

Compulsory Past Papers

LL.B. II





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2020/2021

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ABOUT GhSL

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

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

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

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



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.



SECOND YEAR LAW COMPULSORY UNITS PAST PAPERS

1. Law of Property
2. Law of Persons
3. Duties of Traders and Commercial Intermediaries
4. Substantive Criminal Law
5. Administrative Law
6. Commercial Obligations
7. European Union Law
8. Introduction to Principle of Taxation

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



Second Year Law
Compulsory Units Past Papers

LAW of PROPERTY

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

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

LAW OF PROPERTY

MONDAY 11TH JUNE 2007

9.15AM – 12.15PM

Answer any *three* questions.

1. Outline and explain the main elements of acquisitive prescription and distinguish between the ten year and the thirty year acquisitive prescription.
2. Although ownership has always been considered in absolute terms, modern concepts and priorities have brought about rules and legislation which somewhat limit this concept – discuss.
3. Explain the principles governing the termination of co-ownership as set out in our Civil Code with particular reference to recent changes in the relative legislation.
4. Outline the main elements of possession and explain the distinction between possession in good faith and possession in bad faith. Give examples.
5. Explain the institute of usufruct and discuss the rights and obligations of the usufructuary.
6. Praedial servitudes – explain, with particular reference to the requirements for their constitution and their extinction.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II
SEPTEMBER 2007 RESIT EXAMINATION SESSION
CVL2011 – LAW OF PROPERTY

THURSDAY, 11TH SEPTEMBER 2007

9.15AM – 12.15PM

Answer any three questions

1. Outline the main elements of possession and explain the distinction between possession in good faith and possession in bad faith. Give examples
2. Comparison and distinction between the action spoli and actio manutentionis
3. Examine the requirements of the actio reivindicatoria
4. Explain the principles governing the termination of co-ownership as set out in our Civil Code with particular reference to recent changes in the relative legislation.
5. Outline and explain the main provisions of the Condominium Act.
6. Outline and explain the requirements of (a) the ten year acquisitive prescription and (b) the thirty year acquisitive prescription.

UNIVERSITY OF MALTA
FACULTY OF LAW
LLB II
MAY/JUNE 2008
CVL2011 – LAW OF PROPERTY

THURSDAY, 5TH JUNE 2008

9.15AM – 12.15PM

The time allowed is three hours. Answer any three questions. You may reply either in the Maltese or in the English language

1. Examine the traditional meaning of ownership in the Civil Code. Discuss the point whether the character of absoluteness is today influenced or limited by developments such as planning legislation and the concept of abuse of right.
2. Discuss the procedure and criteria for acquisition and compensation for land acquired by the Competent Authority by absolute purchase in terms of the Land Acquisition (Public Purposes Ordinance) Cap 88 of the Laws of Malta.
3. Compare and distinguish the following possessory actions: (a) the *actio manutentionis* and b) the *actio spoli*.
4. Consider the rights and obligations of the Usfructuary.
5. Examine the obligations of the Emphyteuta.
6. Review the methods and rules relative to the creation and extinction of easements created by Act of Man.

UNIVERSITY OF MALTA

FACULTY OF LAW

LLB II Year

Session September 2008

Time allowed is three hours. Answer any three questions.

1. Examine the requisites of the (i) *actio spoli* and (ii) the *actio manutentionis*.
2. Consider the obligations of the Usufructuary.
3. Discuss the obligations of the Emphyteuta.
4. Explain the (i) ten year acquisitive prescription and (ii) the thirty year acquisitive prescription.
5. Discuss (i) the rights and obligations of the co-owners and (ii) the principles relating to sale by licitation.
6. Examine briefly the procedure relating to Land expropriation and payment of compensation thereof in terms of the Land Acquisition (Public Purposes) Ordinance, Chapter 88 of the Laws of Malta.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II
MAY/JUNE 2009 EXAMINATION SESSION

CVL2011 – LAW OF PROPERTY

MONDAY 8TH JUNE 2009

9.15AM – 12.15PM

Answer any three questions. The time allowed is three hours. You may answer either in the Maltese or in the English language. Each full question carries thirty three marks, the entire paper marked out of a maximum of a hundred marks, and as indicated, rounded off in favour of the student.

1. Examine the meaning of ownership in the civil law system of Malta and also address any contemporary limitations thereon.

(18, 15 marks respectively)

2. Review the meaning of a *condominium* in terms of the *Condominium Act* and (ii) the provisions of the *Condominium Act* relative to alterations to the common parts.

(18, 15 marks respectively)

3. Distinguish between the *actio spoli* and the *actio manutentionis*.

(18, 15 marks respectively)

4. Assess (i) the meaning and notion of usufruct and (ii) the obligations of the usufructuary.

(15, 18 marks respectively)

5. Examine (i) the rights, powers and faculties of the *emphyteuta* (ii) the rules relative to divisibility of ground rent and (iii) the principles regulating acknowledgement of a new *emphyteuta*.

(17, 8 and 8 marks respectively)

6. Explain (i) the ten year acquisitive prescription and (ii) the thirty year acquisitive prescription.

(18, 15 marks respectively)

7. Consider the rules relative to a common wall in terms of the civil code.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II
SEPTEMBER 2009 EXAMINATION SESSION

CVL2011 – Law of Property

Tuesday 1st September, 2009

9.15am – 12.15pm

Answer any THREE questions. Each question carries equal marks.

1. Consider the procedure relative to Land Expropriation in terms of Chapter 88 of the Laws of Malta.
2. Examine the obligations of the usufructuary.
3. Compare and contrast the *actio spolii* with the *actio manutentionis*.
4. Explain the obligations of the *emphyteuta*.
5. Distinguish between (i) acquisitive and extinctive prescription and (ii) suspension and interruption of prescription.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB II YEAR (2009/10)
CVL2011 - LAW OF PROPERTY

MONDAY, 14TH JUNE 2010

4.45P.M. - 7.45P.M.

ANSWER ANY THREE(3) QUESTIONS
ALL QUESTIONS CARRY EQUAL MARKS

1. Examine the rules relating to condominium.
2. Compare and assess the *actio manutentionis* and the *actio spoli*.
3. Review the obligations of the usufructuary.
4. Evaluate the rights and powers of the *emphyteuta*, and any limitations thereof: discuss such powers and limitations also in comparison with those pertaining to an absolute owner.
5. Distinguish, in context of the law of possession, between the notion of (i) good faith and (ii) bad faith. Examine in general terms, the different effects of possession in good faith or in bad faith.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB II YEAR (2009/10)

CVL2011 - LAW OF PROPERTY

FRIDAY, 3RD SEPTEMBER 2010

1.00 - 4.00 P.M.

ANSWER ANY THREE(3) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Examine the concept and meaning of ownership in the context of the law of Malta. How far do you consider ownership an absolute right?
2. Outline the provisions of the Land Acquisition (Public Purposes) Ordinance Chapter 88, relative to expropriation procedure and payment of compensation.
3. (i) Distinguish between the possessor and the holder; and (ii) examine the presumptions arising from possession.
4. Consider the obligations of the usufructuary.
5. The rights and powers of the *emphyteuta* are in many ways akin to those of the owner. Examine and comment on the statement.

UNIVERSITY OF MALTA
FACULTY OF LAWS
JUNE 2011
LL.B. II

CVL2011 – LAW OF PROPERTY

WEDNESDAY 22ND JUNE, 2011

8.00AM – 11.00AM

Select three of the following questions and answer them. All questions carry equal marks.

1. Our courts have tempered the rigour of the classical '*probatio diabolica*' in the *actio rei vindicatoria* and admitted the *actio publiciana*. Compare and contrast, with reference to judgments, the requirements and burden of proof in these actions.
2. Examine the method and procedure to challenge the quantum of compensation offered by the Competent Authority in Expropriation proceedings in terms of Chapter 88 of the Laws of Malta.
3. The Civil Code tradition discourages voluntary community of property and restricts the co-owners' liberty to ensure its permanent continuation. Do you agree? What are the remedies available to the co-owner wishing to dissolve the community?
4. How wide are the powers of the *utilista* in a contract of emphyteusis?
5. Distinguish between an *actio petitoria* and an *actio possessoria*. Summarise the requirements of the *actio spolii*.

UNIVERSITY OF MALTA
FACULTY OF LAW
LL.B. II
SEPTEMBER 2011
CVL2011 – LAW OF PROPERTY

MONDAY 5TH SEPTEMBER 2011

09.15AM – 12.15PM

Select three of the following questions and answer them. All questions carry equal marks.

1. Examine the grounds and circumstances for termination or dissolution of *emphyteusis*.
 2. "Ownership is the right of enjoying and disposing of things in the most absolute manner" (Art. 320 of the Civil Code). Explain the meaning and consequences of the "absolute" nature of ownership.
 3. "Acquisitive prescription is a mode of acquiring but not a mode of transferring property." Do you agree?
 4. Explain the legal classification of easements created by act of man, discussing also the modes of creating and extinguishing the different categories of easements.
 5. The usufructuary's powers and faculties are limited by the duty "*salva rerum substantia*". Examine this limitation within the context of usufruct and the rights of the usufructuary.
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UNIVERSITY OF MALTA
FACULTY OF LAWS
JUNE 2012
LL.B. II

CVL2011 – LAW OF PROPERTY

WEDNESDAY 27th June, 2012

9.15A.M.-12.15P.M.

Select three of the following questions and answer them. All questions are assigned equal marks. Use a separate answer-book for each question.

1. Discuss (i) the rights of the usufructuary and (ii) the grounds for termination of usufruct.
2. Distinguish between causes which (i) prevent, (ii) suspend and (iii) interrupt the running of prescription. In each case examine the implications and effects of each cause.
3. Consider the ways in which the title of emphyteusis differs from full ownership.
4. Discuss, with reference to judgements, the manner in which a wall separating a tenement which is already developed from an undeveloped plot of land, may be rendered common. What obligations, if any, would bind the owner of the undeveloped land after rendering the dividing wall common?
5. 'Ownership is the right of enjoying and disposing of things in the most absolute manner...' (Art.320, Civil Code). Discuss this 'absolute' nature of ownership and its legal consequences.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B.II - SEPTEMBER 2012
CVL2011 – LAW OF PROPERTY

WEDNESDAY 12TH SEPTEMBER 2012

9.15AM – 12.15PM

Select three of the following questions and answer them. All questions are assigned equal marks. Use a separate answer-book for each question.

1. “In an action demanding the recovery of property against an actual possessor, defendant need not prove anything.” Do you agree? Discuss.
 2. The classical remedies for terminating a state of community of property were supplemented in 2004 by two other important remedies. Discuss these new remedies; highlighting in particular the circumstances in which they are available, and whether you feel they serve to facilitate dissolution of community.
 3. Consider (i) the grounds for and (ii) the effects of dissolution termination of emphyteusis.
 4. Evaluate the powers and duties of the *condomini*.
 5. Examine the requirements of the *actio spoli*.
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II

CVL2011 – LAW OF PROPERTY

Thursday 13TH JUNE 2013

9.15A.M. – 12.15P.M.

Answer any Three Questions. Each question carries equal marks. In cases where a question is divided into two parts, each part carries equal marks. Use a separate exam booklet for your answer to each separate question.

In this exam paper references to 'jurisprudence' are meant to denote court judgements.

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- 1) The law gives the co-owner the benefit of opting out of the state of community, even where such co-owner has bound himself or has been bound, not to proceed to partition. Discuss the nature and extent of this right of the co-owner; explaining also the remedies available at law for terminating the state of community.
 - 2) (i) Would you consider acquisitive and extinctive prescription as a necessary functional measure in the interest of social order or as an immoral institute? Discuss, keeping in mind the debate as to whether the various kinds of prescription possess the same juridical nature. (ii) Briefly contrast the ten year and thirty year acquisitive prescription.
 - 3) 'Whilst the *actio finium regundorum* determines the boundary-line, it is the dividing wall which marks this imaginary line by visible and permanent means.'
(i) Discuss, with reference to jurisprudence, the circumstances in which the *actio finium regundorum* may be filed. (ii) Explain, with reference to jurisprudence, the manner in which the dividing wall may be rendered common.
 - 4) (i) 'Emphyteusis is a real right'. Discuss this statement in the light of conditions imposed in emphyteutical grants. (ii) Briefly discuss the grounds and circumstances of termination of emphyteusis.
 - 5) 'Expropriation of private property for a public purpose is a good example of the increasing interaction between human rights and property law.' Consider this statement in the light of the procedure relative to expropriation.

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

CVL2011 – LAW OF PROPERTY

TUESDAY 10TH SEPTEMBER 2013

09.15AM – 12.15PM

*Select three of the following questions and answer them. All questions carry equal marks.
Use a separate exam booklet for your answer to each question.*

1. 'The absolute right of enjoyment of an owner is only absolute to the extent that it does not encroach on the enjoyment of another owner.' Discuss the legal basis of the 'Abuse of Rights' Theory and explain its consequences in practice..
 2. Examine the requirements of the *actio spoli* and the *actio manutentionis*.
 3. Discuss, with reference to judgements the circumstances in which a legal right of way may arise, explaining also any corresponding legal obligations.
 4. Distinguish between the *actio rei vindicatoria* and the *actio publiciana*.
 5. Evaluate the relevant provisions of the Civil Code relating to possession of movables. How far, if at all, is acquisitive prescription applicable to the case of movables which have been lost by or stolen from the owner thereof?
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS Year II
CVL2008 – LAW OF PROPERTY

Wednesday 25th June, 2014

9.15am – 12.15pm

Answer one question from Section A, together with another two questions from Section B; in all three questions. Use a separate script for every question.

SECTION A (Compulsory)

All students are required to answer this question:

1. On 1st June 1984, Alfred Borg and his brother Bernard Borg inherited in full ownership a field in Siggiewi in equal shares between them. This field had a wide frontage on a public road, measured five tumoli, and was surrounded on all four sides by a wall.

In 1990, Alfred Borg and Bernard Borg agreed to divide the field in two equal portions; the front part having the frontage on the public road went to Alfred Borg, while Bernard took the back part. They agreed that Alfred would leave a 3-metre pathway on the left side of his front part, so that Bernard could use it at all times to reach his back part from the public road. Given their good relationship and in order to avoid the expense of a deed and taxes, Alfred and Bernard opted not to draw up a public deed of partition and agreed instead to mark this physical partition of the property with stones placed at intervals along the dividing line.

Both Alfred and Bernard have now grown old and their respective sons John and Teddy are now cultivating the land regularly.

On 1st June 2014, Teddy (Bernard's son) went to the field as usual and found that John (Alfred's son) had tilled the land which formed the 3-metre pathway, obliterated the pathway, and permanently closed the opening from which Teddy and his father used to accede to their part of the field.

Advise Teddy on:

- (i) His remedies to obtain the immediate reinstatement of the pathway and the opening on the public road from which he can accede to the field; (12 Marks)
- (ii) His father's title over the back part of the field, and whether the 3-metre pathway constitutes a right of way; (11 Marks)
- (iii) His father's remedies to permanently terminate the state of co-ownership with his brother Alfred Borg over this field. (11 Marks)

SECTION B

Students are required to answer any two of the following four questions:

- 2. Consider the grounds for termination and dissolution of emphyteusis. Examine the discretion enjoyed by the court in such circumstances. (33 Marks)
 - 3. 'The burden of proving an original title is an undue restriction favouring the actual holder of a thing, to the prejudice of its rightful owner.' To what extent is this correct, particularly in the light of the current judicial interpretation of the *actio rei vindicatoria*? (33 Marks)
 - 4. '*Possideo quia possideo*' – 'I possess because I possess.' Discuss this expression in the context of the possessory actions, explaining why and how the actions protect possession. (33 Marks)
 - 5. 'Our Courts have tempered the prohibition of opening windows in the party-wall in certain specific instances.' Discuss the instances, if at all, when our courts allow such openings, explaining also the extent of this allowance. (33 Marks)
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2nd YEAR
MAY/JUNE 2015 EXAMINATIONS

EXAMINATION: Law of Property (CVL2008)

DATE: 17th June 2015

READING TIME: 8.30AM to 8.35AM

DURATION OF EXAMINATION: 8.35AM to 11.35AM

INSTRUCTIONS TO STUDENTS:

You must answer Question 1 in Section A and any two Questions from Section B.

Every question is to be answered on a different script.

SECTION A (Compulsory) (34 marks)

All students are required to answer this question:

1. In 1980, John Vella inherited a portion of land in Zejtun. The land had a low rubble wall on the public road and was surrounded by other fields. John was never interested in cultivating it. The land could not be developed at the time and its value was relatively low.

John married soon after and went to live in Mellieba. He only visited the land a couple of times, just to show it to his wife and children. When he last visited with his children around 1987, he noticed that the low rubble wall had an opening four meters wide on its left side. He also noticed that the back part was cultivated and that two horses were running loose on the front part. The children enjoyed playing with the horses and John and his wife cherish to this day the photos of the children which they took on that occasion. Whilst in his field, John used his keys to enter the two old rooms which his father had erected many years before. The keys worked. The rooms were almost empty and he locked them up again before he left.

Whilst speaking to his architect, John recently came to know that his land in Zejtun could now be developed. He therefore decided to go on site with his son, Paul. On their arrival on the 25th May 2015, John was astounded to see that the rubble wall on the public road had been replaced by a high wall made of *franka* (limestone), in the middle of which there was a locked gate. He could also see that the old rooms had been renovated and extended to form a small farmhouse. There were also paddocks for horses in the front part of the field.

On seeing this, John became infuriated and decided to break the lock of the front gate. He then walked into the field. As he approached the building, he noticed that it was being used for holiday purposes and that the locks to the rooms had been changed. There and then he decided to change all the locks, including that of the gate, and replace them with new ones.

Almost immediately after this episode, John received a call from Frank, an old Zejtun acquaintance, alleging that the land and building were his property, and threatening John with court proceedings if John did not give Frank the new keys. John refused to give Frank the keys and insisted that he owned the property. John, however, recalled that his father, many years back, had given permission to Frank, then a youngster, to keep his horses in this field.

- (i) Advise John of the consequences of any possessory remedy which is available to Frank in order for the latter to regain physical control of the field (3 marks), the elements which Frank should prove for such action to succeed (9 marks) and any defense John could raise in his favour (3 marks);
- (ii) Advise John of the legal sustainability of Frank's claim to now own this immovable property (7 marks)
- (iii) Advise John regarding any judicial remedy available to him to assert his ownership of this property (3 marks), the elements which John should prove for such action to succeed (6 marks) and any defense Frank could raise in his favour (3 marks).

SECTION B (66 marks)

Students are required to answer any two of the following four questions:

2. Consider the grounds for termination and dissolution of emphyteusis. In your view, does the violation of a condition in emphyteusis necessarily lead to termination? (33 marks)

3. Briefly outline the role played by the Commissioner of Lands throughout the expropriation process. (33 marks)
 4. 'Usufruct is an example of a real right and a lesser right of ownership.' Evaluate this statement by reference to the meaning of real rights and the content of the right of usufruct. (33 marks)
 5. (i) Discuss the two circumstances in which the law grants an owner of a tenement a right of way over a neighbouring tenement and explain the rights/obligations which may arise in such circumstances between the owners of said tenements. (17 marks)

(ii) How is a conventional right of way created? Give reasons for your answer (16 marks)
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
MAY/JUNE 2016 EXAMINATIONS

CVL2008 – LAW OF PROPERTY

DATE: MONDAY 30TH MAY 2016

READING TIME: 10:00AM – 10:05AM

DURATION OF EXAM: 10:05AM – 1:05PM

INSTRUCTIONS TO STUDENTS:

You must answer Question 1 in Section A, any *one* question from Section B and any *one* question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (Compulsory) (34 marks)

1. On the 3rd March 1985, John granted by title of temporary emphyteusis to Paul a ground-floor shop in Qormi for a term of forty five years from the date of the deed. Paul has used the place for his ironmongery business for 25 years. In the last couple of years, however, Paul has grown very sick and closed down his business. The shop appears to have been abandoned; showing very clear signs of dilapidation and apparent structural damage. Paul has also failed to pay his ground-rent due for the past two years.

Besides this shop, John owns the tenement overlying the shop, which he had occasionally used as an office; as well as an adjacent plot of land which has not been occupied for the past forty years. John has recently become aware Paul's children have carried out internal alterations in the shop and opened an interconnecting door from the shop to the stairwell of the overlying tenement. These works were carried out within the last month. At the same time, he also noticed that a year and a half ago Paul's children started works in the adjacent plot of land; intending to develop it into a huge commercial store and overlying residential tenements.

Advise John:

- a. On any remedies he may have against Paul for the payment of the outstanding ground-rent and the termination of the emphyteutical grant (11 marks);

- b. On any remedies he may have to obtain the immediate closure of the door which Paul's children opened to connect their father's shop with the overlying tenement; specifying the requirements of proof that he must satisfy in order to succeed (11 marks);
 - c. On the remedies he may have against Paul's children to take back possession of his adjacent plot of land, specifying the requirements of proof that he must satisfy in order to succeed (12 marks).
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SECTION B (33 marks)

Students are required to answer any *one* of the following two questions:

2. In the last fifteen years there have been substantial changes in Chapter 88 which were purportedly made to speed up the expropriation process and provide a fairer system of compensation. Discuss any *two* of these changes and give your opinion as to whether the stated aim has been achieved.
 3. Discuss in detail the new remedies which Act XVIII of 2004 (as amended in 2016) has introduced for terminating a state of community of property; giving your opinions about their effectiveness in the light of the general rules and principles regulating termination of community.
-

SECTION C (33 marks)

Students are required to answer any *one* of the following two questions:

4. Consider the requirements of the ten year acquisitive prescription and the thirty year acquisitive prescription as they emerge from the Civil Code.
 5. Evaluate the provisions of the Civil Code relating to joint and successive usufruct and creation and termination of usufruct.
-

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2ND YEAR /
LL.B. 2ND YEAR WITH L.P. OPTION
MAY/JUNE 2017 EXAMINATIONS

EXAMINATION: CVL2008 LAW OF PROPERTY

DATE: FRIDAY 2ND JUNE 2017
DURATION OF EXAM: 10.00AM TO 1.05PM

INSTRUCTIONS TO STUDENTS:

You must answer Question 1 in Section A, any *one* question from Section B and any *one* question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (Compulsory) (34 marks)

1. Joseph Borg purchased a farmhouse with an adjoining field at Marsascala and subsequently obtained a permit to change the use of this residential farmhouse into a nightclub. Robert Zahra lives in another farmhouse next to Mr Borg, and also owns an adjoining field adjacent to Mr. Borg's field. There was no wall dividing the two fields at the time when Mr Borg purchased his farmhouse.

Six weeks ago Joseph Borg, who had previously obtained the permits required at law, started using the farmhouse and the field as night club. The activity in the farmhouse and the open air section in the field continued until the early hours of the morning.

Robert Zahra repeatedly complained; but Joseph Borg stated that he had a right to do what he liked with his property. Because of the noise, Robert Zahra felt he could not enjoy his own property. He therefore, having obtained the necessary permit, proceeded two days ago to build a two and a half meter high wall separating his field from Mr Borg's field.

Joseph Borg is complaining that this wall (a) is blocking the view that he previously enjoyed from his field and (b) has not been built on the correct boundary line between their fields.

- A. Advise Mr Zahra about his rights and remedies against Mr Borg in respect of the disturbance being caused. (17 Marks)
- B. Advise Mr Borg on his rights and remedies against Mr Zahra in respect of the newly constructed dividing wall. (17 Marks)

SECTION B (33 marks)

Students are required to answer any one of the following two questions:

2. 'The Courts have tempered the rigorous standard of proof required to successfully prosecute the *actio rei vindicatoria*; without however relieving the plaintiff from the obligation of proving a good title of ownership.' Discuss. (33 Marks)
 3. 'Despite the development of new options for terminating community of property, partition in kind remains the principal right of every co-owner and sale by licitation the most effective subsidiary remedy.' Discuss this statement, making clear whether or not you agree with it. (33 Marks)
-

Section C (33 marks)

Students are required to answer any one of the following two questions. Each sub-question carries equal marks.

4. Answer *both* of these sub-questions:
 - A. Discuss the duties and burdens of the emphyteuta.
 - B. In the case of a transfer of *utile dominium*, when and to what extent is the transferring emphyteuta released from his/her obligations?
 5. Distinguish, explaining the causes thereof, between: (i) prevention, (ii) suspension and (iii) interruption of the running of prescription.
-

University of Malta
Faculty of Laws

CVL2008 LAW OF PROPERTY (80%)

Friday 1st September 2017

Duration of Examination: 8.30AM – 11.35AM

(Instructions to students).

You must answer Question 1 in Section A, any *one* question from section B and any *one* question from section C; three questions in all. Each question must be answered on a separate booklet.

SECTION A (Compulsory) (34 marks)

1. Since the 1970s Ray Abela, a farmer from Ghasri, tilled four adjoining fields (fields A, B, C and D) – all being of irregular shape; one leading to the other. Field C was as big as fields A, B and D put together. The only field having a frontage on a public road is one of the small fields. (Field A).

Ray Abela used to pay rent (not ground rent) to Mrs Mary Stevens specifically on field A. Ray Abela purchased the full ownership of Fields B and C from a certain Grezzju Xuereb (Mrs Stevens' brother) in the 1990s. Before that, he used to rent these two fields from Xuereb. Ray Abela never paid anyone anything on field D, but he tilled it and enjoyed it as though he was the owner since the 1970s; although he knew that he had not concluded a contract (public deed) purchasing it.

Mrs Mary Stevens passed away and her son George Stevens, who is her sole heir, carried out searches into the property she owned and discovers that in the 1950s she had entered into a deed of partition between her and her brother Grezzju Xuereb. According to this deed, Mary Stevens was assigned Fields A, B and D; while Grezzju Xuereb was assigned Field C, which was the largest of the 4 fields.

Seeing all this, 3 days ago George Stevens decides to enter Field D and tilled it, passing through fields A, B and C without Ray Abela's knowledge or consent. As soon as George Stevens has finished tilling the land, Ray Abela finds him there and they have a big argument, with both of them claiming ownership of the land.

- A: Advise George Stevens on his remedies against Ray Abela in respect of fields B and D. (16 marks)
- B: Advise Ray Abela on the defences which he may be entitled to raise in respect of fields B and D. (9 marks)
- C: Advise Ray Abela on any quick remedy he may have against George Stevens for having entered fields A, B and C and having tilled Field D. (9 marks)

SECTION B (33 marks)

Students are required to answer any *one* of the following two questions:

2. A right of way may be legal or conventional. Discuss the circumstances in which the law grants a tenement a right of way, mentioning also the rights of the dominant and servient tenement in such circumstances. Discuss also the manner in which a conventional right of way may be constituted, explaining your conclusion.
 3. 'Limitations to the right of ownership and its exercise are set to satisfy both public and private interests, including those of the owner himself.' Discuss.
-

SECTION C (33 marks)

Students are required to answer any *one* of the following two questions:

4. Examine the meaning and requisites of possession.
 5. 'The usufructuary is to enjoy the usufruct, *salve rerum substantia*.' Comment.
-

University of Malta
Faculty of Laws
May/June 2018 Examinations

CVL2008 – Law of Property

Wednesday 20th June 2018

Duration of Examination: 8:30am to 11.35am

INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A, any one question from Section B and any one question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (COMPULSORY) (34 marks)

1. Alfred, Joseph and Paul are co-owners of a large terraced house in Gudja, which they inherited 4 years ago from their father, in equal shares. The three siblings have since had various disputes over that succession and Alfred and Joseph have stopped almost all communication with Paul for the past two years. The house is in dire need of repairs. Some of the uppermost ceilings have structural damages and the front balconies are in danger of collapsing.

Joseph has found a willing buyer, George, who has agreed to buy the house in its actual dangerous state, at a reduced price. George however insists that he buy the entire house and also that the vendors accept that two windows, which the house has in its dividing wall, overlooking "third party" undeveloped land, and also three smaller openings in the same wall, just beneath the ceilings, constitute servitudes in favour of the house burdening the neighbouring undeveloped land.

When Joseph informed his brothers Paul and Alfred, Alfred immediately accepted. Paul however objected; stating that the house could be demolished and developed into a block of 3 flats with underlying garages, and then they could partition them and each would own a flat and a garage.

Advise Alfred and Joseph on:

- a. any rights and obligations they may have in regards to carrying out repairs to remedy impending dangers of the house; (8 marks)
- b. any remedies they may have to sell the entire house to George, without Paul's consent, explaining the procedures involved; (9 marks)
- c. any other remedies they have to terminate the state of community with ~~George~~ ^{Paul} over this house; (8 marks)
- d. the nature of all five openings in the dividing wall, and the rights and burdens which the house has in regard to the "third party" neighbouring undeveloped land in that regard. (9 marks)

SECTION B (33 marks)

Students are required to answer any one of the following two questions:

2. The Government Lands Act (Chapter 573 of the Laws of Malta) has further streamlined the expropriation procedure when dealing with new expropriations. Explain the impact of these changes in the light of the pre-existing laws of expropriation and their judicial interpretation.
3. 'A right of way may be legal, or conventional, or both.' Discuss.

SECTION C (33 marks)

Students are required to answer any one of the following two questions:

4. Consider the grounds for termination of the emphyteusis.
5. 'The *giuramento decisorio* in the law of extinctive prescription has seen a fundamental change in amendments to the Civil Code introduced in 2017.' How far would you agree with this statement?

University of Malta
Faculty of Laws
September 2018 Examinations

CVL2008 – Law of Property

Date: Friday 7th September 2018

Duration of Examination: 8:30am to 11.35am

INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A, any one question from Section B and any one question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (COMPULSORY) (34 marks)

1. George, John and Paul inherited a farmhouse and a small adjoining garden in Gudja four years ago. This property is adjacent to another farmhouse and field which belong to Phil. The dividing wall was in a very poor state and was not in a condition to support any new construction.

Phil obtained planning permission to extend his farmhouse, building a new floor over the existing farmhouse and utilising the present dividing wall. Phil commenced the works in August 2018, in the course of which he: (i) demolished part of the dividing wall and part of the farmhouse belonging to George, John and Paul; (ii) rebuilt the dividing wall according to art and trade so that it can support the new building, but he did not reinstate the demolished part of George, John and Paul's farmhouse; (iii) built his new farmhouse adjacent to the newly-constructed dividing wall, and on the new floor he left an opening measuring 1 metre x 1 metre in the dividing wall.

George wants to take action against Phil; but Paul and John refuse to do so, stating that they wish to terminate the state of co-ownership in the quickest and most effective manner possible.

- (a) Advise George on the remedies available to him against Phil in regard to the demolished part of the common farmhouse, and the new opening in the dividing wall. (12 Marks)
- (b) Advise Phil on possible defences he may raise against such action/s. (12 Marks)
- (c) Advise John and Paul on the remedies available, if any, to terminate the state of community of property. (10 Marks)

SECTION B (33 marks)

Students are required to answer any one of the following two questions:

2. 'The *actio publiciana* seems to be replacing the *actio rei vindicatoria*, which nevertheless remains the most important remedy for reclaiming ownership.' Discuss.
3. Mention at least one scenario where the Government Lands Act (Chapter 573 of the Laws of Malta) has given the Land Arbitration Board the right to grant "moral damages". How do you think this should work out and what were the underlying reasons behind this?

SECTION C (33 marks)

Students are required to answer any one of the following two questions:

4. Place in perspective the limitation of *salva rerum substantia* in usufruct.
5. Examine the characteristics and requirements of possession which are necessary for acquisitive prescription.
-

University of Malta
Faculty of Laws

June 2019 Examination Session

CVL2008 LAW OF PROPERTY

Date: Saturday 15th June 2019

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

INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A, any ONE (1) question from Section B and any ONE (1) question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (COMPULSORY) (34 marks)

1. Fifteen years ago, Construction Limited developed a plot of land into a ground floor maisonette and an overlying tenement at first floor level, the latter having an independent entrance adjacent to the front garden of the maisonette. The ground floor maisonette has exclusive access to the internal shaft and to a 5-metre deep yard at the back, running the whole back width of the maisonette. The overlying tenement had a bathroom window which opens onto the internal shaft, and two bedrooms at the back having windows overlooking the back yard. The roof and airspace were accessible only from the first floor tenement. Within a month of completion, Construction Limited sold the maisonette to George and also sold the first floor tenement, including the roof and airspace, to John.

In 2008, John obtained a building permit to build an extension to his first floor tenement, consisting in a balcony at first floor level over part of the back yard. George objected to the development. In order to avoid legal expenses, the parties settled verbally that John would convert his two back windows into two doors and construct the new balcony on the airspace of George's back yard. No public deed was ever signed. In consideration of John having an extended balcony, they also agreed that George could build new stairs in his back yard leading to John's roof and build a washroom on John's roof. Later that same year John sold his first floor tenement to Phil. When Phil bought the property, the back doors and balcony, and George's stairs and washroom were already in place.

Phil and his family are very noisy and irritating neighbours. They persist in causing constant disturbance to George, who lives on his own. George has constantly objected to this disturbance but to no avail. As a result, George and

Phil are not on speaking terms. On 15th May 2019, on returning home from work, George finds that his stairs leading to Phil's roof and the washroom have been pulled down completely. He later discovered that Phil obtained a development permit to build two new apartments on his roof. The approved plans show that each new unit will have windows overlooking the internal shaft and a window and balcony overlooking the back yard.

- (a) Advise George on his remedies against Phil in respect of the pulling down of the stairs and the washroom, and prepare him for possible defences which Phil may raise. (10 marks)
- (b) Advise George on his petitory rights, if any, on such stairs and washroom. (8 marks)
- (c) Advise Phil on his rights, if any, to retain the doors and balcony for his first floor apartment. (8 marks)
- (d) Advise Phil on his rights, if any, to open new windows and construct new balconies overlooking George's tenement, and his remedies to enforce his rights. (8 marks).

SECTION B (33 marks)

Students are required to answer any one of the following two questions:

- 2. Discuss the obligations of the usufructuary.
- 3. Consider (a) the grounds for and (b) effects of the termination or dissolution of emphyteusis.

SECTION C (33 marks)

Students are required to answer any one of the following two questions:

- 4. Notwithstanding the introduction of new provisions directed to facilitate the termination of community of property, partition and sale by licitation remain the most practical and effective remedies. Do you agree? Discuss.
- 5. Expropriation is about the compulsory acquisition of private property by the State against the payment of what should be fair compensation. In so far as expropriations of land effected prior to the coming into force of the Government Lands Act (Chapter 573 of the Laws of Malta) are concerned, has this law improved the situation which previously prevailed, from a procedural and substantive position?

University of Malta
Faculty of Laws

September 2019 Examination Session

CVL2008 LAW OF PROPERTY

Date: Monday 9th September 2019

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

INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A, any ONE (1) question from Section B and any ONE (1) question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (COMPULSORY) (34 marks)

1. Baroness Maria Habela owned and lived in an old and prestigious corner Sliema townhouse with a sizeable garden at the back. The whole property has a frontage of approximately 30 meters on one road, where there is the front door, and a depth of 60 meters on the side road. The house has been inherited down the line for many generations.

Baroness Habela died in 2015 and was inherited by her 6 nephews and nieces, namely Stephen, Jack, Charlotte, Robert, David and Denise in equal shares between them. The property was vacant until one month ago when the Baroness' brother George broke into the place without anyone's consent, changed the locks and said that he does not intend moving out, though he did not make any claims on ownership.

The place is suitable for development and can be split into 6 plots, having a frontage of 10 meters and a depth of 30 meters each, but this would mean demolishing the house.

Stephen, Jack, Charlotte and Robert want to sell the property as a whole; whilst David and Denise are claiming that the property can be partitioned in kind.

- (a) Advise the siblings on any quick civil remedies they may be entitled to pursue against George, and explain the requirements of proof for any such remedies to succeed. (12 marks)
- (b) Advise Stephen, Jack, Charlotte and Robert on their rights and remedies, if any, to sell the property as a whole. (11 marks)
- (c) Advise David and Denise on their rights and remedies, if any, to partition the house and garden in kind. (11 marks)

SECTION B (33 marks)

Students are required to answer any one of the following two questions:

2. Contrast the meaning of a) acquisitive prescription and b) extinctive prescription.
3. Examine the rules and principles in the Civil Code relating to the particular effects of possession of movables. Consider in your discussion: (a) the rules relating to prescription in the case of a person who has stolen a movable thing, or who has received or bought such thing in guilty knowledge of fraud or theft; and (b) the action of recovery of a lost or stolen movable against a third party in (i) good faith and (ii) bad faith.

SECTION C (33 marks)

Students are required to answer any one of the following two questions:

4. Discuss, with reference to judgments, the easements which the Civil Code creates on the dividing wall in order to protect adjacent tenements, and their owners and occupiers.
5. Expropriation is about the compulsory acquisition of private property by the State against the payment of what should be fair compensation. Do you think that Government Lands Act (Chapter 573 of the Laws of Malta) gives a suitable remedy to individuals concerned to contest the public purpose of a new intended expropriation and the price offered?



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

CVL2008 Law of Property

Wednesday, 17th June 2020

Examination time: 8:30am – 11:30am + 60 extra minutes for uploading/downloading.

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

Telephone : 2340 3251; 2340 2780

Email: laws@um.edu.mt

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

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

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

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

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

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

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

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

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INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A and any **ONE (1)** question from Section B. Each question must be answered in the appropriate part of the VLE Turnitin link.

SECTION A (COMPULSORY) (50 Marks)

1. Fifty years ago, a Mark Fenech owned a sizeable rectangular field, measuring 100 metres by 50 metres, in Attard. It had a 100metre frontage on an existing public road. He subsequently needed cash, so he divided the field into two equal smaller fields, with a 50-metre frontage on the road, and a depth of 50 metres each. He sold Portion A to Frank Pace and Portion B to Manuel Ellul. Frank Pace eventually died and Portion A passed on to his three children Joseph, Alfred and Mary in equal shares. Manuel Ellul sold Portion B to O'Shea Supermarkets Limited. Portion A and Portion B are separated by a 1.20 meters wide rubble wall.

O'Shea Supermarkets Limited also owns another field, situated at the back of its Portion B. In the contract of acquisition of this other field, it is stated that this field enjoys an easement of right of way over Portion A, and the passage over which this right of way is exercised is situated along the dividing wall between Portion A and Portion B on Joseph, Alfred and Mary's side.

O'Shea Supermarkets Limited obtained a building permit to erect a supermarket on Portion B, and to develop its other field into a storage and recreational area. The permit authorises furthermore the excavation of the whole site (Portion B and the back field) for a below street parking.

In the course of works, O'Shea Supermarkets Limited:

- completely removed the existing dividing wall between Portion A and Portion B;
- excavated the whole site; including the rock underlying the land on which the old dividing wall was built;
- Built a new party-wall only 20cm wide, leaving undeveloped the extra width of the remaining 1 meter of the old rubble wall on Joseph, Alfred and Mary' side so that now the passage way has become 2 meters wide;
- surfaced this passage way with concrete and started using it for vehicular access to the land at the back;
- opened five (5) windows in the new dividing wall.

All this was done without Joseph, Alfred or Mary's knowledge or consent.

About a year later, Joseph, Alfred and Mary visited their land. Upon realizing what had happened, they approached O'Shea Supermarkets Limited requesting the company to reinstate the dividing wall to its original width and location, and so also to reinstate the

passage way to its original state, and to refrain from using it for vehicular access. To their dismay, O'Shea Supermarkets Limited refused. The company did however offer to buy them out.

Mary and Alfred are inclined to accept O'Shea Supermarkets Limited's offer, but Joseph is adamant to take his share in kind. In order to spite O'Shea Supermarkets Limited, Joseph has covered Portion A with 20 truckloads of fresh manure, claiming that the soil needed it, only that the smell is keeping patrons away from the supermarket.

- a. Advise Mary and Alfred on their position at law should they decide to take up O'Shea Supermarket Limited's offer; (12 marks)
- b. Advise Joseph on his position at law in regard to his insistence on partitioning Portion A in kind; (12 marks)
- c. Advise Mary, Alfred and Joseph on their rights and remedies against O'Shea Supermarkets Limited should negotiations for the sale fail. (13 marks)
- d. Advise O'Shea Supermarkets Limited on its position at law, and possible defences in actions it may face, from any or all of the three siblings. (13 marks)

SECTION B (50 marks)

Students are required to answer any one of the following three questions:

2. The *utile dominium* in Emphyteusis is a real right. Given the wide powers of the *utilista*, how far would you consider the *utile dominium* a *jus in re aliena* and not full ownership? Reply in the light of the articles and principles of the Civil Code, applicable doctrine and jurisprudence relating to Emphyteusis. (50 marks)

3. 'The expropriation of private property tampers with the absolute character of the right of ownership and can seemingly only be justified when this is done in the public interest and for a fair compensation.'

Making reference to relevant doctrine and jurisprudence, clarify to what extent, if at all, this principle is respected in regard to:

- a. new (post-April 2017) expropriations? (25 marks) and
- b. uncompleted pre-April 2017 expropriations of property which has been occupied and which were initiated with a Presidential Declaration (published in October 1979) and not followed up with any other legal acts? (25 marks)

4. Remedies in defence of title and remedies in defence of possession are like two different roads to the same practical goal. Do you agree? Give your views, supported by relevant doctrine and jurisprudence, explaining the different remedies considered while making your assessment, and the respective requirements for their successful exercise. (50 marks)



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FACULTY OF LAWS
DEPARTMENT OF CIVIL LAW
SEPTEMBER 2020 EXAMINATION SESSION

CVL2008 Law of Property

Monday, 14th September 2020

Examination time: 8:30am – 11:30am + 60 extra minutes for uploading/downloading.

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

Telephone : 2340 3251; 2340 2780

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

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

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INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A and any **ONE (1)** question from Section B. Each question must be answered in the appropriate part of the VLE Turnitin link.

SECTION A (COMPULSORY) (50 Marks)

1. In 2016, Rachel, Monica and Joe inherited an old-time mansion with a large adjoining garden from their friend Ross; in equal shares between them. The mansion had been abandoned for quite some time and is in urgent need of repairs to parts of the roof and needs fresh plumbing and electricity connections. Rachel and Monica want to keep the property and carry out these repairs; with a long-term plan of redesigning the structure, and splitting it up into four apartments: two on the left and two on the right, with a central communal area downstairs. Joe, who is short of finances, is not willing to spend anything, and just wants to get out of this state of co-ownership.

When the three of them last visited the place, they noticed that some gypsies, Ramon and Lolita, had set up camp in part of the garden. Passers-by said that these gypsies had been constantly occupying the tenement throughout the summer. Seeing this, Joe lost his temper, and whilst the gypsies were away, destroyed the camp and put up a permanent barrier at the entrance of the garden to bar entry.

- a. Advise Rachel, Monica and Joe on their position in relation to, and the juridical consequences to them of, any proceedings which Ramon and Lolita may institute against them following Joe's actions. (12 marks)
- b. Advise Rachel and Monica on their rights in respect of the works which they wish to carry out in the mansion. (12 marks)
- c. Advise Joe on his rights and responsibilities, both in respect of the said works, as well as in respect of his wish to quit the state of co-ownership. (13 marks)
- d. Advise generally the three co-owners on their position at law, and available remedies, against squatters. (13 marks)

SECTION B (50 marks)

Students are required to answer any one of the following three questions:

2. 'Prescription, both acquisitive and extinctive, may create unfair situations, but is born out of social necessity.' Evaluate this statement in the light of the provisions and principles of the Civil Code relative to both acquisitive and extinctive prescription. (50 marks)

3. Expropriation of one's private property is a limitation of the absoluteness of the right of ownership. In the case of the expropriations carried into effect after April 2017, do you think that this has been suitably justified, and has the individual been provided with sufficient remedies? (50 marks)

4. 'A right of way may be legal, conventional or mixed.' Differentiate between a legal right of way and a right of way constituted by act of man, explaining in detail the circumstances in which a right of way comes about, and is extinguished, by law and by act of man. Give your views on the correctness of the 'mixed' attribute in this statement. (50 marks)



Second Year Law
Compulsory Units Past Papers

LAW of PERSONS

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

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

CVL 2015 Law of Persons
Wednesday 29th January, 2014
2.15pm - 4.15 PM

Answer TWO cases out of the three listed below.

Write each answer on a separate booklet.

Every question and every part of every question carries equal marks.

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

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

1. Sabrina is the mother of a newborn baby who was born yesterday and who she has decided to call Samwel. Sabrina is 15 years old and the father is Karim aged 17 years. Sabrina is under a care order and she has been living in residential care since she and her three siblings were removed from their mother's care when Sabrina was seven years old. Her brothers Omar aged five on removal and Tony aged four on removal were placed in foster care together and the youngest sibling Angele who was eighteen months old on removal was eventually placed for adoption. Over the past two years Sabrina has made contact with her mother and now visits her weekly. Her father is unknown. Last year Sabrina met Karim who is an unaccompanied minor asylum seeker who lives close by her residential home. They built up a strong relationship and have plans to settle down together and look after the baby as a family. Sabrina has shared her plans with her social worker and has been advised that it would be in the best interests of her baby if he is given up for adoption so Sabrina can continue with her education and give the child a better chance in life. Sabrina requests the feedback of a child advocate and you are called to advise her. Sabrina would like to know:

1. What rights does Sabrina have over Samwel?
2. What rights does Karim have over Samwel?
3. Does her mother have any legal rights over Samwel?
4. What impact does the care order have over any decisions made in relation to the care of (i) Sabrina and (ii) Samwel?
5. Could Samwel be placed in adoption without (i) Sabrina's and (ii) Karim's consent?
6. Could anyone legally stop Sabrina leaving hospital with Samwel and Karim?
7. Could Sabrina take steps to remove the care order now she has become a mother?

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

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

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

3. For the past year, Martha who is 24 years old, has voluntarily taken over the care and custody of her 8 year old nephew named Luke. The child's parents have a substance abuse problem and are currently receiving treatment in a drug rehabilitation centre. Luke's mother is Martha's only sister and Martha is becoming increasingly convinced that adopting Luke is the only solution to the problem as she believes that only she is capable to provide him with the right

upbringing. Luke has a very good relationship with Martha and has lived with her off and on for the past four years ever since his parents' addiction problem became more serious. Martha wishes to clarify the following concerns before she files an adoption application in Court:

1. Since Martha is Luke's aunt, can she adopt Luke?
2. Will the fact that Martha is gay make any difference? At the moment she is not in a stable relationship but if she does enter into a stable relationship and lives with a gay partner, would Luke be taken away from her?
3. Will the Court hear what Martha has to say before the Court issues such an adoption decree?
4. Before the adoption decree is issued, will the Court dispense with Luke's parents' consent?
5. Can the Court enforce an open adoption?
6. Will the Court ask Luke whether or not he agrees with such adoption?
7. If the adoption takes place, will Luke's parents still be obliged to continue maintaining Luke?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. Hons II Year
September 2014 Examination Session
CVL 2015 – LAW OF PERSONS

THURSDAY, 11TH SEPTEMBER 2014

9.15AM – 11.15AM

Answer TWO cases out of the three listed below.

Write each answer on a separate booklet.

Answer ALL questions in each of the two cases you select.

ALL sub-questions carries equal marks, where applicable.

