Birgu in terms of the law regulating the Acquisition of Immovable Property by Non-Residents? Define 'primary residence' in terms of Chapter 246 of the Laws of Malta. (8 marks)

(iii) Chris is an Australian citizen who always lived in Australia, although he has visited his relatives in Malta for a few weeks in the past years. Chris is also a fellow engineer and childhood friend of Marcus. Chris has recently been informed that he is the heir of his second cousin Peter who was a Maltese national. In his estate, Peter owned an office located in Valletta and this was the only immovable property owned by later Peter. Explain the implications of Chapter 246 to the inheritance of the property in Valletta by Chris. (5 marks)

(iv) Chris is considering the possibility of granting by title of donation unto Marcus only, the office he inherited in Valletta so that Marcus can set up his engineering office and exercise his profession in Malta. This donation will be done after Marcus and Joanne would have already purchased the property in Sannat and the palazzo in Birgu. Joanne will not be included in the donation. Explain the issues, if any, that arise in connection with this donation of immovable property, bearing in mind the provisions of Chapter 246 of the Laws of Malta. (8 marks)

(v) Would it be possible for Chris as an Australian national, to set up a Maltese registered company, in which he will be sole director and sole shareholder and acquire a number of apartments which will be owned by this company in Malta for holiday rental purposes? Explain the requirements at law for a company to qualify as a 'resident' in terms of Chapter 246 of the Laws of Malta. (6 marks)

(vi) During his visit to Malta, Chris visited a converted townhouse in the city centre of Gudja which he fell in love with. The asking price of the property is 129,000 EUR. Chris believes that he will spend another 50,000 EUR to furnish the property and purchase all the required decorations and furnishings. Will it be possible for Chris to purchase this property in terms of Chapter 246 of the Laws of Malta? (5 marks)

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**Question 2:** (10 marks out of 100)

(i) Article 5 of Chapter 246 of the Laws of Malta establishes a list of exceptions to the general rule laid down by Article 4. Explain two of the exceptions listed in Article 5. (5 marks)

(ii) Define a 'non-resident' and 'resident' trust in terms of Chapter 246 of the Laws of Malta. (5 marks)

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**SECTION B Property Transfers Tax**

**Question 3:** (30 marks out of 100)

Way back in 1990 Michael Bartolo inherited a farmhouse measuring 240 square meters from his parents who passed away within 7 months of one another. Michael Bartolo has lived in the farmhouse all his life and together with his wife and two sons, he continued in the longstanding farming tradition of his family at the farmhouse and adjacent land measuring 875 square meters. As they grew older, both Mr. Bartolo's sons showed an intention that their future did not lie in farming; in fact the elder is a family doctor while the younger is an architect. Without the support of his children on the farm Mr. Bartolo has decided to retire from farming. In fact with the help of his son, Mr. Bartolo decided to develop the farmhouse and adjacent land into a complex of 6 large shops at ground-floor level and nineteen overlying apartments and a penthouse. There will also be 15

lock-up garages at under-ground levels 1 and 2 measuring 69 square meters each as well as another 5 lock-up garages measuring 99 square meters each. The garages will be sold together with the apartments.

Mr. Bartolo wishes to keep the penthouse and a 99 square meter garage for his own personal use and enjoyment together with his wife. He also wishes to donate an apartment and garage measuring 99 square meters to each to his sons. One of the apartments will be donated by Mr. Bartolo to the orphaned daughter of his late sister. All the other apartments and garages will be placed for sale on the open market. The proceeds of all these sales will constitute Mr. Bartolo's pension kitty.

(i) Please explain to Mr Bartolo his tax position in terms of the property transfers tax currently in force with respect to the following transactions:

- a. Mr. Bartolo's ownership of the penthouse and underlying garage;
- b. The donation of the apartment and underlying garage made in favour of his sons;
- c. The donation of the apartment made to his niece;
- d. The sale of each apartment together with a garage to third parties;
- e. The sale of a garage measuring 69 square meters to third parties.

(3 marks each, total of 15 marks)

(ii) Mr. Bartolo has also asked you to advise him on the potential tax liability of his sons in the event of his and his wife's demise and his children's decision to transfer the property to third parties. Make sure your replies are concise but still exhaustive. (10 marks)

(iii) Mr Inguanez has approached you and indicated his intention to purchase one of the apartments and 1 lock up garage for rental purposes, bearing in mind that he already owns other property which serves as his residence. Mr. Inguanez explained that he would consider selling the property in the event that any one of his tenants were to offer him a good price. But towards taking such a decision, Mr. Inguanez seeks your assistance in understanding what his tax position could be in the event of a sale of the property within 4 years from the date of purchase.