CASE ONE

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

1. a. What are the remedies, if any, available to the couple in order to obtain recognition of Sarah as their daughter? (10 marks)
- b. Which formalities are required and, in particular (i) are they contentious, (ii) which Court would be competent to consider their request and (iii) against whom would any such formalities need to be directed? (15 marks)
2. Are any such remedies affected by the fact that (i) Jane was conceived and born when Sarah was married to Steve and (ii) they have allowed ten years to pass from when Jane was born in order to take action? (20 marks)
3. List which rights and obligations would attach to Mark upon recognition of Jane as his daughter. (20 marks)
4. Could Jane's rights and status be affected by the separation proceedings? (10 marks)
5. a. Does the fact that Mark is not currently in possession of a DNA test certifying his paternity affect any remedies available at law in any way? (5 marks)
- b. Should the couple submit themselves to a DNA test at this stage and/or should they seek to contact Steve and share their intention should Mark decide to formally recognise Jane as his daughter? (10 marks)
6. Should Mark decide not to formally recognize Jane as his daughter, would others be able to bring such an action? (10 marks)

CASE TWO

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

1. Is it true that they may not adopt before they have been married for a set number of years? (10 marks)
 2. Is it true that both Mona and John must be over 30 years of age? (5 marks)
 3. Is it true that the paramount consideration in adoption is the child and not the adopters? (10marks)
 4. Is it true that they will be able to commission a surrogate mother if all else fails? (10 marks)
 5. If they have a child of their own during the time they are awaiting the baby, could they decide to stop the process? (10 marks)
 6. Is it true that if they adopt a child from a foreign country there are additional procedures to be followed? (10 marks), and what is the role of the Central Authority in an overseas adoption? (10 marks)
 7. Is it true that the child they adopt will be obliged to keep in touch with the birth parents? (10 marks)
 8. In what way will their health, financial status and reputation affect their chances of being given a child in adoption? (15 marks)
- Gina and Tony tell you that feel that they will only be complete as a family when they have a child and they are willing to pay whatever it costs to make this happen. Explain what the law states regarding payments. (10 marks)

CASE THREE

Sarah gave birth to her son thirteen years ago. She is now forty five years old, in a relationship with her female partner and they plan to enter into a civil union next month. The father of the child was a friend of Sarah's who had donated his sperm on condition that he would not appear on the child's birth certificate and would not be responsible for the child's maintenance. Ben is currently displaying very challenging behaviour and Sarah is distressed that her beloved child is becoming unruly, sometimes violent and disrespectful. Sarah's partner feels very strongly that Ben should know who his father is. She was brought up without knowing her father and is convinced that Ben's psychological well-being would be improved if he knew his father and had a relationship with him. Sarah refuses to consider this but yesterday she received a letter from Ben's birth father demanding access to his son and warning her that he will come to the house himself or initiate legal proceedings. Sarah has told no one at home and comes to you for advice:

1. Does Ben's father have the right to claim parental authority after so many years? (15 marks)
2. Does Ben have any say in the matter? What rights does the law accord the child? (20 marks)
3. Does Sarah's partner have any rights and responsibility in relation to Ben? (15 marks)
4. Does Sarah have any responsibility to disclose Ben's parenthood to him? (10 marks)
5. What steps, if any, could Sarah take against Ben's father if he sees through his threat and turns up at her house? (10 marks)
6. If the case ends up in court, what criteria would the court apply in determining the best interest of the child? (15 marks)
7. If Ben's father were legally acknowledged as such, would he be liable to pay maintenance for the previous thirteen years of Ben's life? (15 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. Hons. II Year
January 2015 Examination Session
LAW OF PERSONS (CVL 2015)
Date: Friday 23 January 2015
Time: 09.15 – 11.15

Answer **ONE** case

Answer **ALL** questions in the case you select

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

1. Daniel and Trudy have been together for four years waiting for Trudy's annulment and finally got married in June 2014. They have decided they would like to start a family immediately but know that Trudy cannot have children of her own following a hysterectomy six years ago. Daniel has a son, Karl, aged eight for whom he is sole custodial parent as his wife returned home to Italy with her lover shortly after Karl's birth and she only sees the child for brief periods during school holidays. Daniel and his wife are divorced and are not on speaking terms. Trudy has been caring for Karl for the past four years and would like to adopt him. Together with Daniel, Trudy would also like to adopt two or more children. She has identified two siblings in a residential care under a care order who need a home but who still have contact with their parents and other siblings.

Trudy comes to you for advice:

1. What legal requirements would Trudy need to fulfil to be able to adopt Karl? (10 marks)
2. Would Karl's mother be able to oppose the adoption? (10 marks) Would Daniel's parental authority be affected by the adoption? (10 marks)
3. Would Karl's consent be required? (5 marks) Would Karl receive legal support to help him form an opinion regarding the adoption? (5 marks)
4. Would it be possible for the couple to adopt more than one child simultaneously? (5 marks) Are there any age restrictions imposed by law regarding age of prospective

adopters and child? (10 marks)

5. Will the fact that the couple have only been married one year affect their chances of adoption? (5 marks) Make reference to any relevant judgements on this issue. (10 marks)

6. Would the fact that the siblings identified have contact with their birth parents and other siblings affect the prospects of the adoption? (5 marks) What solutions could you suggest at law? (10 marks)

7. Would the law require a period of foster care prior to the adoption? (5 marks) Would the fact that the children are in residential care under a care order have any impact on the parental consent required at law? (10 marks)

2. Charles and Kate had been in a relationship for some months when Charles received the news that he had been accepted to take up a new post in Australia. Keen on starting a new life Charles made up his mind to end his relationship with Kate. Charles went to Kate to tell her the news but Kate preceded him with hers informing him that she was expecting their child. Nevertheless Charles left Kate for Australia. Three months later Kate met Ahmed and got married to him just one month after giving birth to Charles' son, Alex. A year later Ahmed fled Malta and Kate was left alone until she met Charles by chance in a supermarket where he informed her that he had decided to return from Australia for good. Their relationship resumed and Kate got pregnant again giving birth to baby Kelsey. Kate and Charles want to ensure that the true status of their children is reflected in their act of birth and therefore come to you with the following questions:

1. Does Alex's and/or Kelsey's filiation in their act of birth reflect their natural parentage? (10 marks)

2. What action could be sought by Charles and/or Kate for the declaration of the true paternity of Alex and/or Kelsey? (15 marks)

3. Should neither Charles nor Kate decide not to pursue any action, would others be able to bring an action with regard to the filiation of any or both of their children? (15 marks)

4. Is an action to contest the status of any of the children always lawful? (15 marks)

5. Is clarification of natural parentage of any of the children required to pursue an action with regard to their filiation? (3 marks) If affirmative, who is entitled to clarify? (3 marks) Is there a legal remedy if clarification of natural parentage is opposed? (7 marks)

6. How would such actions affect the rights of the child to know his/her parentage? (10 marks)

7. Does Ahmed's absence from Malta give rise to another remedy, other than a declaration of paternity in respect of Alex and/or Kelsey? (15 marks)

8. Will Kate or Charles' declaration of paternity with respect to any of the children aid or expedite matters from a legal point of view? (7 marks)

3. Nicholas married Susan on the 5th December 2004 and they have two children, Paul aged nine and Cara aged eight. Over the past few years, Nicholas has been in therapy and has accepted that he is a woman trapped in a man's body and thinks of himself as Nadine. Nicholas/Nadine has found great support from a male friend, John who has provided company in many therapeutic sessions, already uses the name Nadine and has agreed to help finance the surgical transition Nicholas feels is essential to wellbeing. Susan does not understand how her husband wishes to be female and feels that it is unacceptable for Nicholas/Nadine to wear female clothing and use make-up. Susan is convinced this behaviour may negatively affect the two children and keeps trying to convince her husband to give up the idea altogether. Nicholas/Nadine loves the children and Susan but feels a new start would be the answer. This could involve cosmetic surgery or more final sexual reassignment surgery and ultimately marriage to John. However there are a number of concerns requiring your advice:

1. Would it be possible for Nicholas to change sex on the act of civil status, including changes to name from Nicholas to Nadine? (10 marks)
2. What requirements are listed in the law before such a change is possible? (10 marks) What are the long term effects? (5 marks) Would it be possible to effect such a change without the gender reassignment surgery? (5 marks)
3. Would these changes be reflected on the acts of civil status of the two minor children? (5 marks) Would this action affect parental authority rights in any way? (10 marks)
4. Would it be possible for Nicholas/Nadine to marry John? (10 marks) What requirements would be necessary for this to be possible? (15 marks)
5. How has the Strasbourg Court (ECtHR) determined cases relating to transsexual rights to marriage? (15 marks) Have the Maltese Courts completely reflected these judgments in their jurisprudence? (15 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. Hons II Year
CVL2015- LAW of PERSONS

DATE: TUESDAY 1ST SEPTEMBER 2015
TIME: READING TIME: 8:30AM -8:35AM
EXAMINATION TIME: 8.35AM – 10.35AM

Choose ONE case out of the three cases below. Answer ALL questions in the case you select
Students are expected to make appropriate reference to jurisprudence and case law.

CASE ONE

Jessica is the ten-year old daughter of Mark and Ingrid. The couple had dated for a number of years until their relationship was terminated by Mark. They have since retained an amicable relationship but do not live together. At the time of Jessica's conception and birth Ingrid was still officially married to Steve although she was 'de facto' separated from him. In fact, Steve and Ingrid are still undergoing legal proceedings regarding reimbursement of past maintenance Steve was and is expected to pay for Ingrid, their twelve year old son Gareth and Jessica. Mark has always regarded Jessica as his own daughter and treated her as such but Ingrid is fearful this attitude will result in her being prejudiced in a divorce settlement. Ingrid and Mark meet you at your office and raise the following queries in connection with the possibility of Jessica being duly recognised as their child:

1. a. What are the remedies, if any, available to Mark and Ingrid in order to obtain recognition of Jessica as their daughter? (8 marks)

- b. Which formalities are required in connection with any such remedies and, in particular: (i) are they contentious, (ii) which Court would be competent to consider their request and (iii) against whom would any such formalities need to be directed? (12 marks)
2. Are any such remedies affected by the fact that (i) Jessica was conceived and born when Ingrid was married to Steve and (ii) ten years have passed since Jessica was born in order to take action? (20 marks)
3. List which rights and obligations would attach to Mark upon recognition of Jessica as his daughter. (20 marks)
4. a. Could any action taken by Mark and/or Ingrid jeopardize Ingrid's rights in the separation proceedings pending between her and her husband Steve? (10 marks)
- b. Would Steve's rights and status be affected? If affirmative, in what way? (10 marks)
5. a. Does the fact that Mark is not currently in possession of a DNA test certifying his paternity affect any remedies available at law in any way? (5 marks)
- b. Should Mark submit himself to a DNA test at this stage and/or should he and Ingrid seek to contact Steve and share their intention if Mark should decide to formally recognise Jessica as his daughter? (10 marks)
6. Should Mark decide not to formally recognise Jessica as his daughter, would others be able to bring such an action? (5 marks)

CASE TWO

Bella is one of four children. She is almost sixteen years old and the primary carer for Daisy aged thirteen, Dylan aged ten and Aisha aged nine. Bella's mother has been suffering from a severe mental health problem since the birth of Dylan and her greatest fear is that the children will be split up, stigmatised and placed in care because of her condition. Bella's father found coping with his wife's mood swings and four children very difficult and he moved out to form another family with a new partner, with whom he has a baby of eighteen months. Sometimes Bella phones her father to remind him to pay some maintenance but this depends on his other commitments and income so Bella tries to help her mother manage on social assistance. A new guidance teacher joined Bella's school this month and is asking many questions. Bella is very worried that her mother's fears will materialise, the family will split up and her mother will

end up in Mount Carmel Hospital. Bella is very resourceful and seeks help from the Office of the Commissioner for Children who refer her to you. These are her questions:

1. Can Bella institute proceedings against her father for maintenance on behalf of her mother and siblings? (10 marks) What would be the implications of such a step? (5 marks)
2. If Bella is obliged to reveal details of her home life to the guidance teacher, what confidentiality can she expect? (5 marks) Would child protection services have to be called in? (15 marks)
3. Bella has been seeking the help of their next door neighbour to write notes to school regarding her siblings on behalf of her mother. Could the neighbour be in trouble for doing this and are there any repercussions at law? (10 marks)
4. Bella's maternal grandparents are in need of care themselves but a maternal aunt in Canada keeps in touch by Skype. Should Bella explore the possibility of asking her to take in the family, what legal requirements would be necessary? (15 marks)
5. Bella was listening to the radio and heard a lawyer advise that parental responsibility extends to family members other than parents where parents are unable or unwilling to act. If correct, to what extent if at all could this be useful to her situation? (15 marks)
6. Could Bella officially take over the running of the household and be civilly responsible? (5 marks) Would her mother have to be interdicted for this to happen? (10 marks)
7. Bella has a boyfriend. She asks whether getting married would place her in a stronger position to care for her siblings and keep the family together? (10 marks)

CASE THREE

In 2010 Sarah and John met Lara who was four years old and living in a children's home. Lara's parents both had a substance abuse problem when Lara was born and while Lara's father is now in a full time job and is in a steady relationship outside his marriage, Lara's mother is still abusing drugs and has had another two children with another partner also outside the marriage. Both these children are also under a care order and Lara sees them sometimes. Lara's mother visits her daughter very sporadically but Lara's maternal grandparents have maintained contact on a weekly basis since she was born. Lara's father has shown little interest in his daughter,

although his current partner who cannot have children of her own has expressed the wish to take Lara into their home.

Lara had been placed with nuns under a care order shortly after she was released from hospital still suffering from withdrawal symptoms. Sarah and John do not have any children of their own and following a short time as social contacts in 2010 they became Lara's official foster carers and have been caring for her in their own home ever since. They would now like to adopt Lara and come to you for advice.

1. a. What legal conditions would Sarah and John be required to fulfil in order to adopt Lara? (15 marks)
b. Would their foster care be taken into account in any way? (5 marks)
 2. To what extent, if at all, would Lara's opinion be considered in the proceedings? (15 marks)
 3. a. Would it be possible for Lara's father and his girlfriend to oppose the adoption? (15 marks)
b. Could Lara's father's girlfriend apply to adopt Lara herself? (5 marks)
 4. a. What role, if any, would Lara's (i) mother, (ii) father have in the Court's consideration of the adoption application? (15 marks)
b. Would it be possible for them to change their mind at any stage of the proceedings? (5 marks)
 5. What rights, if any, do Lara's maternal grandparents have during this process? (10 marks)
 6. Would it be possible for Lara's mother to oppose the adoption on the grounds that she has plans to enter a rehabilitation programme after which she will reunite all her children? (5 marks)
 7. Does the law provide for the maintenance of relationships with all significant people in Lara's life following the finalisation of adoption? (10 marks)
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UNIVERSITY OF MALTA
FACULTY OF LAWS
JANUARY 2016 EXAMINATION SESSION
LL.B. II Year
Law of Persons - CVL 2015
Friday 22 January 2016

Reading Time: 10.00 am – 10.05 am
Duration of Examination: 10.05am-12.05pm

*Choose ONE case and answer ALL component questions.
You are expected to cite relevant local jurisprudence and case law of the ECHR, and make reference to comparative law as appropriate.*

Case ONE

Lisa and Janet are in a relationship. They have not yet entered into a civil union and Janet is not sure if she wants to commit. Lisa on the other hand would like to enter into a civil union with Janet and possibly eventually adopt a child. Janet has a niece called Xenia, with respect to whom a care order has been issued and who would eventually need a foster home. It is being recommended that she be placed either with a foster family or with her aunt; but again her aunt, Janet is reluctant to commit to foster her niece. In the meantime, George and Anne, Xenia's birth parents are trying to regain the care and custody of their daughter Xenia and have started procedures to object to the care order. Xenia has in fact been living on and off with Lisa and Janet for some time but not continuously. Lisa has become very broody and as a contingency plan, in case Xenia's adoption does not come through for her and for Janet, or as a possible sibling for Xenia, Lisa is looking into the possible adoption of another child through intercountry adoption. Lisa has a friend Cynthia who engages in voluntary work in an Asian country with whom she is in contact from time to time and she makes donations to the orphanage where Cynthia volunteers.

- 1) Could Lisa and Janet foster Xenia on the basis that she has been living with them for some time and how would this affect the possible fostering arrangement if it were to happen? (10 marks)
- 2) Alternatively, if Janet does ultimately decide that she wants to commit and adopt a child, can she adopt her niece together with Lisa, if Xenia continues to be subject to the care order? (5 marks)
- 3) Should Lisa and Janet eventually adopt Xenia, what procedures would they have to go through to be considered as prospective adoptive parents? (10 marks)
- 4) If George and Anna set their minds to get their daughter back, what procedures would they have to undertake to object to the care order and eventually regain care and custody of their daughter? (15 marks)

- 5) If George and Anna do regain care and custody of their daughter, could Lisa and Janet claim discrimination on the grounds of their being a homosexual couple? (15 marks)
- 6) If Lisa sets her mind on adopting a child, (either as a sibling to Xenia or as the child of the couple), what are the legal instruments that govern intercountry adoptions? (15 marks)
- 7) On what principles are both local and intercountry adoptions based? (15 marks)
- 8) Could Lisa approach Cynthia privately and try to adopt a child on her own without informing the authorities? (15 marks)

Case TWO

Albert is married to Lara. During the happier years of their marriage, Lara gave birth to a daughter; Eva. Though the birth initially brings the couple closer together, they eventually start experiencing problems in their marriage. Albert finds a well-paying job on an oil rig and escapes his marital woes. He does, however, return home from time to time. Some months after Albert went to work on the rig, Lara gave birth to a son, Michael. Albert, who had always wanted a son, believes that the birth will help rehabilitate their marriage and goes to register the child together with Lara while in Malta. Contrary to what Albert had hoped, the problems between him and Lara take a turn for the worse and Albert leaves the matrimonial home. He begins paying maintenance to Lara for the two children. One year after Michael was born, while on the rig, Albert is informed by a friend that his wife was seen in public on more than one occasion, kissing another man. Albert begins to suspect that Michael may not be his son after all. *The situation is overwhelming Albert, and he comes to you for advice on how to approach the situation:*

- 1) If Albert decides *not* to repudiate Michael:
 - a) Will Albert be expected to maintain Michael? If so, explain to Albert what 'maintenance' is defined as in the Civil Code. (5 marks)
 - b) How much maintenance will Albert have to pay Michael? (10 marks)
 - c) In what manner will Albert be expected to pay maintenance to Michael? (5 marks)
 - d) For how long will Albert be expected to pay Michael maintenance? (10 marks)
 - e) Can Albert's obligation to pay Michael maintenance cease prematurely? (5 marks)
- 2) If Albert decides *to* repudiate Michael:
 - a) What judicial procedural formalities must be observed? (15 marks)
 - b) Against whom must these proceedings be brought? (5 marks)
- 3) Having recognised Michael as his son, with reference to prevailing jurisprudence, what problems is Albert likely to encounter throughout the course of the proceedings? (15 marks)

- 4) If he decides to repudiate Michael, Albert does not want Michael to carry his surname. Can anything be done? (10 marks)
- 5) If Albert is successful in his claim; and it transpires that Michael is not Albert's son:
 - a) Is Albert still bound to pay maintenance to Michael? (10 marks)
 - b) Can Albert retrieve the maintenance, which he has paid for Michael so far? (10 marks)

Case THREE

John, 36, and Jenny, 35, had been married for ten years and are the parents of two children: Mario, 8, and Luka, 5. Following their breakup and the fact that John took on a separate residence from his wife, their dispute initially concerned the children; in particular, *who* will be responsible for their care and custody, *what* maintenance will be due by *which* parent and *what* rights of access will be enjoyed by the parent with whom the children are not living. The children are currently living together with their mother and her new boyfriend Mike. However John has recently had serious doubts as to his paternity of Luka. He believes a DNA test would solve this issue, but Jenny is refusing to submit herself and/or Luka to one. He comes to your office and seeks your advice on all matters concerning his legal relationship with Jenny and the children. *In answering the following four basic queries refer, where possible, to the historical development of the law as well as to applicable jurisprudence on the subject:*

- 1)
 - a) What are John's rights and obligations, if any, towards Jenny? (9 marks)
 - b) Which considerations should be taken into account in this respect? (9 marks)
 - c) Is the fact that Jenny is already living with her new boyfriend of any relevance in this context? (7 marks)
 - 2) What are John's rights and obligations towards both Mario and Luka as long as they are both recognized as his children? (25 marks)
 - 3)
 - a) How should John tackle his doubts as to his paternity of Luka? (5 marks)
 - b) Will he still be able to obtain a DNA test if Jenny continues to refuse to co-operate? (10 marks)
 - c) Will this test be of any use at all given all the circumstances of the case? (10 marks)
 - 4) John believes that it is not fair that, merely because he has decided to leave Jenny, he should spend less time with his children. Advise him as to what his remedies at law would be in this regard and, in particular, whether it would be possible for the children to reside with their respective parents on alternate weeks. (25 marks)
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL. B. HONS. II YEAR
SEPTEMBER 2016 EXAMINATION SESSION

CVL2015 – LAW OF PERSONS

DATE: THURSDAY 1ST SEPTEMBER 2016
READING TIME: 8:30AM – 8:35AM
DURATION OF EXAMINATION: 8:35AM – 10:35AM

Choose ONE case and answer ALL component questions.
You are expected to cite relevant local jurisprudence and case law of the ECHR, and make reference to comparative law as appropriate.

CASE A

John and Mary had been married for six years. They are the parents of Joseph who is now four. Following marital breakdown John and Mary are now divorced. John has been dating Olivia from whom he is expecting a child. He explains to you that he now believes that his family is that formed by himself, Olivia whom he wishes to marry, the child they are expecting and Joseph who is very much part of their life and who is growing up to consider Olivia as his mum more than he does Mary. John comes to your office and seeks your advice in order to better understand his rights and obligations towards all the parties concerned in anticipation of marrying Olivia.

1. Does the law define the notion of 'family' and, if yes, what are the salient characteristics of such a notion? (10 marks)
2. What are currently John's legal obligations towards:
 - (a) Olivia (10 marks)
 - (b) Joseph? (10 marks)
3. What will his legal obligations towards the child he is expecting from Olivia consist of? (10 marks)
4. How will these obligations be affected, if at all, should he decide not to marry Olivia? (10 marks)
5. How would these legal obligations compare with those he is currently subject to vis-à-vis Joseph? (10 marks)
6. Can Olivia be bound by any obligations vis-à-vis Joseph? (10 marks)
7. How can John ensure his recognition as father of the as yet unborn child? (10 marks)
8. Will he and Olivia be able to adopt Joseph and, if yes, under which terms and conditions? (20 marks)

CASE B

John (52) and Cynthia (50) are a married couple nearing their 30th wedding anniversary, with two grown-up children Charles and Daniela. They have been fostering a child Tom (10) for the last five years. Tom has learning difficulties and requires a lot of attention, since at times he manifests behavioural difficulties. John and Cynthia express the wish that eventually they would like to adopt Tom. Tom is under a care order and although he does meet his mother, it is very unlikely that he will live with her. She has addiction issues and is at present in rehab. Concurrently Charles and his wife are trying to adopt a child through intercountry adoption.

1. Explain the various types of foster care arrangements in Maltese system. What type of foster care arrangement would John and Cynthia have with regard to Tom? (15 marks)
2. Describe the process through which foster carers are trained and approved. (10 marks)
3. Will they eventually be able to adopt Tom? Can they opt for open adoption? (15 marks)
4. How can Tom's mother object to the care order? Can she try and regain care and custody of her son and not lose her parental authority? (20 marks)
5. How would the process of intercountry adoption differ from the process undergone by John and Cynthia? What are the principles in common to both types of adoption? (20 marks)
6. What entities would Charles and his wife be dealing with in the process? Explain the role of such entities. (20 marks)

CASE C

Lara and David had been in a relationship for a year when Lara unexpectedly got pregnant, giving birth to Mark nine months later. Lara registered Mark alone since David felt that he was not prepared to be a father and refused to go with her. A few months later, Lara got pregnant again and subsequently gave birth to Christine. Lara registered baby Christine alone as David was again reluctant to join her. During Lara's pregnancy with Christine, David asked Lara to marry him. Lara and David got married ninety days after Christine was born. A year into the marriage, David grew disinterested in Lara and paid no attention to her. Distraught, Lara found comfort in her friend, Michael, and soon started an intimate relationship with him. Out of this relationship Lara got pregnant with her third child and subsequently gave birth to baby Alexander. Lara registered Alexander alone as Michael also refused to go with her since he was a married man and did not want his affair to be documented. Eventually, David left the matrimonial home and started a new relationship with a colleague whilst Michael emigrated to Italy. Lara was left alone with three children to look after without any maintenance from David or Michael.

1. Are Mark, Christine and Alexander considered at law to have been conceived and born out of wedlock? (10 marks)
2. How does the fact that Mark, Christine, and Alexander were not acknowledged by their respective fathers affect, if at all, their filiation in their act of birth registered in the Public Registry? (10 marks)
3. Does Lara need to seek any judicial action to demand a declaration of paternity of any or all of her children? If so, what action? (15 marks)
4. If Lara decides not to pursue any judicial action, would others be able to bring an action with regard to the filiation of the three children? (15 marks)

5. Is clarification of natural parentage of any or all of the three children required to pursue an action with regard to their filiation? If so, who is entitled to clarify? Is there a legal remedy if clarification of natural parentage is opposed? If so, is acquiescence for such clarification absolute? (20 marks)
6. In the event that an action for filiation is not successful:
 - a. Who would need to supply maintenance to the three children? (10 marks)
 - b. For how long would the obligation to supply maintenance persist? (10 marks)
 - c. How much maintenance would the maintenance debtor be expected to pay? (10 marks)

University of Malta
Faculty of Laws

CVL2015 – LAW OF PERSONS (80%)

Date: Tuesday, 5th September, 2017

Duration of Examination: 10.00am-12.05pm

(Instructions to students).

Choose ONE case and answer ALL component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR, and make reference to comparative law as appropriate.

Case ONE

Antoinette and Bernadette are childhood friends. They have heard of four siblings aged between 1 year and 10 years who have been issued with a care order.

Antoinette has her heart set on adoption and she hopes to adopt the two younger siblings, aged 1 and 3.

Bernadette is aware that the birth mother is going to oppose the adoption of the two older siblings. She decides to offer her services as a foster carer for them until the issue is resolved.

Antoinette has another worry on her plate. She is concerned that her elderly mother is showing increasing signs of dementia. She cannot be trusted with taking care of the property and the family business any longer.

The two friends come to you for advice on how to handle their respective issues. Antoinette is accompanied by her Italian husband Carlo. Bernadette seeks advice on foster care. You are going to guide them to go the pertinent entities and help them out with their legal issues.

There is another little detail, about which Antoinette seeks your advice on her own. She likes the way you handle the other issues and decides to approach you with a niggling fear. In spite of trusting her husband, and dearly hoping that they will both be approved as adoptive parents, what would happen in case one day Carlo decides to run away, taking the children with him and returns to his mamma in Rome?

Questions:

1. What should Antoinette and Carlo do in order to start adoption procedures and receive approval as prospective adoptive parents? Describe the process and the entities involved at each stage. (20 marks)
2. What does Bernadette have to do in order to be approved as a foster carer? What are the entities involved under the law and what are their roles? (20 marks)
3. Describe the main legal differences between adoption and foster care placements. List the different legal obligations of the adopter and the foster carer vis-a-vis the minors. (20 marks)
4. What would you advise Antoinette to do with regards to her mother and the management of the property and the family business? (25 marks)
5. In the remote eventuality that Carlo does abduct the children and go to Italy, what would you advise Antoinette to do and where would she go to seek assistance? (15 marks)

Case TWO

Jane is married to Matthew. They are the parents of two children, Odette (18 years of age) and Luke (14 years of age) both born in wedlock. Unaware of her husband, a few years ago Jane started an extra-marital relationship with John. She believes that John is the true father of Luke. The relationship had been going on, behind her husband's back, for a number of years until John suddenly passed away. John always displayed a very loving attitude towards Luke although the boy was never told that John was his true father. On the other hand, Matthew has always treated Luke as if he were his own son. Ahead of John's passing away, however, Jane manages to obtain a DNA sample from John which she believes could come in helpful in the future. She approaches your office with the following queries:

Questions:

1. Who is indicated as Luke's father in Luke's act of birth? (5 marks) Why is this so? (5 marks)
2. Is it possible for Jane to take any judicial action in order to ensure that, the now late John, is recognized as Luke's father? (10 marks) If yes, which formalities would be required in this regard and in front of which court would such action need to be taken? (10 marks)
3. Would it be possible for her to ensure that John is recognized as Luke's father in an official manner without informing Matthew of this? Justify your answer. (15 marks)

4. Will the DNA sample obtained by Jane be, by itself, sufficient to prove John's fatherhood? (15 marks)
5. Which major difficulties will be faced by Jane should she decide to proceed in Court? (15 marks) In particular, will the fact that Matthew always thought Luke was his son in any way affect the outcome of these proceedings? (15 marks)
6. Will Odette and/or Luke and/or Matthew be able to take any action in order to determine Luke's paternity at any point in the future should Jane decide not to take any action at this point in time? (10 marks)

Case THREE

Ryan married Clara in the year 1990. Throughout the course of their marriage, Ryan and Clara had three children, Benjamin, Thomas and Elaine. When Benjamin turned twelve, Ryan and Clara began experiencing problems in their marriage. Ryan works as a clerk with a salary of around €1,200 after taxes. Clara, who just celebrated her fifty-fifth birthday, used to work in a shop as a sales representative but has never worked since she has had to dedicate her attention to their daughter, Elaine, who suffers from a mental impairment. Benjamin and Thomas, aged 19 and 21 respectively are both currently unemployed and are not pursuing tertiary education though Benjamin is currently studying to get into University next year.

The couple begin to experience difficulties in their marriage, due to financial pressures. Following a heated discussion about their poor finances, Clara leaves the matrimonial home together with the children. Ryan later finds out that Clara has gone to live with a male friend who Clara spoke with online on a daily basis. Ryan was always concerned about this friend and now begins to suspect infidelity. Only a few days after Clara's departure, Ryan receives a formal request from his wife for maintenance *pendente litem*, for both herself and for all three children. Ryan's brother recommended you and Ryan comes to you seeking advice.

Questions:

Ryan begins by asking generic questions:

1. What is the definition of 'maintenance' according to the Maltese Civil Code? (5 marks)
2. What is meant by the phrase 'pendente litem'? (5 marks)
3. Ryan heard from a friend that, according to law, he is only bound to pay €200 per child per month, together with half of health and educational expenses. Is Ryan's belief correct? (10 marks)

4. How is maintenance calculated under Maltese law? Explain to Ryan what factors will most likely be taken into consideration by a Court when maintenance is quantified; (15 marks)
5. Ryan would like an alternative to paying monthly instalments of maintenance. Is this possible? (10 marks)

With regards to maintenance due for the needs of the children, Ryan would like to know:

6. Is Ryan expected to pay maintenance for the needs of his sons, Benjamin and Thomas? (15 marks)
 7. For how long he will be expected to pay maintenance for the needs of his daughter, Elaine? (15 marks)
 8. Since Clara is only a few years away from retirement, is Ryan bound to supply maintenance to his wife? (25 marks)
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University of Malta
Faculty of Laws
January 2018 Examinations

CVL2015 LAW OF PERSONS

Friday, 26th January 2018

Duration of Examination: 8.30am to 10.35am

Notes:

Choose **ONE** case and answer **ALL** component questions

You are expected to cite relevant local jurisprudence and case law of the ECHR, and make reference to comparative law as appropriate.

Case ONE reflects situation as at December 2017 and hence existing legislation in force at the time namely the Foster Care Act 2008 (Cap 491) and Care Orders legislation. While students are expected to be aware that these laws have been amended through the Child Protection (Alternative Care) Act, 2017 (Act III of 2017) they are not expected to know what this actually entails, since it has not yet come into force and is indeed being amended.

Case ONE

After having been married for one year, Michael and Tom have decided that they would love to share their lives and home with a child, or more. Michael is all for adopting a child but Tom has also set his mind on fostering having heard a lot about fostering as a service for children in need of care, even if for a brief period of time. So after weighing the pros and cons, going over the space they have in their home and their financial situation, they decide to go for both. Michael and Tom come to you for advice as their friend but also as a lawyer. They are enthusiastic but you realise that they do require further information as to what each institution entails.

- a) Explain to Michael and Tom the legal differences between adoption and foster care. (20 marks)
- b) Explain also the processes leading to applications for adoption and for fostering (20 marks) naming and describing the entities involved in each process. (20 marks)
- c) What are the duties of an adoptive parent and what legal framework would govern the adult-child relationship? (10 marks)
- d) Explain also the duties of a foster carer and the legal issues involved. (10 marks)
- e) Mention the other entities which come into play in foster care and out-of-home care in general. (20 marks)

Case TWO

Kevin is twenty years old, and following a brief relationship with a colleague, Cynthia, has become the father of James. Kevin was completely unprepared for the birth of a child, particularly since he intended to pursue his passion as an artist by taking up residence in London at the end of the year. Nevertheless he decides to recognise the child as his own, and his name is added to the child's birth certificate. Shortly after, however, he and Cynthia part ways. Confused by his predicament, he comes to you seeking advice about his obligations as a father.

- a) Kevin is saving up to go live abroad and his primary concern is money:
 - (i) Will Kevin be expected to maintain James? If so, explain to Kevin what 'maintenance' is defined as in the Civil Code. (5 marks)
 - (ii) How much maintenance will Kevin have to pay James? (10 marks)

- b) Kevin then asks the following questions:
 - (i) Since Kevin and Cynthia are not married, does Kevin have parental authority over the minor child, James? (5 marks)
 - (ii) What is parental authority and how is it exercised? (15 marks)
 - (iii) What happens in case of disagreement between the parents? (10 marks)

- c) Kevin makes it clear that at the end of the year he plans on leaving the island with no intention of returning or of playing any part in his son's life:
 - (i) When may a parent be deprived of parental authority? (15 marks)
 - (ii) When do a parent's rights of parental authority cease? (15 marks)
 - (iii) Would Kevin's abandonment constitute grounds for being so deprived (10 marks)
 - (iv) If Kevin loses his rights of parental authority, can his right ever be reinstated? If so, how? (10 marks).
 - (v) If Kevin leaves Malta, will he still be bound to pay James maintenance? (5 marks)

Case THREE

Patrick was born on the 17th May 1984. He married Judy on the 15th December 2004 and they have two children, Paula aged nine and Carl aged eight. Over the past few years, Patrick has been in therapy and has accepted that he is a woman trapped in a man's body and thinks of himself as Pamela. Patrick/Pamela has found great support from a male friend, John who has provided company in many therapeutic sessions, already uses the name Pamela and has agreed to help finance the surgical transition Patrick feels is essential to wellbeing. Judy does not understand how her husband wishes to be female and feels that it is unacceptable for Patrick/Pamela to wear female clothing and use make-up. Judy is convinced this behaviour may negatively affect the two children and keeps trying to convince her husband to give up the idea altogether. Patrick/Pamela loves the children and Judy but feels a new start would be the answer. This could involve cosmetic surgery or more final sexual reassignment surgery and ultimately marriage to John. However there are a number of concerns requiring your advice:

- a) Would it be possible for Patrick to change sex on the act of civil status, including changes to name from Patrick to Pamela? (10 marks)
- b) (i) What requirements are listed in the law before such a change is possible? (10 marks)
(ii) What are the long term effects? (5 marks)
(iii) Would it be possible to effect such a change without the gender reassignment surgery? (5 marks)
- c) (i) Would these changes be reflected on the acts of civil status of the two minor children? (5 marks)
(ii) Would this action affect parental authority rights in any way? (10 marks)
- d) (i) Would it be possible for Patrick/Pamela to marry John? (10 marks)
(ii) What requirements would be necessary for this to be possible? (15 marks)
- e) (i) How has the Strasbourg Court (ECtHR) determined cases relating to transsexual rights to marriage? (10 marks)
(ii) Have the Maltese Courts completely reflected these judgments in their jurisprudence? (10 marks)
(iii) What recent changes in Maltese law have addressed have addressed such issues? (10 marks)

University of Malta
Faculty of Laws
September 2018 Examinations

CVL2015 - Law of Persons

Date: Thursday 13th September 2018

Duration of Examination: 8.30AM-10.35AM

INSTRUCTIONS TO STUDENTS:

Choose ONE case and answer ALL component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR and make reference to comparative law as appropriate.

Case ONE

Horace and Nicole are in their early 50's and have three grown up children. They start suffering from empty nest syndrome and decide to adopt a child through inter-country adoption.

At the same time, they realise that they can be of service to children who need a temporary family whilst their own is undergoing upheavals. Therefore, they decide to go for fostering. They do the training and in time get to welcome two year old Matthew into their home.

- a) By referring to the Adoption Administration Act 2008, explain to them the processes stipulated in the law that they have to go through before they become prospective adoptive parents (35 marks).
- b) If the situation with Matthew's parents does not change for the better, would there be a chance of them adopting him as well and how would this come about? (10 marks)
- c) Keeping in mind the present state of flux of the laws regarding fostering, can you outline for Horace and Nicole the principles of foster care and the process for eventual adoption of the fostered child. (35 marks)
- d) What are the legal requirements of adoption in a normal situation? What are the requirements of adoption in case the child is being fostered? (20 marks)

Case TWO

Andrea married Christine in the year 1990. Throughout the course of their marriage, Andrea and Christine had two children, Luke and Jasmine. Andrea works as a real estate agent with a salary that varies from anywhere between €1,200 to €2,400, each month, after taxes. Christine, who just celebrated her fifty-ninth birthday, used to work as a teacher but stopped working since she has had to dedicate her attention to their daughter, Jasmine, who suffers from a serious mental impairment. Luke, aged 19 is currently unemployed but is redoing his A-level exams in order to pursue tertiary education.

Andrea and Christine began experiencing problems in their marriage due to work and child related stress. Following a heated discussion about their poor finances, Christine leaves the matrimonial home together with the children. Andrea later finds out that Christine has gone to live with a male friend who Christine spoke with online on a daily basis. Andrea was always suspected that this friend was in actual fact more than a friend and now begins to suspect infidelity more than before. Only a few days after Christine's departure, Andrea receives a formal request from his wife for maintenance *pendente litem*, for both herself and the children.

- a) Andrea is anxious about financial matters and begins by asking:
- i. What is the definition of 'maintenance' according to the Maltese Civil Code? (5 marks)
 - ii. What is meant by the phrase '*pendente litem*'? (5 marks)
- (Total: 10 marks)
- b) Andrea is convinced that according to law, the minimum amount of maintenance he is expected to pay is €200 per child per month:
- i. Is Andrea's belief correct? (10 marks)
 - ii. How is maintenance calculated under Maltese law? What factors will most likely be taken into consideration by a Court when maintenance is quantified; (15 marks)
 - iii. Andrea finds the idea of paying maintenance each month to be cumbersome. He would rather pay once and get it over with. Is this possible? (10 marks)
- (Total: 35 marks)
- c) With regards to maintenance due for the needs of the children, Andrea would like to know:
- i. Is Andrea expected to pay maintenance for the needs of his son, Luke? (15 marks)
 - ii. For how long he will be expected to pay maintenance for the needs of his daughter, Jasmine? (15 marks)
- (Total: 30 marks)
- d) Is Andrea bound to supply maintenance to his wife? (25 marks)

Case THREE

Ronald and Rita have been seeing each other for a couple of months. Rita is the mother of Joseu` who is ten years old and born from a previous relationship. Joseu`'s father is believed to have left the Island and his whereabouts are not known. Ronald has been facing serious problems with his wife Rose for a good number of years. However, he is still living in the matrimonial home with his wife and their two children and claims that he does not have alternative accommodation. Ronald and Rita have often discussed the possibility of setting up family together. They come to your office seeking advice in connection with the following matters:

- a) Can Ronald decide to arbitrarily exclude his wife Rita from the matrimonial home? If yes, explain under which circumstances. If not, explain why. (20 marks)
- b) Explain in detail the rights and obligations which bind Ronald towards Rita (10 marks) and towards his children. (10 marks) (Total: 20 marks)
- c) When, if at all, will such rights and obligations which bind Ronald towards his children terminate in terms of law? (10 marks)
- d) In which circumstances, if any, can the Court decide to exclude either Rita or Ronald from the matrimonial home? (10 marks)
- e) Should Ronald and Rita have any children of their own in what ways, if any, will they be legally considered different from the other children? (10 marks)
- f) Should Ronald and Rita attempt to determine the whereabouts of Joseu`'s father and/or contact him? (10 marks)
- g) Under which circumstances, if any, will Ronald be bound by any rights and/or obligations vis-a`-vis Joseu`? (20 marks)

University of Malta
Faculty of Laws
January/February 2019 Examination Session

CVL2015 LAW OF PERSONS

Date: Friday 25th January 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ONE** case and answer **ALL** component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR and make reference to comparative law as appropriate.

Case ONE

Alison and Roy met as colleagues but began a relationship shortly afterwards. Unexpectedly, Alison becomes pregnant and some months later gives birth to a healthy baby girl, Charlene. Roy was not expecting to become a father and had never really thought about the prospect. Shortly after the discovery, Roy takes on a job abroad and leaves the country without Alison's knowledge without acknowledging the child as his own. When Charlene turns four, Alison turns to drugs and begins to neglect Charlene. Eventually she is entered into a drug rehabilitation programme by her family who take over the care of Charlene in the meantime. That same year Roy returns to Malta, intent on doing right by his daughter; he intends on acknowledging Charlene and playing an active role in her life. Alison on the other hand has not yet recovered and continues to receive treatment for her dependency on narcotics.

- (a) What is parental authority and how is it exercised? (15 marks)
- (b) When may a parent be deprived of parental authority? (15 marks)
- (c) When do a parent's rights of parental authority cease? (15 marks)
- (d) Which of the parents enjoy parental authority? Explain why or why not. (20 marks)
- (e) If a parent loses rights of parental authority, is it possible for that parent to re-acquire the rights of parental authority? If so, how? (15 marks)
- (f) Are either Alison or Roy bound to pay maintenance to Charlene? If so, explain how much maintenance is quantified under Maltese law. (20 marks)

Case TWO

Carl and Lara got married in the year 2010. Throughout the course of their marriage Lara and Carl had three children, Karl, Marielise and Daniel aged nineteen, eighteen and four respectively. Carl is a hairdresser who recently set up a new salon with two part-time employees. Lara is a manager at a popular boutique hotel. Their son, Karl, is currently unemployed and has yet to decide whether to attempt to sit for his A-levels or find a job. Their daughter, Marielise, has just started reading for a degree in medicine at the University. Their youngest son, Daniel, suffers from a slight mental impairment and requires special attention as a result.

Sadly, due to a lack of communication and a number of violent outbursts by Carl, the spouses begin experiencing serious difficulties in their marriage. Initially, the couple begin to discuss the possibility of an amicable settlement. Unfortunately, the negotiations are abruptly terminated after Carl finds out that Lara has had an affair with a colleague and that this affair has been going on for around two years. Upon finding out about his wife's infidelity, Carl pushes his wife against a wall and insults her and leaves the matrimonial home and has not returned since.

Since an amicable settlement is no longer possible, Carl decides to initiate formal proceedings. However, before doing so, he comes to you with the following questions:

- (a) What is the definition of 'maintenance' according to the Maltese Civil Code and why is it due? (10 marks)
- (b) What is meant by the phrase 'pendente litem'? (5 marks)
- (c) How is maintenance calculated under Maltese law? (10 marks)
- (d) What factors will most likely be taken into consideration by a Court when quantifying maintenance? (15 marks)
- (e) With regards to maintenance due for the needs of the children, Carl would like to know:
 - i. Whether he is expected to pay maintenance for the needs of his son, Karl and his daughter, Marielise, and if so, for how long? (15 marks)
 - ii. For how long he will be expected to pay maintenance for the needs of his son, Daniel? (15 marks)
- (f) Is Carl bound to supply maintenance to his wife? (15 marks)
- (g) May Carl claim maintenance from Lara? (15 marks)

Case THREE

Natassja and Robert have been married for the past six (6) years and are the parents of a child Rocco of three (3). Due to serious incompatibility of characters, including also problems arising in view of Natassja's frequent absences from the Island, allegedly for work purposes and/or to visit her family abroad, Robert has opted to file for separation from his wife. During the pendency of these proceedings Robert discovers that Natassja is pregnant with a second child. He informs you that the child cannot be his as they live separately and he has not had sexual contact with her for over two (2) years. In the meantime Rocco has been living with him and is being looked after by himself with the help of his girlfriend Lena. Natassja has barely ever shown any interest in the child. He also informs you that Lena is currently expecting his child. He fixes a meeting at your office in order to seek your advice as to the following queries which he poses to you.

- (a) Will Robert be indicated as the father of Natassja's child in the child's act of birth even though the couple has been separated de facto for the past two years? Justify your answer with reference to particular provisions of the law. (10 marks)
- (b) What are the differences, if any, in the rights and obligations arising between Robert and (i) Rocco, his child born in wedlock, (ii) the child he is expecting from Lena and (iii) the child Natassja is currently expecting, depending on whether or not any action is necessary or taken from his end to contest his paternity of Natassja's second child? Justify your answers with reference to particular provisions of the law (20 marks)
- (c) Should Robert be indicated as the father of Natassja's second child, will he be able to contest this and, if yes, how? Should your answer be in the affirmative, explain in detail the procedure, including against whom any action must be instituted and the necessary evidence, that is required by law for the successful repudiation of paternity. (20 marks)
- (d) Is there a particular time-frame within which Robert may, if necessary, contest his paternity of the child? Explain your answer in detail having regard to the facts of the case decided by the European Court of Human Rights in the names of Mizzi v. Malta, to the legal principles outlined therein and to the consequent historical development of Maltese law pertaining to filiation. (25 marks)
- (e) With regards to Rocco, can Natassja escape from her obligations towards him by leaving the Island and/or by not involving herself in his upbringing? Explain your answer in detail, justifying it with reference to particular provisions of the law which might be applicable as well as to relevant case-law describing and regulating the institute of maintenance. (25 marks)

Date: Wednesday 11th September 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ONE** case and answer **ALL** component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR and make reference to comparative law as appropriate.

Case ONE

1. Nicole and Mark had been in a relationship for a year when Nicole got unexpectedly pregnant, giving birth to Jack nine months later. Nicole registered Jack alone since Mark felt that he was not prepared to be a father and refused to go with her. A few months later, Nicole got pregnant again and subsequently gave birth to Mary. Nicole registered baby Mary alone as Mark was again reluctant to join her. During Nicole's pregnancy with Mary, Mark asked Nicole to marry him. Nicole and Mark got married ninety days after Mary was born. A year into the marriage, Mark grew disinterested in Nicole and paid no attention to her. Distraught, Nicole found comfort in her friend, Leonard, and soon started an intimate relationship with him. Out of this relationship Nicole got pregnant with her third child and subsequently gave birth to baby Stefan. Nicole registered Stefan alone as Leonard also refused to go with her since he was a married man and did not want his affair to be documented. Eventually, Mark left the matrimonial home and started a new relationship with a colleague whilst Leonard emigrated to Italy. Nicole was left alone with three children to look after without any maintenance from Mark or Leonard.
 - (a) Are Jack, Mary and Stefan each considered at law to be conceived and born out of wedlock? (10 marks)
 - (b) How does the fact that Jack, Mary, and Stefan were not acknowledged by their respective fathers affect, if at all, their filiation in their act of birth registered in the Public Registry? (10 marks)
 - (c) Does Nicole need to take any judicial action to demand a declaration of paternity of any or all of her children? If so, what action? (15 marks)
 - (d) If Nicole decides not to pursue any judicial action, would others be able to bring an action with regard to the filiation of the three children? (15 marks)

Case THREE

3. Leonard and Enrica were in a relationship for two years before Enrica got pregnant, subsequently giving birth to a healthy baby girl, Petra. Although Leonard wanted to get married, Enrica was not interested. Around the time that Petra turned four, Leonard lost his job and turned to drinking. Eventually, after a drunken brawl, Leonard ends up in prison serving a 5-year prison sentence. Enrica files court proceedings to have Leonard's parental authority removed and the request is upheld by court.

However, unable to cope alone, Enrica began to experience problems of her own and became addicted to narcotics. Enrica begins to neglect her daughter and occasionally strikes her in an attempt to control her. Eventually she is admitted to a rehabilitation programme. In the interim, Petra is moved to her grandparents' house.

After three years, Leonard is let out of prison due to good behaviour. Leonard has completely reformed his ways and wishes to look after his daughter. Unfortunately, Leonard discovers that he was not registered as Petra's father. Leonard comes to you for advice.

- (a) What is parental authority? (10 marks)
- (b) Prior to being registered as Petra's father, does Leonard enjoy rights of parental authority over Petra? (5 marks)
- (c) What action must Leonard take in order to be recognised as Petra's father? (15 marks)
- (d) Once registered as Petra's father, what rights will Leonard acquire? (15 marks)
- (e) According to section 150, when does parental authority cease *ipso jure*? (15 marks)
- (f) Through her actions, has Enrica automatically forfeited her right to parental authority? Inform Leonard what the grounds for forfeiting parental authority are according to section 154 and which of those reasons are likely to be used against Enrica. (20 marks)
- (g) Once Enrica is out of rehab, how likely is it that she will have her parental authority re-instated? (20 marks)

Date: Tuesday 28th January 2020

Duration of Examination: 8:30AM – 10:35AM

INSTRUCTIONS TO STUDENTS:

Choose **ONE** case and answer **ALL** component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR and make reference to comparative law as appropriate.

Case ONE

1. Malcolm aged 36 and Karl aged 32 have been in a relationship for over five years and got married in February 2019. Malcolm has a child, Oliver aged 8 years, from a previous relationship with Diane. Oliver spends weekends with his father and Karl, and lives with his mother Diane the rest of the week. Karl wishes to have a child of his own and suggests that he and Malcolm adopt a baby. Malcolm does not want to let Karl down on an issue so important to him but he is not as enthusiastic about having another baby so he agrees to support Karl while keeping his involvement to a minimum. He suggests fostering a child close in age to Oliver instead of adopting a baby. Karl's friend has suggested that Karl might be better fulfilled if he finds a surrogate mother to carry his child and has offered to find a willing surrogate. Malcolm has heard this is not legal and is very worried so he offers to let Karl adopt Oliver. Diane has come to know of the various adoption plans through Oliver and tells Malcolm she will be going to Court to stop his access rights.