(5 marks)

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**Question 4:** (20 marks out of 100)

Matthew Pace and Sylvan Cachia have been longstanding friends since early school days. Both have always supported one another throughout their friendship and have grown up practically together. Both have been particularly successful in their respective catering business. Matthew Pace is the sole shareholder of Good Food Limited which in turn owns and operates a

prestigious restaurant. Sylvan Cachia too is the sole shareholder of a company, Corkscrew Limited, that owns and operates a very popular nightclub. Both have decided to join forces and assist one another in delivering a higher value product to their customers. They decided that they shall each transfer to the other 50% of the shares held in their respective companies so that they will have an equal amount of shares and voting rights in the two companies.

Mr. Pace and Mr. Cachia are also considering the option of a third friend, Francis Zahra, investing into the two companies by injecting fresh capital into the two companies for a 50% participation in both companies. This additional capital would allow both companies to refurbish the premises that each company owns.

(i) Briefly advise Mr. Pace and Mr. Cachia on their respective potential tax position under the Income Tax Acts in the event that they effect the share transfers in favour of one another as intended.

Briefly also explain the tax implications applicable in the case that Mr. Zahra effectis his additional investment into Good Food Limited and Corkscrew Limited? (10 marks)

(ii) Zahra Holdings Limited is a family owned immovable property owning company in which Mr. Zahra holds 75% of the shares and voting rights. Zahra Holdings Limited has taken a resolution to sell to Good Food Limited one of its properties adjacent to the restaurant owned by Good Food Limited so that the latter may expand its floor area and seating capacity.

Briefly explain whether the De-Grouping Charges apply would to such transfer, giving reasons for your answer. (10 marks)

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LLDI (2014/15)

CVL4021 – FISCAL LAW ASSOCIATED WITH IMMOVABLES 2

Credit Value: 4

September 2015 Examination Session

Wednesday 9<sup>th</sup> September, 2015

Reading time: 8:30 a.m. – 8:35 a.m.

Exam time: 8:35 a.m.- 10:35 a.m.

INSTRUCTIONS TO CANDIDATES

- This paper is divided in 2 sections. Answer all questions.
- Each question carries the marks indicated in the parenthesis. It is recommended that students apportion time according to the marks assigned to each question.
- During the examination, you are not allowed to have any mobile 'phones and/or memory-resident electronic devices.
- A simple calculator may be used, if required.
- Questions may be answered in bullet form or in paragraph form.
- Each Section is to be answered in a separate booklet. (Two booklets in total)
- This exam paper contains 5 pages in total.



**SECTION A: Immovable Property (Acquisition by Non-Residents) Act**

**Question 1: (40 marks out of 100)**

Joseph Borg is a Maltese citizen who was born in Pieta' on the 11<sup>th</sup> September 1958. In July 1960 his parents emigrated to Australia and he has lived there ever since. His wife, Terry, is an Australian citizen, and they have lived in Australia for all their lives. Last week Joseph and his wife Terry visited Malta and during their trip they decided to acquire an apartment to serve as their holiday home in Saint Paul's Bay. They saw an apartment which they liked, valued 100,000 EUR. This apartment is in shell form state.

(i) What is the procedure applicable for Joseph and Terry to be able to purchase the property in Saint Paul's Bay in terms of Chapter 246 of the Laws of Malta? Will it be possible for them to acquire this property? Please give detailed reasons for your replies. (8 marks)

(ii) Joseph and Terry have also inquired about the possibility of moving permanently to Malta and establishing their main residence in Gozo. Would it be possible for them to acquire their 'primary residence' in Gozo after they would have purchased their holiday home in Saint Paul's Bay? Define 'primary residence' in terms of Chapter 246 of the Laws of Malta. (8 marks)

(iii) Joseph's uncle, Patrick, a Maltese national, lived in Malta for the last 20 years of his life, and he had acquired a house in Mosta and another house in Zebbug, Gozo, where he lived after moving to Malta from Australia. He passed away last July and accordingly to his last will, he appointed Joseph and Joseph's sister Margaret, a Maltese national, as his sole and universal heirs. Explain the implications of Chapter 246 to the inheritance of the property by Joseph and Margaret. (5 marks)