- (a) What are the requirements to qualify as adopters? (15 marks) Would Malcolm and Karl qualify? (5 marks)
- (b) What are the requirements to qualify as foster carers? (15 marks) Would Malcolm and Karl qualify? (5 marks)
- (c) Karl is unclear as to the difference between adoption and fostering - explain the main differences (10 marks)
- (d) Should Diane be concerned and would a plea to stop access rights resolve the issues? (15 marks)
- (e) To what extent, if at all, would Malcolm's attitude and Karl's proposals impact on the rights of Oliver? (20 marks)
- (f) How will Oliver be involved in any decisions to be made and how will he be heard, if at all? (15 marks)

Case TWO

2. Chantelle and Ray had been married for five years when Chantelle started going out for drinks after work with her single colleagues and returning home drunk. During the weekends, she started drinking excessively and this led to incessant fights between the spouses. Ray applied for a training programme abroad and left the Island for 2 years without initiating any separation proceedings. Soon after Ray leaves, Chantelle finds out she's pregnant but since she feels abandoned by Ray, she decides not to tell him about the baby. Chantelle continues to drink and the authorities warn her that unless she controls her addiction, the baby might be taken away from her once born. Chantelle's parents step in, convince Chantelle to attend a rehabilitation programme and after the baby is born, they take care of the baby themselves. Upon returning to Malta after the lapse of the 2 years, Ray learns about the baby and comes to your office for advice. He has the following questions:
- (a) He has been registered as the father of the baby even though he is not certain whether he is actually the father or not and Chantelle refuses to talk to him and has blocked all digital communication. What are his legal options to find out whether he is the biological father or not? What will be the legal repercussions for him if he is the biological father and if he is not? (30 marks)
 - (b) If he is the biological father, does he have a right over the grandparents to raise the child? What will be the factors that the Court will most likely take into consideration before making this decision? (15 marks)
 - (c) If he takes over raising the baby, what will be the rights and responsibilities of Chantelle in regards to the baby? Is it possible not to expose the baby to Chantelle given her chaotic lifestyle and if in the affirmative, how can this be achieved? (25 marks)
 - (d) What rights and/or obligations do the maternal grandparents have in regards to the baby that they have been raising so far? If Ray is not the biological father, can they take over the parental authority of the baby? (15 marks)
 - (e) Ray is unsure whether to proceed solely in regards to the child or whether to file a full-blown case of personal separation against Chantelle. What other legal considerations should he be taking into account in making this decision? (15 marks)

Case THREE

3. Christopher is married to Victoria. Shortly after marriage, Victoria gave birth to a daughter, Michelle. Soon after, however, the couple start experiencing problems in their marriage. Christopher begins spending more time at work, and even take the night shift at least three times a week. He believes that it is better to remain at work than to deal with his marital problems. Some months after Christopher began spending less time at home, Victoria gave birth to a son, Samuel. Christopher, who had always wanted a son, believes that the birth will help their marriage and goes to register the child together with Victoria. Contrary to what Christopher had hoped, the problems between him and Victoria take a turn for the worse and Christopher leaves the matrimonial home. He begins paying maintenance to Victoria for the two children. One year after Samuel was born, Christopher is informed by a neighbour that his wife had a male visitor over on many occasions while Christopher was working the night shift. Christopher begins to suspect that Samuel may not be his son after all.

- (a) If Christopher decides *not* to repudiate Samuel:
- i. Will Christopher be expected to maintain Samuel? If so, explain to Christopher what 'maintenance' is defined as in the Civil Code. (5 marks)
 - ii. How much maintenance will Christopher have to pay Samuel? (10 marks)
 - iii. In what manner will Christopher be expected to pay maintenance to Samuel? (5 marks)
 - iv. For how long will Christopher be expected to pay Samuel maintenance? (10 marks)
 - v. Can Christopher's obligation to pay Samuel maintenance cease prematurely? (5 marks)
- (b) If Christopher decides *to* repudiate Samuel:
- i. What judicial procedural formalities must be observed? (15 marks)
 - ii. Against whom must these proceedings be brought? (5 marks)
- (c) Having recognised Samuel as his son, with reference to prevailing jurisprudence, what problems is Christopher likely to encounter throughout the course of the proceedings? (15 marks)
- (d) If he decides to repudiate Samuel, Christopher does not want Samuel to carry his surname. Can anything be done? (10 marks)
- (e) If Christopher is successful in his claim; and it transpires that Samuel is not Christopher's son:
- i. Is Christopher still bound to pay maintenance to Samuel? (10 marks)
 - ii. Can Christopher retrieve the maintenance, which he has paid for Samuel so far? (10 marks)

Date: Wednesday 2nd September 2020 Duration of Examination: 8:30AM – 10:35AM

INSTRUCTIONS TO STUDENTS:

Choose **ONE** case and answer **ALL** component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR and make reference to comparative law as appropriate.

Case ONE

1. Angela and Karl have been married for eighteen years, since they were both 32 years old. They have a comfortable home and although they are not well off they live a simple life where Karl works as a driver with a local company and Angela works as an LSA in the local primary school. Though they have no biological children together, for the past six years they have formally fostered two half siblings Gabriel and Adam who are now 11 and 9 years old respectively. The boys' biological mother Kylie has now given birth to another baby Stefan. The biological father of the three children is not known. One month ago Kylie was interdicted by the Court and is unable to maintain Stefan. Angela and Karl would love to bring up Stefan too and wish they could adopt all three brothers. They come to you with the following list of questions, in search of advice.
 - (a) Does Angela and Karl's age restrict them from adopting any of the children? (10 marks)
 - (b) Does Gabriel's, Adam's or Stefan's age play any part in the adoption process? (12 marks)
 - (c) Do Angela and Karl need Kylie's consent to apply for the adoption and to carry it through? (15 marks)
 - (d) Would Angela and Karl's health, financial and social status affect their chances of adopting the three children? (15 marks)
 - (e)
 - i. Will either of the three children be affected by changes to their civil status rights if adopted by Angela and Karl? (12 marks)
 - ii. Would it benefit Gabriel and Adam to maintain their status as fostered children? (6 marks)
 - (f) Could Kylie request payment for the adoption to be carried out, particularly as she is giving up Stefan because she cannot support him? (10 marks)
 - (g) What is the procedure for application for adoption? (10 marks) What are the institutions involved in the adoption process? (10 marks)

Case TWO

2. After six years of marriage, Julia separated from her husband Mark to start a relationship with her co-worker Andrew. Julia and Mark regulated their separation by means of a contract. A year into her relationship with Andrew, Julia fell pregnant. Andrew however was enraged by the news as he had made it clear with Julia that he never wanted to be a father and breaks up with Julia. Towards the end of her pregnancy, Julia tries to contact Andrew again but Andrew informs her that he does not want to be involved in the child's life and therefore to see how Julia is going to raise her baby on her own. Julia comes to you for advice before she gives birth and confides that she is considering all options including registering the baby with an unknown father to be able to apply for social benefits.
- (a) Can Julia register the baby with an unknown father? How will the baby be registered (20 marks)
 - (b) In reality, Julia wants her child's birth certificate to reflect his true identity. What does Julia have to do to have Andrew recognised on the birth certificate? (30 marks)
 - (c) What are the legal implications of having Andrew put down as the father? (25 marks)
 - (d) If Andrew experiences a change of heart in the future, can he institute legal proceedings to be recognised as the father? (15 marks)
 - (e) If Julia proceeds with what she considers the best option for herself, can the child file any proceedings in the future to determine their true identity? (10 marks)

Case THREE

3. Christopher and Victoria got married in the year 2002. During their marriage, Victoria gave birth to two children, Martina and David. Victoria is a corporate lawyer working with a firm and has a good salary. Christopher worked briefly in the past as a sales representative but decided that, in light of Victoria's good salary, that he should dedicate his attention to their daughter, Martina, who suffers from a mental impairment as defined in the Equal Opportunities (Persons with Disability) Act. Both children attend a church school. Following yet another altercation, Christopher leaves the matrimonial home together with the children, and takes up residence with a female friend who he worked with briefly in the past but who he mentioned on numerous occasions during the marriage. Victoria begins to suspect infidelity. Shortly after, Victoria receives a formal request from her husband's lawyer for maintenance *pendente lite*, for both himself and for both children. The Court Marshall who delivered the

request for maintenance informs Victoria that she has five days in which to answer. Although a lawyer by profession, Victoria has never practiced in the field of family law and comes to you seeking advice.

- (a) Victoria begins by asking generic questions:
- i. What is the definition of 'maintenance' according to the Maltese Civil Code? (5 marks)
 - ii. What is meant by the phrase '*pendente lite*'? (5 marks)
- (b) Victoria heard from another lawyer at her firm that, according to law, she is only bound to pay €200 per child per month, together with half of health and educational expenses:
- i. Is Victoria's belief correct? (5 marks)
 - ii. How is maintenance calculated under Maltese law? Explain to Victoria what factors will most likely be taken into consideration by a Court when maintenance is quantified; (15 marks)
 - iii. Under Maltese law, is maintenance only capable of being paid in monthly instalments? (5 marks)
- (c) Is Victoria bound to supply maintenance to Christopher? What considerations will most likely be taken into consideration by the Civil Court (Family Section) in coming to its decision? (25 marks)
- (d) With regards to maintenance due for the needs of the children, Victoria would like to know:
- i. For how long she will be expected to pay maintenance for the needs of her daughter, Martina? (10 marks)
 - ii. For how long she will be expected to pay maintenance for the needs of her son, David? (15 marks)
- (e) Victoria only recently joined the law firm she works at and is worried that she may lose her job due to the COVID-19 pandemic. If Victoria loses her job, will she still be expected to pay maintenance? (15 marks)



Second Year Law
Compulsory Units Past Papers

Duties of Traders & Commercial Intermediaries

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

UNIVERSITY OF MALTA
FACULTY OF LAWS
JANUARY SESSION EXAMINATIONS
LL.B. – Year II

DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES
(CML2010)

22nd January 2014

1.00 – 3.00 p.m.

Answer any two (2) questions

All questions (including any (a) and (b) questions) carry equal marks
Answer each question on a separate script

1. List and discuss briefly the trade books that a trader is bound to keep.
2. Why does the law require that a trader should keep trade books?
3. To what extent, if at all, can a proprietor of a trademark which is well known in Malta but in respect of which there is no actual business in Malta obtain protection for his trademark under Maltese law (in particular, under article 32 of the Commercial Code and article 50 of the Trademarks Act)?
4. Determining whether a trademark or trade name is “capable of creating confusion” with another mark or name is a question of fact to be determined by the Courts after comparing the two marks or names. However, our Courts have developed a number of guidelines or ‘rules of comparison’ which they consistently apply in making such a determination. Discuss the principal guidelines / rules and illustrate them with references to some decided cases.
5. Article 34(1) of the Commercial Code provides that it is an act of unfair competition for a trader to spread news which is capable of prejudicing the business or trade carried on by another trader for the purpose of competition. Analyse this legal provision.

UNIVERSITY OF MALTA
FACULTY OF LAWS
JANUARY SESSION EXAMINATIONS

LL.B. – Year II HONS

DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES
(CML2010)

19th January 2015

2.15 – 4.15 p.m.

Answer any TWO (2) questions

All questions (including any (a) and (b) questions) carry equal marks
Answer each question (including (a) and (b) questions) on a separate script

1. Alpha has been manufacturing and selling bicycles in Malta with the trademark 'Achilles' since 1966. Alpha never registered the 'Achilles' trademark. Recently, Beta started manufacturing and selling bicycles using that trademark after it obtained the registration of the trademark 'Achilles' in terms of the Trademarks Act. Beta also wrote to Alpha claiming that since Beta is the registered owner of the trademark 'Achilles', Alpha should now cease and desist from using the trademark. You are required to furnish Alpha with your written legal opinion regarding Beta's claim and Alpha's legal rights particularly in the light of article 32 of the Commercial Code.

2. (a) Why is it in the trader's own interest to keep trade books?

(b) Write short notes on any TWO of the following:

- (i) the notion of 'secondary meaning' in the context of article 32 of the Commercial Code;
- (ii) the notion of 'false indication of origin' in the context of article 33 of the Commercial Code;
- (iii) the notion of 'average consumer' in the context of article 32 of the Commercial Code.

3. (a) For the purposes of article 34(1) of the Commercial Code, the words 'spreading of news' do not mean that the news must be (i) widespread or (ii) false. Discuss referring to decided cases where appropriate.

(b) Answer any TWO of the following:

- (i) Briefly discuss the duty of publication of marriage contracts;
- (ii) Write short notes on the commercial traveller and salesman;
- (iii) List the obligatory trade books that a trader is bound to keep.

4. Peter Smith has been appointed general manager of retail business belonging to the Carlton Group of Companies. Mr Smith has entered into a transaction with a software engineering company, whereby he purchased new software to be used by the Company, yet he did not indicate that he was acting for and on behalf of the Carlton Group. The software engineering Company is now suing him personally for payment.

Mr Smith was also negotiating with another supplier of the Carlton Group, yet this supplier has asked Mr Smith for evidence of his authority to act for and on behalf of the Carlton Group.

A Dutch Company is also suing the Carlton Group. The proceedings were filed, in Malta, against Mr Smith as manager of the Carlton Group. Mr Smith is insisting that he can refuse to be sued. In the course of his employment, Mr Smith had also entered into an agreement with an employee, granting the latter the possibility of an early retirement pension. This employee has now opted for early retirement, yet the Carlton Group is now refusing to pay this pension, saying that Mr Smith was not entitled to enter into such an agreement.

Mr Smith has come to you for advice. Please advise him regarding the following issues:

- (i) Whether he is personally liable for payment to the software engineering company;
- (ii) Whether Mr Smith should comply with the supplier's request to see Mr Smith's authority;
- (iii) Whether Mr Smith is right in refusing to be sued by the Dutch Company;
- (iv) Whether the employee can enforce the pension agreement signed by Mr Smith against the Carlton Group.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. – YEAR II
SEPTEMBER 2015 EXAMINATIONS

EXAMINATION: CML2010
DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

DATE: 7th September 2015

READING TIME: 08:30AM to 8.35AM

DURATION OF EXAMINATION: 08:35AM to 10:35AM

INSTRUCTIONS TO STUDENTS:

1. Answer any TWO (2) questions;
2. The (a) and (b) questions carry equal marks.
3. The percentage mark allotted to each answer is indicated at the end of each question.
4. Answer each question (including (a) and (b) questions) on a separate script.

1. The protection given to names, marks and devices under article 32 of the Maltese Commercial Code depends on "prior use". Discuss. (50%)

2. (a) Describe the trade books that must be kept by a trader. (25%)

(b) Article 32 of the Commercial Code does not prohibit a trader from using his/her own name as the name of his/her own business even if some confusion is caused with a name that is already used by another trader. Discuss. (25%)

3. (a) Why should a trader keep trade books? (25%)

(b) The spreading of news prejudicial to the business or trade of another person would only be in breach of article 34(1) of the Commercial Code if it is done "for the purpose of competition". Discuss (25%)

4. "A manager is a person who is placed, personally and permanently, in charge of the business or of a branch of the business of the principal in one or more fixed places." Discuss. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. – YEAR II
JANUARY 2016 EXAMINATIONS

EXAMINATION: CML2010

DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

DATE: 25th January 2016

READING TIME: 10:00AM to 10:05AM

DURATION OF EXAMINATION: 10:05AM to 12:05PM

INSTRUCTIONS TO STUDENTS:

1. Answer any TWO (2) questions;
 2. The (a) and (b) questions carry equal marks.
 3. The percentage mark allotted to each answer is indicated at the end of each question.
 4. Answer each question (including (a) and (b) questions) on a separate script.
-

1. Alpha is an English company that has been selling sporting goods using the trademark 'Hercules' for a number of years. Alpha has no place of business nor does it carry on business in Malta. Its trademark 'Hercules' is not registered but is well-known all over the world, including Malta. Beta, a Maltese company, recently started selling sporting goods in Malta using the trademark 'Herkule.' Alpha wishes to take legal action to stop Beta from using the trademark 'Herkule'. You are required to furnish Alpha with your written legal opinion regarding its legal rights particularly in the light of article 32 of the Commercial Code and article 50 of the Trademarks Act. (50%)

2. (a) What trade books is the trader bound to keep? (25%)

(b) Write short notes on any TWO of the following:

- (i) In terms of the Commercial Code, in an action for unfair competition, both the plaintiff and the defendant must be traders;
- (ii) The notion of 'get-up' in the context of article 32 of the Commercial Code;
- (iii) The notion of 'average consumer' in the context of article 32 of the Commercial Code. (25%)

3. (a) One of the duties of every trader is the keeping of trade books. How does the trader himself benefit from this duty which the law imposes on him? (25%)

(b) The spreading of news prejudicial to the business or trade of another person would be in breach of article 34(1) of the Commercial Code (a) even though the news is not 'spread' amongst a large number of persons and (b) even though the news is true. Discuss (25%)

4. Discuss the basic principles of agency in general as outlined in articles 49 to 51 of the Commercial Code. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. – YEAR II
SEPTEMBER 2016 EXAMINATIONS

EXAMINATION: CML2010
DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

DATE: 7 September 2016

READING TIME: 08:30AM to 08:35AM

DURATION OF EXAMINATION: 08:35AM to 10:35AM

INSTRUCTIONS TO STUDENTS:

- 1. Answer any TWO (2) questions;**
 - 2. The questions carry equal marks (the percentage mark allotted to each answer is indicated at the end of each question).**
 - 3. Answer each question on a separate script.**
-

1. To what extent, if at all, can a proprietor of a trademark which is well known in Malta but in respect of which there is no actual business in Malta obtain protection for his trademark under Maltese law (in particular, under article 32 of the Commercial Code and article 50 of the Trademarks Act)? (50%)

2. Determining whether a trademark or trade name is “capable of creating confusion” with another mark or name is a question of fact to be determined by the Courts after comparing the two marks or names. However, our Courts have developed a number of guidelines or ‘rules of comparison’ which they consistently apply in making such a determination. Discuss the principal guidelines / rules and illustrate them with references to some decided cases. (50%)

3. List the trade books that a trader is bound to keep under Maltese law. (50%)

4. “A manager is a person who is placed, personally and permanently, in charge of the business or of a branch of the business of the principal in one or more fixed places” (article 57 of the Commercial Code). Discuss. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS, 2nd YEAR
JANUARY 2017 EXAMINATIONS

EXAMINATION: CML2010
DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

DATE: 18 January 2017, *wednesday*

READING & NOTING TIME: 8.30 AM to 8.35AM

DURATION OF EXAMINATION: 8.35AM to 10.35AM

INSTRUCTIONS TO STUDENTS:

1. Answer any TWO (2) questions.
 2. The (a) and (b) questions carry equal marks.
 3. The percentage mark allotted to each answer is indicated at the end of each question.
 4. Answer each question (including (a) and (b) questions) on a separate script.
 5. Writing is permitted during the Reading and Noting time.
-

1. "Traders shall not, for the purpose of competition, spread news capable of prejudicing the business or trade carried on by other persons" (article 34(1) of the Commercial Code). Analyse this provision in the light of the decided cases. To what extent do the provisions of article 32A of the Commercial Code regarding comparative advertising affect the interpretation of article 34(1) adopted by the courts prior to the introduction of article 32A. (50%)

2. (a) The protection given to names, marks and devices under article 32 of the Maltese Commercial Code depends on "prior use". Discuss. (25%)

(b) What are the trade books that a Trader is bound to keep? (25%)

3. (a) To what extent are well-known marks protected in Malta under article 32 of the Commercial Code and article 50 of the Trademarks Act. (25%)

(b) Why is it important for a trader to keep trade books? (25%)

4. Discuss the manner in which the Maltese Commercial Code regulates Mercantile Agency. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS 2nd YEAR 2016/17

CML 2010-DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

Date: Friday 1st September 2017

Duration of Exam: 10.00am to 12.05pm

INSTRUCTIONS TO STUDENTS:

1. Answer any **TWO (2)** questions.
 2. The percentage mark allotted to each answer is indicated at the end of each question.
 3. Answer each question on a separate script.
-

1. Determining whether a trademark or trade name is “capable of creating confusion” with another mark or name is a question of fact to be determined by the Courts after comparing the two marks or names. However, our Courts have developed guidelines or ‘rules of comparison’ which they consistently apply in making such a determination. Discuss the principal guidelines / rules and illustrate them with reference to some decided cases. (50%)
2. Write short notes on any **TWO** of the following:
 - (i) the notion of ‘secondary meaning’ in the context of article 32 of the Commercial Code;
 - (ii) the notion of ‘get-up’ in the context of article 32 of the Commercial Code;
 - (iii) the notion of ‘false indication of origin’ in the context of article 33 of the Commercial Code.(25% each for a total of 50%)
3. One of the major duties that a trader has is that of keeping of trade books. Discuss. (50%)
4. A manager is a person who is placed, personally and permanently, in charge of the business or of a branch of the business of the principal in one or more fixed places. Discuss. (50%)

UNIVERSITY OF MALTA

FACULTY OF LAWS

CML 2010 - DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

DATE: MONDAY 22ND JANUARY 2018 DURATION OF EXAMINATION: 8. 30AM TO 10. 35AM

**Answer ANY TWO questions
All questions carry equal marks
Answer each question on a separate script**

1. Article 34(1) of the Commercial Code provides that it is an act of unfair competition for a trader to spread news which is capable of prejudicing the business or trade carried on by another trader for the purpose of competition. Analyse this provision and discuss how the rules on comparative advertising (article 32A of the Commercial Code) introduced in 2008 affect its traditional interpretation.
2. To what extent are well-known marks protected in Malta under article 32 of the Commercial Code and article 50 of the Trademarks Act.
3. The emphasis behind the duty of keeping trade books is that the trade books are to give a true and fair view of the state of affairs of the business of the trader. To what extent do you agree with this statement ?
4. Discuss the duties that a manager has towards his principal.

UNIVERSITY OF MALTA
FACULTY OF LAWS

CML 2010 DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

Date: Tuesday 4 September 2018

Duration of Examination: 10:00am – 12.05pm

Answer ANY TWO questions
All questions carry equal marks
Answer each question on a separate script

1. The protection given to names, marks, and devices under article 32 of the Maltese Commercial Code depends on “prior use.” Discuss.

2. Determining whether a trademark or trade name is “capable of creating confusion” with another mark or name is a question of fact to be determined by the Courts after comparing the two marks or names. However, our Courts have developed a number of guidelines or ‘rules of comparison’ which they apply in making such a determination. Discuss the principal guidelines / rules and illustrate them with references to some decided cases.

3. What trade books is any trader duty bound to keep?

4. Discuss the manager’s fiduciary duties towards his principal, also in the light of recent local Court judgements.

University of Malta
Faculty of Laws

January/February 2019 Examination Session

CML2010 DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

Date: Wednesday 30th January 2019

Duration of Examination: 08:30AM-10:35AM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. To what extent, if at all, is an *unregistered well-known trademark* protected under Maltese law when the proprietor of the mark does not carry on any business in Malta. (50 marks).
2. "Traders shall not, for the purpose of competition, spread news capable of prejudicing the business or trade carried on by other persons" (article 34(1) of the Commercial Code). Analyse this provision in the light of the decided cases and discuss how the provisions of article 32A of the Commercial Code regarding comparative advertising affect its application. (50 marks).
3. The trader's duty to keep trade books acquires a much wider significance with regard to limited liability companies. Discuss. (50 marks).
4. Discuss the duties that a manager has towards his principal. (50 marks).

**University of Malta
Faculty of Laws**

September 2019 Examination Session

CML2010 DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

Date: Thursday 5th September 2019 **Duration of Examination:** 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. The protection given to names, marks and devices under article 32 of the Maltese Commercial Code depends on "prior use". Discuss.
2. Determining whether a name, mark or device is capable of creating confusion with another name, mark or device is a question of fact to be determined by the Courts after comparing the names, marks or devices. However, our Courts have developed a number of guidelines or 'rules of comparison' which they apply in making such a determination. Discuss the principal guidelines / rules and illustrate them with references to some decided cases.
3. What trade books is a trader expected to keep?
4. "A manager is a person who is placed, personally and permanently, in charge of the business or of a branch of the business of the principal in one or more fixed places." Discuss.



Second Year Law
Compulsory Units Past Papers

SUBSTANTIVE CRIMINAL LAW

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

UNIVERSITY OF MALTA
FACULTY OF LAW
LLB II
MAY/JUNE 2008
CRL2005 – CRIMINAL LAW

MONDAY, 26TH MAY 2008

9.15AM – 12.15PM

Answer ONE question FROM EACH SECTION, in English or in Maltese.

SECTION I

1. (a) "An instrument will be false if the supposed maker did not make it at all, or if it has been altered since he made it" (Blackstone).
Examine the above statement within the context of the various forms of falsities identifying those situations which amount to forgery under our law. (80%)

(b) Explain the concept of *corrupta non corrumpitur* and the shift of approach to this concept in the case-law on the offence of defilement of minors. (20%)
2. (a) Discuss those provisions of the Criminal Code which extend special protection to minors for the purposes of the offences of rape, abduction, prostitution and violent indecent assault. (80%)

(b) The law of forgery extends a different treatment to public documents and private writings. Distinguish between the features of the two forms of instrument. (20%)
3. (a) Elaborate upon and discuss the elements of the offence of bigamy highlighting those problems linked to the bilateral nature of the offence. (80%)

(b) Does *falso grossolano* exclude the offence of forgery. (20%)

PTO

SECTION II

4. Analyse in detail the elements of the offence of theft as defined by Carrara comparing and contrasting them with the elements of the offences of misappropriation and of obtaining money by false pretences (*truffa*).
5. Examine the specific intent in wilful homicide. Distinguish between an excusable and a justifiable homicide.
6. (a) Examine the concept of *coup d'etat* under the Maltese Law. (70%)
(b) Discuss briefly "attempts against the life of the President of Malta". (30%)

SECTION III

7. Analyse and distinguish the elements of the following offences
 - (i) unlawful assembly (S.68);
 - (ii) tumultuous assembly (S.79); and
 - (iii) incitement to racial hatred (S.82A)
8. When is the offence of theft aggravated by the circumstances of:
 - (i) violence
 - (ii) place
 - (iii) person
9. Discuss the ingredients of the offences of perjury and false swearing (extra-judicial perjury) and carefully explain the differences between them.

UNIVERSITY OF MALTA
FACULTY OF LAW
LL.B. II
MAY/JUNE 2008
SPECIAL SESSION OF EXAMINATION

CRL2005 – CRIMINAL LAW

MONDAY 9TH JUNE 2008

9.15AM – 12.15PM

Answer ONE question from each section.

SECTION I

1. (a) Discuss in detail the elements of the offence of defilement of minors, illustrating the problems that have arisen and how the Maltese Courts have resolved them. (80%)

(b) Define a public document and a private writing, distinguishing them in the context of forgery. (20%)

2. (a) Examine the manner in which, and the extent to which, prostitution is proscribed by our penal laws. (80%)

(b) When does personal falsity amount to the offence of forgery of a document? (20%)

3. (a) Analyze the offence of abduction highlighting any differences where the offence is committed by violence and where it is committed by fraud or seduction. (80%)

(b) Discuss briefly the meaning and implication of the “imitation of the truth” in the offence of forgery. (20%)

P.T.O.

SECTION II

4. (a) Distinguish the concept of animus necandi in homicide and that of animus nocendi in bodily harm. (70%)

(b) How does Maltese law deal with the offence of bodily harm followed by death. (30%)

5. (a) What constitutes the offence of misappropriation under our law. (Art 293). In what way does the offence differ from the offence of fraud? (Art 308) (80%)

(b) Discuss the aggravation of the offence of theft by “means” and by “nature of the thing stolen”. (20%)

6. When is the offence of theft deemed to be completed in Maltese law. Analyze the different theories.

SECTION III

7. Grievous bodily harms feature frequently in criminal cases. Analyse in detail grievous bodily harms under Maltese law.

8. (a) Outline the constituent elements of the offence of “calumnious accusation” (art 101) and “fabrication of false evidence” (art 110(1)) highlighting the difference between them. (80%)

(b) Comment on the offence of “simulation of offence”. (art 110(2)). (20%)

9. Write notes on three of the following:
 - (a) provocation
 - (b) sudden passion or mental excitement
 - (c) excess of legitimate self-defence
 - (d) supervening accidental cause.

UNIVERSITY OF MALTA
FACULTY OF LAW
LLB II
SEPTEMBER 2008
CRL2005 – CRIMINAL LAW

MONDAY, 1st SEPTEMBER 2008

9.15AM – 12.15PM

Answer ONE question FROM EACH SECTION, in English or in Maltese.

Use a separate booklet for each question.

SECTION I

1. "For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction." (Kenny)
Comment on the elements of this definition of a document.

2. (a) Carefully analyse the elements of the offence of rape and discuss the merits or otherwise of having "lack of consent" as an element of the offence rather than the element of "violence". (80%).

(b) Distinguish briefly material, personal, ideological, and nominal falsity (20%).

3. (a) Comment in detail on the following offences:
 - (i) living wholly or in part on the earnings of the prostitution of any other person;
 - (ii) loitering or soliciting for the purpose of prostitution or for other immoral purposes. (80%)
(b) Comment briefly on the relevance, if any, of "the imitation of the truth" in relation to offences of forgery. (20%)

/..... P.T.O.

SECTION II

4. Carefully define the offence of theft under Maltese Law and examine in detail two of the following aggravations of the same offence:
 - (a) means
 - (b) place
 - (c) nature of the thing stolen

5. Wilful homicide distinguishes itself at law by the specific intent where the mental element is involved. Analyse the notion of wilful homicide.

6. Our Criminal Code gives the President of Malta particular protection. Mention the main cases when this protection is given and explain what justifies this specific protection at law.

SECTION III

7. (a) Analyse in detail the constituent elements of the crime of perjury with particular reference to recent court judgments on this offence. (80%)

(b) "It is indispensable for the commission of the crime of calumnious accusation for the perpetrator to accuse a person before a competent authority with an offence of which he knows such person to be innocent". Comment with reference to Maltese court judgments. (20%)

8. (a) Carefully examine the constitutive elements of the offence of misappropriation under Maltese Criminal Law. (80%)

(b) Examine briefly the common aggravations of the offences of fraud under Maltese Criminal Law. (20%)

9. Grievous bodily harms are defined at law. Analyse their notion and the cases of grievous bodily harm.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
JUNE 2009

CRL2005-CRIMINAL LAW

THURSDAY 11th JUNE, 2009

8.00 am – 11.00 am

Answer ONE question FROM EACH SECTION, in English or in Maltese.

Use a separate booklet for each question.

SECTION I

1. "In crimes of forgery the criminal intent consists in the conscious and wilful alteration of the truth, without there being the need to look for an *intentio nocendi* or an *intentio decipiendi*".
Discuss this statement with particular reference to the position obtaining in Maltese law.
2. (a) Carefully analyse the elements of the offence of abduction and discuss in particular whether the offence can be committed by "retention" as distinct from "taking" of the passive subject. (80%).

(b) Explain briefly the notion of *falso grossolano* and discuss in what circumstances, if ever, does it exclude the offence of forgery (20%).
3. (a) "The definition of the offence of defilement of minors in the Criminal Code is deceptively simple" Discuss, highlighting any problems to which the definition gives rise to while briefly giving consideration to the circumstances which aggravate the offence. (80%)

(b) Define "public document" for the purposes of the law on forgery explaining which is the feature which gives a document its distinctive "public" character. (20%)

/..... P.T.O.

SECTION II

4. (a) Define the offence of theft and comment thereon. Carefully examine the aggravations of the offence of theft by "violence" and "means" (80%)

(b) Is it true to say that a "service" offered to an offender as a result of a fraudulent act by the offender can never amount to the offence of misappropriation? Give reasons for your answer. (20%)
5. *Animus necandi* is the hallmark of the offence of wilful homicide. Analyse and distinguish the intentional element of the offence of wilful homicide, grievous bodily harm from which death ensues and involuntary homicide.
6. Analyse the offence of *coup d'etat* in terms of article 56 of the Criminal Code and explain the main features distinguishing one sub-article from the other. In particular examine the notions of conspiracy, preparatory act and voluntary desistance in the said offence of *coup d'etat*.

SECTION III

7. (a) "A man calumniated is doubly injured - first by him who utters the calumny, and then by him who believes it" (Herodotus). In the light of this statement analyse in detail the elements of the crime of calumnious accusation under Maltese law with particular reference to Maltese court judgments on this offence. (80%)

(b) Explain in which cases Maltese law admits the possibility of retraction and illustrate your reply by reference to Maltese case law. (20%)
8. (a) When is wilful homicide deemed to be excusable? (50%)

(b) Analyse the concept of bodily harm under our criminal code. (50%)
9. Write notes on three of the following:
 - (a) When is an offence deemed to be accompanied with public violence?
 - (b) Tumultuous assembly;
 - (c) When is an assembly not unlawful in terms of article 81 of the Criminal Code?
 - (d) Arbitrary exercise of pretended rights;
 - (e) Attempts against the life and safety of the President of Malta.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
JUNE 2009
SPECIAL SESSION

CRL2005-CRIMINAL LAW

THURSDAY 25th JUNE, 2009

9.15 am – 12.15 pm

Answer ONE question FROM EACH SECTION, in English or in Maltese.

Use a separate booklet for each question.

SECTION I

1. (a) Discuss the requisites of “writing” and “tenor” as essential characteristics of the notion of document for the purpose of offences of forgery. (80%)

(b) Comment briefly on the bilateral nature of the offence of bigamy (20%)
2. (a) Discuss the element of violence in the offences of rape, abduction and violent indecent assault mentioning the circumstances, if any, that aggravate the offence in each case (80%).

(b) To what extent is gross forgery (*falso grossolano*) relevant to the issue of criminal responsibility for offences of forgery? (20%)
3. (a) Comment briefly on the elements of the offences of “loitering or soliciting for the purpose of prostitution or for other immoral purposes” and “living on the earnings of prostitution”. (80%)

(b) Explain the extent, if at all, to which material, personal, ideological and nominal falsity give rise to the offence of forgery. (20%)

/..... P.T.O.

SECTION II

4. (a) What constitutes the offence of misappropriation under our law (article 293). In particular, what *actus reus* is required and what items may be misapplied to consummate this offence. (80%)
- (b) Discuss briefly the aggravation of the offence of theft by "means". (20%)
5. When is a homicide not considered to be an offence? Analyse and discuss justifiable homicide.
6. (a) Why and to what extent is the President of Malta given specific attention under the Title "Offences Against the Security of the Government"? (70%)
- (b) Define complicity in offences against the security of the Government. (30%)

SECTION III

7. (a) Analyse the constituent elements of the crimes of perjury and false swearing highlighting the distinction between these two crimes, with particular reference to recent court judgments on the issue. (80%)
- (b) Explain briefly the crime of subornation of witnesses, with particular reference to court judgments on this crime. (20%)
8. (a) Define the offence of theft. Carefully examine the aggravations of the offence of theft by "violence" and "person". (80%)
- (b) Discuss briefly whether the offences of misappropriation (article 293) and other fraudulent gain (article 309) may be prosecuted *ex officio* or whether the complaint of the injured party is required and examine also the common aggravations of these offences. (20%)
9. Write notes on three of the following:
- (a) Public Officer in terms of Article 92 of the Criminal Code;
 - (b) Arms regular and arms irregular;
 - (c) Illegal arrest;
 - (d) Arbitrary exercise of pretended rights;
 - (e) Accidental affray.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
SEPTEMBER 2009

CRL2005-CRIMINAL LAW

THURSDAY 7th SEPTEMBER, 2009

9.15 am – 12.15 pm

Answer ONE question FROM EACH SECTION, in English or in Maltese.

Use a separate booklet for each question.

SECTION I

1. (a) "For a document to be an object of forgery it is essential that it consists in a writing by an identifiable author." Examine the implications of this statement also in the light of recent relevant amendments to the Criminal Code. (80%)

(b) What circumstances constitute presumed violence under the Criminal Code for the purpose of the offence of rape. (20%)
2. (a) Analyse the elements of the offence of bigamy with particular reference the problems that arise out of its bilateral nature. (80%)

(b) Comment briefly on the relevance, if any, of "the imitation of the truth" in relation to offences of forgery. (20%)
3. (a) "Whosoever in order to gratify the lust of any other person induces a person under age to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall on conviction be liable to imprisonment for a term from eighteen months to four years, with or without solitary confinement" (S. 204(1) of the Criminal Code).

Discuss the elements of this offence, taking into account its aggravations. (80%).

(b) When does a falsity constitute a material falsity for the purpose of the law of forgery. (20%)

/..... P.T.O.

SECTION II

4. (a) Distinguish the offences of theft, misappropriation and obtaining money or property by false pretenses. (80%)
(b) Comment on the aggravations of theft by "person" and by "place". (20%)
5. (a) How does Maltese law protect the President of Malta differently from the way it protects other Maltese citizens? (50%)
(b) Examine the cases whereby there is a *coup d'etat* against the State of Malta. (50%)
6. The crimes of fabrication of false evidence and calumnious accusation have certain common elements. Explore the distinction between the two offences, with particular reference to relevant Maltese Court judgments.

SECTION III

7. (a) Examine in detail, including with reference to Maltese Court judgments, the constituent elements of the crime of perjury. (80%)
(b) Discuss the meaning of the legal term "interdiction" and examine the circumstances where interdiction can be imposed by the Court in the case of the crimes of calumnious accusation, perjury and false swearing. (20%)
8. (a) When is an offence deemed to be accompanied with public violence? (50%)
(b) When is an attempt deemed to be seditious? (50%)
9. When is wilful homicide deemed to be excusable?

UNIVERSITY OF MALTA
Faculty of Laws

June 2010 Examinations

LL.B. II YEAR

CRIMINAL LAW

16th June, 2010

9.15 a.m. to 12.15 p.m.

Answer ONE question FROM EACH SECTION in English

Use a separate booklet for each question.

SECTION I

1. (a) "Saving the cases referred to in the preceding sub-title, any public officer or servant who shall, in the exercise of his functions, commit forgery by any false signature, or by the alteration of any act, writing, or signature, or by inserting the name of any supposititious person, or by any writing made or entered in any register or other public act, when already formed or completed, shall, on conviction, be liable to imprisonment for a term from two to four years, with or without solitary confinement." (Art. 179 Criminal Code)

Discuss in detail the material and intentional elements of the above offence of "forgery of acts by public officer". (80%)

(b) Discuss briefly the maxim *maxim corrupta non corrumpitur* in relation to the offence of defilement of a minor. (20%)

2. (a) "The characteristic element of the offence of rape in English law is 'lack of consent' while in Maltese law it is 'violence'". Discuss, taking into account and explaining in detail the circumstances which give rise to presumed violence under the Maltese Criminal Code. (80%).

(b) Distinguish between the intent to deceive and the intent to defraud with respect to offences of forgery explaining briefly which of these two intents, if any, you think is required for such offences under our law. (20%)

3. (a) Analyse the offence of abduction highlighting any differences where the offence is committed by violence and where it is committed by fraud or seduction. (80%)

/.....P.T.O.

(b) Comment briefly on the relevance, if any, of "the imitation of the truth" in relation to offences of forgery. (20%)

SECTION II

4. (a) Carefully discuss the elements of theft under Maltese law. Examine the aggravations "by violence" and "by place" of the offence of theft. (80%)

(b) Explain briefly the crime of subornation of witnesses, with particular reference to the varying degrees of punishment provided by law. (20%)

5. (a) Examine in detail the constituent elements of the crime of perjury as illustrated by Maltese case law on this offence. (80%)

(b) Distinguish briefly between *animus nocendi* and *animus necandi*. (20%)

6. Distinguish between the provisions of article 216 of the Criminal Code (*offesa grave*) and those of article 218 (*offesa gravissima*) of the same Code. What difference does it make to either of these offences if instead of a generic intent to cause harm the offence is accompanied with a specific intent to kill or to put the life of another person in manifest jeopardy. (100%)

SECTION III

7. "The State has to be protected by law". Analyse this statement with particular reference to the notion of *coup d'etat*. (100%)

8. (a) Carefully examine the requirements of the offence of misappropriation under Maltese law. In what way is the offence of misappropriation different from the offence of "obtaining money by false pretenses". (80%)

(b) Briefly examine the requirements of for the offence of "other fraudulent gain" under our law. (20%)

9. (a) Analyse the distinction between the constitutive elements of the crimes of fabrication of false evidence and calumnious accusation with particular relevance to Maltese court judgments on this matter. (80%)

(b) Briefly examine the notions *furtum usus* (theft limited to making use of an object) and "theft by finding". (20%)

UNIVERSITY OF MALTA
Faculty of Laws

September 2010 Examinations

LL.B. II YEAR

CRIMINAL LAW

6th SEPTEMBER, 2010

9.15 a.m to 12.15 p.m.

Answer ONE question FROM EACH SECTION in English

Use a separate booklet for each question.

SECTION I

1. (a) Critically consider the controversy on the nature of the criminal intent for offences of forgery of documents giving your views in this regard in so far as the offences of forgery in the Criminal Code are concerned. (80%)

(b) Explain briefly the bilateral nature of the offence of bigamy and the problems that arise as a result. (20%)
2. (a) Discuss the element of violence in the offences of rape, abduction and violent indecent assault mentioning the circumstances, if any, that aggravate the offence in each case (80%).

(b) Distinguish briefly between material, personal, nominal and ideological falsity. (20%)
3. (a) Explain in detail the elements of the offence of defilement of minors with particular reference to the impact of the notion of *corrupta non corrumpitur* on the development of Maltese case law regarding the said offence. (80%)

(b) Briefly distinguish between public documents and private writings in the context of offences of forgery. (20%)

/.....P.T.O

SECTION II

4. Carefully discuss the elements of the offence of theft under Maltese law and examine the aggravations "by person" and "by means" of the same offence. (100%)
5. Analyse the intentional element of *animus necandi* and *animus nocendi* in our law referable to offences whereby a person causes the death of another person. (100%)
6. (a) How does Maltese Criminal Law consider the offence of insurrection or *coup d'etat*? Is there a distinction between a citizen of Malta and a non-citizen in the commission of acts specified in article 56 of the Criminal Code. (80%)

(b) Why and to what extent is the President of Malta given "protection" in terms of article 55 of the Criminal Code. (20%)

SECTION III

7. (a) When is a bodily harm deemed to be grievous? Should the distinction based on gravity be maintained in our law? (80%)

(b) Write notes on two of the following:
 - (i) unlawful assembly;
 - (ii) arbitrary exercise of pretended rights;
 - (iii) tumultuous assembly (20%)
8. (a) Carefully examine the requirements of the offence of misappropriation under Maltese law. Briefly discuss whether a *mise-en-scene* or *messa in scena* is required under our law for the consummation of the said offence. (80%)

(b) Discuss briefly the characteristics of "the thing stolen" in the offence of theft and any specific exceptions laid down by law to the general rule (20%)
9. (a) Outline the constituent elements of the offence of perjury with particular reference to recent court pronouncements and legislative amendments to the relative provisions in the Criminal Code. (80%)

(b) Discuss briefly the element of "making a gain" or "profit" and whether there is any difference between the offences of fraud and theft in this respect. (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
MAY/JUNE SESSION 2011

CRIMINAL LAW

THURSDAY 9th JUNE 2011

8.00 am - 11.00 am

ANSWER ONE QUESTION FROM EACH SECTION IN ENGLISH

SECTION I

1. "For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction." (Kenny)
Comment on the elements of this definition of a document. (80%)

(b) What objects or things can be the subject of theft under our law? (20%)

 2. (a) Carefully analyse the elements of the offence of rape and discuss the merits or otherwise of having "lack of consent" as an element of the offence rather than the element of "violence". (80%)

(b) When is an offence said to be accompanied by public violence? What are the consequences on the punishments for such an aggravation? (20%)

 3. (a) Elaborate upon and discuss the elements of the offence of bigamy highlighting those problems linked to the bilateral nature of the offence. (80%)

(b) Briefly discuss the element of "seduction" in the offence of abduction. (20%)
-

P.T.O.

SECTION II

4. Professor Francesco Carrara upheld that homicide may be *doloso* (wilful), or *colposo* (culpable) or *preterintenzionale* (very much akin to the offence of grievous bodily harm from which death ensues). To what extent, if at all, is this reflected within the case-law of Maltese Courts relating to homicide? (100%)
5. Carefully define the offence of theft and its constitutive elements under Maltese law. Also examine the aggravations by "time" and "person" to the offence of theft under our law. (100%)
6. Write short notes on any TWO of the following
 - (a) The distinction between material, personal, ideological, and nominal falsity; (50%)
 - (b) The distinction between the constitutive elements of the crimes of perjury and false swearing; (50%) or
 - (c) The possibility of retraction and its application by reference to Maltese case law. (50%)

SECTION III

7. (a) What elements constitute the offence of "arbitrary exercise of a pretended right", known as "ragion fattasi" under Maltese Law? Illustrate your answer with judgments that are relevant on this matter. (80%)
(b) Draw the distinction between a "public officer" and a "public servant" which is of relevance in a number of offences of forgery. (20%)
8. (a) What actions would be considered by the Criminal Code as amounting to an insurrection or *coup d'etat*? In what way do they offer adequate protection against any insurgents? (80%)
(b) Explain briefly the crime of simulation of an offence, with particular reference to Maltese case law on this subject (20%).
9. (a) Our Criminal Code gives the President of Malta particular protection. Mention the main cases when this protection is given and explain what justifies this specific protection at law. (80%)
(b) Briefly explain the manner in which you distinguish the offences of theft, misappropriation, obtaining money by false pretences and other fraudulent gain? (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
SEPTEMBER 2011 EXAMINATION SESSION

CRIMINAL LAW

WEDNESDAY 7th SEPTEMBER 2011

9.15am – 12.15 p.m

ANSWER ONE QUESTION FROM EACH SECTION IN ENGLISH

SECTION I

1. (a) "For a document to be an object of forgery it is essential that it consists in a writing by an identifiable author." Examine the implications of this statement taking into account technological advances and legislative developments (80%)

(b) Discuss briefly the instances of presumed violence with respect to the offence of rape under the Criminal Code. (20%)

2. (a) The offence of abduction may take place (i) by the use of violence (ii) by the use of fraud or seduction. Distinguish between the elements of the two forms of the offence and explain the contribution made by the judgment in the case "Il-Pulizija vs. Raymond McKay" to a better understanding of these elements.(80%)

(b) Briefly explain material, personal, ideological and nominal falsity and which, if any, give rise to forgery of a document. (20%)

3. (a) Explain in detail the ingredients of the offence of defilement of a minor and how the courts' case law on this offence evolved in the course of time. (80%).

(b) Explain *falso grossolano* and its relevance for the determination of criminal responsibility for offences of forgery. (20%)

/PTO

SECTION II

4. Examine, with reference to case law, the notion of legitimate self-defence. Is excess of self defence always punishable? (100%)

5. Carefully examine the requirements for the offence of misappropriation under Maltese law. In what way is the offence of misappropriation different from the offence of "obtaining money by false pretenses". (100%)

6. (a) Explain the legal reasons why the crime of calumnious accusation is considered to be so serious an offence under Maltese law, with particular reference to Maltese court judgments on the matter. (80%)

(b) Briefly examine the notions of "*furtum usus*" (theft limitedly to make use of an object) and "theft by finding". (20%)

SECTION III

7. (a) In what manner and under what circumstances does the Criminal Code consider an action as amounting to racial hatred or violence? Comment in the light of articles 82A to 82C of the Criminal Code. (80%)

(b) "Subornation of witnesses is a crime that undermines the administration of justice". Briefly criticise this statement. (20%).

8. (a) "The person of the President of Malta is given special protection by the Maltese Criminal Code." To what extent do you agree with this statement? (50%)

(b) Our Court of Criminal Appeal, in the case "Ir-Repubblika ta' Malta vs. Nathalie Pisani decided on the 24th May 1982 drew distinctions between infanticide and wilful homicide. Elaborate with reference to the law on infanticide. (50%)

9. Carefully discuss the elements of theft under Maltese law. Examine the aggravations "by violence" and "by place" of the offence. (100%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
MAY/JUNE SESSION 2012
CRIMINAL LAW

THURSDAY 14th JUNE 2012

TIME: 8.00am – 11.00am

ANSWER ONE QUESTION FROM EACH SECTION IN ENGLISH

SECTION I

1. (a) "*For a document to be an object of forgery it is essential that it consists in a writing by an identifiable author.*" Examine the implications of this statement and comment on whether a computer disk (CD or hard disk) can constitute a document for the purpose of the offence of forgery. (80%)

(b) Discuss briefly the maxim *corrupta non corrumpitur* in relation to the offence of defilement of a minor (20%)

2. (a) Examine in detail and distinguish violent abduction and abduction by fraud and seduction. (80%)

(b) Distinguish between the intent to deceive and the intent to defraud with respect to offences of forgery explaining briefly which of these two intents, if any, you think is required for such offences under our law. (20%)

3. (a) Carefully analyse the elements of the offence of rape (80%).

(b) Briefly distinguish between material, personal, ideological and nominal falsity within the context of forgery. (20%)

SECTION II

4. (a) Define the offence of theft. Carefully examine the aggravations of the offence of theft by "violence" and "means". (80%)

(b) What constitutes a 'course of conduct' for the purposes of the crime of harassment? (20%)

5. (a) To what extent, if at all, does a 'duty of care' subsist in the light of the specific, positive, indirect intent required for the consummation of wilful homicide? (80%)
- (b) Briefly Distinguish the offences of theft, misappropriation and obtaining money or property by false pretences. (20%)
6. Write notes on any 5 of the following (20% each):
- a) Supervening accidental causes;
 - b) Contributory negligence;
 - c) Animus necandi and animus nocendi;
 - d) The constitutive elements of the crime of instigation to commit suicide;
 - e) Attempted grievous bodily harm;
 - f) Provocation;
 - g) Presumed foreseeability;
 - h) Excess in self-defence which is not liable to punishment;

SECTION III

7. What are the material elements by which a person may commit and insurrection or *coup d'etat* in terms of Article 56 of the Criminal Code? (100%)
8. (a) The President is deemed to be the highest official of the State. Does the Criminal Code offer any special protection to this position? Discuss (80%)
- (b) When is an assembly not considered as being unlawful under the Criminal Code? (20%)
9. (a) Carefully outline the constituent ingredients of the offence of perjury. (80%)
- (b) In what way does the offence of Arbitrary exercise of pretended rights differ from other offences such as theft or wilful damage? (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
SEPTEMBER SESSION 2012
CRIMINAL LAW

MONDAY 10th SEPTEMBER 2012

TIME: 9.15am – 12.15pm

ANSWER ONE QUESTION FROM EACH SECTION IN ENGLISH

SECTION I

1. "In crimes of forgery the criminal intent consists in the conscious and willful alteration of the truth, without there being the need to look for an *intentio nocendi* or an *intentio decipendi*".

Discuss this statement with particular reference to the position obtaining in Maltese law (100%).

2. (a) Carefully analyse the elements of the offence of abduction and discuss in particular whether the offence can be committed by "retention" as distinct from "taking" of the passive subject (80%);

(b) Explain briefly the notion of falso grossolano and discuss in what circumstances, if ever, does it exclude the offence of forgery (20%);

3. (a) "*A man calumniated is doubly injured – first by him who utters the calumny, and then by him who believes it*" (Herodotus). In the light of this statement analyse in detail the elements of the crime of calumnious accusation under Maltese law with particular reference to Maltese court judgments on this offence. (80%)

(b) Explain in which cases Maltese law admits the possibility of retraction and illustrate your reply by reference to Maltese case law. (20%)

SECTION II

4. (a) Examine Section 225 of the Criminal Code, the law dealing with involuntary homicide, making reference to case-law (80%)
- (b) To what extent, if at all, may attempted grievous bodily harm subsist under Maltese criminal law? (20%)
5. Write notes on any 5 of the following: (20% each):
- a) Distinguish between *animus necandi* and *animus nocendi*;
 - b) Distinguish between motive, premeditation and criminal intent;
 - c) Supervening accidental causes;
 - d) The constitutive elements of the crime of infanticide;
 - e) Excess in self-defence which is not liable to punishment;
 - f) The means by virtue of which the crime of trafficking of persons can be consummated;
 - g) The constitutive elements of the crime of the malicious administration of substances capable of causing any harm or injury to health;
 - h) Transferred malice;
6. Examine the definition of theft under our law. Examine in particular the aggravation "by time", "by person" and "by nature of the thing stolen. (100%)

SECTION III

7. "The offence of "Arbitrary exercise of pretended rights", otherwise known as "ragion fattasi" is merely a repetition of other offences found in our code such as fraud, theft or voluntary damage and should therefore be removed from our Criminal Code".

Do you agree with this statement? Illustrate your answer by examining the elements which make it different from the other offences (if any). (100%)

8. (a) How does Maltese law protect the President of Malta differently from the way it protects other Maltese citizens (50%);

(b) When is an offence deemed to be accompanied with public violence? Is there a difference in punishment when public violence is present? (50%)

9. (a) What are the essential elements which constitute the offence of obtaining money by false pretences under Maltese law (s.308 of the Criminal Code)? In particular what circumstances aggravate the offence? (50%)

(b) Discuss the elements of the offence of incitement to racial hatred (Article 82A of the Criminal Code). (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
MAY/JUNE SESSION 2013
CRL2000 - SUBSTANTIVE CRIMINAL LAW

THURSDAY 30th MAY 2013

TIME: 9.15am – 12.15pm

ANSWER ONE QUESTION FROM EACH SECTION IN ENGLISH

SECTION I

1. (a) "The definition in the Criminal Code of the offence of 'defilement of minors' is deceptively simple". Comment. (80%)

(b) In the event that you find an object lying around in a public place do you commit an offence if you were to take it and keep it? (20%)

2. (a) Identifying the requisite elements of criminal intent for offences of forgery has proved a complex problem which still gives rise to controversy. Critically examine the nature of the difficulties involved making your own reflections as to what you consider to be the correct position under Maltese Law. (80%)

(b) In what way does the Criminal Code treat the offence of conspiracy against the State (Article 57 of the Criminal Code) differently from the general offence of conspiracy (Article 48A of the Criminal Code)? (20%)

3. (a) Analyse the elements of the offence of abduction. Can the offence be committed by "retention" as against by "taking"? (80%)

(b) Briefly distinguish between public documents and private writings in the context of the offences of forgery. (20%)

SECTION II

4. Write notes on any **five [5]** of the following (20% each):
- a. Inciting or helping others to commit suicide;
 - b. Supervening accidental causes;
 - c. Attempted grievous bodily harm;
 - d. Contributory negligence;
 - e. Blackmail;
 - f. "*dolus indetererminatus determinatur ab exitu*";
 - g. The link of causation;
5. To what extent, if at all, is the objective test of the 'reasonable man' relevant for the purposes of the crimes against the person [Title VIII of the Criminal Code, Chapter 9 of the Laws of Malta]? (100%)
6. (a) What are the elements of the offence of misappropriation (Article 293 of the Criminal Code)? How is this different from obtaining monies with false pretences (Article 308 of the Criminal Code)? (80%)
- (b) State and explain briefly the circumstances giving rise to presumed violence in the case of the offence of rape. (20%)

SECTION III

7. (a) Carefully analyse the elements constituting the offence of Arbitrary Exercise of a pretended right, commonly referred to as "*ragion fattasi*" (Article 85 of the Criminal Code). Illustrate your answer with judgements which defined this offence. (80%)
- (b) What is meant by the statement that bigamy is a bilateral offence? (20%)
8. Write notes on any **four** of the following (25% each):
- a. The notion of public violence as treated by our Criminal Code;
 - b. The distinction between "arms proper" and "arms improper";
 - c. The elements of the offence of "unlawful assembly";
 - d. The circumstances behind an "assembly when not unlawful";
 - e. The offence of "provocation to perpetrate crimes against the safety of the Government";
 - f. The administration of an unlawful oath (Article 76 of the Criminal Code) and the taking of an unlawful oath (Article 77 of the Criminal Code);

9. (a) Carefully examine the aggravations of theft by "amount, "person" and by "place". (80%)
- (b) Distinguish between the "*animus nocendi*" and the "*animus necandi*". (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
SEPTEMBER SESSION 2013
CRIMINAL LAW

FRIDAY, 6th SEPTEMBER 2013

TIME: 9.15am – 12.15pm

ANSWER ONE QUESTION FROM EACH SECTION IN ENGLISH

SECTION I

1. (a) Discuss the element of violence in the offences of rape, abduction and violent indecent assault mentioning the circumstances, if any, that aggravate the offence in each case. (80%)

(b) To what extent, if at all, may attempted grievous bodily harm subsist under Maltese criminal law? (20%)

2. (a) "Maltese law does not prohibit prostitution but it seeks to punish the exploitation by others of prostitutes, to discourage prostitution and to facilitate the rehabilitation of prostitutes". Discuss. (80%)

(b) Discuss briefly the element of "making gain" or "profit" and whether there is any difference between the offences of fraud and theft in this respect. (20%)

3. (a) Elaborate on the elements of "writing" and "author" in the traditional notion of "document" for the purposes of offences of forgery commenting on any adjustments to this notion as a result of recent amendments to the Criminal Code. (80%)

(b) Explain in which cases Maltese law admits the possibility of retraction and illustrate your reply by reference to Maltese case law. (20%)

SECTION II

4. Carefully analyse the elements constituting the offence of Greivous Bodily Harm in terms of Article 216 (*offesa grave*) and those of Article 218 (*offesa gravissima*) of the Criminal Code. How do these offences differ from each other? (100%)
5. (a) Under what circumstances is wilful homicide deemed to be excusable? (80%);

(b) How has the doctrine of *corrupta non corrumpitur* developed in case law with reference to the offence of defilement of minors? (20%)
6. (a) Define the offence of theft. Carefully examine the aggravations of the offence of theft by "place" and "means". (80%)

(b) Briefly discuss the element of "seduction" in the offence of abduction. (20%)

SECTION III

7. (a) Analyse critically the elements constituting the offence of insurrection (*Coup d' état*) as found in Article 56 of the Criminal Code. Do you think that this offence is relevant in today's world? (100%)
8. Write notes on any four of the following (25% each):
 - a. The offence of "Unlawful Assembly" (Art. 68);
 - b. The false imputation of misconduct in the administration of the Government (Art. 75);
 - c. The distinction between an arrest, detention and confinement;
 - d. The distinction between "arms proper" and "arms improper";
 - e. The provocation to perpetrate crimes against the safety of the Government (Art. 59);
 - f. Attempts against the life and safety of the President of Malta;
9. (a) What are the aggravating circumstances to the offence of misappropriation? (80%)

(b) Can personal, ideological and nominal falsity give rise to the offence of forgery? (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
CRL2006 – SUBSTANTIVE CRIMINAL LAW 1

MONDAY 27th JANUARY, 2014

1.00PM – 3.00PM

Answer any two (2) questions from the following:

1(a) "For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction."
(Kenny).

Comment on the elements of this definition of a document (80%)

(b) What is the difference between the offences of theft, misappropriation and obtaining money by false pretences (20%)

2 (a) Identifying the requisite elements of criminal intent for offences of forgery has proved a complex problem which still gives rise to controversy. Critically examine the nature of the difficulties involved making your own reflections as to what you consider to be the correct position under Maltese law. (80%)

(b) Briefly examine the constitutive elements to consummate the offence of misappropriation under our law (20%).

3 (a) Our law does not provide a definition of the offence of theft. Carefully examine the definition of theft given to us by jurists and how it is interpreted under our law. Carefully also examine the aggravation "by means" to the offence of theft (80%)

(b) Briefly distinguish between public documents and private writings in the context of the offences of forgery (20%).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
CRL2007 – SUBSTANTIVE CRIMINAL LAW

WEDNESDAY 11TH JUNE, 2014

9.15AM – 11.15AM

ANSWER ANY TWO QUESTIONS:

1.(a) Recent legislative amendments manifest the gravity of the crime of the traffic of persons. Discuss and elaborate. (80%).

(b) Comment briefly on the offence of violent indecent assault (20%).

2. (a) Explain the elements of the offence of defilement of minors while highlighting how the principle of *corrupta non corrumpitur* developed in Maltese case-law (80%).

(b) Briefly discuss the offence of Administering of an unlawful oath (Article 76 of the Criminal Code) and Taking an unlawful oath (Article 77 of the Criminal Code) (20%)

3. (a) Explain the elements of the two different forms of the offence of abduction (80%).

(b) Briefly comment on possible defences to the crime of harassment in terms of Article 251(A) of the Maltese criminal code (20%).

4 . (a) The President is considered to be one of the highest institutions in Malta. Does the Criminal Code afford enough protection to the life and the liberty of the President? If yes, in what way? (80%)

(b) Briefly comment on excess in the limits of lawful self-defence, when such excess is not punishable at Law (proviso to Article 227(d)). (20%).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
CRL2006 – SUBSTANTIVE CRIMINAL LAW I

MONDAY 1ST SEPTEMBER 2014

9:15AM – 11:15AM

ANSWER ANY TWO QUESTIONS

1. For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction." (Kenny)
Comment on the elements of this definition of a document. (80%)

(b) What objects or things can be the subject of theft under our law? (20%)

2. (a) Carefully define the offence of theft and its constitutive elements under Maltese law. Also examine the aggravations by "time" and "person" to the offence of theft under our law. (80%)

(b) Draw the distinction between a "public officer" and a "public servant" which is of relevance in a number of offences of forgery. (20%)

3. Carefully distinguish between material, personal, ideological, and nominal falsity. (80%)

(b) Briefly explain the manner in which you distinguish the offences of theft, misappropriation, obtaining money by false pretences and other fraudulent gain? (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

FRIDAY 5TH SEPTEMBER 2014

9:15AM – 11:15AM

ANSWER ANY TWO QUESTIONS :

1.(a) Carefully explain what constitutes an offence of violent indecent assault under Maltese law (80%).

(b) When is an offence said to be accompanied by public violence? What are the consequences on the punishments for such an aggravation? (20%)

2. (a) Carefully analyse the elements of the offence of rape and discuss the merits or otherwise of having “lack of consent” as an element of the offence rather than the element of “violence”. (80%)

(b) Briefly comment the elements required for the crime of harassment in terms of Article 251(A) of the Maltese criminal code. (20%)

3. (a) Professor Francesco Carrara upheld that homicide may be *doloso* (wilful), or *colposo* (culpable) or *preterintenzionale* (very much akin to the offence of grievous bodily harm from which death ensues). Discuss whether this distinction applies to Maltese law, and if so, how. (80%)

(b) Briefly discuss the element of “seduction” in the offence of abduction. (20%)

4. (a) The President is considered to be one of the highest institutions in Malta. Does the Criminal Code afford enough protection to the life and the liberty of the President? If yes, in what way? (80%)

(b) Briefly explain the elements of the offence of bigamy highlighting under Maltese law. (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
CRL2006 – SUBSTANTIVE CRIMINAL LAW I

MONDAY 26TH JANUARY 2015

9:15AM – 11:15AM

ANSWER ANY TWO QUESTIONS

1. (a) Critically consider the controversy on the nature of the criminal intent for offences of forgery of documents giving your views in this regard in so far as the offences of forgery in the Criminal Code are concerned. (80%)

(b) Briefly examine the requirements for the offence of “other fraudulent gain” under our law (20%).

2. (a) Carefully define the offence of theft and its constitutive elements under Maltese law. Also examine the aggravation by “violence” to the offence of theft under our law. (80%)

(b) Write brief notes on the the main differences and similarities between the crimes of Unlawful Assembly (atruppament), Unlawful Assembly with Seditious Intent, Tumultuous Assembly, and Seditious Conspiracy as provided for in our Criminal Code. (20%)

3. Carefully examine the requirements to commit the offence of misappropriation under Maltese law. (80%)

(b) Briefly explain the circumstances when an offence is deemed to be accompanied by public violence. (20%)

4. (a) What actions would be considered by the Criminal Code as amounting to an insurrection or *coup d'etat*? In what way do they offer adequate protection against any insurgents? (80%)

(b) Briefly distinguish between material, personal, ideological, and nominal falsity for the purposes of forgery. (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2ND YEAR

CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

MONDAY 22ND JUNE 2015

READING TIME: 10:00AM – 10:05AM

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

ANSWER ANY TWO QUESTIONS:

1. a. What are the elements of Bribery? carefully distinguish between Active Bribery and passive bribery? (80%)
b. Analyse the crime of 'transmission and communication of diseases or conditions to others' in terms of Article 244A of the Maltese Criminal Code (20%)
2. a. Discuss the element of violence in the offence ^{of} rape, abduction, and violent indecent assault, mentioning the circumstances, if any, that aggravate the offence in each case. (80%).
b. When, if at all, can the crime of 'attempted grievous bodily harm' subsist under Maltese law? (20%)
3. a. With reference to case law, analyse the excusable crime of wilful homicide where it is committed by any person acting under the first transport of a sudden passion or mental excitement in terms of Article 227 (c) of the Maltese Criminal Code. (80%)
b. Comment briefly on the offence of "Simulation of offence" (art. 110(2)) (20%)
4. a. To what extent, if at all, is foresight pivotal (crucial) for the determination of the prevailing *mens rea* for homicide? (80%)
b. Briefly discuss the constitutive elements of the offence of defilement of minors (20%).

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

CRL2006 – SUBSTANTIVE CRIMINAL LAW I

THURSDAY 3RD SEPTEMBER 2015

READING TIME: 8:30AM – 8:35AM

DURATION OF EXAMINATION: 8:35AM – 10:35AM

ANSWER ANY TWO QUESTIONS IN ENGLISH

- 1(a) Explain the elements (formal and material) constituting the crimes of unlawful assembly (S.68 of the Criminal Code), unlawful assembly with seditious intent (S.73), seditious conspiracy (S.74) and tumultuous assembly (S.79) (80%)
- (b) Briefly explain the manner in which you distinguish the offences of theft, misappropriation, obtaining money by false pretences and other fraudulent gain? (20%)
2. (a) Carefully define the offence of theft and its constitutive elements under Maltese law. Also examine the aggravations by “violence” and “means” to the offence of theft under our law. (80%)
- (b) Does *falso grossolano* exclude the offence of forgery. (20%)
- 3(a) *“The meaning of document for the purposes of forgery cannot be considered in isolation from the rule that it must “tell a lie about itself.” (Smith & Hogan)*
Comment on and elucidate the above statement in relation to the different kinds of falsity, namely, material, personal, nominal and ideological. (80%)
- (b) Discuss briefly the elements of the crime of conspiracy in the Title of Crimes against the safety of the Government (20%)
- 4(a) *“In crimes of forgery the criminal intent consists in the conscious and wilful alteration of the truth, without there being the need to look for an intentio nocendi or an intentio decipiendi”.*
Discuss this statement with particular reference to the position obtaining in Maltese law. (80%)
- (b) Explain the distinction between public documents and private writings highlighting any legal consequences of the distinction for offences of forgery. (20%).

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

CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

WEDNESDAY 9TH SEPTEMBER 2015

READING TIME: 8:30AM – 8.35AM

DURATION OF EXAMINATION: 8:35AM – 10:35AM

ANSWER ANY TWO QUESTIONS IN ENGLISH:

- 1 (a) Professor Francesco Carrara upheld that homicide may be *doloso* (wilful), or *colposo* (culpable), or *preterintenzionale* (very much akin to the offence of grievous bodily harm from which death ensues). Analyse the extent to which, if at all, this distinction applies to Maltese law, and elaborate thereupon. (80%)

(b) Comment briefly on the offence of “offences against decency or morals committed in public” (20%).
2. Write notes on any *three* of the following (each sub-question carries equal marks) (100%):
 - a) Criminal corporate liability
 - b) The offence of violent indecent assault
 - c) Provocation in crimes Against the Person
 - d) The circumstances which give rise to presumed or constructive violence in Title Crimes Affecting the Good Order of Families.
3. (a) Discuss the implications of the expression “(shall) have carnal knowledge of a person of either sex” in the definition of the offence of rape under the Criminal Code (80%).

(b) Briefly explain the offence of “simulation of offence” (20%).
- 4 (a) “The essential elements of the offence of perjury go beyond the actual wording of the law”. Explain the elements of the offence of perjury with reference to the correctness or otherwise of this statement (80%).

(b) Discuss briefly the offence of slight bodily harm (20%).

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

CRL2006 – SUBSTANTIVE CRIMINAL LAW 1

THURSDAY 14TH JANUARY 2016

READING TIME: 10:00AM – 10:05AM

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

ANSWER ANY TWO QUESTIONS

- 1) (a) Explain the historical and sociological *raison d'etre* underpinning section 85 of the Criminal Code, making special reference to the copious case-law of the Maltese Courts on the crime of arbitrary exercise of pretended rights and the main elements constituting it. How does the maxim "*qui continuat non attentat*" feature in the analysis on section 85? (80%)

(b) It is generally agreed that not every object is susceptible to theft. Discuss briefly what objects may be the subject of the offence of "theft". In particular does the criminal code cater for any specific exceptions to the general rule? (20%)

- 2) (a) Define the offence of theft. Carefully examine the aggravations of the offence of theft by "means" and "place". (80%)

(b) Explain the distinction between public documents and private writings highlighting any legal consequences of the distinction for offences of forgery. (20%).

- 3) (a) "*For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction.*" (Kenny)
Comment on the elements of this definition of a document. (80%)

(b) Write short notes on the main elements of the crime of conspiracy as found in section 57 and section 58 of the Criminal Code. (20%)

- 4) (a) Discuss fully the nature of criminal intent for offences of forgery and the different views of commentators in this regard. (80%)

(b) Briefly explain the manner in which you distinguish the offences of theft, misappropriation, obtaining money by false pretences and other fraudulent gain? (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2ND YEAR

CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

MONDAY 20TH JUNE 2016

READING TIME: 10:00AM – 10:05AM

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

ANSWER ANY TWO QUESTIONS IN ENGLISH:

- 1 (a) Carefully analyse the elements of the offence of rape and discuss the merits or otherwise of having “lack of consent” as an element of the offence rather than the element of “violence”. (80%).

(b) Briefly examine the means by which a person would be criminally liable for trafficking another person [Article 248A(2)(a)-(e) of the Criminal Code]. (20%).

2. (a) “The definition of the offence of defilement of minors is deceptively simple.” Comment and elaborate on the elements of the offence. (80%).

(b) Briefly discuss the defences to the crime of harassment [Article 251A(3)(a)-(c) of the Criminal Code]. (20%).

3. (a) With reference to case-law, explain the law on involuntary homicide or bodily harm (sub-title IV of Title VIII of the Criminal Code). (80%)

(b) Can the offence of rape subsist between spouses? (20%)

- 4 (a) Analyse the crime of excusable wilful homicide where it is committed by any person acting under the first transport of a sudden passion or mental excitement [Article 227(c) of the Criminal Code and its proviso] (80%).

(b) Comment on the meaning of “seduction” in relation to the offence of abduction (20%).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
SEPTEMBER 2016 EXAMINATIONS

CRL2006 – SUBSTANTIVE CRIMINAL LAW 1

DATE: FRIDAY 2ND SEPTEMBER 2016

READING TIME: 8:30AM – 8:35AM

DURATION OF EXAM: 8:35AM – 10:35AM

ANSWER ANY TWO QUESTIONS IN ENGLISH

1. Explain the elements (formal and material) constituting the crimes of unlawful assembly (S.68 of the Criminal Code), unlawful assembly with seditious intent (S.73), seditious conspiracy (S.74) and tumultuous assembly (S.79) (80%)
 - (b) Explain the distinction between public documents and private writings highlighting any legal consequences of the distinction for offences of forgery. (20%)

2. *"The meaning of document for the purposes of forgery cannot be considered in isolation from the rule that it must "tell a lie about itself." (Smith & Hogan)*
Comment on and elucidate the above statement in relation to the different kinds of falsity, namely, material, personal, nominal and ideological. (80%)
 - (b) Briefly explain the manner in which you distinguish the offences of theft, misappropriation, obtaining money by false pretences and other fraudulent gain? (20%).

3. *"In crimes of forgery the criminal intent consists in the conscious and wilful alteration of the truth, without there being the need to look for an intentio nocendi or an intentio decipiendi".*
Discuss this statement with particular reference to the position obtaining in Maltese law. (80%)
 - (b) Discuss briefly the elements of the crime of conspiracy in the Title of Crimes against the safety of the Government (20%)

4. (a) Carefully define the offence of theft and its constitutive elements under Maltese law. Also examine the aggravations by "violence" and "means" to the offence of theft under our law. (80%)
 - (b) Does *falso grossolano* exclude the offence of forgery. (20%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
SEPTEMBER 2016 EXAMINATIONS

CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

DATE: FRIDAY 2ND SEPTEMBER 2016

READING TIME: 8:30AM – 8:35AM

DURATION OF EXAM: 8:35AM – 10:35AM

ANSWER ANY TWO QUESTIONS IN ENGLISH:

SUB-QUESTIONS IN QUESTION 2 CARRY EQUAL MARKS.

1. (a) To what extent, if at all, is foresight pivotal (crucial) for the determination of the prevailing *mens rea* for homicide? (80%)

(b) Comment briefly on the offence of “offences against decency or morals committed in public” (20%).

2. Write notes on any *three* of the following:
 - (i) Attempted grievous bodily harm;
 - (ii) Transferred malice and universal malice;
 - (iii) The concealment of homicide or bodily harm, and the concealment of dead bodies;
 - (iv) Infanticide.

3. (a) Discuss the implications of the expression “(shall) have carnal knowledge of a person of either sex” in the definition of the offence of rape under the Criminal Code (80%).

(b) Comment on the offence of “simulation of offence” (Article 110(2) of the Criminal Code) (20%).

- 4 (a) Outline the constitutive elements of the offence of “calumnious accusation” (article 101 of the Criminal Code) and “fabrication of false evidence” (Article 110(1) highlighting the difference between them (80%).

(b) Discuss briefly the offence of slight bodily harm (20%).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. II YEAR
JANUARY 2017 EXAMINATIONS

EXAMINATION: CRL2006 SUBSTANTIVE CRIMINAL LAW 1

DATE: MONDAY 23RD JANUARY 2017

READING & NOTING TIME: 08.30AM TO 08.35AM

DURATION OF EXAM: 08.35AM TO 10.35AM

Writing is permitted during the Reading and Noting time.

ANSWER ANY TWO QUESTIONS

1. (a) What are the elements of the offence of Bribery? (Article 115 of the Criminal Code). In what way is this offence different from the offences of Unlawful Exaction (Article 112) and that of Trading in Influence (Article 121A)? (80%)

(b) Briefly explain the distinction between public documents and private writings highlighting any legal consequences of the distinction for offences of forgery. (20%).

2. (a) "*For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction.*" (Kenny)
Comment on the elements of this definition of a document. (80%)

(b) Briefly describe the elements of Corporate Criminal Liability (Article 121D) under the Criminal Code. (20%)

3. (a) Define the offence of theft. Carefully examine the aggravations of the offence of theft by "violence", by "means" and "person". (80%)

(b) Discuss briefly the elements of the crime of conspiracy in the Title of Crimes against the Safety of the Government. (20%)

4. (a) What actions would be considered by the Criminal Code as amounting to an insurrection or *coup d'etat*? In what way do they offer adequate protection against any insurgents? (80%)

(b) Briefly examine the constituent elements for the offence of misappropriation under Maltese Criminal law (section 293 of the Criminal Code). (20%)

UNIVERSITY OF MALTA

FACULTY OF LAW

LL.B. HONS. 2ND YEAR/ LLB. 2ND YEAR WITH L.P. OPTION

CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

DATE OF EXAMINATION: WEDNESDAY 21ST JUNE 2017

TIME OF EXAMINATION: 10.00AM – 12.05PM

ANSWER ANY TWO QUESTIONS:

1. (a) With reference to case-law, outline the differences between 'legitimate self-defence' on the one hand and 'provocation' on the other hand. (80%)

(b) Briefly explain the elements of the offence of violent indecent assault under Maltese law. (20%).

2. (a) With reference to case-law, examine the concept of '*keeping a proper lookout whilst driving*' in the light of the constitutive elements of the crime of involuntary homicide or bodily harm. (80%)

(b) Comment briefly on the "*offences against decency or morals committed in public*". (20%)

3. (a) Carefully analyse the elements of the offence of rape and discuss the merits or otherwise of having "*lack of consent*" as an element of the offence rather than the element of "*violence*". (80%).

(b) Briefly discuss the requirement of a 'course of conduct' for the purposes of the offence of harassment (*fastidju*). (20%)

- 4 (a) Outline the constituent elements of the offence of "calumnious accusation" (article 101 of the Criminal Code) and "fabrication of false evidence" (Article 110(1) highlighting the difference between them (80%).

(b) The offence of abduction may take place either: (i) by the use of violence, or (ii) by the use of fraud or seduction. Briefly distinguish between the elements of the two forms of the offence. (20%).

University of Malta
Faculty of Laws

Bachelor of Laws (Honours)

CRL2006 – SUBSTANTIVE CRIMINAL LAW

Monday 4th September 2017

Duration of Examination: 10.00am to 12.05pm

ANSWER ANY TWO QUESTIONS

1. (a) What actions would be considered by the Criminal Code as amounting to an insurrection or *coup d'etat*? In what way do they offer adequate protection against any insurgents? (80%)/

(b) Briefly explain the distinction between public documents and private writings highlighting any legal consequences of the distinction for offences of forgery. (20%).

2. (a) Define the offence of theft. Carefully examine the aggravations of the offence of theft by "violence" and "person". (80%).

(b) Write short notes on the main elements of the crime of conspiracy as found in section 57 and section 58 of the Criminal Code. (20%)/

3. (a) *"For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction."* (Kenny)
Comment on the elements of this definition of a document. (80%)/

(b) It is generally agreed that not every object is susceptible to theft. Discuss briefly what objects may be the subject of the offence of "theft". In particular does the criminal code cater for any specific exceptions to the general rule? (20%)

4. (a) Carefully examine the offence of Bribery under our law ? (Article 115 of the Criminal Code). (80%)

(b) Briefly explain the constitutive elements of the offence of obtaining money by false pretences (Article 308 of the Criminal Code). (20%).

University of Malta
Faculty of Laws

Bachelor of Laws (Honours)

CRL2007 – Substantive Criminal Law 2

Wednesday 6th September, 2017

Duration of Examination: 10.00am to 12.05pm

ANSWER ANY TWO QUESTIONS IN ENGLISH:

1. (a) Professor Francesco Carrara upheld that homicide may be *doloso* (wilful), or *colposo* (culpable), or *preterintenzionale* (very much akin to the offence of grievous bodily harm from which death ensues). Analyse the extent to which, if at all, this distinction applies to Maltese law, and, with reference to case-law, elaborate thereupon. (80%).

(b) The offence of abduction may take place either: (i) by the use of violence, or (ii) by the use of fraud or seduction. Briefly distinguish between the elements of the two forms of the offence. (20%).

2. Write notes on any two (2) of the following:
 - i. the offence of attempted grievous bodily harm (*tentattiv ta' ferita gravi*) (50%);
 - ii. accidental affray (*glieda accidentali*) (50%);
 - iii. supervening accidental causes (50%);

3. (a) Carefully analyse the elements of the offence of rape and discuss the merits or otherwise of having "*lack of consent*" as an element of the offence rather than the element of "*violence*". (80%).

(b) Article 338(z) of the Criminal Code establishes the offence of failing to pay maintenance due in terms of a court order or as bound by a contract. What are the elements of this offence and how is it different from other contraventions? (20 %).

- 4 (a) Outline the constituent elements of the offence of "calumnious accusation" (article 101 of the Criminal Code) and "fabrication of false evidence" (Article 110(1) highlighting the difference between them (80%).

(b) Briefly explain the elements of the offence of violent indecent assault under Maltese law. (20%).

University of Malta
Faculty of Laws
LL.B. Hons
CRL2006 – Substantive Criminal Law 1

Wednesday 24th January 2018

Duration of Examination: 8.30 am to 10.35 am

ANSWER ANY TWO QUESTIONS

1. (a) Carefully define the offence of theft and its constitutive elements under Maltese law. Also examine the aggravations by “violence” and “means” to the offence of theft under our law. (80%)
(b) Write short notes on the main elements of the crime of conspiracy as found in section 57 and section 58 of the Criminal Code. (20%)

2. (a) Carefully analyse the elements of the offence of passive bribery as found in Article 115 of the Criminal Code. How does this Article differ from active bribery as found in Article 120? (*80%*).
(b) What is Corporate Criminal Liability? Briefly, discuss the elements of this concept. (*20%*).

3. (a) *"The meaning of document for the purposes of forgery cannot be considered in isolation from the rule that it must "tell a lie about itself." (Smith & Hogan)*
Comment on and elucidate the above statement in relation to the different kinds of falsity, namely, material, personal, nominal and ideological. (80%)
(b) Briefly explain the manner in which you distinguish the offences of theft, misappropriation, obtaining money by false pretences and other fraudulent gain? (20%)

4. (a) Carefully examine the offence of misappropriation under our law (Article 293 of the Criminal Code) (80%)
(b) Explain the distinction between public documents and private writings highlighting any legal consequences of the distinction for offences of forgery. (20%).

University of Malta
Faculty of Laws

CRL2006 – SUBSTANTIVE CRIMINAL LAW 4

Date: Monday, 10th September 2018 **Duration of Examination:** 10.00 am – 12.05 pm

Answer any **TWO** questions from the following.

1. (a) Elaborate on the elements of “writing” and “author” in the traditional notion of “document” for the purposes of offences of forgery commenting on any adjustments to this notion as a result of recent amendments to the Criminal Code. **(80%)**

(b) When are the elements of the offence of an unlawful assembly (Article 68 of the Criminal Code)? **(20%)**

2. (a) Define the offence of theft commenting also on the aggravations “by person”, “by time” and “by place” **(30%)**

(b) How does Maltese criminal law protect the President of Malta differently from the way it protects other Maltese citizens? **(20%);**

3. What are the constitutive elements of the offence of Arbitrary Exercise of pretended rights (Article 85 of the Criminal Code) and how does this distinguish itself from other offences? **(80%)**

(b) Carefully distinguish between the offences of Fraud, Theft and Misappropriation **(20%)**

4. (a) Carefully analyse the elements of the offence of Bribery (Article 115 of the Criminal Code) and how is this different from the offence of Trading in influence (Article 121A of the Criminal Code) **(80%);**

(b) Explain briefly the notion of *falso grossolano* and discuss in what circumstances, if ever, does it exclude the offence of forgery **(20%);**

----- END -----

University of Malta
Faculty of Laws

CRL2007 – SUBSTANTIVE CRIMINAL LAW 2

Date: Thursday, 14th June 2018

Duration of Examination: 08.30 am – 10.35 am

Answer any **TWO** questions from the following.

1. (a) Analyse the crime of excusable wilful homicide where it is committed by any person acting under the first transport of a sudden passion or mental excitement [Article 227(c) of the Criminal Code and its proviso] **(80%)**.

(b) In what way is the contravention of failing to give a person the sum fixed as maintenance [Article 338(z) of the Criminal Code] different than the other contraventions in the same Article? Discuss with reference to the elements of this offence. **(20%)**.
2. (a) What are the constitutive elements of the offence of “Calumnious Accu^sations” as found in Article 101 of the Criminal Code. **(80%)**.

(b) Briefly distinguish between the offence of Grievous Bodily Harm [Article 216 of the Criminal Code] and Very Grievous Bodily Harm [Article 218 of the Criminal Code] **(20%)**.
3. (a) With reference to case-law (jurisprudence), analyse the extent to which the contributory negligence of the victim may constitute a defence for the accused in the crimes of involuntary homicide or bodily harm (which are punishable under sub-title IV of title VIII of the Criminal Code). **(80%)**.

(b) Write short notes on (i) the offence of infanticide [Article 245 of the Criminal Code] **and** (ii) Supervening Accidental Causes. **(20%)**.
4. (a) Carefully analyse the elements of the offence of Rape and discuss the merits of otherwise of having “lack of consent” as an element of the offence, rather than the element of Violence. **(80%)**

(b) Comment briefly on the offence of “Simulation of an offence” [Article 110(2) of the Criminal Code] **(20%)**

University of Malta
Faculty of Laws

CRL2007 - SUBSTANTIVE CRIMINAL LAW 2

Date: Thursday, 06th September 2018

Duration of Examination: 08.30 am - 10.35 am

Answer any **TWO** questions from the following.

1. (a) Examine Section 225 of the Criminal Code, the law dealing with involuntary homicide, making reference to case-law **(80%)**;

(b) What are the constitutive elements of the contravention of failing to pay maintenance when so ordered by the Court or bound by a contract (Article 338(z) of the Criminal Code) **(20%)**

2. (a) "*A man calumniated is doubly injured - first by him who utters the calumny, and then by him who believes it*" (Herodotus). In the light of this statement analyse in detail the elements of the crime of calumnious accusation under Maltese law (Article 101 of the Criminal Code) with particular reference to Maltese court judgements on this offence. **(80%)**

(b) How has the doctrine of *corrupta non corrumpitur* developed in case law with reference to the offence of defilement of minors? **(20%)**

3. (a) "*Maltese law does not prohibit prostitution but it seeks to punish the exploitation by others of prostitutes, to discourage prostitution and to facilitate the rehabilitation of prostitutes*". Discuss. **(80%)**

(b) Write short notes on the constitutive elements of the offence of perjury **(20%)**

4. (a) Carefully analyse the elements constituting the offence of Grievous Bodily Harm in terms of Article 216 (*offesa grave*) and those of Article 218 (*offesa gravissima*) of the Criminal Code. How do these offences differ from each other? **(80%)**

(b) Write notes on any three (3) of the following **(20%)**:
 1. Supervening accidental causes;
 2. Accidental affray;
 3. The crime of infanticide;
 4. The defences, stipulated under Article 251A(3) of the Criminal Code, to the crime of harassment.

----- END -----

University of Malta
Faculty of Laws
January/February 2019 Examination Session

CRL2006 SUBSTANTIVE CRIMINAL LAW 1

Date: Wednesday 6th February 2019 **Duration of Examination:** 8.30AM - 10.35AM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions from the following.

For each question you must reply to both the (a) and the (b) parts of the question.

1. Answer both the below:

- (a) Carefully examine the definition of the offence of theft under our law (as propounded by Carrara). Also discuss the aggravations "by means" and "by person" to the offence of theft. (80 marks)
- (b) What are the sources on which the offences relating to "Of Computer Misuse - Articles 337B - 337H of the Criminal Code" are based? Is there a need for these sources to be international instruments? (20 marks)

2. Answer both the below:

- (a) "The meaning of document for the purpose of forgery cannot be considered in isolation from the rule that it must 'tell a lie about itself'" – Smith and Hogan. Comment on the above statement in relation to the different kinds of falsity, namely, material, personal nominal and ideological. (80 marks)
- (b) How important, if at all, is the element of a mode of action for the crime of conspiracy under our law? Explain with reference to both articles 57 and 48A of the Criminal Code (20 marks)

3. Answer both the below:

- (a) "Maltese law does not consider the crime of arbitrary exercise of pretended rights to be one against property, but a crime against the administration of justice and public administrations". Explain in detail why this is so, including reference to applicable local case law and jurists. (80 marks)
- (b) Briefly explain the differences between public documents and private writings in the context of the offences of forgery (20 marks).

4. Answer both the below:

- (a) To what extent, if at all, is the element of "lack of authorisation" important in the commission of crimes relating to computer misuse? Illustrate your arguments with examples from the law. (80 marks)
- (b) Briefly explain the offence of bribery under our law. (20 marks)

University of Malta
Faculty of Laws

September 2019 Examination Session

CRL2006 SUBSTANTIVE CRIMINAL LAW 1

Date: Friday, 13th September 2019 Duration of Examination: 10:00AM – 12.05PM

INSTRUCTIONS TO STUDENTS:

Answer **TWO (2)** questions from the below.

For each Question you must reply to both the (a) and (b) parts of the question.

1. Answer both the below:

- (a) What constitutes the offence of obtaining money or property by false pretences (section 308 of the Criminal Code). Examine the elements of this offence of fraud and in particular whether the requirement of a *mise en scene* is always required for the consummation of this offence. (80%)
- (b) Article 337C of the Criminal Code states that any person who without authorisation does any of the acts mentioned in the same article, shall be guilty of an offence. Chose any two (2) from the modes of action listed in the Article and discuss their respective elements (20%)

2. Answer both the below:

- (a) How does the offence of Bribery (Article 115 of the Criminal Code) distinguish itself from the offence of Trading in Influence (Art 121A of the Criminal Code). In your reply, highlight the elements of each offence and how they distinguish themselves from one another. (80%)
- (b) Is it correct to state that a “service” offered to an offender as a result of a fraudulent act committed by the said offender can never amount to the offence of misappropriation? If so why? (20%)

3. Answer both the below:

- (a) What actions would be considered by the Criminal Code as amounting to an insurrection or coup d’etat? In what way do they offer adequate protection against any insurgents? (80%)
- (b) What is *furtum usus* (theft by finding)? Is it a punishable offence under our law? (20%)

4. Answer both the below:

- (a) "For the purposes of the law of forgery a document is writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction." (Kenny). Comment on the elements of this definition of a document. (80%)
- (b) Briefly analyse the elements of the offence of Arbitrary Exercise of a pretended right (Art. 85 of the Criminal Code) (20%)

University of Malta
Faculty of Laws

June 2019 Examination Session

CRL2007 SUBSTANTIVE CRIMINAL LAW 2

Date: Friday 21st June 2019

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

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions from the following **FOUR (4)** questions:

1. Answer both the below:

- (a) With reference to case-law (jurisprudence), analyse the crime of transmission, communication or passing on diseases or conditions in terms of Article 244A of the Criminal Code; (80 marks)
- (b) Briefly discuss the constitutive elements of the offence of Defilement of Minors (Article 203(1) of the Criminal Code) as highlighted by the various Courts Judgements. (20 marks)

2. Answer both the below:

- (a) Our law does not define “perjury”. Moreover, the constituent elements of this offence are explained by doctrine and jurisprudence rather than by the law itself. Whilst explaining the relative provisions of law and the constituent elements thereof, analyse the correctness of these two statements. (80 marks)
- (b) Write notes on any three (3) of the following (20 marks):
 - i. *Dolus indeterminatus determinatur ab exitu*;
 - ii. Distinguish between *animus necandi* and *animus nocendi*;
 - iii. The defences stipulated under Article 251A(3) of the Criminal Code to the crime of harassment;
 - iv. The crime of blackmail which is punishable under Article 250 of the Criminal Code;

3. Answer both the below:

- (a) Act XIII of 2018 revamped one of the fundamental elements in the sexual offences by replacing the element of "violence" with that of "consent". Discuss briefly these changes and do you think that this change has upgraded the regime of sexual offences? (80 marks)
- (b) Write notes on any three (3) of the following: (20 marks)
- i. Define the actus reus consisting of "*imprudence, carelessness, unskilfulness in his art or profession*" for the purposes of Article 225 of the Criminal Code dealing with involuntary homicide;
 - ii. The crimes which refer to miscarriage under Title VIII of the Criminal Code (of crimes against the person);
 - iii. Supervening accidental causes;
 - iv. The Punishable means, prevailing under Article 248A(2) of the Criminal Code, by virtue of which a person is trafficked for the purposes of exploitation in the production of goods or provision of services;

4. Answer both the below:

- (a) With reference to case-law (jurisprudence), analyse the circumstances by means of which a willful homicide may be deemed to be excusable in terms of Article 227 of the Criminal Code. (80 marks)
- (b) Briefly explain the meaning of the phrase "criminal proceedings" used in the provisions dealing with subornation of witnesses and perjury. (20 marks)

University of Malta
Faculty of Laws

September 2019 Examination Session

CRL2007 SUBSTANTIVE CRIMINAL LAW 2

Date: Thursday 5th September 2019 Duration of Examination: 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions from the below.

For each question you must reply to both the (a) and the (b) parts of the question.

1. Answer both the below:

- (a) With reference to case-law (jurisprudence), carefully analyse the elements constituting the offence of Grievous Bodily Harm in terms of Article 216 (*offesa grave*) and those of Article 218 (*offesa gravissima*) of the Criminal Code. How do these offences differ from each other? (80%)
- (b) Briefly discuss the constitutive elements of the offence of Defilement of Minors. (20%)

2. Answer both the below:

- (a) Carefully analyse the elements of the offence of “calumnious Accusation” as found in Article 101 of the Criminal Code. (80%)
- (b) Write notes on any 3 (three) of the following [20%]:
 - i. accidental affray (*glieda accidentali*);
 - ii. the offence of administering or causing others to take substances injurious to health;
 - iii. the offence of causing others to fear that violence will be used against them;
 - iv. the offence of infanticide;
 - v. the means by virtue of which the offence of the traffic of persons can be consummated.

3. Answer both the below:

(a) Professor Francesco Carrara upheld that homicide may be *doloso* {willful}, or *colposo* {culpable} or *preterintenzionale* {very much akin to the offence of grievous bodily harm from which death ensues} - [*Programma del Corso del Diritto Criminale, Parte Speciale, Tipografia Giusti, Lucca, 1875*].

To what extent, if at all, is this reflected within the case-law of Maltese Courts of Criminal Jurisdiction relating to homicide? (80%)

(b) What is Revenge Porn? Is it considered as an offence under our Laws? Discuss. (20%)

4. Answer both the below:

(a) What are the elements of the offence of Abduction (Article 199 of the Criminal Code). In what manner can this offence be carried out? (80%)

(b) Write notes on any three (3) of the following [20%]:

- i. The constitutive elements of the crime of instigation to commit suicide;
- ii. Contributory negligence;
- iii. Attempted grievous bodily harm;
- iv. Provocation;
- v. Excess in self-defence which is not liable to punishment.

University of Malta
Faculty of Laws

January 2020 Examination Session

CRL2006 Substantive Criminal Law 1

Date: Tuesday, 21st January 2020

Duration of Examination: 10:00AM - 12.05PM

INSTRUCTIONS TO STUDENTS:

Please choose any two questions from the following.

You are required to reply to both "A" and "B" of each question.

1. Answer both the below:

- (a) Analyse, compare and contrast, including reference to any applicable case law, the crimes found in Article 68, Article 74 and Article 79 of the Criminal Code, viz. the crimes of unlawful assembly, seditious conspiracy and tumultuous assembly respectively. (80 marks)
- (b) Article 337C of the Criminal Code provides an extensive list of modes in which the *actus reus* for the offence of computer misuse may manifest itself. Carefully examine any 2 from these modes. (20 marks)

2. Answer both the below:

- (a) What constitutes the offence of misappropriation under our law? (Art. 293 of the Criminal Code) In particular, what *actus reus* is required, and what items may be misapplied, for the consummation of this offence. (80 marks)
- (b) Does our Criminal Code contemplate the crime of ideological falsity and if in the affirmative, analyse the applicable elements of this crime in our Criminal Code and in what ways does it differ from the crime of material falsity. (20 marks)

3. Answer both the below:

- (a) What are the elements of the offence of Bribery as found in article 115 of the Criminal Code. (80 marks)
- (b) Explain the main differences between public documents and private documents in the context of the offences of forgery. (20 marks)

4. Answer both the below:

- (a) Kenny holds that "For the purpose of the law of forgery, a document is writing in any form, on any material, which communicates to some person/s a human statement whether of fact or fiction." Comment on this definition of a document for the purposes of the offences of forgery. (80 marks)
- (b) Discuss briefly the aggravation of the offence of theft by "means". (20 marks)



L-Università
ta' Malta

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

CRL2007 Substantive Criminal Law 2

Thursday, 11th June 2020

Examination time: 8:30am – 10:30am + 60 extra minutes for uploading/downloading.

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

Telephone : 2340 3251; 2340 3688

Email: laws@um.edu.mt

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

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS. You have the option to either type in your answers on a word document or write down your answers on an A4 sheet/s of paper. Once you have completed the examination, you are to save your answers in pdf format or scan your handwritten answers using Adobe Scan app and Microsoft Office Lens app, and upload them within the time indicated for the examination. **The name you should assign to the file you are going to upload to the VLE dropbox should be the study-unit code.** The VLE will then rename the file automatically to also include your name and surname.

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

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

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

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

Instructions to Candidates:

Students are to answer a total of two questions:

- One question from Section A; and
- The compulsory case study question in Section B.

Section A - Choose ONE question from the below (50%)

Question 1:

Under which circumstances, if any, do Maltese Courts enjoying criminal jurisdiction undertake an objective test (the test of the reasonable person or so-called *bonus paterfamilias*) in order to determine the subsistence of the formal element of a crime/s against the person? [50 marks];

- OR -

Question 2: (Answer all questions hereunder):

- Distinguish, with reference to case-law, between grievous bodily harm (*offiza/ferita gravi*) and very grievous bodily harm (*offiza/ferita gravissima*) [35 marks]
- To what extent, if at all, may supervening accidental causes decrease/mitigate the punishment in cases of:
 - wilful homicide and [3 marks]
 - involuntary homicide and [3 marks]
 - excusable homicide? [3 marks]
- List the elements of the offence of attempted grievous bodily harm. [3 marks]
- Two (2) twenty-year old law students, who have been identified, exchanged blows in an intense physical confrontation relating to their former partner, inside the Gateway building, just after a lecture. The dispute led to injuries incurred by both students. They were both charged with having caused bodily harm in an accidental affray (*glieda accidentali*). To what extent, in your opinion, is this charge legally sustainable or correct? [3 marks]

Section B - Compulsory Question (50%)

Question 3:

Case Study:

The police inspector is in the middle of a criminal investigation. Having spoken to a number of individuals, he established the following facts and timelines:-

On the 8th June 2020 at 2.25am, the Police received a phone call requesting assistance from a female person located in Balluta Bay. The police immediately went on site and found a woman dressed only in a bathrobe, with the "S Lounge" logo embroidered on it. They took her to the police station and upon further investigation they learned that the woman's name is Sacha Andrukovich. She told them she is from Ukraine and was brought to Malta when she was still 22 years old, supposedly to work as a family carer. The Maltese agent, a certain Ġorġ Borg, had promised her she will be very happy with her new family and that they will pay all her expenses.