(iv) Joseph and Margaret have decided to partition the property they inherited. Joseph will become full owner of the house in Mosta and Margaret will become full owner of the house in Zebbug, Gozo. Explain the issues, if any, that arise in

connection with this partition of immovable property, bearing in mind the provisions of Chapter 246 of the Laws of Malta. (8 marks)

(v) Explain the requirements at law for a company to qualify as a 'resident' in terms of Chapter 246 of the Laws of Malta. Joseph's wife, Terry and Joseph's sister Margaret are thinking about setting up a company to operate in the floral business in Malta. Is it possible for them to set up a 'resident' company in terms of Chapter 246 of the Laws of Malta if they split the shareholding of the company equally between themselves? (6 marks)

(vi) Joseph and Terry's son Gerald is an Australian citizen and he would like to live in Europe to further his studies in the history of art. He came across an unconverted house in Senglea, valued 190,000 EUR and he intends to refurbish it extensively and make this property his main residence. Gerald already owns an apartment in Italy, which he will now rent to holidaymakers. Do you envisage any difficulties for Gerald to acquire the property in Senglea in terms of Chapter 246 of the Laws of Malta? (5 marks)

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**Question 2: (10 marks out of 100)**

(i) Article 5 of Chapter 246 of the Laws of Malta establishes a list of exceptions to the general rule laid down by Article 4. Explain two of the exceptions listed in Article 5. (5 marks)

(ii) Which declaration/s must the Notary include in the deed when applying an exception from Article 5 of Chapter 246 of the Laws of Malta, to a particular transfer of property? (5 marks)

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**SECTION B Property Transfers Tax**

**Question 3: (30 marks out of 100)**

Mr and Mrs Coppini own a beautiful bungalow in Marsascala having an area of 300 square meters which includes a two car garage and pool area. The house is surrounded by a garden that measures an additional area of 150 square meters. This

house has, since their marriage 35 years ago, been Mr and Mrs Coppini's matrimonial home, where they have lived and raised their two children. Now that their children have all grown up and taken their own separate path in life, Mr and Mrs Coppini have decided to sell their entire property in Marsascala so as to purchase another property, smaller in size, which is more suitable to their current requirements. You are requested to provide Mr. and Mrs Coppini with your advice as to whether any property transfers tax is payable upon the sale of their property. In providing your advice, please make sure you explain the reasons and motivations behind their tax position as well as advising on any conditions that must be fulfilled so that the optimal tax result is achieved.

(15 marks)

Mr and Mrs Coppini have engaged the services of an estate agent to find a suitable property to live into in the later years of their life. The estate agent has shortlisted some properties which Mr and Mrs Coppini are considering. However, their main concern remains their tax position in the event that they need, for some reason, to sell the property. The shortlisted properties are the following:

- a. A small townhouse in Mqabba (includes a one car garage)
- b. A penthouse in Qawra in a complex of 30 apartment units each having a lock up-garage in the underlying basement levels. The penthouse in Qawra includes its own lock up garage at basement level.
- c. A house in the heart of Sliema with a garage measuring 75 square meters located 600 meters away from the house.

Please identify and briefly explain all potential property tax implications of the eventual sale of each of these properties by Mr and Mrs Coppini.

(15 marks)

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**Question 4: (20 marks out of 100)**

It has become very clear that Mr and Mrs Coppini are quite fiscally sensitive and are now considering other future potential tax liabilities from an estate planning point of view. Mr and Mrs Coppini wish to avoid a situation where upon their demise the new property becomes a fiscal burden on their two children. Towards this end Mr and Mrs Coppini wish your advice in relation to the two potential scenarios:

- a. In the event of the demise of both Mr and Mrs Coppini, the property will devolve to their children *causa mortis*. Mr and Mrs Coppini wish to know what the children's tax position will be in the event that they sell the inherited

property to third parties.

- b. Mr and Mrs Coppini are also considering the alternative of donating the property to their children jointly as soon as their new residence is purchased. Despite the donation, Mr and Mrs Coppini intend to enter into an agreement with both children pursuant to which they will be granted a life-long right of habitation in the property until the demise of the surviving spouse.

Provide Mr and Mrs Coppini with a brief synopsis of the potential tax position of their children upon the demise of both Mr and Mrs Coppini taking into consideration all possible scenarios. You should assume that Mr and Mrs Coppini are aware that fiscal laws relating to immovable property transfers may change in the future and that your brief advice is based on current applicable legislation.

(20 marks)

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