Upon her arrival at the airport on the 2nd March 2020, she was picked up by a driver, who took her passport and luggage and dropped her off at a guest house. Upon entering the guest house, from the logo "S Lounge" and the furniture of the place, she immediately realised that her job was going to be very different from caring for families.

There, she was welcomed by Ġorġ Borg. She asked him what exactly her job was to be. He told her that from now on, she will be offering sexual services as a prostitute. He threatened her by telling her that she had to work there until she repays him the €15,000 cost of getting her to Malta from Ukraine. He also told her that he will be keeping her passport as a guarantee. He told her that she had to sleep, work and live at the guesthouse and trying to escape is useless as he knows everyone in Malta. He gave her some designer lingerie and warned her that those clothes belong to him and he will take legal proceedings against her if she runs away with them or with any other garment. He explained that all the money she makes must be given to him, and he will then give her share to her.

She explained to the police that during the three months she spent there, she made friends with a number of other women who had her exact same job. Three women were also foreign and had her exact same conditions. Five other women were Maltese and lived close by. They could work there whenever they wanted and just paid Ġorġ Borg a fee to use the rooms and services.

During the three months she spent there, Sacha got used to this type of work but a few days before she escaped, she overheard a conversation between Ġorġ and a certain Raymond. Raymond told him that he met Letizia, who was 14 years old, on social media and that their chats got hot and that she even invited him to have sex. He had no place where to take her and Ġorġ offered him a room. Raymond was very happy about this and later that day he informed Letizia, via social media, that all was set and they could meet. Sacha, in fact, saw Raymond back again the following day in the company of a young girl. Ġorġ welcomed them and took them up to a room.

Sacha told the inspector that she ran away that night, but all her foreign friends have remained there, as they are too scared to leave. She also believes that the running and managing of the brothel was Gorg's only income and activity.

Questions:-

The following questions need to be answered by the investigating inspector. Carefully answer ALL the following questions:-

- (i) Can you identify all the possible offences with which Gorg Borg can be charged before a Court of law in terms of the sub-title "Of Sexual Offences" (Articles 198 - 209) found in the Criminal Code (Cap. 9) and the White Slave Traffic (Suppression) Ordinance (Cap 163 of the Laws of Malta)? [25 marks] and
- (ii) Can you identify all the possible offences with which Raymond can be charged before a Court of law in terms of the sub-title "Of Sexual Offences" (Articles 198 - 209) found in the Criminal Code (Cap. 9) and the White Slave Traffic (Suppression) Ordinance (Cap 163 of the Laws of Malta)? [10 marks] and
- (iii) Sacha has asked the inspector whether he'll charge her, as she ran away with a branded bathrobe. How would you reply to her question? [5 marks] and
- (iv) What are the powers given to the Commissioner of Police in terms of the White Slave Traffic (Suppression) Ordinance to:
 - (a) Enter and search the properties wherein it is suspected that persons are detained against their will for immoral purposes; [5 marks] and
 - (b) Order the temporary closure of any property being used as a brothel [5 marks].



Second Year Law
Compulsory Units Past Papers

ADMINISTRATIVE LAW

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

15/11/2011

LLB II YR

OFFICE NO. _____
FOR OFFICE USE ONLY

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

PBL2015 – Administrative Law

THURSDAY 27TH JANUARY, 2011 8.00 A.M. – 9.00 A.M.

EACH CORRECT ANSWER SCORES TWO MARKS

NEGATIVE MARKING APPLIES AS FOLLOWS:

The first three wrong answers will be marked 0

The next three wrong answers will be marked -1 mark

All other wrong answers will be marked – 2 marks

Where no answer is given the mark will be 0 and an abstention from giving an answer will not count as a wrong answer

OFFICE NO. _____
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NAME & SURNAME _____

ID CARD NO _____

FACULTY OF LAWS
LL.B. – II YEAR

PBL 2015 – ADMINISTRATIVE LAW

THURSDAY 27TH JANUARY, 2011 8.00 A.M. – 9.00 A.M.

INDICATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE (T) OR FALSE (F)

<u>STATEMENT</u>	<u>TRUE</u> <u>OR</u> <u>FALSE</u>
1. Malta has a Code of Administrative Law	
2. Like the French Conseil d'Etat, Malta has a system of Administrative Courts which are separate and distinct from the courts of civil jurisdiction	
3. Administrative Law is categorized under Public Law	
4. Administrative Law regulates the exercise of powers by the public administration	
5. The courts of civil jurisdiction do not have any powers of judicial review over the public administration	
6. Judicial review is concerned with acts of private persons	
7. Administrative Law relates to the powers exercised by the legislature, the judiciary and the President of Malta	
8. The Administrative Justice Act establishes the Administrative Review Tribunal	
9. Subsidiary legislation is subject to parliamentary scrutiny	
10. Proportionality is a continental law not a common law concept	
11. Administrative powers must be exercised solely for the purpose for which they have been granted	
12. The principles of natural justice form part of administrative law	
13. Ridge v Baldwin is a judgment of the House of Lords. It dealt with the issue of the exercise of powers by Cabinet	
14. The Ombudsman has the power to reverse bad decisions taken by the public administration	
15. Paolo Busuttil vs Clement La Primaudaye noe was a case which dealt with the removal of the Prime Minister from office on the grounds of misbehaviour	
16. The courts of civil jurisdiction continue to the present day to distinguish and emphasize between acts carried out by the state iure imperii and acts carried out by the state iure gestionis	
17. No court can award damages against the Government due to the doctrine of governmental immunity from damages, even where the Government is at fault. This doctrine is applied very rigorously by our courts	
18. The Civil Court, First Hall, does not have the power to inquire and review the manner in which the Broadcasting Authority acts in the distribution of air time to political parties. This is because the Broadcasting Authority is established by the Constitution of Malta,	

the supreme law of the land and thus is exempted from the jurisdiction of the courts of civil jurisdiction	
19. John Lowell et noe vs Dr Carmelo Caruana noe dealt with an action for damages instituted by Mr Lowell against Minister Caruana. Minister Caruana had revoked a licence to import wines and spirits which had been issued by the Commissioner of Police to Mr. Lowell	
20. The Public Service Commission – established by the Public Service (Constitution) Act – may not be sued before a court of civil jurisdiction with regard to any decision taken by the Commission even if such decision might infringe human rights and fundamental freedoms. This is due to a provision in the Constitution of Malta which protects the said Commission from the institution of any such action against it	
21. Prime Minister et vs Sister Luigi Dunkin et is a leading judgment in Administrative Law. It deals with the powers of the Commissioner of Police to search private hospitals where the Police have a reasonable suspicion that the hospital in question is treating drug addicts without having first provided the Police with the particulars of such patients	
22. The principles of natural justice are not always applied by our courts. One such exception is where a judge is challenged to abstain from hearing a case pending before the court in which s/he sits in those circumstances where the judge is a party to the proceedings. This is known as the principle of judicial immunity and is one of the ingredients of the doctrine of the independence of the judiciary	
23. No government file may be exhibited in court. Were this to be the case, the court would be acting in breach of the doctrine of separation of powers	
24. The principles of natural justice have to be followed by the courts. However quasi-judicial tribunals such as the Industrial Tribunal are not bound to apply the principles of natural justice as these tribunals are not normally presided by judges or magistrates and therefore there is a relaxation of the standards in such cases	
25. Article 469A of the Code of Organization and Civil Procedure allows for judicial review to take place even if there is another ordinary remedy which may be resorted to by an aggrieved party	
26. The Freedom of Information Act allows any person to seek any information in the possession of the Government provided that s/he pays the prescribed fee to obtain access to such information. Once the fee is paid, the Government is duty bound to release such information	
27. The Data Protection Act allows a controller of data to process sensitive personal data and to disclose such data when a request to that effect is made by a bona fide journalist who carries a press card issued by the Department of Information. This measure ensures	

accountability in government's conduct	
28. European Union Law has no relevance to Maltese Administrative Law	
29. The legislative source of Maltese Administrative Law is the Italian Codice di Diritto Amministrativo	
30. A vested right is a right which a person enjoys by virtue of the Interpretation Act. This law states that whoever enjoys a right of any sort in Malta cannot be deprived of that right except by order of a Minister and following the payment of adequate compensation	
31. A right of appeal is distinct from review proceedings	
32. Public corporations can have their own internal review mechanisms which are separate and distinct from the Ombudsman	
33. No warrant of impediment may be issued against the Government of Malta in satisfaction of a monetary claim as this would be in breach of the doctrine of constitutional governability	
34. It is the Interpretation Act which empowers a Minister to make retrospective criminal legislation	
35. All laws, prior to their enactment, have to be examined by the Constitutional Court to ensure compliance with all the provisions of the Constitution of Malta	
36. Nemo iudex in causa sua, that is, that no person may be a judge in his or her own cause is one of the principles of natural justice	
37. There is no duty for the public administration in Maltese Law to give reasons for one's decisions	
38. Audi alteram partem, that is, the duty to hear the other party, applies to all courts but not to quasi-judicial tribunals because such tribunals do not form part of the courts established in Malta	
39. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not apply to Administrative Law. The said Convention applies only to criminal cases	
40. The Constitution of Malta is a source of administrative law	
41. Administrative acts can never be retroactive in application	
42. The right to be heard implies that a person has to be heard more than once until s/he exhausts all the evidence which s/he intends to produce, even if s/he requests several hearings. If a quasi-judicial tribunal does not give such a person all the sittings s/he requests, the said tribunal will be in breach of the principle of natural justice of audi alteram partem	
43. The Administrative Justice Act (Chapter 490 of the Laws of Malta) establishes a number of 'principles of good administrative behaviour' which reflect the basic principles of Administrative Law	
44. The revocation or modification of administrative acts has not given rise to any important judgments in Maltese Administrative Law	
45. The rule that British Common Law is a source of Maltese Administrative Law was not introduced by the Maltese Parliament	

but by the Maltese Courts	
46. In a number of cases concerning Governmental liability the Maltese Courts made reference to Continental doctrine	
47. A wrong reference to the 'enabling' provision in a Legal Notice enacting subsidiary legislation is a ground for annulment of such a Legal Notice even if this could have been lawfully made under another enabling provision of law	
48. Administrative Law has a basis in the principle of 'rule of law'	
49. Administrative action has to conform with the purpose of the law under which it is taken	
50. The Public Administration Act does not form part of Administrative Law.	

OFFICE NO. _____
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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. – II YEAR

PBL2015 – Administrative Law

TUESDAY 24TH JANUARY, 2012 11.45 A.M. – 12.45 P.M.

EACH CORRECT ANSWER SCORES TWO MARKS

NEGATIVE MARKING APPLIES AS FOLLOWS:

The first three wrong answers will be marked 0

The next three wrong answers will be marked -1 mark

All other wrong answers will be marked – 2 marks

Where no answer is given the mark will be 0 and an abstention from giving an
answer will not count as a wrong answer

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NAME & SURNAME _____

ID CARD NO _____

FACULTY OF LAWS
LL.B. – II YEAR

PBL 2015 – ADMINISTRATIVE LAW

TUESDAY 24TH JANUARY, 2012 11.45 A.M. – 12.45 P.M.

INDICATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE (T) OR FALSE (F)

<u>STATEMENT</u>	<u>TRUE</u> <u>OR</u> <u>FALSE</u>
1. The sole source of Administrative Law is case law.	
2. Administrative Law is a branch of European Law.	
3. The Administrative Justice Act is a codification of all administrative statutory law.	
4. The Interpretation Act is a statutory law of an administrative nature.	
5. The Freedom of Information Act has not yet entered into force in all its totality.	
6. The Freedom of Information Act does not provide for a blanket access to all information held by Government.	
7. Not everybody is entitled to request access to information under the Freedom of Information Act.	
8. Any Member of Parliament may table a negative resolution to annul a subsidiary law.	
9. The principles of natural justice are not enshrined in a written law but are established by case law.	
10. The principles of natural justice are threefold: <i>nemo iudex in causa sua</i> ; <i>audi et alteram partem</i> ; the duty to give reasons.	
11. The principle of proportionality does not apply to Administrative Law but only to Human Rights Law.	
12. The principle of legality means that the Government may, in certain determined circumstances, ignore the provisions of a law to carry out its political programme.	
13. The <i>ultra vires</i> doctrine is a principle of Criminal Law.	
14. Reasonableness is a guiding principle for the public administration when exercising a discretion.	
15. The principles of good administrative behaviour are set out in article 469A of the Code of Organization and Civil Procedure.	
16. The Administrative Review Tribunal is established by the Interpretation Act.	
17. The Administrative Review Tribunal has jurisdiction to hear appeals from all administrative tribunals established by law such as the Communications Appeals Board, the Tourism Appeals Board, etc.	

18. The principle <i>delegatus non potest delegare</i> means that a person or body who has been delegated the power to make subsidiary law may not, in turn, delegate such power to another body or person unless the law allows for such delegation.	
19. A Henry VIII clause empowers a Minister to make subsidiary law which may amend a principal law.	
20. Subsidiary legislation comes in different forms such as regulations, rules, orders and bye-laws.	
21. Judicial review is contained only in article 469A of the Code of Organization and Civil Procedure.	
22. An administrative tribunal may be empowered by law to review a decision of a person or body.	
23. The Administrative Court in Malta may annul any decision of the public administration which is wrong on the face of the record.	
24. All entities of the public administration are empowered by law to inflict administrative sanctions.	
25. Administrative sanctions come in different forms: they range from a sentence of imprisonment to a fine (<i>multa</i> or <i>ammenda</i>).	
26. <i>Nemo iudex in causa sua</i> means that a person cannot be a judge in his or her own cause.	
27. <i>Audi et alteram partem</i> means that a person has a right to be heard.	
28. One of the principles of good administrative behaviour is the <i>audi et alteram partem</i> .	
29. An administrative tribunal has to deliver its judgment in public.	
30. When the state acts <i>jure imperii</i> , it is immune from any damages which it might have caused. Normally the state acts <i>jure imperii</i> when it is carrying out commercial transactions.	
31. The Data Protection Act deals with the protection of a person's data such as his or her expectations in life, prospects for the future and career aspirations.	
32. The source of Maltese Administrative Law is French Administrative Law.	
33. The Council of State is established by the Constitution of Malta. It has the power to advise the President of Malta, amongst other things, on the dissolution of the House of Representatives.	
34. European Administrative Law does not exist. This is because the EU Treaty prohibits the European Commission from directly employing its own staff.	

35. Our law does not recognize a legitimate expectation. This is confirmed by case law as well.	
36. Each time a new law is enacted, all vested rights existing hitherto the enactment of such law come to an automatic end.	
37. Lowell vs Caruana is studied in Administrative Law. It concerned a situation where the Government challenged all the courts in the Civil Court, First Hall, from hearing a case and one of the judges had to apply the doctrine of necessity.	
38. Busuttill vs La Primaudaye dealt with the functioning of the Public Service Commission in Malta. This judgment has affirmed that the said Commission, in terms of the Constitution, can never be actionable at law in so far as appointments of public officers are concerned.	
39. The Ombudsman has no right to reverse a court judgment. But he can reverse a decision of a Minister or Parliamentary Secretary.	
40. In a legal notice published by the Minister responsible for justice, he made a wrong reference to the provision empowering the Minister to make such a legal notice. In view of such mistake, those regulations are null and void.	
41. Judicial review and appeal proceedings are co-terminous.	
42. The Laws of Malta are made by the Law Commission under the Statute Law Reform Act.	
43. The Public Administration Act applies both to the public service and the public sector.	
44. The Principal Permanent Secretary, as head of the public service, is empowered to issue directives not only to the public service but even to the public sector.	
45. There have been only a handful of cases decided by our courts under the Whistleblowing Act 2007.	
46. Review procedures from a decision of the public administration vary. Some decisions may be reviewed in terms of article 469A of the Code of Organization and Civil Procedure whilst others may be reviewed by specifically set up administrative tribunals.	
47. A public authority as defined in article 469A of the Code of Organization and Civil Procedure does not encompass a tribunal.	
48. The Prime Minister may revoke all decisions taken by a head of department, both verbally or in writing.	
49. The Public Service Commission is not actionable in judicial review proceedings.	
50. The Administrative Code, 2007 distinguishes between the public sector and the public service.	

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

PBL2015 – Administrative Law

MONDAY 3rd SEPTEMBER, 2012 11.45 A.M. – 12.45 P.M.

EACH CORRECT ANSWER SCORES TWO MARKS

NEGATIVE MARKING APPLIES AS FOLLOWS:

The first three wrong answers will be marked 0

The next three wrong answers will be marked -1 mark

All other wrong answers will be marked – 2 marks

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FACULTY OF LAWS
LL.B. – II YEAR

PBL 2015 – ADMINISTRATIVE LAW

MONDAY 3rd SEPTEMBER, 2012 11.45 A.M. – 12.45 P.M.

INDICATE WHETHER THE FOLLOWING STATEMENTS ARE TRUE (T) OR FALSE (F)

STATEMENT	TRUE OR FALSE
1. Administrative Law is a branch of Industrial Law	
2. Constitutional Law and Administrative Law form part of Public Law	
3. In Malta there is no Administrative Code	
4. Administrative Law is contained only in the Interpretation Act	
5. Chapter IV of the Constitution of Malta sets out the principles of good administration	
6. The principle of good administration is a human right enshrined in the European Convention on Human Rights	
7. Subsidiary legislation has to be laid on the Table of the House of Representatives	
8. Delegated legislation is published in all daily newspapers	
9. Subsidiary legislation comes in different forms: it can take the form of a regulation, rule, or bye-law	
10. The Administrative Justice Act establishes an Administrative Review Tribunal and an Administrative Court	
11. The Administrative Court acts as a court of appellate jurisdiction from decisions of the Administrative Review Tribunal	
12. Any information in the possession of the Government may be requested by any Maltese citizen on the payment of the prescribed fee	
13. The Ombudsman is not obliged by the Freedom of Information Act to make his records accessible to the public	
14. The rule of law has no relevance to Administrative Law as this is a constitutional doctrine with no application in Administrative Law	
15. The Public Administration Act regulates the public administration. The public administration means both the public service and the public sector	
16. The public service includes both departments of government and government agencies	
17. The Interpretation Act states that a Minister may give directions in writing to a public officer unless a law where	

to state that a public officer is not subject to the direction or control of any person	
18. Ultra vires means within the powers.	
19. Nemo iudex in causa sua means that a person may not be a judge in his own cause	
20. There is no duty in Administrative Law to give reasons. Such duty applies only in the case of Article 6 of the European Convention on Human Rights	
21. Audi alteram partem means that the other party has to be heard, that is, all the parties to a suit have to be heard	
22. The principles of natural justice are not enshrined in a written law but are the product of case law	
23. Article 469A of the Code of Organization and Civil Procedure deals with judicial review of administrative action	
24. The courts of constitutional competence have the power to review laws enacted by Parliament	
25. A person means both a natural person and a moral person	
26. A moral person means a person who is known for his moral rectitude and therefore rises above other persons from a moral viewpoint	
27. Any Member of Parliament may present a motion for a resolution in the House to annul a subsidiary law	
28. The motion mentioned in question 27 has to be presented not later than six months from the laying on the Table of the House of such a subsidiary law	
29. The sources of Maltese Administrative Law are mixed; both British and French Law interact together to produce Maltese Administrative Law	
30. There is case law which states that when there is a lacuna in Maltese Public Law recourse has to be had at British Public Law	
31. The doctrine of the dual personality of the state continues to be applied by Maltese Courts till this very day	
32. The doctrine of the dual personality of the state means that when the courts are in doubt how to decide a case they should always decide in favour of the plaintiff	
33. In dubio pro Governo is a settled principle of Administrative Law. Courts are duty bound to decide cases in favour of the public administration if the latter pleads that the tort in question was not procured by it but by one of its own employees	
34. A public officer is immune from judicial process: he can never be sued in his own name. The suit has in the first instance to be instituted against the public administration and if the public administration is found to be in fault, it can	

sue the public officer in damages	
35. The public administration, due to the nature of its duties, is not bound by the Data Protection Act	
36. The Council of State has full powers to annul a law enacted by Parliament when the latter has enacted a law in breach of the Constitution	
37. The Council of State is composed of the President of Malta, retired Presidents, retired Prime Ministers, retired Leaders of the Opposition and the Attorney General ex officio	
38. The Commission for the Administration of Justice is responsible for the administrative running of the courts	
39. Administrative offences are found in several laws. They have to be distinguished from criminal offences	
40. One distinguishes between judicial review and an appeal	
41. In judicial review proceedings a superior court can reverse a judgment delivered by a lower court and substitute its discretion for that of the lower court. In this case the superior court exercises all the powers of the inferior court without the need of having to refer the case back to the inferior court	
42. The Principal Permanent Secretary is the Head of the Public Service. The Ombudsman answers to the Principal Permanent Secretary	
43. The Public Service Commission falls under the Office of the Ombudsman and the Ombudsman himself chairs the said Commission	
44. The Auditor General is an Officer of Parliament	
45. The Speaker of the House of Representatives signs bills into acts.	
46. The President of Malta performs acts which are of an administrative nature	
47. Lowell vs Caruana dealt with the concept of res judicata in Maltese Administrative Law	
48. Busuttill vs La Primaudaye was a landmark judgment which stated that Administrative Law is a branch of European Union Law	
49. The principle of proportionality is applied by Maltese Courts	
50. The doctrine of necessity is an Administrative Law concept	

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UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II YEAR
PBL2015 – ADMINISTRATIVE LAW

TUESDAY 29th JANUARY, 2013

10.30A.M. – 11.30A.M.

EACH CORRECT ANSWER SCORES TWO MARKS

NEGATIVE MARKING APPLIES AS FOLLOWS:

The first three wrong answers will be marked 0

The next three wrong answers will be marked -1 mark

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will not count as a wrong answer

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FACULTY OF LAWS
LL.B. II YEAR
PBL2015 – ADMINISTRATIVE LAW

TUESDAY 29th JANUARY, 2013

10.30A.M. – 11.30A.M.

INDICATE WHETHER THE FOLLOWING 50 STATEMENTS ARE TRUE OR FALSE. CIRCLE THE CORRECT ANSWER.

1. The fundamental human rights provisions of the Constitution of Malta constitute criteria of legality which Government action has to satisfy – TRUE / FALSE
2. If an official act of an administrative nature violates fundamental human rights an individual will normally be entitled to redress but this is not the case when the official act is of a legislative rather than an administrative nature such as the issuing of regulations. – TRUE / FALSE
3. The European Convention on Human Rights is an international instrument binding the State but it is not part of Maltese Administrative Law. – TRUE / FALSE
4. A complaint filed with the Ombudsman is tantamount to a statutory appeal from an administrative decision. – TRUE / FALSE
5. There is no difference between judicial review and appeal. – TRUE / FALSE
6. An action for judicial review may be made both against individuals and against the Government of Malta, but it cannot be made against individuals alone – TRUE / FALSE
7. Court Litigation between the citizen and a Government department is not necessarily of concern to Administrative Law and may be a purely civil law dispute. – TRUE / FALSE
8. The study of Administrative Law is in fact the study of the science of administration. – TRUE / FALSE
9. An appeal “on the merits” allows the appellant to invite the appeal tribunal or court to reconsider all aspects of the decision being appealed.- TRUE / FALSE

10. An appeal "on point of law" restricts the appellant to challenging errors of law but it also allows the appellant to ask for a revision of discretion lawfully exercised. - **TRUE / FALSE**
11. Procedures which do not produce any results outside the Administration (like a procedure which organizes the classification of documents in a particular Government Department) are not the concern of the "procedural" guarantees of Administrative Law even if damages may be suffered as a result thereof - **TRUE / FALSE**
12. The 'Rule of Law' does not only require formal compliance with the law but it also requires that the public administration should, given specific circumstances, act in a consistent manner- **TRUE / FALSE**
13. The rule of law requires that it must be possible for everybody to obtain knowledge of his or her rights and duties under the law. - **TRUE / FALSE**
14. The Constitution is one of the sources of Administrative Law. - **TRUE / FALSE**
15. The "procedural" principles of Administrative Law are aimed at ensuring that the Administration acts according to law but they are not concerned with the question as to whether reasons should have been given for a decision. - **TRUE / FALSE**
16. "Natural justice" and "procedural fairness" are basic principles of English and Maltese Administrative Law. - **TRUE / FALSE**
17. There is no right to make representations to a public authority. - **TRUE / FALSE**
18. An administrative act done by a public official solely for the purpose of enriching himself may constitute a criminal offence but it does not violate article 469A of the Code of Organization and Civil Procedure. - **TRUE / FALSE**
19. The principle that "vested rights" must be protected is concerned with the question of retroactivity of administrative acts. - **TRUE / FALSE**

20. Applying the test of "proportionality" rather than the test of "Wednesbury unreasonableness" to administrative acts means giving the Government more extensive immunity from judicial scrutiny. -- **TRUE / FALSE**
21. Where cases are objectively the same their treatment by the administration must be the same but this principle does not exempt the authorities from the duty to consider each case on its own merits or from having policies on the exercise of discretionary powers. -- **TRUE / FALSE**
22. The principle of equality before the law can be invoked to justify an illegal practice in situations where one group of persons are prosecuted whilst others are not, even though both groups were in the same factual situation -- **TRUE / FALSE**
23. Differences in treatment resulting from genuine changes of policy still infringe the principle of equality before the law. -- **TRUE / FALSE**
24. The circumstances in which an administrative sanction may be imposed must be prescribed by law. -- **TRUE / FALSE**
25. Generally, in imposing administrative sanctions on individuals the administrative authorities are obliged to respect the rules and guarantees normally imposed by criminal law. -- **TRUE / FALSE**
26. Administrative acts may not be revoked. -- **TRUE / FALSE**
27. The revocation of an administrative act may give rise to a right to damages against Government. -- **TRUE / FALSE**
28. The warrant of prohibitory injunction is an instrument for the granting of provisional protection whilst a court case is pending. -- **TRUE / FALSE**
29. In cases of urgency the court may issue a warrant of prohibitory injunction provisionally without having heard both parties. -- **TRUE / FALSE**

30. In the court decision in re “Dr. Frank Cassar vs Chairman of the Public Service Commission” (Civil Court First Hall, 12 October 1976) it was decided that no action could be taken against the Public Service Commission if it failed to abide by its own rules of procedure since it was the Commission that established its procedure – **TRUE / FALSE**
31. The “Paolo Busuttil vs Clement La Primaudaye ne” judgements (18 February and 28 May 1894) were about the issue of the liability of government for acts of its employees.- **TRUE / FALSE**
32. The Court judgement in the case of “Paolo Busuttil vs Clement La Primaudaye ne” came to the same conclusion in the First Hall of the Civil Court and in the Court of Appeal but the reasons given by the First Hall cannot be said to have been adopted in the Court of Appeal’s judgement. **TRUE / FALSE**
33. The “Prime Minister vs Sister Luigi Dunkin“ decision (12 June 1980) discussed the principle of “compliance with the purposes of the statute”. – **TRUE / FALSE**
34. In the judgement of the Civil Court First Hall “Mintoff vs Montanaro Gauci (17 May 1971) it was held that in deciding how to distribute the time available for broadcasts between political parties the Broadcasting Authority exercised an unreviewable judicial function”. – **TRUE / FALSE**
35. The 1972 “Lowell vs Caruana” judgement by the First Hall of the Civil Court affirmed the position of Continental law as a source of Maltese administrative law. – **TRUE / FALSE**
36. The “Grech vs Mintoff” judgement (Civil Court First Hall 6 December 1976) annulled a decision which a tribunal established by law was held to have taken on the basis of an error of law – **TRUE / FALSE**

37. The “Montalto vs Clews” judgement (“First Hall Civil Court 26 May 1987) affirmed the jurisdiction of the ordinary courts to review decisions of statutory tribunals. – **TRUE / FALSE**
38. The “Ellul Sullivan vs Vassallo” judgement of the Court of Appeal (26 June 1987) decided that the failure to inform a shipping company of the reasons on the basis of which it was being proposed to take action against it amounted to a breach of the principles of natural justice. -**TRUE / FALSE**.
39. Refusal to renew a driving licence on the ground that the holder is no longer in an adequate state of health to hold such a licence is an ‘administrative sanction’.**TRUE / FALSE**
40. A decision to issue a building permit taken by the Malta Environment and Planning Authority is not an “administrative act” within the meaning of article 469A of the Code of Organization and Civil Procedure. – **TRUE / FALSE**
41. The House of Lords decision in re “Padfield vs Minister for Agriculture Fisheries and Food” (1968) decided that the exercise of discretion in a manner that was not in accordance with the policy and objects of the law amounted to an illegality. – **TRUE / FALSE**
42. The English Court of Appeal decision in re “ R vs Secretary of State for the Home Department *ex parte* Fayed” (1998) held that the duty to act fairly could not be deemed to have been overridden by a section in the law which exempted the Government from giving reasons for its decision. – **TRUE / FALSE**
43. There are certain acts of administration, the so-called “non-justiceable acts” or “acts of state”, which are not subject to judicial review and this proves conclusively that judicial review is not an essential element of a State governed by the rule of law. – **TRUE / FALSE**
44. Generally in countries with a civil law tradition (such as Italy) the tribunals taking cognizance of judicial review cases are “Administrative Courts”. – **TRUE / FALSE**

45. According to Article 460 of the Maltese Code of Organisation and Civil Procedure one must notify a judicial letter or a judicial protest to administrative authorities at least ten days before filing a court case against them on the same claim and this rule admits no exceptions. – **TRUE / FALSE**
46. In an action for Governmental liability the damages claimed can also be damages which are still to be suffered in the future. – **TRUE / FALSE**
47. The case law of French Administrative Courts has held that, unless particular circumstances are proven, the birth of a human being cannot give rise to a right of another person to demand damages – **TRUE / FALSE**
48. Conclusions made in an Ombudsman's report bind Government to the same extent as a court judgement. – **TRUE / FALSE**
49. Under the Data Protection Act it is not only a natural person but even a company that can be a "data subject" – **TRUE / FALSE**
50. Under the Data Protection Act the consent given by a " data subject" for the receipt of information relating to direct marketing may not be revoked at will but requires justification on "compelling legitimate grounds" – **TRUE / FALSE**



L-Università
ta' Malta

FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
FEBRUARY 2021 EXAMINATION SESSION

PBL2015 ADMINISTRATIVE LAW

Friday 19th February 2021

Examination time: 08:30 – 9:30 + 15 extra minutes for uploading/downloading.

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

Telephone : 2340 3251; 2340 3752

Email: laws@um.edu.mt

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

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

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

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

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

With regard to FLOWmulti examinations, you are advised to type directly on WISEflow (and not on MS Word intending to copy and paste on WISEflow).

With regard to FLOWassign examinations, you are advised to upload your work in PDF format.

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INSTRUCTIONS TO STUDENTS:

Answer **ALL FIVE (5)** Short Questions. All Questions carry equal marks.

1. Which are the principal sources of Maltese Administrative Law? Have these changed over the years?

 2. Does Administrative Law play a role in maintaining public trust in the proper functioning of public authorities? If so, briefly describe how and if not briefly state why not.

 3. Which are the essential features of the 'rule of law' and of the 'principles of natural justice'?

 4. Which principles of Administrative law mostly act as a restraint on the taking of decisions by public authorities which are excessive or unforeseeable in their impact on the rights and interests of individuals?

 5. What is understood by "Administrative Law remedies"? Does the State have a legal duty to provide such remedies?
-

UNIVERSITY OF MALTA
FACULTY OF LAW
LL.B. II
MAY/JUNE 2008 EXAMINATION SESSION

PBL2015 – ADMINISTRATIVE LAW

MONDAY 2ND JUNE 2008

1.00PM – 4.15PM

Instructions to candidates: Candidates will have from 1.00pm to 1.15pm to read the examination paper, and the examination proper will begin at 1.15pm and will end at 4.15pm.

CANDIDATES MAY NOT BEGIN TO WRITE BEFORE 1.15PM.

Answer: Question 1(a) or 1(b) AND question 2(a) or 2(b) AND, any two other questions from questions 3, 4, 5 and 6.

Questions 1 and 2 carry 17 marks each ; Questions 3, 4, 5 and 6 carry 33 marks each.

1. (a) B has a permit from the Department of Agriculture 'to sell and distribute dairy products in Valletta using refrigerated vehicle number 'AAA 111'. He also holds a permit from the Department of Trade 'to act as a street hawker from a fixed point at City Gate, Valletta, for the purpose of the sale of dairy products from refrigerated vehicle AAA 111'. The Tourism Authority complains to the Commissioner of Police that the large number of street hawkers setting up for business in City Gate is giving an undignified appearance to the entrance to the capital city and has moreover attracted a number of pickpockets to operate in the area thus creating a tense and unsafe environment. On this basis the Commissioner of Police orders the Department of Trade to revoke all licences for hawkers in the area and to issue new licences to the same persons to act as hawkers elsewhere in Valletta. The Department of Trade, although it is not legally obliged to do so, complies. B is not interested in moving elsewhere and therefore transfers his new hawker's licence to D who however holds no permit to sell dairy products and intends to use the licence in order to set up a stall selling pirated DVD's and fake sportswear at the new market. In line with a policy in favour of 'less Government for small businesses' the transfer of the stall licence from B to D is approved by the Department of Trade but, soon after D starts setting up his new stall, shop owners who sell genuine DVD's and sportswear in the area protest with the Department of Trade which admits that the transfer of the licence from B to D was made 'by mistake' but refuses to cancel it since it argues that D has now 'acquired a right'. In the meantime B continues to sell and distribute dairy products from various other places in Valletta using vehicle number AAA111 (which he does not transfer to D) under the permit which he holds from the Department of Agriculture. Advise the shop owners who wish to annul the decisions of

the Commissioner of Police and of the Department of Trade and to seek damages due to loss of business.

(b) X, a businessman, imports a container load of an oriental drink. The label on each bottle claims that the drink 'can help you calm down and enjoy life'. The Department of Health gets to know about the importation of the drink and is worried that if consumed in nightclubs in conjunction with alcohol the drink could cause serious health problems. The Department has no legal power to stop the distribution of such drinks but under the 'Drugs and Magic Remedies Act' (fictional) the Minister responsible for Health may add 'any disease he deems fit' to a list of diseases in the Schedule of the Act and upon such addition being made 'no product claiming to provide a cure in respect of such disease may be advertised or sold other than from a licensed pharmacy'. The Minister of Health issues a Legal Notice whereby 'depression' is added to the Schedule of the Act and the imported drink is immediately seized from all shops, nightclubs and other places of business other than pharmacies. X, who is now faced with claims for refunds from the businesses to which he had sold the drink writes to the Department of Health indicating that there are other drinks freely available on the market which have the same composition and claims that the dangers of his drink had been blown beyond all proportions by the Department on the instigation of one of its employees whose family had an interest in a competitor business. The Department writes back rejecting X's claims of bias and in order to demonstrate how impartial it has been it also orders the confiscation of the other drinks indicated in X's letter as having the same composition of X's drink. Discuss the legal prospects of (i) X and (ii) the importers of the other confiscated drinks who both wish to take action against the Department of Health.

2. (a) A complaint is filed with the Accountancy Council, a non-Governmental body, alleging professional misconduct by P, an accountant. After reading out the complaint at one of its meetings the Council decides not to consider it further and to refer the matter to the Accountancy Profession Board, a Board set up by law to regulate the Accountancy profession. Proceedings are taken against P before the Accountancy Profession Board for the revocation of P's warrant on the ground of misconduct in the exercise of his profession. The Chairman and Vice-Chairman of the Accountancy Profession Board are also President and Vice-President of the Accountancy Council and other members of the Board are also drawn from the Council. The Accountancy (Regulation) Act (fictional) provides that any fines levied by the Accountancy Profession Board are to be held in an Accountancy Profession Fund to be administered by the Accountancy Council 'for the benefit of the profession'. In the past the Accountancy Profession Fund had been, sometimes controversially, used for the funding of travel by members of the Accountancy Council for the purpose of participation in international conferences. The decisions of the Accountancy Profession Board are subject to appeal to the Court of Appeal if they order the revocation or suspension of an accountant's warrant but not if they impose a fine of less than 5000 Euro. P feels that his prospects of being treated fairly are compromised. Advise him.

(b) The Department of Education from year to year constitutes an Assessment Committee in order to recommend and select books of various authors and publishers for various school subjects. The Assessment Committee normally also included well-known teachers of particular subjects whose books were also in the selection list. In previous years members of the Assessment Committee sat on the Committee even when their own books were being considered but after this practice was criticised in the press it was decided to change the procedure. At this year's meeting of the Assessment Committee when a book was being assessed an individual member would withdraw when his or her book was under consideration but participated when the books of other members were being considered. The result was that some books of the members of the Assessment Committee were approved whilst others were not. The decisions of the Assessment Committee are subject to an appeal to the Minister of Education, S, who is an author who was not a member of the Assessment Committee and whose book was not accepted wishes to challenge the decision of the Assessment Committee but given the close working relationship between the Minister and many members of the Assessment Committee she considers that her prospects of a successful appeal to the Minister are minimal. Advise S.

3. The Court's power to annul an administrative act on the ground that it constitutes an 'abuse of power' or is based on an 'error of fact' is qualified'. Discuss this statement with reference to Article 469A of the Maltese Code of Organisation and Civil Procedure.

4. To what extent is it correct to state that although Malta has no 'Code of Administrative Procedure' the 'Code of Organisation and Civil Procedure' still lays down specific rules applicable only when the Government is a party to a court case.

5. 'Recent Maltese case law on the liability of public authorities in tort has done away with any shadows of past immunity.' Discuss.

6. Briefly outline the subject matter of three of the following judgements and discuss their relevance in the context of the evolution of Maltese Administrative law:

- (i) *Elvira Abela vs Prime Minister et* – decided by the Court of Appeal on the 30 December 1994;
- (ii) *John Lowell et noc vs Dr. Carmelo Caruana noe* – decided by the Civil Court First Hall on the 14 August 1972;
- (iii) *Dr. Frank Cassar vs Chairman of the Public Service Commission* – decided by the Civil Court First Hall on the 12 October 1976;
- (iv) *Mary Grech vs Minister for the Development of the Infrastructure* – decided by the Court of Appeal on the 29 January 1993;
- (v) *Dr. Alfred Sant noe vs Commissioner of Inland Revenue* – decided by the Court of Appeal on the 4 March 1992.

UNIVERSITY OF MALTA

FACULTY OF LAW

LL.B II (2007/8) - SEPTEMBER 2008 SESSION

ADMINISTRATIVE LAW EXAMINATION

Wednesday, 3rd September 2008

Time: 9.15-12.30

Answer: Question 1(a) or 1(b) AND question 2(a) or 2(b) AND, any two other questions from questions 3, 4, 5, 6, and 7:

Questions 1 and 2 carry 17 marks each ; Questions 3, 4, 5, 6 and 7 carry 33 marks each.

1(a). The Roads Authority is in charge of the proper maintenance of roads. As part of a routine road maintenance project the Authority hires a contractor to carry out maintenance on two tunnels forming part of a major highway each of which only takes traffic going in one direction. The Authority also binds the contractor to place adequate road signs in order to avoid danger to road users during the execution of the maintenance works. The contractor decides that he needs to close one of the tunnels and to leave the other open to be used as a two way road (when it is normally used one way) during the execution of the works. The contractor does not place any road signs indicating that the road is being used two way instead of one way but calls the Police asking them to regulate the flow of traffic whilst the maintenance works are being carried out. The Police send two police constables from the local Police station who do their best to direct traffic to use one of the tunnels two-way. Whilst doing this work one of the policemen notices a vehicle emitting excessive exhaust fumes and stops it. Whilst the policeman is taking the particulars of the driver of that vehicle he ceases directing traffic and a head-on collision ensues between a driver who, given lack of notice, drove into the tunnel under the impression that he was driving in a one-way system and another oncoming vehicle the driver of which had been directed to proceed into the tunnel from the other end against what was normally a one-way system.. X, the driver who upon the directions of the policeman at the other end of the tunnel drove his vehicle against the normal one-way system and who suffered damages as a result of the accident wishes to sue for damages. Advise him on his prospects of being successful in an action for liability in tort against the various possible defendants.

1(b) The Commissioner for Refugees, after reviewing the application for refugee status by R, an Iraqi Kurd, only on the basis of his written application refuses R refugee status on the ground that there were areas in the Kurdish Autonomous Zone in Iraq where R would not suffer a well-founded fear of persecution. At the time when this decision was taken there was a policy of the Ministry of the Interior which favoured the granting of

leave to remain in the country to persons in R's situation but this policy was not brought to the attention of the Commissioner by his assistant with whom R had once had an argument. That policy was therefore not applied by the Refugee Commissioner in R's case although it was applied in other, later, cases by the same Commissioner when the latter got to know about it. In subsequent correspondence with R the Commissioner admits that he was not aware of the existence of the policy at the time when he gave the decision in R's case but argues that strictly speaking he was only bound to apply the law and was not bound by the policy and that therefore the existence or otherwise of the policy was irrelevant to the decision of R's case. He also maintains that his decision not to grant refugee status or leave to remain in the country was substantially just and that he saw no reason why it should be revoked. Advise R who wishes to seek judicial review of the Commissioner's decision.

2(a) A Government owned company provides services in the field of telecommunications. It is also the main repository of knowledge about telecommunications matters within the public sector. Other private companies also provide services in the field of telecommunications and in some lines of business they act in competition with the Government owned company. The field of telecommunications requires considerable technical co-ordination for the purpose of ensuring that the equipment used by one company does not cause interference with that used by others and the relevant law envisages the appointment of a Chief Inspector of Telecommunications, a Government employee, in order to execute this function. Upon the retirement of the person occupying the post of Chief Inspector, a call for applications for the post is issued by the Public Service Commission which, after interviewing the candidates, considers that none of the candidates for the job have sufficient knowledge of the Telecommunications field to be appointed to the post. As a temporary measure the Minister responsible for Telecommunications therefore considers that a temporary solution can be found by conferring the powers of Chief Inspector of Telecommunications upon Mr. X who is the Chief Engineer of the Government owned company so that the work done by the Chief Inspector will proceed until a suitable candidate for the job is found. The Minister therefore writes to the Public Service Commission recommending the temporary appointment of Mr X as Chief Inspector even though Mr. X was not one of the candidates for the job. The Public Service Commission recommends that Mr. X be appointed Chief Inspector temporarily until the situation is reviewed in six months time. Mr. X is so appointed. The non-Government owned companies doing business in the field of telecommunications fear that Mr. X will be more lenient in his inspection of equipment belonging to the Government owned company, which is still his employer, than he will be with regard to that of their companies and they wish to oppose his appointment. Advise them.

2(b) The Local Council of locality Y wishes to implement a number of public works projects within its locality for which it lacks the necessary funds. It also receives many complaints from residents to the effect that, given that the locality is increasingly becoming more commercial and is attracting more visitors, residents who return home after work are finding it almost impossible to park their cars in the locality. The Council is authorised by law to regulate parking in locality Y. Z a councillor on the Local Council who is also a minor shareholder of a company operating local warden services suggests to the Local Council that the introduction of a scheme whereby a large number

of parking places would be reserved for residents would both ease the parking problem for residents and raise money for the Council given that a number of visitors are likely to carelessly or inadvertently park their cars wrongly in the reserved parking places and incur fines which will then be payable to the Local Council after paying an administrative fee to the operator of the local warden services. Given that elections are approaching and that the majority on the Council, of which Z forms part, is also eager to please the residents, the Council takes a decision whereby it appoints Z as the Councillor in charge of parking schemes in the locality with full powers to introduce reserved parking schemes without further reference to the Council. Z proceeds to introduce extensive reserved parking schemes for residents. He does not employ the services of the local warden service company in which he is a shareholder but employs another company without issuing a call for tenders as required by public procurement regulations and justifies this by stating that the matter is urgent. The parking schemes draw adverse criticism from the Association representing the commercial community in the area on the ground that they scare off potential clients. Moreover, in a burst of anger an official of the Association suggests that Z is capable of eventually subtly eliciting bribes from the local commercial community in return for the non-enforcement of the schemes at certain peak business hours. Z immediately sues the official of the Association who made this innuendo for libel and the Association decides to retaliate by challenging the parking schemes. Advise the Association on its prospects in challenging the parking schemes.

3. To what extent is it correct to state that the notions of the 'rule of law', the 'separation of powers' and the 'sovereignty of parliament' as reflected in the Constitution of Malta are essential to a proper understanding of Maltese Administrative Law.

4. 'In Malta the ordinary courts of civil jurisdiction have the power to ensure that inferior bodies such as statutory tribunals observe the law and do not act beyond the scope of their powers.' Discuss this statement with reference to case law.

5. Discuss the role played by the 'principles of natural justice' in the judicial review of administrative acts under Article 469A of the Maltese Code of Organisation and Civil Procedure.

6. Outline the main purposes served by subordinate legislation, and discuss the justifications and dangers of extensive recourse to such a manner of legislating in modern societies.

7. Discuss the importance of three of the following judgements in the context of the evolution of Maltese Administrative law:

- i. The Prime Minister et vs Sister Luigi Dunkin nomine; First Hall Civil Court, 26th June 1980;
- ii. John Holland nomine vs Julian Schembri; Court of Appeal, 20th May 1991;
- iii. Dr. Frank Cassar vs Chairman of the Public Service Commission; Civil Court First Hall, 12 October 1976;
- iv. Dr. Joseph R. Grech vs Commissioner of Police; Court of Appeal, 1st March 1988;
- v. Dr. Carmelo Vella et vs Housing Secretary et; Court of Appeal, 30th December 1993.

UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL2015 - ADMINISTRATIVE LAW
LLB II YEAR (2008/9)
MAY/JUNE 2009 SESSION OF EXAMINATIONS

DATE: Thursday, 4th June 2009

TIME: 8.00a.m. - 11.00a.m.

Answer 4 Questions in all as follows: 1(a) OR 1(b) AND Question 2(a) OR 2(b) AND, any TWO other questions from 3, 4, 5 and 6.

Questions 1(a) or 1(b) and 2(a) or 2(b) carry 17 marks each; Questions 3, 4, 5 and 6 carry 33 marks each.

1 (a) Cadiz Developments Ltd owns a piece of land in the locality of Saepta on which it wishes to develop a huge commercial and housing project. The project is generally opposed for environment protection reasons outside the locality Saepta but the residents of the locality see it as presenting an opportunity to raise the prices of their own property and to generate jobs and business in the locality.

The issuing of building permits falls within the jurisdiction of the National Planning Authority (NPA) but according to law the NPA can, under the signature of its Chairman, delegate its authority to Local Councils to issue building permits within their locality for building projects the estimated value of which doesn't exceed EUR 100,000.

An employee of the NPA issues such an instrument of delegation of authority to the Local Council of Saepta without actually informing the NPA Chairman but he signs the instrument 'for Chairman' thus giving the impression that he has acted upon the NPA Chairman's instructions.

The project proposed by Cadiz Developments Ltd has an estimated value of more than EUR 100,000 if taken as a whole but at a time very close to the election of the Local Council of Saepta the local council unanimously approves ten projects which individually do not

exceed EUR 100,000 but which when taken together in fact constitute almost all Cadiz Developments Ltd's project.

Green Cities, an environmentalist organisation feels that the members of the Local Council have approached the applications for the issue of building permits with closed minds and wishes to challenge the issue of the ten permits on any legal grounds that may be available. Advise Green Cities..

1 (b) After coming to Malta as a tourist, Tiro, who holds a postgraduate qualification in Medicine from the University of Accra applied to stay in Malta as a postgraduate doctor. At the time when he applied to extend his stay he was eligible to stay. Seeing that his application was taking a long time to be processed Tiro files a judicial protest against the Director of Citizenship holding him responsible for the delay and for any damages which Tiro claimed it was causing. A few days after Tiro filed his judicial protest the Director of Citizenship issues a set of new regulations which stipulate that for a person to be allowed to stay in Malta as a postgraduate doctor he must hold a degree in Medicine from the University of Malta or from another recognised University in the European Union. Tiro's application is refused on the basis of the new regulations.

Tiro feels that he has a vested right to have his application decided according to the law as it stood on the date when he submitted his application and that the Director of Citizenship has acted abusively in his regard when he issued the new regulations. He appeals on this point to the Immigration Appeals Tribunal which dismisses his claim without a hearing after it considers the claim to be manifestly ill-founded. There is no statutory right of appeal from decisions of the Tribunal. Advise Tiro about any legal remedies that may be available for him to pursue.

2 (a) Following concern about stagnation in the housing rental market due to low rents fixed by law a new law is enacted by Parliament which states that statutory rents are to remain the same for "dwelling houses" "unless the local council of the area where a rented house is situated grants permission for a higher rent to be paid". The declared purpose of the law, as it results from statements made by the Minister responsible for housing both during the parliamentary discussion of the relative Bill and outside Parliament was that of allowing controlled rents to gradually increase.

The local council of Vallecas is politically hostile to the changes in the law and refuses each and every application made to it by landlords to increase rents. It does this for the declared purpose of 'protecting tenants against the new rent laws'. Where the dwellings consist of flats, of which there are many in Vallecas, the Council refuses to consider the application since it considers that a flat does not fall within the description of a 'dwelling house' given that the Council considers that a 'house' is only an independent dwelling unit without any common parts with other dwellings. Laura is a landlord whose application for an increase in rent of a house (not a flat) in Vallecas has been refused by the Local Council and she wishes to take legal action to challenge the decision of the Council. Maria is a friend of Laura and a taxpayer resident in Vallecas who feels that through its decisions (both with regard to houses and flats) in cases where the Government was the landlord the Local Council is

putting a disproportionate burden on taxpayers by effectively forcing them to unnecessarily subsidise low rents. Advise Maria and Laura.

2 (b) The Transport Authority is charged by law with the duty of conducting driving tests. .

Faced with a situation where many of its driving instructors have sought employment elsewhere after extensive criticism in the media about their alleged lack of professionalism the Transport Authority delegates the Commissioner of Police to appoint any Police officers as he deems fit to carry out driving tests.

Terrentia sits for her driving test which is conducted by a police officer appointed in terms of the above arrangement between the Transport Authority and the Commissioner of Police. She fails her test and is told that she will not be allowed to take another driving test for three months. Terrentia feels that the police officer conducting the test was unduly harsh with her and did not pay enough attention to her driving during the test during which he appeared to be very tired and on the verge of falling asleep. When she enquires about the reasons why she failed she is told that she made too many errors of judgement without any details being given. Both Terrentia and her employer, who needs her to perform driving duties in the absence of one of his drivers who is on long leave, wish to challenge the decision to exclude Terrentia from taking another driving test for three months.. Advise them.

3. 'The legacy of the rule of law has been that all rules of the legal system should be equally applicable to all'. To what extent is it a characteristic of Maltese Administrative law that it is a law based on general rules which is reluctant to admit special legal regimes that only regulate the administration?

4. With reference to case law illustrate how judicial review prevents those exercising public functions from abusing them by taking decisions based on improper motives or irrelevant considerations.

5. 'In the Maltese legal system governmental liability is based on the ordinary civil law of tort and for the Government to be liable it is not a requirement that a public authority should have knowingly or maliciously exceeded its powers'. Discuss this statement with reference to statutory law and case law.

6. Outline the principal reasons which have contributed towards the increase in the number of laws containing a delegation of law making power. Is it correct to state that the increase in delegated legislation means that in modern societies people are really ruled by bureaucracy rather than by their elected representatives?

UNIVERSITY OF MALTA
FACULTY OF LAW
DEPARTMENT OF PUBLIC LAW
PBL2015 – ADMINISTRATIVE LAW
SEPTEMBER 2009

THURSDAY, 3RD SEPTEMBER 2009

9.15AM – 12.15PM

Answer ONE question from SECTION 1A, and ONE question from SECTION 1B and TWO questions from SECTION 2:

SECTION 1A question 1 or 2 and SECTION 1B question 3 or 4 carry 17 marks each; Questions 5, 6, 7, 8 and 9 carry 33 marks each.

SECTION 1A

1. X, an ophthalmic optician is charged before a Health Professions Tribunal with making fraudulent claims for payment to the detriment of the Department of Health. The charge may lead to X being removed from certain lists of medical practitioners, a step which would seriously affect her potential income from the exercise of her profession. The Health Professions Tribunal is appointed by the Minister responsible for Health who is also the Minister in charge of the Department of Health and whose offices are situated in the same building that houses the Department. The Chairman and members of the Tribunal are appointed for a renewable period of one year. X was not informed that she could be assisted by a lawyer at the hearing before the Tribunal and she appears at the hearing and takes up her own defense. The Department of Health, on the other hand, is assisted by a lawyer at the hearing. X does not raise the issue concerning her representation at the hearing and instead she defends herself in a manner that demonstrates her good knowledge of the relevant laws and regulations and of the procedures of the Tribunal. One issue which the Tribunal has to decide concerned the question as to whether X, before making her allegedly fraudulent claims, had received a letter outlining the manner in which claims for payment from the Department of Health had to be substantiated. In its decision the Tribunal decides that X had in fact received the letter even though she had insisted that she hadn't. In its final decision the Tribunal decides to remove X from some lists of medical practitioners since it states that it is convinced that the claims for payment made by her were presented in a misleading and fraudulent manner. X feels that the Tribunal's decision is unfair and wishes to challenge it through judicial review in Court. Discuss her chances of success.

2. Under the 'Land Acquisition (Local Councils) Act' (fictional) a local council is empowered to 'acquire and manage land for the benefit, improvement or development of its locality'. In exercise of these powers the Local Council of Canubia acquired a piece of C's agricultural land for the purpose of stopping the land being rented out to hunters

who had attracted a lot of negative publicity for Canubia because of their brutal and illegal practices. The decisions of Local Councils on the expropriation of land are subject to appeal to a Local Councils Appeals Board and C appeals the decision to expropriate his land as being ultra vires. After hearing brief submissions from the parties the Appeals Board does not allow the parties to produce any witnesses and holds that the expropriation was not ultra vires stating that "considerations relating to the public image of the locality are relevant to the 'benefit, improvement or development' of the locality". C wishes to seek judicial review of the decision of the Tribunal, from which there is no statutory right of appeal. Advise C.

SECTION 1B

3. Z is an owner of a restaurant who holds a permit to place tables and chairs on public land. P intends to open another restaurant next door to Z's and before he opens for business P files an application to place tables and chairs on public land in front of his proposed restaurant which land Z is currently using. The Police consider that a situation where Z would be allowed to place tables and chairs on public land in front of P's restaurant is likely to cause public order problems and they therefore revoke Z's permit insofar as it relates to land in front of P's proposed new restaurant. Z is not consulted before this decision is taken and he only gets to know about the decision when he receives a new permit which states that it 'supersedes any previous permit' which permit relates to a smaller area of public land immediately fronting his restaurant. Z feels that the Police have unduly favored P and that they have violated his acquired rights and he wishes to seek judicial review of their decision. Advise Z.

4. B, the leader of a political party not represented in Parliament but which has polled quite a number of first preference votes at the last general elections, complains to the Broadcasting Authority that the public television broadcasting services were giving much more coverage to another party, represented in Parliament, whose views were similar to those of his party. In his complaint B claims that this discrimination was unreasonable and was not objectively justified in view of the fact that the two parties had very close political positions on most issues and of the fact that his party had polled a comparable amount of first preference votes at the last general elections despite not managing to elect any candidate.

The Broadcasting Authority decides that the 'balance and impartiality' obligations of the public service broadcaster found in the Constitution and in the Broadcasting Act did not grant it jurisdiction to consider issues relating to the media exposure given to political parties with similar positions as long as the point of view of the parties on the same side of the political spectrum was covered. The Authority also holds however that even if it had jurisdiction to consider the complaint it would have still denied it after considering the merits. The Authority gives detailed reasons for its decision on the merits.

B wishes to seek judicial review of the Authority's decision. Advise B.

SECTION 2

5. Outline the advantages and disadvantages of employing statutory tribunals to settle disputes with the administration rather than allowing such disputes to be decided by the ordinary courts at all stages.

6. "The judgement in the case of 'Paolo Busuttill vs Clement La Primaudaye' (15 February 1894), albeit being still extensively discussed and analysed, is of no practical relevance to Maltese Administrative Law today and is now merely history". Discuss.

7. Discuss the ground of 'incompetence' as a basis for judicial review of administrative acts. Is it correct to state that this ground of review found in Article 469A of the Code of Organization and Civil Procedure is superfluous since it almost always coincides with another judicially reviewable defect in an administrative act?

8. Outline the principal characteristics of the concept of 'public interest immunity' from presentation in Court of Government documents as reflected in the Maltese Code of Organization and Civil Procedure. To what extent is it correct to state that the transition from the old concept of 'Crown privilege' of official documents to the more modern concept of 'public interest immunity' is still only a 'drop in the ocean' as far as 'open Government' and 'transparency' are concerned.

9. To what extent is it correct to state that "there is no effective machinery for the parliamentary control of delegated legislation" and that as a consequence "much of the most important legislation is never even considered by Parliament".

UNIVERSITY OF MALTA
FACULTY OF LAW
DEPARTMENT OF PUBLIC LAW
PBL2015 – ADMINISTRATIVE LAW
MAY/JUNE 2010
LL.B II

THURSDAY, 10TH JUNE 2010

8.00AM – 11.00AM

Answer 4 Questions in all as follows:

Question A1 OR A2 from SECTION A,
AND

Question B1 OR B2 from SECTION B,
AND

Any TWO other questions from SECTION C:

Marking scheme: Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each.

SECTION A

Question A1 (17 marks):

The Local Council of Penderville has been delegated legal competence to issue building permits in the locality by the Minister of the Environment and Planning.

Z-Mart, a supermarket discount chain applies to the Council for a permit to build a large store on an unbuilt piece of land on the outskirts of Penderville on which an important battle was fought during the 'siege of Penderville' a couple of centuries ago.

The Minister, who delegated the authority to the Local Council is obliged by law to follow particular procedures before issuing building permits and the Local Council therefore takes it upon itself to follow the same procedures which include a public hearing to discuss applications for the type of development proposed by Z-Mart.

When the word spreads around about the proposed project the main trade union in Penderville expresses grave concern about Z-Mart's history of flouting employment laws and employing badly paid and often foreign part-time workers to carry on its business. The trade union writes to the Local Council opposing the issue of the permit unless Z-Mart grants proper assurances about the conditions of employment of employees in its proposed establishment.

Moreover a group of re-enactors preparing for a major re-enactment of the 'siege of Penderville' also write to the Local Council and to the Minister opposing the issue of the permit on the ground that the building of the proposed store would 'rob Penderville

of the scene of a historical battle" and would also cause them losses and damages by rendering the re-enactment, in which they have invested substantially, impossible. In their letter the re-enactors also reserve their right to sue the Council and the Minister for damages should the permit be issued.

In view of these objections the Local Council decides not to organise a public hearing about the application at all after deciding that before proceeding with the consideration of the application it should await the outcome of a Court case where another Minister's delegation of a licensing power to another Local Council is being challenged. The Secretary of the Council is therefore instructed to keep the application as the last item on the agenda of every meeting of the Council where it would have very little prospect of ever being discussed.

Z-Mart, who have purchased the land for the proposed new store for a substantial sum of money write to the Council threatening to take legal action against it for damages and for what they term 'abuse of power'.

Briefly analyse the administrative law issues raised by the above facts.

Question A2 (17 marks):

Open Spaces Company Limited ('the company') is the owner of vast wastelands in the countryside. In order to try to put these lands to use the company enters into an agreement with a number of promoters to organise parties, fairs, shows, boxing tournaments and other crowd pulling events on the land free of charge and with the organisers pocketing all the profits from the events but also carrying all the risks and costs.

These events take place and the venue acquires some prominence. When this is achieved the company terminates the agreement and sets up its own subsidiary company in order to take over the business of organising events on the land.

Feeling cheated, the promoters, who hold all trading permits from the Director of Trade to carry out commercial activity on the land in their name, write to the Director of Trade, informing him that given that they are the rightful holders of the permits which still have a year to run they will sue him for damages should he issue other permits to the company's subsidiary in respect of the same land without ensuring that they are compensated for renouncing to their permits.

The Director of Trade doesn't comment on this letter but when he receives an application for a trading licence from the company's subsidiary to carry out commercial activity on the lands in question he refuses the same on the ground that permits in respect of the same lands and activities are still in force in favour of the promoters. He therefore invites the company's subsidiary to settle any pending issues with the promoters before filing any new application. The decisions of the Director of Trade are subject to appeal to the Trading Licences Appeals Board to which the company's subsidiary actually appeals. The Board dismisses the appeal of the company's subsidiary on the ground that the fact that the company allowed the promoters to obtain trading licences in their own name implied that it would not invoke its powers to terminate the agreement before those licences ran their course and that therefore the

Director was correct not to issue concurrent licences in such a manner as to bypass all the promoters' contractual claims. There is no provision in the law providing for an appeal from the decisions of the Trading Licences Appeals Board.

Briefly discuss the legal options open to the company and its subsidiary in the field of administrative law.

SECTION B

Question B1. (17 marks):

Lasers Co. Ltd ('Laser') . applies to organise a huge festival on the eve of a public holiday in the summer. It starts preparing for the event many months in advance and enquires with the local police station what permits it is likely to be granted. A policeman at the station, who also works as a bouncer at such events after hours and who is interested in befriending the directors of Laser leads Laser's directors to believe that it would be no problem for him to issue a permit to them to play music at the festival until 4.00am as he felt that he was legally entitled to do. Laser bases its business plan for the festival on the premise that the festival will last until 4.00am.

When Laser submits a formal application for the permit a few weeks before the proposed date of the festival the application is referred by another policeman to a different section of the force and Laser receives a permit allowing it to play music at the festival only until 2.00am.

Laser writes to the Police to protest about the limitation of the time allowed for the playing of music but the Police reply that the playing of loud music until 4.00am has proven from past experience in other areas to be the cause of a number of evils including undue distress to the residents of nearby villages from where the music can easily be heard, increased drug and alcohol abuse and consequent traffic accidents and quarrels . The Police also assert that the fixing of the time for stopping the music is something which falls within their 'absolute discretion' according to the relative regulations.

Laser feels that the Police are exaggerating the consequences of the playing of music until 4.00am and that they are actually motivated by an interest to favour their competitors who are organising indoor parties on the same night where, according to the quoted regulations music can be played until 4.00am.

Advise Laser on its prospects in an action for judicial review.

Question B2. (17 marks):

Matthew and Mark are brothers and they both own small and adjacent restaurants in a popular tourist spot. The place where the restaurants are situated is quite crowded and permits to place tables and chairs outside restaurants in the area are not easy to obtain.

The allocation of permits for the placing of such tables and chairs on public land is entrusted to the 'Tourism Authority' and Mark, after a conversation with a neighbour who works at the Authority and who informs him that new permits are about to be issued on a first come first served basis, applies for a permit to place tables and chairs both in front of his own restaurant and in the space in front of his brother's restaurant. The authority grants Mark permits covering the whole area applied for within a few days and without having issued a public call for applications for such permits since the law does not expressly oblige it to do so.

Matthew and Mark are also involved in civil litigation between them on the division of their late father's estate and Mark proposes to Matthew that he would be willing to allow him to place some tables and chairs in front of Matthew's restaurant as part of the settlement of that case. The settlement goes through on this basis and for many years Matthew places tables and chairs in front of his restaurant on the basis of the permit held by Mark and without being recognised by the Tourism Authority as having any right over the public land in front of his restaurant.

Matthew and Mark eventually retire and they are succeeded in their business by their sons Luke and John who also keep to the same arrangement without informing the Tourism Authority that their fathers are no longer in business. Luke, Matthew's son, eventually writes to the Tourism Authority demanding that the permit in respect of the land in front of his restaurant be transferred on to his name but at the Tourism Authority the application falls to be considered by Mark's neighbour, who has in the meantime risen to a senior position within the Authority, and who refuses the application on the ground that neither Luke nor his father Matthew previously held any permits. The neighbour also informs Mark about what happened and advises him to tell his son John to apply for the permit himself. John does so and is immediately issued with the permit in respect of all the land covered by his father's permit. This incident leads to a quarrel between Luke and John and John demands that Luke should remove the tables and chairs from in front of Luke's restaurant.

Luke feels that the Tourism Authority has acted in a manner that favoured his cousin and that effectively cheated him out of the benefits of the private settlement made between his and John's fathers.

Advise Luke on his prospects in an action for judicial review and damages against the Authority.

SECTION C.

C1. To what extent does Article 469A of the Maltese Code of Organisation and Civil Procedure provide for the possibility of redress in cases where due to the possibility of subjective bias in the decision making process of a public authority "there was a real danger of injustice having occurred". (33 marks)

C2. "The Ombudsman and Statutory Tribunals are better for resolving some disputes than the Courts but what goes on in public law actions in the courtroom is still of great constitutional significance." Discuss this statement with reference to the various types of administrative law remedies. (33 marks)

C3. Discuss the impact which laws on 'data protection' and 'freedom of information' have upon the traditional notions of "government privilege" and "public interest immunity" within the context of the right of access to information held by public authorities. (33 marks)

C4. To what extent does administrative law protect the 'legitimate expectations' which individuals may have with regard to the way in which they are to be treated by public authorities. (33 marks)

C5. "Nowadays distinctions between the 'legislative', the 'judicial', the 'quasi-judicial', the 'administrative' and the 'prerogative' powers of the public administration are devoid of practical consequences" Discuss. (33 marks)

UNIVERSITY OF MALTA
FACULTY OF LAW
DEPARTMENT OF PUBLIC LAW
PBL2015 – ADMINISTRATIVE LAW
SEPTEMBER 2010
LL.B II

FRIDAY, 10TH SEPTEMBER, 2010

9.15AM – 12.15PM

ANSWER 4 QUESTIONS IN ALL AS FOLLOWS:

Question A1 OR A2 from SECTION A,
AND
Question B1 OR B2 from SECTION B,
AND
Any TWO other questions from SECTION C:

Marking scheme: Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each.

SECTION A

A 1. The Local Council of Fiestaland decides to start organising a traditional food festival and market (the 'Festival') on the first Sunday of every month. For this purpose the Council appoints a Board to receive applications and make recommendations to the Council with regard to the licensing of individuals to put up stalls at the Festival on a yearly basis. There are no pre-determined criteria set by the Council on the basis of which persons are to be recommended for a licence by the Board. The Board eventually issues a call for applications wherein it inserts a condition to the effect that 'persons applying for a licence to put up a stall must be directly involved in the production of the products which they propose to sell from the stall and must be residents of Fiestaland'.

John, who does not live in Fiestaland but who owns a farm over there from where he produces traditional cheese, applies for a licence giving the address of his farm as his residential address. The Board discusses the application and in the course of the discussion mention is made of the fact that John was not brought up in Fiestaland and holds political views which are not at all popular there. The Board recommends to the Council to refuse John's application on the ground that given that John does not habitually sleep in Fiestaland he does not meet the residence requirement in the call for applications. The Council accepts the Board's recommendation and refuses John's application.

John, who in fact spends most of the day in Fiestaland on a regular basis wishes to challenge the Council's decision since he feels that the Board has designed the selection criteria simply to keep him out of the Festival. Advise John.

A.2. The Countryside (Protection) Act (fictional) provides that before any public works related to road construction or road widening are carried out in areas which are of outstanding natural beauty a process of public consultation must be carried out.

Joseph, a farmer, lives in a small house next to his fields in Snailland. The road in front of his house is rather narrow and Joseph is substantially inconvenienced by the fact that he cannot park his small truck in front of his house due to the regular use of the road by large tourist coaches and sightseeing tour busses.

Joseph applies to the Roads Department to have a small stretch of road in front of his house widened so as to facilitate the parking of his truck and the carrying on of his business and the Director of the Roads Authority, sympathising with Joseph and considering that the road widening involved is very minor, orders the widening of the road as requested without going through a process of public consultation. This is done despite the fact that in previous correspondence on other matters the Director had committed himself to the view that Snailland is an area of outstanding natural beauty.

The works are completed over one night but as soon as the sightseeing tour operators realise what has happened they write to the Director calling upon him to reinstate the area to its previous state given that the works carried out were illegal.

A couple of nature conservationist organisations also write to the Director protesting that the works may have caused irreparable damage to a rare species of lizard that bred in the area.

The Director rebuts these claims arguing that the particular stretch of land where the minor works were carried out is not, taken alone, an area of outstanding natural beauty and that the works have not in any way detracted from the natural beauty of Snailland as a whole.

The Minister for Roads, feeling that the sightseeing tour operators and the nature conservationists are being frivolous, uses his power under the Countryside (Protection) Act to grant an exemption from the public consultation requirement. However given that the works have already been completed the exemption is issued retroactively.

The sightseeing tour operators, given their interest in maintaining a good working relationship with the public authorities, do not pursue their claims any further but the nature conservationists wish to challenge the legality of the works carried out on the grounds of the damage done to the rare species of lizard. Advise the Director of Roads on his prospects in an action for judicial review.

SECTION B

B.1. Following a controversial appointment of a former police officer as Prison Director of Darkwoods Prison, a riot breaks out at the prison and a number of prisoners and guards are injured.

After these incidents, proceedings are taken against various prisoners before the Darkwoods Prison Governing Board, a Board set up under the Prison Regulations but composed mostly of civil servants.

Simon, Mark and Luke are three prisoners accused before the Board of causing damage to prison property and of violent behaviour during the riot.

In the proceedings before the Board they are not allowed to bring forward any fellow prisoners as witnesses in their defence since the Board ruled that such evidence could not possibly be of any value. They are also not permitted to be assisted by a lawyer.

Simon is allowed to give his evidence before the Board. Mark, who is a lawyer serving time for assisting a client in money laundering, is not allowed to give evidence at all since the Board ruled that his knowledge of procedural law and his eloquence would give him an unfair advantage over his colleague prisoners in these informal proceedings. Luke is not allowed to give evidence since he was caught on film by a CCTV camera setting fire to prison furniture and the Board ruled that there could be no better proof of his actions than that.

After the hearing the Board postpones the cases for a decision which it gives 45 minutes later. The decision gives no reasons and simply states the punishments. Apparently for fear of provoking further riots, the punishments are very mild with regard to Simon and Luke. Mark, perceived by the Board as a dangerous agitator, is found not guilty and is therefore not given any punishment at all.

Simon and Luke wish to challenge the prison board's decision in judicial review proceedings but they do not wish their punishment to be increased in any circumstances. Advise them on their chances in an action for judicial review and on the legal risks, if any, which they may face.

B.2. Mary holds a licence from the Roads Authority to run a newspaper kiosk in one of the main streets of Aquaville, a popular tourist locality. Mary is a widow with young children and she does not have the time to run the kiosk herself. She therefore enters into an operation agreement for the running of the Kiosk with Steve. The operation agreement obliges Steve to keep the kiosk open at particular times and also obliges him to follow all employment laws and regulations in the event that he engages any employees at the kiosk.

Mary later gets to know that Steve is running the kiosk by employing persons working illegally and that he is also only opening the kiosk at peak hours of business in order to minimise his costs. She approaches Steve and the two agree that Steve is to pay Mary a considerable sum of money in full and final settlement of any present or future claims for the breach of the agreement for the said two reasons.

Steve, who shortly after paying the money gets to know that Mary's late husband used to run the kiosk in the same manner as he was operating it, feels that he has been entrapped by Mary into coming to this agreement. In a moment of anger Steve reports the case to the Roads Authority. The Roads Authority, which is involved in Court litigation with Mary on other unrelated matters, immediately writes to Mary informing her that her licence is cancelled with immediate effect giving her no reasons.

Explain the legal remedies open to Mary, who has practically lost her livelihood as a consequence of the cancellation of the licence, in the circumstances.

SECTION C

C.1. "The Court's power under Article 469A of the Maltese Code of Organization and Civil Procedure, to annul an administrative act on the ground that it constitutes an 'abuse of power' is far from being absolute. In fact it is strictly qualified." Discuss.

C.2. To what extent, if at all, is it correct to state that current Maltese case law on the liability of public authorities in tort does not take the role and the financial limitations of public authorities into proper account?

C.3. "The role and purpose of the office of the Ombudsman is not that of being a low cost substitute for the ordinary Courts". Comment on this statement with reference to the role of the Ombudsman in Administrative Law.

C.4. "Public authorities have a duty to be consistent in the decisions which they take and they also have a duty to live up to their promises." Discuss.

C.5. Briefly outline the subject matter of three of the following judgements and their relevance in context of the central issues and principles of Maltese Administrative Law:

- (i) John Lowell et noe vs Dr. Carmelo Caruana noe -- decided by the Civil Court First Hall on the 14 August 1972;
- (ii) Dr. Frank Cassar vs Chairman of the Public Service Commission -- decided by the Civil Court First Hall on the 12 October 1976;
- (iii) Albert Galea vs Hon. Dr. Patrick Holland et -- decided by the Court of Appeal on the 29th January 1980;
- (iv) Mary Grech vs Minister for the Development of the Infrastructure -- decided by the Court of Appeal on the 29 January 1993;
- (v) Elvira Abela vs Prime Minister et -- decided by the Court of Appeal on the 30 December 1994.

**UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL 2015 – ADMINISTRATIVE LAW
MAY/JUNE 2011 LL.B. II**

DATE Thursday, 16th June 2011

TIME 8.00A.M. – 11.00A.M.

Answer 4 Questions in all as follows:

**Question A1 OR A2 from SECTION A
AND
Question B1 OR B2 from SECTION B
AND
Any TWO other questions from SECTION C**

Marking Scheme:

**Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each**

SECTION A

Question A1 (17 marks):

The Rector of the University of Malta has filed a development permission application with the Malta Environment and Planning Authority (henceforth “the MEPA”) in order to construct two spacious buildings on University Campus to be used primarily as lecture halls. The MEPA has written back to the Rector informing him that it has decided to refuse his application because it runs counter to its development planning policy on University. After his application is refused, without a right of audience and any specific reasons given, Rector manages to download a copy of this policy from the MEPA website to learn that it consists only in one sentence which reads as follows: “No future development permission applications of whatsoever nature will be processed and approved by MEPA in so far as the University of Malta is concerned.” In the time being the Kunsill Studenti Universitarji (henceforth “the KSU”) has called for a one day protest march at University which it is holding on a Saturday so as not to disrupt lectures. The students are up in arms against the University Rector as several lectures have been cancelled due to lack of lecture rooms and, when lecture rooms are assigned, these are inadequate as do not accommodate all students in a class so much so that some students have to end up standing in class and at other times they have to hear the lecture standing up in the corridor as there is no sufficient seating capacity making it near to impossible for them to take down notes on their laptop. On his part the Rector is baffled by the unexpected decision taken by MEPA in the University’s regard as he has been applying for development permission in the past years without any difficulties at all to have such applications approved. The Rector was infuriated as he was never informed of any such policy decision MEPA is referring to in its decision letter let alone was he ever consulted during its formulation. Were this to be the case he would have surely objected thereto. To

make matters worse, the Rector has learnt that the MEPA has very recently approved substantial extensions to buildings both at MCAST and at the Institute for Tourism Studies. The latter two institutions, in a bid to attract more students, are now carrying one page colour adverts in all the local daily and weekly newspapers showing the new facilities which they will be making available to their prospective students during next academic year. Advise the Rector as to what remedies he may avail himself against the MEPA decision in the light of the above circumstances.

Question A2 (17 marks):

St Anthony's Company Limited had been issued a licence by the Minister responsible for health to operate a private hospital in Malta. This licence has been renewed at regular intervals during the last ten years with no conditions attached thereto. The said company is wholly owned by the Maltese Catholic Church. The company has been making substantial amounts of profits during these last ten years which profits have been used to make good for the Church's annual deficit which, also during the last ten years, has unfortunately always been constantly on the rise. The Director of St Anthony's Hospital, Fr Anthony Padua, has applied to renew the yearly licence as per standard practice at the Ministry of Health. The hospital licence in question has been approved and renewed but this time round it has been subjected to the following two new conditions: (a) that half of the profit made by St. Anthony's Company Limited should be given directly to the poor. This should be done by paying them to the Community Chest Fund so that the President of Malta may distribute it to the poor; and (b) that half of the beds in the Hospital should be reserved to poor patients as certified by the Director for Social Welfare and offered to such poor patients free of charge. Fr Anthony has made written representations with the said Minister arguing that if he were to comply with these ludicrous conditions, his hospital would end up running out of business within a few weeks as what was being asked of his company was impossible to meet whilst at the same time making profit. His hospital was not a charitable institution but a profit making business. The Minister has also informed Fr Anthony in writing that should the company fail to comply with these conditions, the Hospital would return back to the Government to be operated by the Department of Health or such other sub-contractor as the Government might choose. This, in view of the fact that the Hospital originally belonged to Chiara Offreduccio who, in her bequest, had donated the premises housing the hospital to the Government on condition that they be used as a hospital, either by the Department of Health or by a private hospital. Fr Anthony has requested several times to meet the Minister to make submissions on this case when the application was being processed but the Minister wrote back informing Fr Anthony that such conditions were approved by Cabinet, they were in line with the teachings of St Anthony of Padua and, therefore, were final and no appeal lay therefrom. Furthermore, the Minister saw no reason why he should go into details as to the *ratio* for the imposition of the conditions in question but simply replied to Fr Anthony that these conditions were imposed by way of a new public policy approved by Cabinet. Fr Anthony considers the Minister's behaviour unacceptable but is unaware as how he should proceed. He has asked you to advise him what remedies are available to him in the circumstances to obtain a revocation of the Minister's offending conditions in the hospital licence.

SECTION B

Question B1 (17 marks):

Silvio Berlusconi has decided that after he retires from politics in the very near future to private life, he would want to obtain a communications licence to operate a mobile telephony platform in Malta. As he is well aware that such applications require a time period within which to be processed, he has begun to make the necessary preparations by applying to the Malta Communications Authority for such a licence. However, to his amazement, the Authority has just decided to refuse his application. In doing so, the Authority took into consideration extraneous considerations which did not form part of the subject-matter of the application, that is, that Mr. Berlusconi is not a Maltese citizen but an EU citizen hailing from Italy. Second, in refusing the application, the Authority had presumed that Mr. Berlusconi will be using the said communications network to further his political interests in Italy (not in Malta) as through such platform he would be in a position to assist the political party he belongs to, even though he will not be leading it himself on retirement. Third, although there is a provision at law that the Communications Authority should not distinguish between Maltese and Italian citizens when awarding licences, the Authority has decided to ignore the said provision considering it irrelevant and inapplicable in the circumstances. Mr. Berlusconi is adamant to obtain the licence that he has applied for as he contends that once he will retire to private life he has not intention of engaging any longer in political activity but will restrict his main activity to the world of commerce and business. Advise Mr. Berlusconi as to what grounds exist to challenge the Authority's decision and what remedies can he resort to.

Question B2 (17 marks):

Joseph Borg works in London but travels frequently to Malta to spend his vacations with his wife and children. On one occasion, when Joseph was at Luqa International Airport, he was detained by the Police as they had received court instructions not to allow a certain Joseph Borg – who was awaiting trial by jury for multiple homicide – to leave Malta. These instructions were imparted by the judge presiding the Criminal Court. Inspector Sherlock Holmes was informed by the Immigration Police at Luqa Airport that Joseph Borg was about to leave the Island. The Inspector immediately gave orders to the Immigration Police to arrest Joseph Borg so that he could take him to court and accuse Joseph Borg of breaching his bail conditions. When Joseph Borg, a few hours later was taken to court, he informed the Judge presiding the Criminal Court that there was a case of mistaken identity: he had never been in his lifetime accused of any criminal offence; nor was he facing any criminal proceedings before that Court. He also informed the Court that he had already made such representations with Inspector Holmes but the latter refused to check his identification document and kept on insisting that Joseph Borg wanted to evade justice and that such conduct was very serious. The Criminal Court ascertained itself that Joseph Borg who had been brought under arrest before it was not the Joseph Borg who was undergoing criminal proceedings before the said Court. Infuriated by the treatment meted out to him, Joseph Borg – who had in the meantime lost the aeroplane to London and not even received a verbal apology from the Police – filed a civil action for damages against the Commissioner of Police where he requested

the Civil Court, First Hall, to declare that the Commissioner's action was abusive of Joseph Borg's constitutional rights as he was wrongly detained, arrested and brought before the Criminal Court due to the Inspector's negligence when refusing to verify his identity. Moreover, Joseph Borg had to sign an important contract that day in London but as he failed to turn up without any reason given, the contract was signed later on the day with a competing company thereby incurring loss of profits. Had the contract been signed, Joseph Borg would have earned five thousand euro. As Joseph Borg was stripped of his mobile phone and not given permission by the Police to phone the other party to the contract when under arrest, he could not communicate with the other party in London to inform him of his situation. The Commissioner of Police has pleaded in court that he has nothing to do with this case; that Joseph Borg was not detained or arrested under his instructions; that Inspector Holmes had neither consulted him nor sought his permission before ordering the detention and subsequent arrest of Joseph Borg; and that Inspector Holmes had not obtained a Magistrate's arrest warrant. The Commissioner of Police is thus seeking your advice as to what he should plead in court in the case instituted by Joseph Borg against him.

SECTION C

C1 Outline those centrally important constitutional concepts which frame and lend explanatory significance to any analysis of the workings of the contemporary system of administrative law. (33 marks)

C2 'The introduction of statutory tribunals in recent years can be closely linked to the development of a coherent system of administrative justice.' Discuss this statement by providing examples of statutory tribunals set up in Malta. (33 marks)

C3 The courts have the jurisdiction to rule upon the legality of government action. How do they go about in achieving such aim? (33 marks)

C4 In the context of delegated legislation, it has been stated that 'although it would appear that a trend towards delegation confirms that there has been a significant shift of power to the executive organs of the state, at the same time it should be recognised that delegation can in most cases be justified because of the greatly enlarged role of governmental activities and the obvious constraints that this expansion places on parliamentary time.' To what extent, if at all, are you willing to subscribe to this statement? (33 marks)

C5 Discuss any THREE of the following in the context of Administrative Law:
(a) unreasonableness;
(b) proportionality;
(c) legitimate expectation;
(d) the duty to give reasons (33 marks; each part carries equal marks)

**UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL 2015 – ADMINISTRATIVE LAW
SEPTEMBER 2011
LL.B. II YEAR**

**DATE: Thursday 1st September 2011
TIME: 9.15A.M. – 12.15 P.M.**

Answer 4 Questions in all as follows:

**Question A1 OR A2 from SECTION A
AND
Question B1 OR B2 from SECTION B
AND
Any TWO other questions from SECTION C**

Marking Scheme:

**Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each.**

SECTION A

Question A1 (17 marks):

The Minister responsible for the police has issued a legal notice under the Code of Police Laws in terms of which he has shortened the closed season for hunting by twenty-seven days. Birdlife Malta are up in arms against this legal notice because the season for hunting has been extended by the said twenty-seven days. This means that by shortening the closed season by twenty-seven days, hunters will gain another twenty-seven days extra for hunting. Birdlife think that the Minister cannot shorten the closed season by means of a legal notice as the Code of Police Law does not empower the Minister to change the provisions of the Code by regulations. On his part the Minister is arguing that he has acted correctly because, although he has no power by regulations to amend a primary law, he can still have recourse to the Henry VIII clause to shorten the closed season. Birdlife Malta are not sure whether the Minister's legal argument is correct and that have called at your office seeking your learned advice. Advise Birdlife Malta as to whether they can challenge the Minister's regulations.

Question A2 (17 marks):

Joseph Borg applied to the Malta Environment and Planning Authority (MEPA) to develop a piece of land outside the development zone where normally development is not allowed. He has applied to build a petrol station and car wash. The residents of Victoria, Gozo, support this application because the existing petrol station is situated within the

village core and is generating considerable pollution in a residential area with all the cars visiting the petrol station twenty-four hours a day. The MEPA has taken on board the submissions by the Victoria Local Council favouring the development and has approved Joseph Borg's development permission. Flimkien ghall-Ambjent Ahjar (Together for a Better Environment) have just learnt of MEPA's decision taken just yesterday and are objecting to the grant of development permission. They are seeking your opinion as to how they can challenge at law the development permission in order to have it revoked. Advise Flimkien ghall-Ambjent Ahjar how to proceed.

SECTION B

Question B1 (17 marks):

The Socjeta' Hbieb tan-Nar (Friends of Fireworks Association) has, as in previous years, applied to the Commissioner of Police to be able to let off their fireworks from the Valletta bastions. The Association has been for the last fifty years letting off its fireworks from the Valletta bastions with no difficulty at all. This time round they have received the following one line reply to their application from the Commissioner of Police: "Please be informed that your application has been refused". The Association do not know what remedies are available at law to them and how to contest, if possible, the Commissioner of Police's decision. Advise the Association.

Question B2 (17 marks):

Adelaide Borg has applied to join the M.D. course. The University Admissions Board has rejected her application on the grounds that according to the criteria formulated by the Faculty of Medicine and applied by the University Admissions Board she did not obtain all her Advanced and Intermediate certificates in one session. On its part, the Rector of the University is claiming that the criteria in question were formulated by the Faculty of Medicine and approved by Senate. The latter is the body at University which has the final say on academic matters. The Rector has also submitted that the University Admissions Board has scrupulously abided by the Senate approved criteria. As Adelaide Borg wants to read for an M.D. degree she has called at your office to advise her on what grounds, if any, can she challenge the criteria which are serving as an obstacle for her to gain admission to the M.D. course.

SECTION C

C1 'The Administrative Justice Act, Chapter 490 of the Laws of Malta, sets out the principles of good administrative behaviour and establishes the Administrative Review Tribunal.' Discuss. (33 marks)

C2 The Freedom of Information Act, Chapter 496 of the Laws of Malta, when in full force, will allow members of the public to have access to government-held information. What constraints does this law impose on members of the public at obtaining such information? (33 marks)

C3 What do you understand by the term 'legitimate expectation'? Explain this term by reference to case law. (33 marks)

C4 'The principle of proportionality is enshrined in Maltese Administrative Law.' What do you understand by this principle and to what extent, if at all, are you willing to endorse this statement? (33 marks)

C5 How is the administrative state accountable at law? (33 marks)

UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL 2015 – ADMINISTRATIVE LAW
MAY/JUNE 2012 LL.B. II

Date: Thursday, 31st May 2012

Time: 8.00 a.m. – 11.00 a.m.

Answer 4 Questions in all as follows:

Question A1 OR A2 from SECTION A

AND

Question B1 OR B2 from SECTION B

AND

ANY TWO other questions from SECTION C

Marking Scheme:

Questions in SECTION A and in SECTION B carry 17 marks each

Questions in SECTION C carry 33 marks each

SECTION A

Question A1 (17 marks)

Lawrence Muscat is the leader of the newly established political party 'Democratic Malta'. He has applied to the Broadcasting Authority to be included in the next scheme of general election broadcasts. The Authority has granted him only five minutes of broadcasting time stating that he is entitled to the allocation of five minutes of broadcasting time because his political party is a very new party and the Authority cannot determine with sufficient clarity what support will his party garner in the forthcoming general elections; that 'Democratic Malta' is not represented in the House of Representatives; and that once 'Democratic Malta' has an electoral pledge to abolish the Broadcasting Authority if elected to Government, the Authority does not agree with such a proposal and stands firm in taking all the necessary measures intended to safeguard its existence. Lawrence Muscat has read the provisions of the Constitution of Malta, in particular article 118 which states that 'broadcasting facilities and time are fairly apportioned between persons belonging to different political parties' and article 124(10) which states that 'No provision of this Constitution that any person or authority, shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law. He is also aware of the case of *Mintoff noe vs. Montanaro Gauci noe* decided on 17 May 1971 by the Civil Court, First Hall, but does not know how he can challenge the Authority's decision. On the other hand, the Nationalist Party and the Labour Party have complained to the Broadcasting Authority that as 'Democratic Malta' has not proved itself to the electorate, the Broadcasting Authority has abused its powers under the Constitution when it granted

'Democratic Malta' five minutes airtime without knowing what electoral support the new party enjoys.

Lawrence Muscat has called at your office and is asking you to take up his brief. He wants to have more than five minutes in the Broadcasting Authority's general elections scheme of political broadcasts but does not know what he can do. Please advise him.

Question A2 (17 marks):

Miss Josephine Borg's name was removed from the electoral register. When she made enquiries with the Electoral Commission she was informed that a third party had applied to the Revising Officer who informed the Revising Officer that Ms Borg had moved house and that Ms. Borg's entry in the electoral register was consequently incorrect. Before the court, it was pleaded that the Civil Court, First Hall, did not have jurisdiction to entertain such an appeal as the law did not provide for a system of review over decisions of the Revising Officer. On the other hand, it was argued that the Civil Court, First Hall, could only review the decisions of the Electoral Commission. Advise Ms Borg how she can proceed to make a case to obtain her promotion.

SECTION B

Question B1 (17 marks):

On marriage Stephanie Mizzi Schembri was forced to resign from the public service. Before tendering her resignation she had served as a clerk at the Law Courts for 10 years. After having brought up her children she resumed service under the Government just over five years ago. When she rejoined the public service she was re-engaged as a Clerk. Now that a call for applications has been issued so that Clerks may be promoted to Executive Officers, Stephanie has decided to apply. She was however informed that the first ten years of service before the termination of her employment could not be taken into consideration once she had voluntarily resigned. Her promotion application was thus rejected. Advise Stephanie.

Question B2 (17 marks):

David Pisani was employed as a Police Inspector. One fine day he was dismissed from the Police Force without being given any reasons therefor. Mr Pisani was dismissed by the Prime Minister on the advice of the Public Service Commission because it was alleged that Mr Pisani had close contacts with criminals. He has always denied this allegation. He was thinking of instituting a judicial review action in terms of article 469A of the Code of Organization and Civil Procedure. Please advise David.

SECTION C

C1. Discuss the principles of good administrative behaviour as contained in article 3(2) of the Administrative Justice Act, Chapter 490 of the Laws of Malta.

- C2. Judicial review of administrative action is spread all over the statute book. To what extent are you willing to endorse this statement?
- C3. The Interpretation Act is the law par excellence of Administrative Law. Explain.
- C4. What are the arguments brought in favour and against delegated legislation? Do you favour the making of delegated legislation?
- C5. The principles of natural justice are enshrined in Maltese Law and in case law. Explain what you understand by these principles and give examples from case law as how have these principles been applied by Maltese courts.
- C6. To what extent do you think that human rights law limits the action of the government and public authorities?

UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL 2015 – ADMINISTRATIVE LAW
SEPTEMBER 2012 LL.B. II

Date: Friday, 14 September 2012

Time: 9.15 a.m. – 12.15 p.m.

Answer 4 Questions in all as follows:

Question A1 OR A2 from SECTION A

AND

Question B1 OR B2 from SECTION B

AND

ANY TWO other questions from SECTION C

Marking Scheme:

Questions in SECTION A and in SECTION B carry 17 marks each

Questions in SECTION C carry 33 marks each

SECTION A

Question A1 (17 marks)

Mr Glen Bonnici had undergone a surgical operation as a result of which the surgeon forgot the scissors inside Mr Bonnici before sewing him up. Subsequently Mr Bonnici was feeling pain in his abdomen though he could not understand the cause therefor. After an x-ray was taken, he was informed that he had to undergo another surgical operation to have the scissors removed. Mr Bonnici has called at your office as he wants to sue the surgeon, the Chief Government Medical Officer and the Superintendent administratively responsible for the running of the hospital. He is further requesting your advise as to whom he has to sue, whether the Attorney General should be involved in any way in these proceedings and whether there is a valid case for vicarious liability for the negligence of the employees as the employer had employed allegedly incompetent persons.

Question A2 (17 marks):

Ms Mariella Stivala applied with the Commissioner of Police for the issue of a licence to own an air gun. The Commissioner however refused the grant of the licence as Ms Stivala had been found guilty by the courts of criminal jurisdiction of having committed an offence twenty years ago by using a firearm. Ms. Stivala is arguing that the Commissioner of Police is abusing his position, that he is acting unreasonably and that he is prejudiced in her regard basing himself on a petty offence which she committed when still a minor. Advise Ms. Stivala how she can proceed to impugn the Commissioner's refusal.

SECTION B

Question B1 (17 marks):

Mr. James Buttigieg is the owner of a restaurant. The Director of Works contracted a company to carry out road works in the restaurant's vicinity. These works took an inordinate time to complete. The restaurant was badly affected, losing its clientele in the interim period. Advise Mr Buttigieg how to proceed.

Question B2 (17 marks):

Ms Nathalie Mizzi was employed as a driver on a public transport vehicle. Following criminal proceedings where she was found guilty her tag which allowed her so to work was taken away by Transport Malta even though the criminal proceedings were not yet res judicata. She is thinking of bringing judicial review proceedings against Transport Malta for having withdrawn her tag without hearing her but is afraid that if she does so Transport Malta might plead that she has not exhausted her ordinary remedies when she did not appeal the Authority's decision before the Appeals Board. She is now in your office awaiting to learn how you are going to advise her.

SECTION C

- C1 What are the salient provisions of the Freedom of Information Act?
- C2 Explain the provisions of article 469A of the Code of Organization and Civil Procedure.
- C3 How is the principle of proportionality applied in Administrative Law?
- C4 Which are the principles of good administrative behaviour as set out in the Administrative Justice Act?
- C5 A Select Committee of the House of Representatives is discussing an Administrative Code. What are the advantages and disadvantages of drawing up an Administrative Code?

**UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL 2015 – ADMINISTRATIVE LAW
MAY/JUNE 2013 EXAMINATION SESSION**

LL.B. II YEAR (2012/3)

DATE: 10th June 2013

TIME: 9.15AM – 12.15PM

ANSWER 4 QUESTIONS IN ALL AS FOLLOWS:

**Question A1 OR A2 from SECTION A
AND
Question B1 OR B2 from SECTION B
AND
Any TWO other questions from SECTION C**

MARKING SCHEME:

**Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each**

SECTION A

- A1.** In the course of negotiations between State A and State B on the purchase of large quantities of weapons by State B from State A's ailing arms industry the Minister of Foreign Affairs of State A instructs the Government appointed members of State A's 'Overseas Development Fund Corporation' to approve the financing of the construction of a very large administrative building in State B as development aid. Although the Overseas Development Fund Corporation Act, which establishes the Overseas Development Fund Corporation entitles the Minister to give directions of a general nature to the Corporation it is not normal practice for the Minister to give instructions on the approval of specific overseas projects. The members of the Corporation however approve the project without much discussion acting on the understanding that they are obliged to follow the Minister's instructions. The funds are transferred, the administrative building (which also houses a huge 'Presidential Palace') is built and the arms deal between State A and State B goes through thereby saving a number of companies in State A's arms industry from bankruptcy. The case attracts the attention and criticism of the media and the Auditor General eventually investigates the spending of public money on the 'administrative building' project by the Corporation. The Auditor General is very critical of the way in which the Corporation acted and states that the funding of the project was a sheer waste of public money. C, a voluntary organisation which had applied with the Corporation for the funding of a literacy programme which it intended to implement in a developing country and whose

application was denied wishes to challenge the Corporation's decision to fund the 'administrative building' in State B. What are its prospects?

- A2. The Medical Council has a power and a duty at law to remove any medical practitioner who in its opinion is 'no longer fit to practice medicine' from the Medical Register. Following a number of reports on incidents of malpractice involving Dr X and on his state of mind the Council commences proceedings against Dr. X with a view to his removal from the Register. At the hearing Dr. X is not allowed to be assisted by a lawyer on the ground that the Council considers that the proceedings are 'in substance an examination of the Doctor's personality which is medical rather than legal in nature'. The Council concentrates on two reports of medical malpractice in particular and does not allow Dr X to bring forward any evidence concerning his behaviour in other cases but it allows him to make submissions on the two cases. The Council concludes that it emerges very clearly from the behaviour of Dr. X in the two particular cases that he is no longer a person fit to practice medicine. Moreover in its decision the Council also states that the eccentric behaviour of Dr. X at its hearings leave it in no doubt about the correctness of its decision however harsh that decision may be and whatever its consequences. Following the decision Dr. X's lawyer sends a judicial protest to the Council complaining of its failure to give Dr. X a fair hearing. The Council's lawyers reply that the Council's decision was taken after the Council had the opportunity of observing Dr. X's behaviour which enabled the Council to form a view of Dr. X and of his personality which no other authority could effectively review. Advise Dr. X.

SECTION B

- B1. S is the owner of a piece of land which he wishes to develop to its maximum potential. For this purpose he engages Architect T who draws up two plans for a possible development. T warns S that one of the plans shows a building which is higher than what is permitted in similar areas but also informs him that given that these height restrictions have not been made specifically applicable to the area where S's land is situated there was a possibility that a permit would still be issued on the basis of what he describes as a 'legal loophole'. T however warns S that there is a risk involved. S agrees to the proposal and in fact T manages to obtain the permit for the higher building after adopting a strong attitude towards the employees of the planning authority. When the building is almost completed a number of people living in the area protest and claim that given the height limitations in similar areas the planning authorities should never have issued the permit. Faced with a lot of pressure from the media, allegations of discrimination and corruption and public calls for the board of the planning authority to resign, the planning authority decides to revoke the permit issued to S and to substitute it immediately with another permit for a building of a lesser height claiming that it had been misled by T into issuing the permit and that the height limitations which T claimed not to have been applicable were in fact legally applicable on the basis of the principle of equal treatment. The Planning Act (fictional) grants the planning authority the right to revoke any permit issued on the basis of materially false or misleading information without having to pay any compensation. Advise on the prospects for S.

B2. About 60 years ago E's grandfather illegally built a farm in an area of barren land which was known to be prone to flooding. Because of the flooding problem the farm was built in an area where it was higher than its surroundings and the farm did not suffer significant flooding problems for many years. The surrounding area was eventually developed, mostly for recreational activities but at one point the Government decided to implement an elaborate road construction and regeneration project in the area. As a result of the project E's farm, which E had in the meantime inherited from his father and grandfather, ended up being at a lower level than its surroundings. By the time when the Government's project was implemented the illegality of the building used by E was generally forgotten by the authorities who also assisted E by constructing conduits for the drainage of the property in the event of heavy rain. At one point however a heavy storm hit the area with levels of rainfall the likes of which had not been recorded for the last 50 years. E's farm was flooded and E suffered a huge amount of damages. Advise E on his prospects of success if he were to sue Government also considering the eventuality of the authorities discovering the original illegality of the building.

SECTION C

- C 1. "A decision is arbitrary if the decision maker is unresponsive to reasons for giving one decision rather than another." Discuss this statement with reference to the duty to give reasons for decisions and the role it plays in administrative law.
- C 2. "It can be procedurally unfair to disappoint an expectation without a hearing and it can be substantively unfair to disappoint an expectation." Discuss
- C 3. "The importance of the principle of proportionality in modern Administrative Law can hardly be overstated." Discuss
- C 4. Explain the ground of 'violation of the law' as a ground for judicial review of administrative acts. To what extent is it correct to state that this ground is mainly about errors of fact and not about errors of law?
- C 5. "The question is whether a fair-minded and informed observer, having considered the facts, would conclude that there is a real possibility that the tribunal was biased." Discuss this statement with reference to the role played by courts and court-like tribunals in ensuring the fairness of administrative justice.

UNIVERSITY OF MALTA
FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
PBL 2015 – ADMINISTRATIVE LAW
MAY/JUNE 2013 EXAMINATION SESSION

LL.B. II

13th September 2013

TIME 9.15AM – 12.15PM

Answer 4 Questions in all as follows:

Question A.1 OR A.2 from SECTION A
AND
Question B.1 OR B.2 from SECTION B
AND
Any TWO other questions from SECTION C

Marking Scheme:

Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each

SECTION A

A.1 The Roads Authority is in charge of the proper maintenance of roads. As part of a routine road maintenance project the Authority engages a contractor to carry out maintenance on two tunnels forming part of a major highway each of which only takes traffic going in one direction. The Authority also binds the contractor to place adequate road signs in order to avoid danger to road users during the execution of the maintenance works. The contractor decides that he needs to close one of the tunnels and to leave the other open to be used as a two way road (when it is normally used to take traffic going only one way) during the execution of the works. The contractor places minimal road signs, just in front of the two entrances to the tunnel, indicating that the road is being used two way instead of one way. After a number of 'near misses' the contractor calls the Police asking them to regulate the flow of traffic whilst the maintenance works are being carried out. The Police send two police constables from the local Police station who do their best to direct traffic to use one of the tunnels two-way. Whilst doing this work one of the policemen notices a vehicle being driven by a driver who was obviously under the influence of drink and stops it. Whilst the policeman is demanding that the driver takes a breathalyser test he ceases directing traffic and a head-on collision ensues between a driver who, given lack of notice, drove into the tunnel under the impression that he was driving in a one-way system and another oncoming vehicle the driver of which had been directed to proceed into the tunnel from the other end against what was normally a one-way system. A, the driver who upon the directions of the policeman at the other end of the tunnel drove his vehicle against the normal one-way system and who suffered damages as a result of the accident wishes to sue for damages. Advise him on his prospects of being successful in an action against the Roads authority and the Police.

A.2 The Commissioner for Refugees, after reviewing the application for refugee status by B, only on the basis of his written application refuses B refugee status on the ground that there were areas in B's country of origin where B would not suffer a well-founded fear of persecution. At the time when this decision was taken there was a policy of the Ministry of the Interior which favoured the granting of leave to remain in the country to persons in B's situation but this policy was ignored by the Commissioner who was irritated by what he understood as the arrogant tone of B's application. In subsequent correspondence with B the Commissioner states that he was aware of the existence of the policy at the time when he gave the decision in B's case but argues that strictly speaking he was only bound to apply the law and was not bound by the policy and that therefore the existence or otherwise of the policy was irrelevant to the decision. He also maintains that his decision not to grant refugee status or leave to remain in the country was substantially just and that he saw no reason why it should be revoked. Advise B who wishes to seek judicial review of the Commissioner's decision.

SECTION B

B.1. C, a businessman, imports a container load of an oriental drink. The label on each bottle claims that the drink 'can help you calm down and enjoy life'. The Health Authority gets to know about the importation of the drink and, after it is reported that a small number of people were admitted to hospital after consuming it, the Health Authority becomes worried that if consumed in nightclubs in conjunction with alcohol the drink could cause serious health problems. The Authority has no legal power to stop the distribution of such drinks but under the 'Drugs and Herbal Remedies Act' (fictional) the Minister responsible for Health may add 'any disease he deems fit' to a list of diseases in the Schedule of the Act and upon such addition being made 'no product claiming to provide a cure in respect of such disease may be advertised or sold other than from a licensed pharmacy'. The Minister of Health issues regulations whereby 'depression' is added to the Schedule of the Act and stocks of the imported drink are immediately seized from all shops, nightclubs and other places of business other than pharmacies. C, who is now faced with claims for refunds from the businesses to which he had sold the drink writes to the Health Authority indicating that there are other drinks freely available on the market which have the same composition and claims that the dangers of his drink had been blown beyond all proportions by the media and particularly by two journalists who receive sponsorships from his competitors. The Authority writes back rejecting C's claims and in order to demonstrate its fairness it also orders the seizure of the other drinks indicated in C's letter as having the same composition of C's drink. Discuss the legal prospects of C who still wishes to proceed against the Health Authority and of E whose stocks were seized by the Authority on the basis of C's letter..

B.2. D, owns a field in an area considered by the Department of Agriculture as being one of high quality agricultural land. The field is also within walking distance of a much frequented summer entertainment area and is ideally situated for conversion into a car park during the Summer months. A law authorizing the Department of Agriculture to stop the conversion of high quality agricultural land to other use is pending in Parliament and has not been passed due to other pressure on parliamentary time. The operation of a car park, however, requires Planning permission. When D applies for Planning permission to operate the car park in the area the Planning Authority refuses the application immediately on the ground that the conversion of the land into a car park goes against a long established policy of the

Department of Agriculture in favour of the preservation of high quality agricultural land and would therefore go against the public interest in general. D requests a hearing but his request is refused.

D, who is in a position to prove that he would be able to restore the land to a high level of agricultural quality when the Summer is over wishes to challenge the decision of the Planning Authority which he can only appeal 'on a point of law'. D also wishes to claim damages. Advise D.

SECTION C

C. 1. The Administrative Justice Act establishes a number of principles of good administrative behaviour. Outline these principles.

C. 2. To what extent can it be correctly stated that the subjection of governmental action to the rules of natural justice render growing Governmental powers more "tolerable"?

C.3. "Administrative legislation is traditionally looked upon as a necessary evil, an unfortunate but inevitable infringement of the separation of powers". Discuss this statement also making reference to the legal framework within which subsidiary legislation is issued and controlled in Maltese Law.

C.4. Discuss the main principles which regulate the liability of public authorities for damages caused by administrative acts.

C.5. Explain how the principle of proportionality is applied in Administrative Law.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2nd and 3rd YEAR
MAY/JUNE 2015 EXAMINATIONS

EXAMINATION: PBL2015 – ADMINISTRATIVE LAW

DATE: Friday 12th June 2015

READING TIME: 10.00AM to 10.05AM

DURATION OF EXAMINATION: 10.05AM to 1.05AM

Answer: Question 1(a) or 1(b) AND question 2(a) or 2(b) AND, any two other questions from questions 3, 4, 5, 6 and 7.

Questions 1 and 2 carry 17 marks each ; Questions 3, 4, 5, 6 and 7 carry 33 marks each.

1. (a) A applies for a permit to demolish a house and to construct a nine storey block in its stead. His application is approved under a 'deemed approval' scheme whereby if an application is submitted and no reply is received within eight weeks the permit is deemed to have been approved and the applicant has the right to demand that it be issued by the Planning Authority without further procedures. Upon realising about the approval of A's application, a number of neighbours protest with the responsible Minister and with the Planning Authority that such a high building would ruin the skyline and would practically condemn them to live in permanent shade. The Planning Authority holds that once the permit was issued it has no power to withdraw it and rejects the complaints. The Minister on the other hand considers that the 'deemed approval' scheme is not so final and that the Planning Authority had a right at law to intervene and withhold the permit within 20 days from when the permit was deemed to have been approved. The Minister therefore invokes his power at law to 'issue directions of a general nature to the Planning Authority' to order the Authority to reduce the number of storeys of the proposed building to four. Without disclosing the Ministerial direction, which the Planning Authority holds to be invalid, the Planning Authority organises a hearing for all interested parties after which it declares that it is withholding the permit. The 20 day time limit has however lapsed by the time that this declaration is made. Neither A nor the neighbours are happy with the permit for a four storey building and both wish to challenge it for opposite reasons. What is their way forward?

(b) **B** is the owner of a plot of land which can only be developed if another small piece of land were to be added to it for the purpose of road formation. He therefore asks the Land Authority to expropriate a small adjoining piece of land which belongs to **C** under a procedure which allows the Authority to expropriate property "on behalf of third parties" at the expense of the requesting private party. The Authority is not convinced that there is the necessary public interest in the development of **B**'s land and refuses his request. **B** reacts by offering to the Authority the right to use part of his proposed building as Government offices free of charge for a period of ten years should the expropriation and the development go through. The Authority finds this proposal attractive since some Government offices in the same locality are under threat of eviction. The Authority therefore reverses its decision about the absence of a public interest in the expropriation of the adjoining land subject to **B** accepting in writing beforehand to allow the Government to use part of the proposed property as **B** has promised. **B** signs up to this obligation and **C**'s land is expropriated at **B**'s expense. Advise **C** as to the grounds on which he may seek to challenge the Authority's decision.

2. (a) **D** was dismissed from service with a public corporation on two grounds namely (1) unauthorised absence from duty and (2) taking an active part in politics against the rules of the corporation. **D** seeks review of the decision of the Corporation to dismiss him before a Review Tribunal established by a Collective Agreement between the Corporation and the Trade Union representing the employees of the Corporation. The Review Tribunal finds that the rules of natural justice were not followed with regard to the charge of active participation in politics since **C** was never made aware that there was a corporation rule against this and moreover it was not at all uncommon for employees of the Corporation to take an active part in politics. The Tribunal also finds that the evidence upon which the Corporation decided that **C** was absent from duty was ambiguous. However the Tribunal holds (1) that it was sufficient for the Corporation to prove one ground of dismissal and (2) that the question of ambiguity of evidence as to absence from duty was a finding of fact and not of law which fell outside the jurisdiction of the Tribunal as a Review Tribunal since it was inherent in a process of review that the facts were not to be re-assessed under any circumstances. **C**'s dismissal is therefore confirmed. Advise **C** as to the grounds upon which he may seek to challenge the Review Tribunal's decision.

(b) A new Lawyers Act establishes a Bar Council for Advocates and the Act authorises that Council to issue regulations establishing the "conditions under which an Advocate shall have the right to practice". Concerned that the number of Advocates is increasing in a manner that may disrupt the market for legal services the Council issues a regulation barring the enrolment of any person who has reached forty-five years of age as an Advocate and also providing that no person over seventy years of age may practice as an Advocate. **D** is 46 years old, has passed his Bar Exams but is denied a warrant to practice as an Advocate. **E** is seventy years old and received a letter from the Council demanding that he should return his warrant. Both **D** and **E** wish to challenge the regulation, which as subsidiary legislation has force of law, as 'ultra vires' the Council's powers. Advise **D** and **E**.

3. "Governmental liability has remained a province of administrative law mainly regulated by judge made law despite attempts to regulate it by statute." Discuss.

4. What are the main advantages and disadvantages of providing for disputes between the Government and individuals to be decided by statutory tribunals rather than by the ordinary courts?

5. Outline the controls and safeguards against the misuse or misapplication of delegated legislation.

6. What grounds of judicial review would be mostly of assistance when a decision of a public authority is outrageous, vindictive or defies logic?

7. In the Maltese legal scenario to what extent can it be stated that through the power of judicial review Administrative Law vests in the Courts the nature of a 'second sovereign' apart from Parliament?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2nd YEAR
MAY/JUNE 2016 EXAMINATIONS

EXAMINATION: PBL2015 ADMINISTRATIVE LAW

DATE: FRIDAY 17th JUNE 2016

READING TIME: 10.00AM TO 10.05AM

DURATION OF EXAM: 10.05AM TO 1.05PM

**Answer: Question A1 OR A2 from SECTION A,
AND
Question B1 OR B2 from SECTION B,
AND,
Any TWO other questions from SECTION C:**

**Questions in SECTION A and in SECTION B carry 17 marks each;
Questions in SECTION C carry 33 marks each.**

SECTION A

A1. A applies for a permit to demolish a house and to construct a ten storey apartment block instead. The application is processed by B his cousin who works at the Planning Authority. B recommends to the Planning Authority Board that the application should be approved despite the fact that according to Planning Policies buildings in the area should not exceed eight storeys. Knowing B to be a reliable and meticulous employee the Planning Authority Board unintentionally overlooks the details of the application and approves it.

The issue of the permit raises a nationwide controversy and the Minister responsible for planning appoints a Board of Inquiry to investigate the matter.

The Board of Inquiry only hears the evidence of the Secretary to the Planning Authority Board and concludes its report by recommending that the building permit issued to A be revoked.

The Planning Authority Board revokes the permit believing that it is bound by the recommendation of the Board of Inquiry.

In the meantime A has already completed works on the foundations for a ten storey building which are around twenty per cent more expensive than those for an eight storey building.

The revocation of the permit is subject to an appeal to the Court of Appeal "on a point of law". Advise A what "points of law" both in his favour and against him, the above situation gives rise to.

A2. Under income tax laws the Commissioner for Revenue is entitled to issue a "best of judgment" tax assessment upon any person whose tax return the Commissioner considers to be unreliable in that the Commissioner considers it likely that a substantial part of the income of the taxpayer remained undeclared. The "best of judgement" assessment entitles the Commissioner to establish the amount of the taxpayer's income himself after calling upon the taxpayer to provide proof of the amount declared "if the Commissioner considers it appropriate" to do so.

C, a second hand car dealer, files his income tax return and declares a loss.

Knowing the extent of C's business activity and his high standard of living the Commissioner considers that the situation cries for a "best of judgement" tax assessment. Without calling upon C to give an explanation the Commissioner issues such an assessment establishing C's income at a very high level.

C files an objection to the assessment complaining, amongst other matters, that he was not heard before the 'best of judgement' assessment was issued upon him but the Commissioner replies that he had good reason not to send for C before issuing the assessment since C's declaration "verged on the ridiculous".

There is a right of appeal to the Administrative Review Tribunal from the Commissioner's refusal of an objection but previous case law, dating back around thirty years, has held that the Commissioner's discretion under the law to decide whether to send for a taxpayer before issuing a "best of judgment" assessment is not reviewable.

What do you consider C's prospects to be if he were to file an appeal on the merits of the assessment which would however also raise the issue of fair hearing as a preliminary matter?

SECTION B

B1. D's agricultural land is expropriated for the purpose of enabling the realisation of the development of a tourist village by an international package tour operator. After the expropriation the development planning status of the land is changed and whereas whilst the land was in C's ownership it's only permitted use was for agricultural purposes, once the land passed to Government ownership the permitted use was changed to enable the land to be developed.

This change enabled to Government to demand a high price for the land when transferring it to the international package tour operator whilst only being exposed to pay C a low price for the land as agricultural land.

Feeling that he has been cheated, C seeks your advice about whether he can challenge the expropriation and the subsequent change in planning status in Court. Advise C.

B2. The Minister responsible for Social Security comes under pressure in the media to introduce a benefit granting compensation to persons who suffer personal injury as a result of accidents in the home.

It is considered that the introduction of such a benefit would place too big a burden on public funds and the Government rejects a proposal by the Minister for Social Security to introduce such a benefit.

However, as a compromise the Minister is allowed to grant *ex gratia* compensation in “deserving cases where the results of an accident in the home are considered to be devastating on an individual’s life”.

A compensation scheme is therefore launched with much publicity but the scheme is not legislated but it is operated on the administrative level on the basis of a Cabinet decision.

Both D and E have suffered severe accidents in the home as a result of which they both lost their jobs.

D is granted “*ex gratia*” compensation under the scheme whilst E is refused compensation on the ground that he has not produced sufficient evidence that the accident happened in the home and that his case was not a “deserving case”. No further explanation was given of either of the two reasons given.

When E writes to the Minister to object to the refusal he is informed that “the compensation scheme is not regulated by law” and therefore does not confer any right on any person, to the “*ex gratia*” compensation which it provides for”.

Advise E about his prospects in challenging the refusal.

SECTION C

C1. Article 469A of the Code of Organisation and Civil Procedure includes two grounds of judicial review, namely “violation of the Constitution” and “when the administrative act is otherwise contrary to law” which appear repetitive. Do these grounds provide any added value to the article in view of the other grounds of judicial review which it includes?

C2. Explain the nature of Administrative Law. What is the constitutional significance of this branch of public law?

C3. Is it correct to state that for one to be entitled to the protection of Administrative Law it is not necessary for one to have acquired a 'right' but it is enough to have a 'legitimate expectation'? Explain to what extent this is or is not the case.

C4. "The Maltese legal system has naturally laid to rest any immunity of the Government from suit that was based on the exercise of powers of a '*iure imperii*' nature for at least forty years." Discuss.

C5. "Delegated legislation is nothing but a tool in the hands of Government to escape the scrutiny of Parliament when legislating. It is the legislator's equivalent of having the cake and eating it". Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2nd YEAR
SEPTEMBER 2016 EXAMINATIONS

SEPTEMBER 2016 EXAMINATION: PBL 2015 ADMINISTRATIVE LAW (80%)

DATE: 5th SEPTEMBER 2016

READING TIME: 8.30AM TO 8.35AM

DURATION OF EXAMINATION: 8.35AM to 11.35AM

INSTRUCTIONS TO STUDENTS:

Answer: Question 1(a) or 1(b) AND question 2(a) or 2(b) AND, any two other questions from questions 3, 4, 5, 6 and 7.

Questions 1 and 2 carry 17 marks each; Questions 3, 4, 5, 6 and 7 carry 33 marks each.

1. (a) Acting upon information which he could not legally disclose due to a law on the protection of informants the Director of the Department of Overseas Trade decides that Mr. Atkins, an employee of the Department, should be required to resign or, if he refused, be dismissed from the Department. The Director sends for Mr. Atkins and, without telling him of the information which he was basing his demand upon, asks him to resign, in default of which he would be dismissed. Atkins resigns under protest but later, feeling that he had been tricked, decides to challenge the decision of the Director on the ground that it was taken in breach of natural justice. What are Mr. Atkins' prospects?

1. (b) Under a newly enacted "Requisitioned Premises (Compensation) Act", the owners of immovable property which had been requisitioned under a previous law are given a right to apply to a Compensation Commission in order to demand a fair and reasonable compensation for the prejudice which they suffered as a result of requisition orders.

The law included the following two conditions:

- (i) The applicant for compensation must have been the owner of the requisitioned premises on the 1 January 1960
- (ii) A successor in title to the premises must have acquired the premises not later than the 1 January 2000 (the date when the law that enabled such requisitions had been repealed):

Mr. Berry was the owner of requisitioned premises who had transferred the premises after the 1 January 2000 but who was the owner on the 1 January 1960. When he files the application for compensation he is told by the Commission that his application could not be received since his successor in title had not acquired the premises before the 1st January 2000.

Mr. Berry challenges the Commission's decision by means of an action before an Administrative Review Tribunal but the Tribunal decides that the interpretation of the conditions laid down by the law fell within the jurisdiction of the Commission and that it was not up to the Tribunal to overturn a decision of the Commission made on a point of law which fell within the jurisdiction of the Commission to decide.

Mr. Berry feels that as a person who owned the premises on the 1st January 1960 he had a right to request compensation irrespective of future transfers of the property and that both the Commission and the Tribunal had wrongly interpreted the law. What are Mr. Berry's prospects in an appeal on a point of law from the decision of the Tribunal?

2. (a) Due to the need to speed up the hearing of court cases the Government identifies certain categories of cases which may be referred to Tribunals set up by law for the purpose and which will be presided by practicing lawyers acting as part-time chairpersons of the Tribunals.

Mr. Smith is involved in a civil case concerning a boundary wall and his case is one of those which according to a new law is referred to a tribunal. The part-time chairperson of the tribunal is a lawyer who until two years before used to form part of the same law firm from where the lawyer appearing for Mr. Smith's opponent in the case comes.

Mr. Smith feels that this situation creates an "appearance of bias" and is in breach of his right to a fair trial. He therefore instructs his lawyer to ask the chairperson of the tribunal to refrain from hearing the case but the chairperson decides that the ground raised by Mr. Smith has no basis in written law and that he would be acting in breach of the law if he had to accept to step down on that ground. The law permits an appeal on a point of law from such a decision. How do you evaluate Mr. Smith's prospects giving due account to the right to a fair trial?

2. (b) The Commission for Equal Opportunities received a complaint that a firm of estate agents was committing acts of unlawful discrimination in the course of its business as an estate agent. The Commission initially carries out its own preliminary investigation of the facts and considers that there are enough grounds to issue a warning to the firm of estate agents. The issuing of a warning in such circumstances is authorised by law and the warning does not impose or imply any civil or criminal penalties. It does however cause reputational damage. Before issuing the warning the Commission notifies the firm of estate agents of the complaint made against it and grants the firm an opportunity to make both written and oral submissions. The firm files the written submissions in which it rebuts the complaint made against it and asks for an oral hearing and for an opportunity to cross-examine the persons who made the complaint. The Commission grants the oral hearing but denies the request for cross-examination. The firm's lawyers attend the oral hearing and make their submissions, including submissions that they were denied the right to cross-examine the complainants and that the proceedings were not fair. The Commission decides to issue the warning notwithstanding the absence of cross-examination since it considers that the proceedings before it are only investigative in nature and that it is under no duty to allow the cross-examination of the complainants. The firm of estate agents wishes to contest the warning issued by the Commission in judicial review proceedings. On what grounds may such proceedings be based?

3. "Some grounds of judicial review are not concerned with the decision but with the decision making process". Which are these grounds and how do they protect the individual against abuse by public authorities?

4. "The need for Government to speedily collect amounts which are clearly due to it justifies the existence of special procedures to collect such amounts but due regard must also be paid to the substantive and procedural rights of the alleged debtor." Discuss whether, and if so how, the provisions found in the Maltese Code of Organisation and Civil Procedure on special proceedings applicable to Government dues and to eviction from public lands seek to establish such a balance.

5. Explain the changes to the Maltese Administrative Justice system brought about by the implementation of the Administrative Justice Act.

6. What are the main written laws and leading court decisions which can be said to regulate the issue of Governmental liability in tort in contemporary Maltese Administrative Law?

7. "In the absence of a comprehensive system of legal aid, judicial review remains inaccessible to large numbers of people and other Administrative law remedies are therefore essential for the maintenance of a truly accessible system of Administrative Law." Discuss.

UNIVERSITY OF MALTA

FACULTY OF LAWS

MA ADVOCACY/ MA-NOTARIAL STUDIES/ LL.D. III YEAR (2016-2017)

JUNE 2017 EXAMINATIONS

EXAMINATION: PBL 2015 ADMINISTRATIVE LAW

DATE: 15th June 2017

DURATION OF EXAMINATION: 10AM to 1.05 PM

INSTRUCTIONS TO STUDENTS:

Choose question 1A or 1B and 2A or 2B and any other two out of questions 3,4,5 and 6.:

Questions 1 and 2 carry 17 marks each whilst the other questions carry 33 marks.

1A. The local village feast day is approaching and a number of hawkers are applying with the Local Council to set up stalls in streets and squares in the village on the feast day. A, who runs a bar in a prominent square in the village files a number of applications in the name of his employees for the setting up of stalls on the square. The Local Council rejects all the applications summarily, arguing that the applications were not made in good faith but were intended only to eliminate competition with A on the sale of food and drink on the square on the feast day. Viewing this as an opportunity to raise some much needed funds the Council instead allocates the stalls to a businessman for a considerable sum also granting the businessman the right to re-allocate the stalls himself. The law grants the Local Council the authority to authorise the putting up of stalls but it is silent about any further arrangements for re-allocation. It is however a general principle that licences are personal although there is nothing specific in the law about that. At the end of the day, A ends up buying out the businessman and obtains all the stalls on the square. When the feast is over he seeks legal advice as to whether he could sue the Local Council to try and get the money which he paid to the businessman back. What are his prospects?

1B. The Local Markets Act grants the Director of Trade the power to revoke a commercial licence or to suspend the licence for a maximum of two months in cases where the holder of such licence has

not abided by licence conditions, has failed to obey orders given to him by a public authority or committed misconduct in his dealings with customers. The decision of the Director to revoke a licence is subject to an appeal to the Local Markets Tribunal with a right of appeal on a point of law to the Court of Appeal. There is however nothing in the law about the manner in which to impugn a suspension of a licence for a maximum of two months. After receiving reports that B, a commercial licence holder, was being persistently being rowdy and aggressive towards customers and was disobeying every order given to him by the police, the Director of Trade uses his power to suspend B's licence and merely informs B of his decision and of the period during which the licence was being suspended. When B writes back through his lawyer to contest the decision and to demand a hearing the Director informs him that given that a mere suspension of a licence, as distinct from a revocation, does not have 'grave' consequences and given that the law itself does not provide any means to challenge such a decision specifically for this reason, he saw no point in taking the matter further. Advise B.

2A. Following a scare about the possible effects of a particular vaccination given to babies, many parents start avoiding vaccinating their children on the basis of a number of reasons, such as claiming to suffer from a specific condition. Some time later there is an increase in the number of infectious diseases reported in children's nurseries and a Local Council issues a bye-law stating that no child who has not been vaccinated may be admitted to a State nursery in the locality. C whose child is refused admission to the nursery on the ground that he has not been properly vaccinated challenges the decision arguing (a) that the vaccination is not effective in any case, (b) that given that the rule on exclusion of unvaccinated children only applies in one particular locality it is disproportionate and discriminatory. The Local Council stands by its position arguing that this is a public health issue about which it can make no compromises irrespective of the regulations applied elsewhere. Discuss C's prospects in an action for judicial review.

2B. C is sentenced to five years imprisonment for drug trafficking. At the time when he was sentenced the Prison Regulations provided that prisoners would be eligible for home leave after they would have served one-third of their sentence. Following a number of incidents where prisoners on home leave were involved in the commission of crimes the Prison Regulations are amended in order to make eligibility for home leave subject to the condition that the prisoner must have served at least one-half of the sentence. The amending regulations include a 'transitory provision' stating that the regulations are applicable immediately but that those prisoners who have already been granted the possibility of home leave under the previous legal regime may retain it. C has not yet served one-third of his sentence and therefore has to wait until he would have served one-half of the sentence before becoming eligible for home leave. He feels that the amending regulations have deprived him of an acquired right or at least that they have been unfair in depriving him of a substantive legitimate expectation. Discuss C's chances if he had to try to challenge the applicability of the amending regulation to him.

2. "Judicial review is both about the procedural and about the substantive elements of acts of the Administration." Discuss this statement with reference to the grounds for judicial review applicable in the Maltese Courts.

3. "Maltese case law on the liability of the administration in tort has seen a shift from "officers' liability" to "State liability"". Discuss.
4. Outline the importance of the principle of proportionality in Administrative Law.
5. Give a brief overview of an "Ombudsman type" remedy. To what extent can it be stated that such a remedy is an "Administrative Law remedy"?
6. Discuss the purposes, importance and dangers of 'delegated legislation'. Is such legislation subject to effective controls?

University of Malta
Faculty of Laws
May/June 2018 Examinations

PBL2015 –Administrative Law

Date: Monday 4th June 2018

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

INSTRUCTIONS TO STUDENTS:

This exam paper is divided into 2 sections: Section A (34 marks) and Section B (66 marks).

SECTION A: Answer Questions 1A OR 1B AND 2A OR 2B

1(a). The judicial authorities of another Member State of the European Union issue a European Arrest Warrant against A, a citizen and resident of Malta. The purpose of the warrant is for A to answer to criminal charges of human trafficking in that State. In Malta the European Arrest Warrant is implemented through regulations issued under the Extradition Act. Those regulations require that the Maltese authorities should execute European Arrest Warrants issued by other EU Member States if these satisfy the conditions provided for in the regulations. A, contends that the regulations were issued without the necessary legal basis and contained various crucial provisions which exceeded the authority given to the Minister to issue regulations under the Extradition Act. He files an action claiming that the regulations are null and void since the Minister was not competent to issue them and also since the Minister in issuing the regulations had abused his power since he had used the legal authority to issue regulations for a purpose which was totally different from that for which that power was given to him under the Extradition Act. The Government replies that the action was wrongly directed and that article 469A of the Code of Organization and Civil Procedure under which the action was filed is irrelevant to such situations. Discuss A's prospects. **(17 marks)**

OR

1(b) Following many instances where motor vehicles which were found on the road in a dangerous state were found to have been certified as roadworthy by B, who holds a license as a 'vehicle tester', two undercover journalists visit B's vehicle testing garage with an old and unmaintained vehicle which they obtained from a person at the entrance of a scrapyard where he intended to scrap it. B tells the journalists that he will do his best to see that the vehicle passes the roadworthiness test and after some magical fiddling with the equipment the vehicle is issued with a 'Passed' certificate. The two journalists then proceed to produce a television documentary about the shortcomings of vehicle roadworthiness testing. B is not referred to directly in the documentary but, knowing his history, officials of the Roads

Authority, easily guess that it must have been him. The Roads Authority sends its officers to immediately close down B's vehicle testing facility and to inform B that both his license and a bank guarantee which he had been required to issue in order to guarantee observance of the conditions of his license were being withdrawn. The officers are instructed not to engage in any unnecessary conversation with B or to give any reasons other than informing him that he had 'brought this upon himself'. B later discovers that the journalists had been tipped off by an employee of the Roads Authority who had access to the Authority's confidential information and whose brother was about to open another vehicle testing facility not far from B's garage but the law on the licensing of vehicle testing facilities provides that the Roads Authority may withdraw licenses for such facilities 'in its absolute discretion if the holder of the license acts in any manner that is fraudulent, misleading or devious'. Advise B. **(17 marks)**

AND

2(a) A School Curriculum Committee is established by the Headmaster of a Government school with a remit of selecting books which are to form part of the school's syllabi. In selecting the members of the Committee the Headmaster acts on the premise that the Committee's standing would benefit if its members were themselves known authors of children's books known in the community. Many of the authors selected however have written books which they are themselves proposing to the Committee for the school syllabi. The Headmaster who chairs the Committee and is aware of the rule of 'nemo iudex in causa propria' and adopts a procedure for the Committee whereby when the books were being assessed an individual member whose book was being considered would withdraw from the Committee meeting. However the member would still participate in the Committee's deliberations when the books of other Committee members were being considered. Otherwise the Committee could not function and the Headmaster feels that this situation, albeit not ideal, is covered by the 'doctrine of necessity'. Committee members act prudently and in the end only about 25% of the books selected are books written by Committee members. C whose book is not selected due to the selection of a book of a Committee member in the same category wishes to challenge the Committee's decision to reject his book and the Headmaster's decisions on the composition and the procedure of the Committee. Advise C. **(17 marks)**

OR

2(b) Under legislation enacted during the Second World War to ensure the supply of essential services to the community but retained in force even more than seventy years thereafter, the Department of Trade issues regulations whereby it prohibits anyone from dealing in cosmetics without a special license from the Department itself. The regulations provide for a power of the Department to grant an exemption from the licensing requirement. The Department then adopts a policy whereby such exemptions are granted automatically to licensed pharmacies. D, who after being released from prison on parole following a sentence for money laundering wishes to set up herself in business as a beautician is refused a license to deal in cosmetics since the Department considers that the

issuing of the license would facilitate future money laundering and prevent her rehabilitation. The regulations do not include rules establishing the grounds upon which a license may be denied and D feels that the denial will in fact prevent her re-insertion into society. What are D's prospects? **(17 marks)**

SECTION B: Answer ANY TWO (2) Questions (33 marks each)

3. 'Maltese Administrative Law is English Administrative law applied in Malta' Discuss.
4. 'If the State respects the Rule of Law and the Separation of Powers there is no need to codify the grounds of judicial review of administrative action.' Discuss this statement with reference to Article 469A of the Maltese Code of Organization and Civil Procedure.
5. "There is no point in discussing Governmental liability in tort as though it were distinct from liability in tort applicable to all in general." Discuss
6. 'Delegated legislation is subject to a number of Constitutional and Parliamentary limitations and controls' Discuss.
7. Outline the meaning and relevance of the principles of 'reasonableness' and 'proportionality' to Maltese Administrative Law.

**UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2018 Examinations**

PBL 2015 – ADMINISTRATIVE LAW

Date: Monday 3rd September 2018

Duration of Examination: 8.30am-11.35am

INSTRUCTIONS TO STUDENTS:

This exam paper is divided into 2 sections: Section A (34 marks) and Section B (66 marks).

SECTION A: Answer Question 1A OR 1B AND 2A OR 2B

1(a). A's uncle was a small businessman who held a licence to sell refrigerated goods from a mobile kiosk which he used for the purpose of selling milk.

When the uncle was about to retire, he offered A the transfer of his licence. A, also a trader, was not interested in selling milk but was interested in obtaining the licence as long as the conditions would be changed to allow him to sell clothes. He therefore agreed with his uncle to pay him compensation for the transfer of the licence as long as the conditions could be changed to allow for the sale of clothes.

When the current licence term expired and was up for renewal, A and his uncle went to the Department of Small Businesses (the 'Department') and requested a change in the conditions of the licence to allow for the sale of clothes instead of refrigerated goods. The clerk in attendance, an acquaintance of A, immediately obliged and issued a renewed licence to A authorising the sale of clothes.

In his haste to finish the job the clerk overlooked the fact that the regulations governing the issue of such licences provided explicitly that a licence renewal had to be on the same terms and conditions and that therefore the condition could not be changed.

A pays the compensation to his uncle and goes into business selling clothes and immediately causes turmoil in the market where he sets up his stall since other traders allege that he is selling smuggled counterfeit goods at low prices on which they cannot compete.

After a complaint by a competitor asking for the investigation of the regularity of A's licence, the Department reviewed the file and the Director noticed the illegality in the

change in the condition and took immediate action by revoking A's licence and instructing the Police to enforce the revocation by not allowing A to put up his stall in future.

A feels aggrieved and writes to the department claiming his licence back and pointing to the compensation which he paid to his uncle on the basis of the Department's decision but the Director informs him that he cannot condone an illegality and was bound to follow the law. There was nothing for the Director to add. Advise A

OR

1(b) A big pharmaceutical company requested the issue of a licence from the Health Authority to import and sell medicines to target certain specific ailments. These medicines were known to be produced in developing countries in a manner involving child labour and other forms of human exploitation. The Health Authority examined the application and issued a licence for the importation of the product. A human rights lobby group feels very strongly against this and wishes to file an action for judicial review in order to quash the decision whereby the licence was issued. The group starts off by writing to the Health Authority which is however dismissive in its reply arguing that the group cannot avail itself of judicial review proceedings in respect of a licence which was neither issued nor denied to it. Advise on the prospects should the group still file for judicial review of the decision to issue the licence.

AND

2(a) B entered Malta claiming that he had to leave his country of origin because he was subject to persecution. Upon his arrival he applies for Asylum in terms of the Refugees Act and is called for a long interview with the Commissioner for Refugees. However the Commissioner concludes that B did not actually come from the place where he claimed to hail from and the application for asylum is denied. B feels aggrieved by the decision and is told by a friend that he can institute an action for judicial review before the First Hall of the Civil Court in terms of article 469A of the Code of Organisation and Civil Procedure. It is to be noted that the Refugees Act provides that any person aggrieved by a decision of the Commissioner for Refugees may within 20 days launch an appeal before the Refugee Appeals Board which is a Board established by the Refugees Act and which has a long history of refusing almost every application which is submitted before it. B, on getting to know about the Refugee Appeals Board's record (the Board had dismissed 90 percent of all appeals during the previous three years) comes to you as a lawyer asking you to file a judicial review action instead of an appeal since he feels he has no time and money to waste

on appeals before the Refugee Appeals Board. Advise him what he can expect should if he were to go ahead as he is proposing.

OR

2(b). An illegal fireworks factory is reported to the Police anonymously. The Police upon receiving the anonymous report conduct an on the spot inspection but find the allegedly illegal factory closed. Feeling that there is something to the report they conduct surveillance of the area and when C, the person apparently operating the illegal factory, turns up they ask him what type of activity he was conducting and demand that he provides proof of his licence. C replies that he did not need a licence for his very minor and amateur activity and that he just produced the fireworks, which were not at all powerful, by way of a personal hobby. The police are sceptical about this explanation and they enter the premises forcefully after obtaining a search warrant from a Magistrate as is required by law. The search reveals that the amount of fireworks on site was such as to indicate production on a small but rather commercial scale. The Police immediately confiscate the fireworks and have them destroyed as a danger to public safety. C feels aggrieved by the decision of the police to destroy the fireworks as he claims that such a decision is contrary to law and has no legal basis since there was no law which specifically authorised the Police to destroy anything which they consider to be dangerous. He feels that even if produced illegally (which he contests) the fireworks were produced up to the standards required by law and that it was disproportionate and capricious for the Police to destroy them without testing their quality beforehand. He argues that through this method of operation the Police have imposed a punishment upon him, to the benefit of his competitors, some of whom are friends with the Police, without the necessity of taking him to court and without a finding of guilt. The Police refuse to discuss the legality of their actions or the payment of any damages but despite the lapse of a year they have not charged C in Court claiming to be conducting further investigations and to be awaiting expert reports. Advise C.

SECTION B: Answer Any Two (2) Questions.

3. 'There is no real distinction in substance between what we call 'Constitutional Law' and what we call 'Administrative Law'. The distinction only serves to point to different aspects of the same subject.' Discuss. (33 marks)

4. 'The Court's power to annul an administrative act on the ground that it constitutes an 'abuse of power' or is based on an 'error of fact' is qualified'. Discuss this statement with reference to Article 469A of the Maltese Code of Organisation and Civil Procedure and to case law. (33 marks)

5. To what extent is it correct to state that although Malta has no 'Code of Administrative Procedure' the 'Code of Organisation and Civil Procedure' still lays down specific rules applicable only when the Government is a party to a court case? (33 marks)

6. "In their relations with the public, administrative tribunals shall respect and apply the principles of good administrative behaviour laid down in this Part of this Act" (Administrative Justice Act (Chapter 490 Laws of Malta) article 3(1)). What do these words mean in practice? (33 marks)

7. Briefly outline the subject matter of the judgement in the case of "John Lowell et noe vs Dr. Carmelo Caruana noe" delivered by the Civil Court First Hall on the 14 August 1972 and discuss its relevance in the context of the evolution of Maltese Administrative law. (33 marks)

University of Malta
Faculty of Laws

June 2019 Examination Session

PBL2015 ADMINISTRATIVE LAW

Date: Wednesday 12th June 2019

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

INSTRUCTIONS TO STUDENTS:

This exam paper is divided into 2 sections: Section A (34 marks) and Section B (66 marks).

SECTION A: Answer Sections 1(a) OR 1(b) AND 2(a) OR 2(b)

1. Answer **EITHER** Question (a) OR (b):

- (a) The Act on Standards in Public Life establishes the office of Commissioner for Standards in Public Life with authority to investigate breaches of ethics and abuse of power by Ministers, Members of Parliament and certain categories of members of their staff known as 'persons of trust'. The Ombudsman Act provides that "it shall be the function of the Ombudsman to investigate any action taken by or on behalf of the Government, or other authority, body or person to whom this Act applies, being action taken in the exercise of their administrative functions". A is an inmate at a Correctional Facility who feels that the conditions of his detention are unhealthy and appalling. After unsuccessfully petitioning the Correctional Facility management and its Director A writes to the Minister responsible for the Correctional Facility demanding that steps be taken to improve the conditions of his detention and particularly the bad state of the cell where he is housed. Having received nothing more than an acknowledgment of receipt of his letter despite the lapse of two months, A writes to both the Ombudsman and to the Commissioner for Standards in Public Life claiming abuse of power both by the Director of the Correctional Facility and by the Minister who, he claims, have ignored his letters due to the political beliefs which he used to manifest many years ago. The Ombudsman Act includes a provision whereby the Ombudsman may refrain from investigating a claim if alternative means of redress are available and a case officer at the office of the Ombudsman writes to A informing him that the Ombudsman considers that adequate means of redress are available through the claim made with the Commissioner for Standards in Public Life. Feeling destined

to 'fall between two stools' **A** seeks your advice as to how he should respond to the letter from the Ombudsman's case officer and whether, should the worst happen and both the Ombudsman and the Commissioner for Standards in Public Life refuse to investigate the case, there would be other means of redress which he may resort to. (17 marks)

OR

- (b) A foreign national landed in Malta in 2018. He sought and was granted refugee status under the Refugees Act. In 2019 the Security Service reports to the Minister that it received (confidential) intelligence from a foreign security service that **B** has links to many members of a terrorist organisation and the Security Service therefore proposes to the Minister that he should be removed from Malta 'as a danger to the security of Malta' in terms of Article 9 of the Refugees Act which provides as follows:
- "9. (1) A person shall not be expelled from Malta or returned in any manner whatsoever to the frontiers of territories where, the life or freedom of that person would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (2) The provisions of subarticle (1) shall not apply to a refugee in respect of whom there are reasonable grounds for regarding him as a danger to the security of Malta, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community."***

The Minister informs **B** of his intention to issue an order declaring him as 'a danger to the security of Malta' without giving any further explanation and grants **B** two weeks to make submissions in writing to contest that decision. In his submissions **B** produces evidence of the likelihood of his being tortured or killed if he were to be returned to his native country and also argues that his presence in Malta does not constitute a danger to Malta's security since he was never involved in acts of terrorism. An immigration officer examines **B**'s submissions and recommends to the Minister that an order should be issued for **B**'s removal. **B** is not given a copy of the immigration officer's report and when he is served with the Minister's order of removal he seeks judicial review of the same arguing that the Minister's decision was unreasonable, that the procedures adopted were unfair and that the order for his removal violated Articles 2 and 3 of the European Convention on Human Rights on the right to life and on the protection against torture and inhuman or degrading treatment. You are asked by an NGO working with refugees to give an opinion on the issues raised by the above facts and in particular (1) On the extent to which a reviewing Court can be expected to review the

Minister's decision that **B** constituted a danger to the security of Malta and on the circumstances, if at all, in which such a court would be likely to quash such a decision and (2) On whether the 'rules of natural justice' have been adhered to. (17 marks)

AND

2. Answer **EITHER** Question (a) **OR** Question (b):

- (a) **C** a high ranking civil servant who resigned his post after being involved in an apparent attempt to cover-up of a scandal involving false invoicing (by others unconnected with him) of his department, claims a pension under a special law granting a right to a pension to high ranking civil servants even if they resign prior to reaching retirement age provided they have given the State 'reputable service'. The officer entrusted by the Director of Social Security, who administers the pension scheme, to examine **C**'s claim concludes that **C** did not qualify for the pension as he did not meet the requirement of 'reputable service' even though he was never dismissed and never charged in court or before a disciplinary tribunal for his actions. The Director, without examining the claim any further, adopts the case officer's conclusion and informs **C** that he is not entitled to the pension and that his request is therefore denied. **C** appeals to the Social Security Arbiter who is entitled by law to annul the Director's decision only if he concludes that the decision was 'manifestly unreasonable'. Upon examining the evidence the Arbiter concludes that **C** ought to have been granted a pension and therefore annuls the Director's decision and orders the payment of the pension to **C**. The chain of reasoning of the Arbiter's decision shows that little consideration was given to whether the Director's decision was 'manifestly unreasonable' but it rather indicates that the Arbiter had decided on humanitarian grounds. Nevertheless in its concluding paragraph the Arbiter's decision states that the Director's decision was 'manifestly unreasonable' and was therefore being annulled. The Director is entitled to appeal the Arbiter's decision only on a point of law to the Court of Appeal. Advise him whether such an appeal is worth pursuing or not and for what reasons. (17 marks)

OR

- (b) The 'Farmers' Markets (Regulation) Act' (fictional) ('the Act') regulates the issuing of licences for the operation of market stalls at 'farmers' markets' and requires that persons wishing to operate such stalls have to be licensed by the 'Department of Agriculture' ('the Department'). A section of the Act requires that the Department, in considering whether or not to

issue a licence to any person, should take into account whether it considers that the applicant is a 'a bona fide farmer and a fit and proper person to hold a licence'. Licences to run stalls at farmers' markets are viewed by a number of philanthropic organisations as possible tools for the rehabilitation of a number of persons with a problematic past and the Department is petitioned by a number of such organisations to establish a policy favourable to the social purpose of rehabilitation of such persons. The philanthropic organisations propose that they would arrange for the person concerned to do part-time work on a farm for which they would pay him themselves and then they would assist that person to apply for a stall at a farmers' market in the running of which their personnel would in practice assist him against a share of turnover which would go in part to them and in part to the philanthropic organization. The Authority does not consider it wise to establish such a general policy but, acting only upon the request of an organisation working for the welfare of ex-prisoners, grants a licence to *D* who has just been released from prison after serving time for people smuggling and grievous bodily harm. *E* who had applied for a stall at a farmers' market and has a clean conduct certificate but was not given a licence on account of the fact that the Department considered him as 'an amateur gardener not a farmer' (an analysis which is substantially correct) feels aggrieved by the decision of the authority to grant a licence to *D* and not to him and moreover to grant it despite being aware of the rather convoluted arrangement with the philanthropic organisation. Examine *E*'s prospects if he had to pursue the matter in court. (17 marks)

SECTION B: Answer **ANY TWO (2)** Questions (33 marks each)

3. 'Like the Maltese language, Maltese Administrative Law has many sources but its basis is still clearly attributable to one main basic structure and source.' Discuss this statement with reference only to the sources and structure of Maltese Administrative law.
4. 'Maltese law and case law do not distinguish a separate legal regime or separate rules for governmental liability in tort. Any ultra vires act gives rise to ordinary civil liability. Matters are kept very simple.'. Do you consider this statement as substantially correct and, if so, to what extent?
5. 'The similarities between the Ombudsman Act, article 22 sub-articles (1) and (2) (which deal with findings of the Ombudsman), and 469A COCP, are not a mere coincidence: the law maker intentionally set up one institution to complement the other.' Give your views for agreeing or disagreeing with this statement.

6. Discuss whether and to what extent the laws on 'data protection' and 'freedom of information' reflect the practical application of the Administrative law principles of legality, openness and proportionality.
7. 'There is no effective machinery for the parliamentary control of delegated legislation and judicial control is so restricted that it is only exercised "once in a blue moon"'. Analyse this statement with reference to the procedures for the parliamentary and judicial control of delegated legislation in Malta.

University of Malta
Faculty of Laws

September 2019 Examination Session

PBL2015 ADMINISTRATIVE LAW

Date: Saturday 7th September 2019 Duration of Examination: 8:30AM - 11:35AM

INSTRUCTIONS TO STUDENTS:

This exam paper is divided into 2 sections: Section A (34 marks) and Section B (66 marks).

SECTION A: Answer Sections 1(a) OR 1(b) AND 2(a) OR 2(b)

1. Answer EITHER Question (a) OR (b):

- (a) Company A applies for a building permit which involves the demolition of an old building and its replacement with a high rise building containing a mixture of residential property, a hotel, offices and a shopping complex. The residents of the area, foreseeing the parking, pollution and traffic problems which the building and the process of its construction would cause to them, file a protest with the planning authorities and oppose the issue of the permit before a planning board tasked with deciding upon such matters. The permit is however issued given that the planning board holds that the inconveniences cited by the residents relate to the ordinary inconveniences which one has to bear as a result of living in society. On appeal before the Court of Appeal the residents put forward proof, which they claim not to have been available to them before, to the effect that several members of the planning board had publicly expressed opinions which hinted that they were in favour of the continuation of the project before the board had actually decided. What legal considerations do you foresee the Court of Appeal making? If it were to uphold the appeal and refer the case back to the planning board would a stalemate be created? (17 marks)

OR

- (b) The South American community in Malta wishes to celebrate an important feast and for this reason it asks for the closure of a main and very commercial street on a Saturday morning. The Police grant the request as a matter of course after providing for the necessary alternative traffic

arrangements. In practice the holding of the feast means that many shops which sell high end fashion goods will lose an important day of business. The association of shopkeepers argues that such a feast need not be held in such a prominent street on a Saturday and ask the Government for compensation for loss of business. On the other hand the closing of main streets for the holding of Maltese feasts and religious processions is a common occurrence. The Police refuse to grant compensation. Advise on the likely prospects if the shopkeepers' association sues for damages. (17 marks)

AND

2. Answer EITHER Question (a) OR Question (b):

(a) Horse racing in Malta is organised by a private association which is however recognised by law as the only organisation which is legally entitled to fulfil such a function. The disciplinary board of the association proposes to exclude B, a horse owner, from the association on the ground of a very loosely defined offence of 'unbecoming conduct'. This is done upon persistent reports by a competitor to the effect that B feeds his horses illegal substances. When he demands a hearing B is told that the Secretary of the disciplinary board will phone him up and give him 30 minutes to say what he has to say over the phone, without a meeting. The disciplinary board confirms B's exclusion and this decision has grave consequences on B who will have to give up involvement in horse racing activity and sell his horses under 'forced sale' conditions. B wishes to challenge the decision of the association. May he seek judicial review of the association's decision either under article 469A of the Code of Organisation and Civil Procedure or otherwise? (17 marks)

OR

(b) In view of a marginal increase in cases of mumps amongst young children a local council enacts a bye-law whereby children who have not been vaccinated against mumps may not be admitted to the local child care facilities. The local council has legal competence to regulate child care facilities in its area but has no legal competence in public health matters. C, who has refused to have her child vaccinated on account of her religious beliefs feels that the council is greatly exaggerating the danger of children contracting mumps from child care centres and is merely seeking political popularity given that her religious beliefs are very unpopular in the locality. Outline the main arguments open to both sides if the matter is not resolved amicably and proceeds to court. (17 marks)

SECTION 3: Answer ANY TWO (2) Questions (33 marks each)

3. Discuss the importance of the European Convention on Human Rights as a source of Administrative Law.
4. What are the main advantages and disadvantages of having administrative law disputes decided by tribunals established by law rather than by courts? Is the jurisdiction of such tribunals severely limited by the right to a fair trial as defined in Article 39 of the Constitution of Malta?
5. "Over time, privatisation, nationalisation and liberalisation change the public sector but whatever the circumstances the Administrative Law principles of legality, rationality and procedural fairness retain their importance to any activity of a public character". Discuss.
6. "Where a public authority wishes to revoke an administrative decision it needs to exercise care not to violate the principle of legal certainty and, in particular, not to interfere with an individual's acquired rights". Discuss this statement with particular reference to Maltese case law arising from the revocation of administrative acts.
7. Discuss how and for what reasons public authorities are accountable in law for their unlawful or negligent actions or inactions or for the unlawful or negligent actions or inactions of their employees.



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

PBL2015 ADMINISTRATIVE LAW

Monday 22nd June 2020

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

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

Telephone : 2340 3251; 2340 3752

Email: laws@um.edu.mt

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

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

.....

INSTRUCTIONS TO STUDENTS:

Answer **TWO (2)** out of the THREE (3) Questions from **SECTION 1**. Each Question carries equal marks (37 marks).

Answer **ONE (1)** out of the TWO (2) Questions from **SECTION 2**. Each Question carries equal marks (26 marks).

SECTION 1: Answer **TWO (2)** of THREE (3) Questions from this section.

1. Infrastructure Malta (IM) is a government entity responsible for coordinating and financing road construction in Malta and Gozo. It issued a public tender for interested contractors to undertake works in Regional Road, Msida. A consortium of road contractors, named XYZ Ltd, tendered for the works. However so, they lost the tender to undertake said works, notwithstanding their bid being the cheapest.

XYZ Ltd received a letter in which IM explained that XYZ Ltd were not technically equipped to do the job. Moreover, IM stated that XYZ Ltd was recently exposed in Lovintimes.com wherein it was revealed that XYZ Ltd was blacklisted due to money laundering.

XYZ Ltd appealed the decision before a review board set up by IM to overview complaints from aggrieved tenderers. This Board was chaired by an architect, a certain Architect Abela, who was appointed by IM for the purpose. The other member sitting on the Board was a lawyer, a certain Dr Bartolo, who is also a lecturer at University.

Architect Abela happened to have been a consultant to XYZ Ltd in the past. Nevertheless, he signaled no conflict of interest since that was more than ten years before. Using his private email, Architect Abela invited XYZ Ltd to make written submissions to substantiate their complaints.

XYZ Ltd, through Dr Vella (their lawyer) reverted by saying that they wanted a formal hearing. Subsequently, Dr Bartolo, using his university email, wrote to Dr Vella explaining that the reviewing Board was willing to meet him (Dr Vella) through a zoom call. Moreover, Dr Bartolo insisted that the call should take place on a Saturday afternoon.

Dr Vella refused this invitation since Saturday was not a decent time. Dr Vella suggested his clients XYZ Ltd to file a constitutional case in court, citing discrimination.

XYZ Ltd disagreed with Dr Vella's suggestion, and directed Dr Vella to meet Architect Abela privately. Dr Vella refused, citing ethical issues.

XYZ Ltd went on to appoint another lawyer, Dr Mangion. After XYZ Ltd explained the situation, Dr Mangion agreed to meet Architect Abela privately on condition that the latter is not taken by surprise. Dr Mangion decided to send a very courteous email to Architect Abela, requesting a meeting with a view to iron out any misunderstandings. Architect Abela agreed to meet.

Meanwhile, Infrastructure Malta gave the tender to another company ABC Ltd., even though their bid was not the cheapest. ABC Ltd, carried out a very good job. Towards completion, Infrastructure Malta requested ABC Ltd to tarmac an additional stretch of road through a direct order following which it was inundated with questions from Lovintimes.com due to it having abused its power when it gave the direct order of five hundred euros to ABC Ltd to carry out the additional works.

Infrastructure Malta replied to Lovintimes.com, stating that it was authorized to give direct orders up to ten thousand euros when an urgent matter arises. Moreover, Infrastructure Malta insisted that it had decided to award the tender to ABC Ltd after it was Lovintimes.com who had exposed the other tenderer, XYZ Ltd, to be unfit.

The student is to read the above case carefully and comment about the relevance, if any, of the following observations from an administrative law standpoint and after seeing the whole factual context:

- (a) XYZ LTD had the cheapest bid and, yet was refused the tender to carry out the works.
- (b) XYZ Ltd were not technically equipped to do the job and were blacklisted due to money laundering.
- (c) The review board was set up by IM.
- (d) Dr Bartolo was also a lecturer at University.
- (e) Architect Abela happened to have been a consultant to XYZ Ltd in the past. Nevertheless, he signaled no conflict of interest since that was more than ten years before.
- (f) XYZ Ltd, through Dr Vella (their lawyer), wanted a formal hearing.
- (g) The reviewing Board was willing to meet Dr Vella through a zoom call instead of meeting in public.
- (h) Saturday was not a decent time.
- (i) Dr Vella suggested that XYZ Ltd that they should file a constitutional case in court, citing discrimination.

- (j) XYZ Ltd disagreed, and suggested to Dr Vella that he should meet Architect Abela privately.
- (k) Architect Abela agreed to meet Dr Mangion.
- (l) Infrastructure Malta gave the tender to another company ABC Ltd., even though their bid was not the cheapest.
- (m) The direct order was to the tune of five hundred euros, hence within reasonable limits.
- (n) It was Lovintimes.com who had exposed the other tenderer, XYZ Ltd, to be unfit.

2. Thinkcare group is a philanthropic organization but it is partly funded by government. It was constituted by agreement in front of a Notary. Thinkcare group is coordinated by a committee made up of a chairman and ten members. The chairman is also the Director of Central Bank. Lately the committee decided to suspend one of its members, Timothy Callus. Mr Callus is alleging that he was given no fair hearing and no reason for his dismissal. He wants to know whether he should file a challenge in terms of judicial review. He is also thinking of suing the committee members for libel.

Meanwhile, Thinkcare group filed a planning application to the Planning Authority with a view to construct an additional floor in their headquarters in Sliema. The application was refused by the Planning Authority, the reason highlighted by the Authority being that there is too much construction works going on. Moreover, when the application was about to be decided, no one from Thinkcare group was alerted about the sitting.

Thinkcare group was advised that it could appeal the application before the Environment and Planning Review Tribunal. (Indeed, Chapter 551 of the Laws of Malta provides such remedy). Nonetheless, the chairman of Thinkcare is of the opinion that the committee should lodge a challenge in terms of Article 469A of the Chapter 12 of the Laws of Malta.

Another member, Wilfred Cascun, is of the idea that Thinkcare group should ask the Local Council to issue a building permission instead of the Planning Authority.

Another member, Josephine Magro, suggested that the Committee stands a better chance if it files a challenge against government, requesting damages in the form of a sum of money. This, due to the fact that the Planning Authority had abused its position.

Another member, Max Abela, said that he was ready to go and speak privately to the members of the Authority. In that way, the Authority could possibly change its mind and issue permission. After all, Thinkcare was a philanthropic organization. According to Max Abela, who had joined the law course and then decided to move on to medicine, the organization was entitled to obtain planning permission in line with the principle of proportionality.

The student is to read the above case carefully and comment about the relevance, if any, of the following observations from an administrative law standpoint and after seeing the whole factual context:

- (a) The chairman of Thinkcare group, a philanthropic organization, is also the Director of Central Bank.
- (b) Lately the committee decided to suspend one of its members, Timothy Callus. Mr Callus is alleging that he was given no fair hearing and no reason for his dismissal and he wants to know whether he should file a challenge in terms of judicial review.
- (c) Mr Callus is also thinking of suing the committee members for libel.
- (d) The Planning Authority refused permission since there is too much construction works going on.
- (e) When the application was about to be decided by the Planning Authority, no one from Thinkcare group was alerted about the sitting.
- (f) Thinkcare group was advised that it could appeal the application before the Environment and Planning Review Tribunal. Nonetheless, the chairman is of the opinion that the committee should lodge a challenge in terms of Article 469 A of the Chapter 12 of the Laws of Malta.
- (g) Another member, Wilfred Cascun, is of the idea that Thinkcare group should ask the Local Council to issue a building permission instead of the Planning Authority.
- (h) Another member, Josephine Magro, suggested that the Committee stands a better chance if it files a challenge against government, requesting damages in the form of a sum of money. This, due to the fact that the Planning Authority had abused its position.
- (i) Max Abela, said that he was ready to go and speak privately to the members of the Authority. In that way, the Authority could possibly change its mind and issue permission. After all, Thinkcare was a philanthropic organization.

(j) According to Max Abela, who had joined the law course and then decided to move on to medicine, the organization was entitled to obtain planning permission in line with the principle of proportionality.

3. Grajjiet Kurrenti is a new NGO. It was formed with the intent to keep the government in check. Lately government negotiated an oil deal with Turkey. The NGO is insisting to know the details of the deal but government is saying that it could withhold the information, since the oil qualifies as a 'trade secret'. Government cited Article 32 of Chapter 496 as a reason not to disclose the information. Grajjiet Kurrenti representatives exposed government's reply on their website. Meanwhile, Grajjiet Kurrenti lodged a complaint to the Valletta Local Council about the matter. The Mayor promised to enter into the matter and revert. Grajjiet Kurrenti also went to the Ombudsman. The Ombudsman reverted by saying that such a complaint does not fall within his remit. Grajjiet Kurrenti is also thinking to file a challenge in terms of judicial review in terms of Article 469A in order to retrieve the information, citing public interest as a reason to support its application. An opposition MP, Dr Jones, acting on behalf of Grajjiet Kurrenti, took the matter to Parliament. Dr Jones insisted inter alia that Grajjiet Kurrenti had a vested right to acquire the required information. At one point, he also said that Grajjiet Kurrenti had a legitimate expectation to know what is going on in Malta.

The student is to read the above case carefully and comment about the relevance, if any, of the following observations from an administrative law standpoint and after seeing the whole factual context:

- (a) Grajjiet Kurrenti is a new NGO. It was formed with the intent to keep the government in check.
- (b) Government negotiated an oil deal with Turkey.
- (c) The NGO is insisting to know the details of the oil deal but government is saying that it could withhold the information, since oil negotiations qualify as a 'trade secret'.
- (d) Grajjiet Kurrenti representatives exposed government's reply on their website.
- (e) Grajjiet Kurrenti lodged a complaint to the Valletta Local Council about the matter. The Mayor promised to enter into the matter and revert.
- (f) The Ombudsman reverted by saying that such a complaint does not fall within his remit.
- (g) Grajjiet Kurrenti is also thinking to file a challenge in terms of judicial review in terms of Article 469A.
- (h) Dr Jones is an opposition MP and took the matter to Parliament.

(i) Dr Jones insisted alia that Grajjiet Kurrenti had a vested right to acquire the required information.

(j) Dr Jones said that Grajjiet Kurrenti had a legitimate expectation to know what is going on in Malta and hence entitled to receive the required information.

SECTION 2: Answer **ONE (1)** of TWO (2) Questions from this section.

4. Explain the reasonableness test in judicial review actions under Article 469A of Chapter 12 of the Laws of Malta, illustrating your answers with reference to Maltese decided cases.

5. Describe the procedural obstacles which one may encounter in filing judicial review action under Article 469A of Chapter 12 of the Laws of Malta.



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**FACULTY OF LAWS
DEPARTMENT OF PUBLIC LAW
SEPTEMBER 2020 EXAMINATION SESSION**

PBL2015 ADMINISTRATIVE LAW

Thursday 10th September 2020

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

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INSTRUCTIONS TO STUDENTS:

Answer **TWO (2)** out of the **THREE (3)** Questions from **SECTION 1**. Each Question carries equal marks (37 marks).

Answer **ONE (1)** out of the **TWO (2)** Questions from **SECTION 2**. Each Question carries equal marks (26 marks).

SECTION 1: Answer **TWO (2)** of **THREE (3)** Questions from this section.

1. Infrastructure Malta (IM) is a government entity responsible for coordinating and financing road construction in Malta and Gozo. Due to the current workload, Infrastructure Malta (IM) decided to delegate some of its tasks to 'For Better Malta', an NGO that was recently set up to raise awareness about road safety.

As a start, 'For Better Malta' issued a tender document calling interested contractors to submit their bid to carry out works in Mqabba. XYZ Limited was the only bidder, to which end Infrastructure Malta (IM) stepped in, insisting that there should be a competitive process.

Infrastructure Malta (IM) decided to, now, issue the tender itself. In the tender document, it listed a number of criteria, with which interested tenderers had to abide. The list included a condition that tenderer should own a tarmac plant in Mqabba.

The tender was subsequently awarded to Magro Ltd, who indeed owned a tarmac plant in Mqabba. Nevertheless, another company, Attard Ltd, felt aggrieved by this decision since it couldn't tender in the first place due to it not owning a tarmac plant in Mqabba.

Attard Ltd went to Dr Bajada who insisted that they should file a complaint with the Mqabba Local Council.

Attard Ltd went to the Mqabba Local Council and they were told that a legal remedy should be sought elsewhere.

Having had enough with the situation, Attard Ltd took the issue to Dr Micallef, an Opposition MP who is a lawyer. Dr Micallef decided to make the details public in Parliament. He also advised Attard Ltd that they had a legitimate expectation to, at least, be allowed to participate in the tender process.

Maltatimes.com reported Dr Micallef's speech in Parliament. In reaction, Infrastructure Malta (IM) held that Dr Micallef was not allowed to mention the matter publicly in view of the Data Protection Act.

The student is to read the above case carefully and comment about the relevance, if any, of the following observations from an administrative law standpoint and after seeing the whole factual context:

- (a) Infrastructure Malta (IM) is a government entity responsible for coordinating and financing road construction in Malta and Gozo. Due to the current workload, Infrastructure Malta (IM) decided to delegate some of its tasks to 'For Better Malta, an NGO that was recently set up to raise awareness about road safety.
- (b) As a start, 'For Better Malta' issued a tender document calling interested contractors to submit their bid to carry out works in Mqabba. XYZ Limited was the only bidder, to which end Infrastructure Malta (IM) stepped in, insisting that there should be a competitive process.
- (c) Infrastructure Malta (IM) decided to, now, issue the tender itself. In the tender document, it listed a number of criteria, with which interested tenderers had to abide. The list included a condition that tenderer should own a tarmac plant in Mqabba.
- (d) The tender was subsequently awarded to Magro Ltd, who indeed owned a tarmac plant in Mqabba. Nevertheless, another company, Attard Ltd, felt aggrieved by this decision since it couldn't tender in the first place due to it not owning a tarmac plant in Mqabba.
- (e) Attard Ltd went to Dr Bajada who insisted that they should file a complaint with the Mqabba Local Council.
- (f) Attard Ltd went to the Mqabba Local Council and they were told that a legal remedy should be sought elsewhere. However, the Council gave no details as to what remedy could be sought.
- (g) Having had enough with the situation, Attard Ltd took the issue to Dr Micallef, an Opposition MP who is a lawyer. Dr Micallef decided to make the details public in Parliament.
- (h) Dr Micallef also advised Attard Ltd that Attard Ltd had a legitimate expectation to, at least, be allowed to participate in the tender process.
- (i) Maltatimes.com reported Dr Micallef's speech in Parliament.
- (j) In reaction, Infrastructure Malta (IM) held that Dr Micallef was not allowed to mention the matter publicly in view of the Data Protection Act.

2. Thinkcare group is a philanthropic organization who is partly funded by government. It was constituted by agreement in front of a Notary. Recently, Thinkcare group submitted a planning application to construct an office complex in an area designated as a strategic open gap, where, according to the Local Plan, no further development can take place.

Thinkcare group was advised that the Planning Authority had refused the application without being notified of the hearing when the decision was to take place. This, despite the Development Planning Act states clearly that applicants should be alerted of the date when a planning decision is to be taken and also be invited to be present during the meeting.

Thinkcare group, through their lawyer Dr Savona, wrote to the chairman of the Authority, asking reversal of the decision. In his letter, Dr Savona wrote that Thinkcare Group, being a leading NGO, was entitled to the permit notwithstanding what the Local Plan stated. Dr Savona also highlighted that his client should, as a minimum, have been notified of the hearing. Dr Savona also warned that the chairman of the Commission tasked with deciding the application should abstain from hearing the case since he had wrote against the idea of having more buildings in strategic open gaps in a local newspaper.

In turn, the Planning Authority replied, justifying its decision. Using his personal email, the Chairman said that the Authority stood by its previous decision, adding that Thinkcare Group always had an option to appeal the decision before the First Hall Civil Court, using the remedy under Article 469A of Chapter 12. (Note however that Chapter 551 provides that planning decisions are to be appealed before an ad hoc Tribunal styled as the Environment and Planning Review Tribunal).

Meanwhile, Thomas Abela, a member of Thinkcare Group, had a word with the Minister responsible for the Planning Authority. The Minister felt that the Authority had acted in bad faith and ordered it to issue the permit within a week. The Minister also reminded the Authority to adhere to the proportionality principle and have regard to the fact that Thinkcare Group was not a profit making entity.

The student is to read the above case carefully and comment about the relevance, if any, of the following observations from an administrative law standpoint and after seeing the whole factual context:

(a) Thinkcare group is a philanthropic organization who is partly funded by government. It was constituted by agreement in front of a Notary.

(b) Thinkcare group submitted a planning application to construct an office complex in an area designated as a strategic open gap, where, according to the Local Plan, no further development can take place.

(c) Thinkcare group was advised that the Planning Authority had refused the application without being notified of the hearing when the decision was to take place. This, despite the Development Planning Act states clearly that applicants should be alerted of the date when a planning decision is to be taken and also be invited to be present during the meeting.

(d) Thinkcare group, through their lawyer Dr Savona, wrote to the chairman of the Authority, asking reversal of the decision.

(e) In his letter, Dr Savona wrote that Thinkcare Group, being a leading NGO, was entitled to the permit notwithstanding what the Local Plan stated.

(f) Dr Savona also highlighted that his client should, as a minimum, have been notified of the hearing.

(g) Dr Savona also warned that the chairman of the Commission tasked with deciding the application should abstain from hearing the case since he had wrote against the idea of having more buildings in strategic open gaps in a local newspaper.

(h) In turn, the Planning Authority replied, justifying its decision. Using his personal email, the Chairman said that the Authority stood by its previous decision, adding that Thinkcare Group always had an option to appeal the decision before the First Hall Civil Court, using the remedy under Article 469A of Chapter 12. (Note however that Chapter 551 provides that planning decisions are to be appealed before an ad hoc Tribunal styled as the Environment and Planning Review Tribunal)

(i) Meanwhile, Thomas Abela, a member of Thinkcare Group, had a word with the Minister responsible for the Planning Authority.

(j) The Minister felt that the Authority had acted in bad faith and ordered it to issue the permit within a week.

(k) The Minister also reminded the Authority to adhere to the proportionality principle and have regard to the fact that Thinkcare Group was not a profit making entity.

3. In the wake of COVID 19, the Superintendent of Public Health issued a Legal Notice stating that no mass activities should be held until further notice. Notwithstanding so, the Lija Local Council decided to proceed with organizing a local festivity so long as it was open to Lija residents. As a result, the Council was inundated with public criticism so much so that an article condemning the Council's attitude was published on TimesDaily.com.

In reply, the Council issued a statement stating that it was ignoring the Legal Notice on a number of counts.

The Council said that it had promised the locals that the festivity was to take place and by not honouring this commitment, it was acting in violation of the legitimate expectation principle.

It added that the locals had a vested right since the festivity was organized each and every year. The Council also said that the Superintendent had no vires on Local Council matters.

Meanwhile, Ghaqda Tobba Maltin took umbrage at the situation. They lodged a request under judicial review (Article 469A) before the First Hall Civil Court, requesting the Court to stop the Lija Council from holding the activity.

Ghaqda Tobba Maltin also went to the Ombudsman. The Ombudsman reverted by saying that such a complaint does not fall within his remit.

An opposition MP, Dr Jones took the matter to Parliament and said that Speaker of the House had the power to overrule what the Superintendent of Public Health had said. The Speaker obliged and issued a statement that the Council could proceed with the activity.

The student is to read the above case carefully and comment about the relevance, if any, of the following observations from an administrative law standpoint and after seeing the whole factual context:

- (a) In the wake of COVID 19, the Superintendent of Public Health issued a Legal Notice stating that no mass activities should be held until further notice.
- (b) Notwithstanding so, the Lija Local Council decided to proceed with organizing a local festivity so long as it was open to Lija residents
- (c) As a result, the Council was inundated with public criticism so much so that an article condemning the Council's attitude was published on TimesDaily.com.
- (d) In reply, the Council issued a statement stating that it was ignoring the Legal Notice on a number of counts.
- (e) The Council said that it had promised the locals that the festivity was to take place and by not honouring this commitment, it was acting in violation of the legitimate expectation principle.
- (f) The Council added that the locals had a vested right since the festivity was organized each and every year. The Council also said that the Superintendent had no vires on Local Council matters.
- (g) Meanwhile, Ghaqda Tobba Maltin took umbrage at the situation. They lodged a request under judicial review (Article 469A) before the First Hall Civil Court, requesting the Court to stop the Lija Council from holding the activity.
- (h) Ghaqda Tobba Maltin also went to the Ombudsman. The Ombudsman reverted by saying that such a complaint does not fall within his remit.
- (i) An opposition MP, Dr Jones took the matter to Parliament and said that Speaker of the House had the power to overrule what the Superintendent of Public Health had said.

- (j) The Speaker obliged and issued a statement that the Council could proceed with the activity.
-

SECTION 2: Answer ONE (1) of THREE (3) Questions from this section.

4. "The ultra vires doctrine is the way the Courts control executive action". Discuss.
5. Explain the ground of review relating to the rules of natural justice as it is now and its possible future development.
6. Explain the different levels and layers of the public sector, and the importance from a legal point of view of such distinction.
-



Second Year Law
Compulsory Units Past Papers

**COMMERCIAL
OBLIGATIONS**

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

UNIVERSITY OF MALTA

FACULTY OF LAW

SEPTEMBER 2015 EXAMINATIONS

LL.B. HONOURS 3RD YEAR & LL.B. 3RD YEAR WITH L.P. OPTION

**CML3009 – COMMERCIAL OBLIGATIONS, COMMERCIAL SALE AND
CREDIT INSTRUMENTS**

Thursday 10th September, 2015

Duration of Examination – 10.05 am – 12.05 pm

Reading Time – 10.00 am – 10.05 am

Answer one question from Section A and one question from section B. (All questions carry equal marks) *Answer every question on a different script.*

Section A

1. Discuss the relevance of Act IX of 2004 and the consequential amendments to the COCP in relation to bills of exchange. In your answer, please refer to case-law both before and after such amendments.
2. Compare and contrast the transferability of a bill of exchange to the Civil Code provisions relating to the assignment of debts and other rights.

Section B

3. To what extent is it correct to argue that silence, on the part of the offeree, can imply acceptance? Discuss with reference to Article 110 of the Commercial Code.
4. Discuss how the Commercial Code treats joint and several liability and the tacit resolutive condition differently from the Civil Code.

UNIVERSITY OF MALTA

FACULTY OF LAW

MAY / JUNE 2016 EXAMINATIONS

LL.B. HONOURS 3RD YEAR & LL.B. 3RD YEAR WITH L.P. OPTION

CML3009 – COMMERCIAL OBLIGATIONS, COMMERCIAL SALE AND CREDIT
INSTRUMENTS

MONDAY 20TH June 2016

Examination Time – 10.05 a.m. - 12.05 p.m.

Reading Time – 10.00 a.m. – 10.05 a.m.

Answer one question from Section A and one question from section B. (All questions carry equal marks. Use a different script for each section).

Section A

1. Discuss the essential features of a bill of exchange with particular focus on the autonomous and negotiable nature of such instrument.
2. Article 123 of the Commercial Code lists a number of essential characteristics for the validity of a bill of exchange. Discuss with reference to local case-law.

Section B

3. Maltese case law has shown on various occasions that silence on the part of the offeree can imply acceptance. To what extent do you agree with this statement?
4. The Commercial Code treats various aspects of obligations differently from the Civil Code. In the light of the above explain in detail how **joint and several liability** and the **implied resolutive condition** are treated differently in the Commercial Code.

UNIVERSITY OF MALTA

FACULTY OF LAW

September 2016 EXAMINATIONS
(Resit Session)

LL.B. HONOURS 3RD YEAR & LL.B. 3RD YEAR WITH L.P. OPTION

CML3009 – COMMERCIAL OBLIGATIONS, COMMERCIAL SALE AND
CREDIT INSTRUMENTS

Friday 9th September 2016

Examination Time – 8:35 a.m. – 10:35 a.m.

Reading Time – 8:30 a.m. – 8:35 a.m.

Answer one question from Section A and one question from section B. (All questions carry equal marks. Use a different script for each section).

Section A

1. Discuss the relevance of the 2004 amendments to Article 253 of the Code of Organisation and Civil Procedure granting bills of exchange the status of executive title under Maltese law. Discuss with reference to case-law both before and after such amendments.
2. Compare and contrast the provisions of the Commercial Code relating to the transferability of credit instruments with the provisions of Article 1469 *et seq* of the Civil Code entitled 'Of The Assignment of Debts and Other Rights'.

Section B

3. Commercial obligations differ from civil obligations. Discuss with particular reference to sections 114 to section 118 of the Commercial Code.
4. "A contract stipulated by means of correspondence, whether by letter or telegram, between parties at a distance, is not complete if the acceptance has not become known to the party making the offer within the time fixed by him or within such time as is ordinarily required for the exchange of the offer and the acceptance, according to the nature of the contract and the usages of trade generally." Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B.HONS 2nd YEAR / LL.B.HONS 3rd YEAR 2016/17
JUNE 2017 EXAMINATIONS

CML3009 – Commercial Obligations, Commercial Sale and Credit Instruments

Thursday 8th June 2017

10.00a.m.-12.05p.m.

INSTRUCTIONS TO STUDENTS:

Answer one question from Section A and one question from section B.

(All questions carry equal marks. Use a different script for each section).

Section A

1. Credit instruments are often described as being necessary, literal, autonomous, fungible and negotiable. Discuss this description with particular reference to the autonomous and negotiable nature of credit instruments.

2. Article 123 of the Commercial Code identifies a number of elements which a bill of exchange must include. Discuss each of the elements with a focus on the elements which are required *ad validitatem*

Section B

3. Paul Borg and Peter Galea are both traders and they have decided to jointly bid for a tender to supply metal beams to Rock Limited a company involved in the building of factories. Borg and Galea were successful in their bid, and Rock Limited forwarded them a copy of the supply agreement to be duly signed by them. For one reason or another, the supply agreement was never signed by Borg and Galea. The supply agreement stipulated that the beams had to be supplied by not later than two months from the date of the agreement. There is a penalty for the late supply of the beams. Borg and Galea plan to purchase the metal beams from Metallica Limited another local company that specialises in the manufacture of metal beams. Metallica Limited is only prepared to furnish the beams if Borg and Galea provide a surety for the payment of the beams. Paul Borg's elderly aunt, Carmelina Borg, who has never traded but who has substantial property is prepared to act as a surety and informs Metallica about this. As soon as the order with Metallica is

confirmed by Borg and Galea, Paul Borg decides to leave the island and makes himself unreachable, leaving Peter Galea alone to face the music. Metallica are demanding payment in order to deliver the beams while Rock Limited is insisting on the timely supply of the beams. Peter Galea and Carmelina Borg have come to you for advice.

4. To what extent is it correct to argue that silence on the part of the offeree can imply acceptance? Discuss with reference to Article 110 of the Commercial Code.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B.HONS 2nd YEAR 2017/18
JUNE 2018 EXAMINATIONS

CML3009 – Commercial Obligations, Commercial Sale and Credit Instruments

Monday 11th June 2018

Duration of Examination: 1.00PM – 3.05PM

INSTRUCTIONS TO STUDENTS:

Answer one question from Section A and one question from Section B.

(All questions carry equal marks. Use a different script for each section).

Section A

1. The acceptor of a bill of exchange that has matured has failed to effect payment on presentment by its holder who is an endorsee of the bill. Discuss the rights of action competent to the holder/endorsee in the circumstances.
2. Does the endorsee of a bill of exchange enjoy the same or better rights than the payee on a bill of exchange that has not been endorsed? Discuss with reference to relevant case law.

Section B

3. With reference to the Commercial Code, and the pronouncements of our courts, explain how a tacit resolutive condition is considered for the purposes of commercial obligations.
4. "In commercial obligations, when there is an exchange of correspondence, the duty to reply to the correspondence received, assumes more importance than in a civil obligation." This was stated by the Commercial Court, after quoting Giorgi, in the case *Av Dr George Vassallo nomine vs Aurelio Mea nomine*, decided 2nd May 1954. To what extent do you agree with this statement?

University of Malta
Faculty of Laws

CML3009 – Commercial Obligations, Commercial Sale and Credit Instruments

September 2018 Examinations

Date: Tuesday 11th September, 2018

Duration of Examination: 8.30am-10.35am

INSTRUCTIONS TO STUDENTS:

Answer one question from Section A and one question from Section B.

(All questions carry equal marks. Use a different script for each section).

Section A

1. The acceptance of a bill of exchange grants additional rights to its holder. Discuss.
2. Discuss the difference between real and personal pleas that can be raised on an action for payment of a bill of exchange.

Section B

3. Briefly discuss two of the following:
 - a) Joint and several liability in commercial obligations;
 - b) The implied resolutive condition in commercial obligations; and
 - c) The effect of the parties agreeing to reduce the verbal agreement to writing in commercial obligations.
4. **Article 110 of the Commercial Code states:** *“ A contract stipulated by means of correspondence, whether by letter or telegram, between parties at a distance, is not complete if the acceptance has not become known to the party making the offer within the time fixed by him or within such time as is ordinarily required for the exchange of the offer and the acceptance, according to the nature of the contract and the usages of trade generally.”* Discuss.

**University of Malta
Faculty of Laws**

June 2019 Examination Session

**CML3009 COMMERCIAL OBLIGATIONS COMMERCIAL SALE AND CREDIT
INSTRUMENTS**

Date: Friday 28th June 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ONE (1)** question from **Section A** and **ONE (1)** question from **Section B**.

All questions carry equal marks.

Answer each question on a separate script.

Section A

1. Discuss two of the essential requisites of a bill of exchange, the absence of which would invalidate the bill.
2. The countermanding of a cheque (stop-payment) is incompatible with the rules governing bills of exchange. Discuss this statement.

Section B

3. "The Commercial Code treats various aspects of obligations differently from the Civil Code." To what extent do you agree with this statement?
4. When contracting parties are not in the presence of each other, the moment of conclusion of a contract is of paramount importance. Discuss.

University of Malta
Faculty of Laws

September 2019 Examination Session

**CML3009 COMMERCIAL OBLIGATIONS COMMERCIAL SALE AND CREDIT
INSTRUMENTS**

Date: Wednesday 11th September 2019 **Duration of Examination:** 10:00AM – 12:05PM

INSTRUCTIONS TO STUDENTS:

Choose **ONE (1)** question from **Section A** and **ONE (1)** question from **Section B**.

All questions and subquestions carry equal marks.

Section A

1. Pleas which are personal to the endorsers of a bill of exchange may not be set up against the holder of the bill. Please discuss this statement.
2. Discuss the two types of action competent to the holder of a bill of exchange and the differences between them.

Section B

3. With reference to the provisions dealing with commercial obligations under the Commercial Code, discuss any **TWO (2)** of the following:
 - (a) The implied resolutive condition
 - (b) Co-debtors joint and several liability
 - (c) The parties agreement to reduce a verbal agreement to writing
 - (d) Litigious rights arising from commercial transactions
4. Notwithstanding the content of article 110 of the Commercial Code, can silence lead to the conclusion of commercial contracts?



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

CML3009 Commercial Obligations, Commercial
Sale and Credit Instruments

Thursday, 25th June 2020

Examination time: 08:30 – 10:30 + 60 extra minutes for uploading/downloading.

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

Telephone: 2340 3251; 2340 3143

Email: laws@um.edu.mt

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

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

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

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

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

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

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

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

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INSTRUCTIONS TO STUDENTS:

Answer one question from Section A and one question from Section B.

All questions carry equal marks.

Section A

1. A valid two-party bill of exchange is signed by the purchaser of a laptop (as drawer and acceptor) and delivered to the seller as payee. The seller subsequently endorses the bill in favour of a bank (as endorsee) and delivers the bill to the bank. The laptop is faulty and on maturity of the bill of exchange the purchaser refuses to pay on the bill of exchange. Discuss the rights of action competent to the holder of the bill of exchange.
2. A three-party bill of exchange has been signed by the drawer and is held by the payee. Discuss the rights competent to the payee of the bill of exchange before the maturity date indicated on the bill of exchange and any obligations assumed by the payee on the exercise of those rights.

Section B

3. By means of an email dated 11th September 2019, Siekel Limited a company in Malta made an enquiry with Arcobaleno Energie SA in Sicily whether they were in a position to supply 1500 gallons of kerosene, and at what price. Arcobaleno replied right away and offered 1500/2000 gallons at the price of €2.25 per gallon. The day after Siekel emailed and stated that they were ready to pay €2 per gallon. Arcobaleno replied right away and stated that at the price of €2 per gallon they could supply 1500/2000 gallons and that they would be able to load this on the weekly Tirrenia ferry that would sail to Malta in a week's time. The day after Arcobaleno sent an email to Siekel stating that they had arranged to send 2500 gallons by means of the Grimaldi vessel. Siekel replied and stated that the market was not so good and they could not take more than 1500 gallons. Arcobaleno replied to this on the 14th September 2019 stating that "we confirm that we have booked space on the Grimaldi ferry for 1500/2000 gallons". On the 15th September Siekel replied by saying nothing about the quantity and only insisting that the kerosene was to arrive in Malta not later than the end of the week. Upon loading the merchandise on the Grimaldi ferry, Arcobaleno sent a message to Siekel telling them that 2200 gallons had been loaded and that they would be in Malta within 24 hours. The merchandise arrived in Malta

in the evening of the 16th September. The day after, i.e. on the 17th September, in the evening, Siekel protested and stated that they had made it clear that they would not accept more than 1500 gallons as stated in their earlier email. You have been requested to advise Arcobaleno on the pertaining legal position.

4. Joseph Schembri and Kenneth Borg are both traders and they have decided to jointly bid for a tender to supply waterproofing material to Docklands Limited, a company involved in large infrastructural projects. Schembri and Borg were successful in their bid, and Docklands Limited forwarded them a copy of the supply agreement to be duly signed by them. For one reason or another, the supply agreement was never signed by Schembri and Borg, notwithstanding the insistence of Docklands. The supply agreement stipulated that the waterproofing material had to be supplied by not later than two months from the date of the agreement. There is a penalty for the late supply of the material. Schembri and Borg plan to purchase the material from Qatra Qatra Limited another local company that specialises in the manufacture of waterproofing material. Qatra Qatra Limited is only prepared to furnish the material if Schembri and Borg provide a surety for the payment of the material. Schembri's elderly aunt, Martha Galea, who has never traded but who has substantial property is prepared to act as a surety and informs Qatra Qatra about this. As soon as the order with Qatra Qatra is confirmed by Schembri and Galea, Schembri suddenly decides to leave the island and makes himself unreachable, leaving Borg alone to face the music. Qatra Qatra are demanding payment in order to deliver the material while Docklands Limited is insisting on the timely supply of the material. Kenneth Borg and Martha Galea have come to you for advice.



Second Year Law
Compulsory Units Past Papers

EUROPEAN UNION LAW

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

UNIVERSITY OF MALTA

FACULTY OF LAWS

LLB III YEAR & BA LEGAL III YEAR REPEATERS
& LLD QUALIFYING YEAR

SPECIAL SESSION OF EXAMINATIONS

EUROPEAN UNION LAW

17TH NOVEMBER 2006

9.00 AM TO 12.15 PM

Instructions to candidates: Candidates will have from 9.00 am to 9.15 am to read the examination paper, and the examination proper will begin at 9.15 am and will end at 12.15 pm. Candidates may not begin to write before 9.15 am.

ANSWER FOUR QUESTIONS IN ALL, WITH AT LEAST ONE QUESTION FROM EACH SECTION

SECTION A

1. 'Building on the Treaty of Nice, the Treaty establishing a Constitution for Europe (the Constitutional Treaty) will finally conclude, if ratified, the institutional reforms needed for a Union of 27 or more member states while heightening democracy and legitimacy of law-making at European level'.

Discuss.

2. 'While it is true that the case-law of the European Court of Justice has made huge strides in rendering Community law effective in all the Member States, thus achieving a large measure of uniform application and interpretation of Community law, there remain serious gaps in the full and general enforcement of Community law in national courts, and difficulties for the individual in securing such enforcement'.

Explain this statement.

3. Explain in detail the evolution of the structure and powers of the European Parliament from the EEC Treaty to the present day.

SECTION B

4. A Member State that fails to fulfil its obligations under the Treaties faces the possibility of action being taken against it before the European Court of Justice. Explain the circumstances in which, and the procedure by which, this can take place, and the consequences for the Member State of a finding that it has acted in breach of its obligations under Community law.
5. By referring to the relevant case-law, explain the requirements of 'individual concern' and of 'direct concern' as elements of the locus standi (standing) of the individual under Article 230 of the EC Treaty and draw out the difficulties faced by the individual who seeks to convince the Community Court that such requirements are satisfied in his/her/its regard.
6. 'Article 234 EC Treaty is all about collaboration between the national courts and the European Court of Justice'.
Explain this statement.
7. What role(s) do the so-called General Principles of Community Law play in the Community legal order? Illustrate your answer by reference to decided cases.

- enforcement actions

- locus standi

SECTION C

8. Explain the importance of the *Keck* decision of the European Court of Justice and the controversy surrounding its effect on the previous case-law of the European Court of Justice.
9. 'The purpose of Article 90 of the EC Treaty is to prevent the objectives of Articles 23 to 25 of the EC Treaty from being undermined by discriminatory internal taxation'.
Discuss by reference to the case-law of the European Court of Justice.
10. Discuss the differences and the similarities if any, between the mandatory requirements and Article 30 of the EC Treaty.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B III & QUALIFYING YEAR

SEPTEMBER 2007 SESSION OF EXAMINATIONS

ECL 3005 - EUROPEAN UNION LAW

MONDAY 10TH SEPTEMBER 2007

9.15AM TO 12.30PM

Instructions to candidates: Candidates will have from 9.15am to 9.30am to read the examination paper, and the examination proper will begin at 9.30 am and will end at 12.30pm . Candidates may not begin to write before 9.30am.

ANSWER FOUR QUESTIONS IN ALL, i.e. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS.

SECTION A

1. "The Treaty Establishing a Constitution for Europe (the Constitutional Treaty) would have replaced the current treaties and brought more 'order' to the legal order of the Union".

Discuss.

2. "The ever-growing importance of the European Parliament has been reflected over the years both in the judgments of the European Court of Justice and in various Treaty amendments related to the role, prerogatives and legal standing of the European Parliament."

Discuss.

3. "The development of the concept of direct effect of Community law by the European Court of Justice shows two things: first, how inventive the court can be in pursuing the objectives of the EC Treaty; and second, that the Treaty nevertheless imposes constraints on the European Court of Justice in developing the Union legal order." - *direct effect*

Discuss.

SECTION B

4. "The protection of fundamental rights and human rights has been ever on the increase in the European Community, and - now more recently - also the European Union, legal order".

Discuss.

5. "Article 234 of the EC Treaty, in setting down the jurisdiction of the European Court of Justice to hear preliminary references, nevertheless gives those national courts and tribunals a wide measure of discretion as to whether or not to make a reference". - preliminary ruling.

Explain and discuss this statement.

6. "Article 230 of the EC Treaty permits both "privileged" and "non-privileged" applicants to challenge the legal validity of Community acts, but puts obstacles (in the form of restrictive conditions) in the way of the "non-privileged" applicants." - locus standi.

Explain how the European Court of Justice has interpreted those 'obstacles' or conditions that face the non-privileged applicant seeking to use Article 230.

SECTION C

7. What possible arguments can a Member State that is accused of breaching Article 28 of the EC Treaty raise in its defence? Art 30 - free movement of goods

8. Does the European Court of Justice so interpret Article 90 of the EC Treaty such that a protectionist motive is regarded as an essential element of breach of that provision by a Member state?

9. "The European Court of Justice applies an 'effects-based' test when examining a national measure for breach or otherwise of Article 25 of the EC Treaty". not purpose. Italian Air Case Commission v Italy 20/68

Discuss this statement by reference to the case-law of the European Court of Justice on customs duties and charges having equivalent effect to customs duties.

W. v. M. (1982) 1361

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III & QUALIFYING YEAR
JUNE 2008 SESSION OF EXAMINATIONS
EUROPEAN UNION LAW ECL 3005
WEDNESDAY 28TH MAY 2008 - 10.30 TO 13.45

Instructions to Candidates: candidates will have from 10.30 TO 10.45 to read the examination paper, and the examination proper will begin at 10.45 and will end at 13.45. Candidates may not begin to write before 10.45.

ANSWER FOUR QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS.

SECTION A

1. "The 'Lisbon Treaty' largely incorporates the main changes to the legal order of the Union as heralded in the 'Constitutional Treaty'".

Explain this statement.

2. "The European Court of Justice has been a prime developer of the key doctrines of the legal order of the European Union, *such as* supremacy of Union Law and the doctrine of direct effect, and in the process pulling this developing legal order away from the paradigm of international law while accepting that it remains rooted in international law".

Explain and illustrate this statement.

3. "The opportunity for the European Court of Justice to clarify a number of questions raised by its own ruling in *Francovich* came in the joined cases of *Brasserie du Pecheur* and *Factortame III*. The Court took the opportunity to do so, but this hardly means that the '*Francovich Principle*' is easy for national courts to apply."

Discuss this statement by reference to the main case law of the Court in this area.

SECTION B

4. How do the Community doctrines of direct effect and supremacy of Community law and the principles of indirect effect (or harmonious interpretation) and state liability guarantee to the individual that his Community rights would be fully respected at the national level?
5. 'Case law on the individual's locus standi (standing) to challenge Community acts under Article 230 EC before the Community Courts is driven solely by the Courts' preoccupation with avoiding a flood of cases while completely ignoring the individual's plight and his or her right to an effective remedy'.

To what extent do you agree with this statement?

6. In the preliminary reference procedure 'the relationship between national court and European Court is co-operative rather than hierarchical, based on the recognition that each court has a different function and on mutual goodwill and respect' (Anderson and Demetriou).

Show how the underlined characteristics of the procedure are reflected in the mechanics of the procedure and where necessary illustrate by reference to case law.

7. 'The development of general principles as a source of law represents one of the Court's most remarkable and inspired initiatives, not only filling in the inevitable gaps which emerged in the Treaty framework but also allowing the Court to draw on national law, thereby ensuring that Community law reflects the basic legal values of the Member States' (Arnulf).

By reference to case law, show how general principles of Community law, especially in the field of human rights protection, have served to plug the gaps while reflecting basic national values.

SECTION C

8. What justifications may be cited by a Member State in response to an argument that a national measure infringes Article 28 EC? Do the same justifications apply to breaches of Article 25 EC?
9. What role do (a) market access and (b) discrimination play in the interpretation of Article 28 EC?
10. Are Articles 25 and 90 EC intended to strike down Member State protectionism?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III & LL.D QUALIFYING YEAR
MAY/JUNE 2009 SESSION OF EXAMINATIONS
ECL 3005 - EUROPEAN UNION LAW
Monday 25th May 2009, 9.15am to 12.15pm

ANSWER FOUR QUESTIONS IN ALL, i.e. ONE FROM EACH SECTION AND A
FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS

SECTION A

1. "The ratification and coming into force of the Lisbon Treaty would (i) extend the *community method's* operation to almost all Union areas of competence and (ii) ensure the protection of human rights and fundamental freedoms in a Union context."
Discuss this statement.
2. "The European Parliament and the European Council have been the main 'gainers' in terms of institutional power from practically every Treaty revision since the Treaty of Maastricht".
Do you agree with this statement?
3. "The European Court of Justice is certainly not your typical international court and is far more than that whether in terms of task, approach or practice as adopted by it."
Discuss and illustrate this statement.

SECTION B

4. "The doctrine of Direct Effect of community law is the primary tool whereby an individual is empowered to assert his or her rights under community law throughout the community."
Discuss this statement.
5. What must an individual seeking the annulment of a community act prove in order to establish his/her or its 'standing' before the European Court of Justice for the purposes of Article 230 of the EC Treaty?

6. What 'considerations' should a national court or tribunal take into account in determining whether or not to make a preliminary reference to the European Court of Justice under Article 234 of the EC Treaty?

SECTION C

7. "The case-law of the European Court of Justice under Article 90 of the EC treaty can be controversial. This is in part because the Treaty language requires the ECJ to make decisions that relate to difficult matters, such as whether goods are similar to each other or whether a differential tax regime is protective of 'home state' products".

Discuss this statement by reference to the case-law of the ECJ.

8. Explain the particular circumstances in which it may be permissible under Community law for a Member State to prohibit or restrict the free movement of goods.
9. Discuss in detail the *Keck* case (case C-267/268/91) and explain how the ECJ developed the meaning of Article 28 of the EC Treaty in the cases it decided after *Keck*.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III & LL.D QUALIFYING YEAR
JUNE 2009 SPECIAL SESSION OF EXAMINATIONS
ECL 3005 - EUROPEAN UNION LAW
Friday 5th June 2009, 9.15am to 12.15pm

ANSWER FOUR QUESTIONS IN ALL, i.e. ONE FROM EACH SECTION AND A
FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS

SECTION A

1. What are the main *constitutional* elements or features of the European Union legal order?
2. "The European Parliament and the European Council have been evolving, and stand to evolve further if the Lisbon Treaty comes into force, as the two central institutions in the institutional architecture of the European Union."
Do you agree with this statement?
3. "The General Principles of Community law serve various functions in the European Union legal order."
Show, by reference to selected judgments, how the European Court of Justice has identified such 'general principles' and indicate what this, and its use of them, tells us about how the European Court of Justice sees its role.

SECTION B

4. What is the meaning of "the Supremacy of European Law" and how have national supreme courts in the Member States responded to this doctrine of European Law?
5. "The European Court of Justice has held that Directives are capable of Direct Effect, but only vertically."
Explain this statement.
6. "The *Francovich* principle, as refined by the *Brasserie and Factortame* judgments, and as applied in later cases, now ensures the individual a remedy where the individual suffers through the failure of a Member State to comply with its Treaty obligations to the individual's detriment." Discuss this statement.

SECTION C

7. "Economic integration can take various forms, and these can be ranged in a spectrum across which the degree of involvement of participating economies, one with another, becomes greater and greater. The free trade area is the least onerous, while the economic union is the most complete, form."

Discuss this statement in the light of the theories of economic integration and the main case law with regard to the free movement of goods under the EC Treaty.

8. Explain the particular circumstances in which it may be permissible under Community law for a Member State to impose a pecuniary charge or requirement or restriction of a fiscal nature on goods crossing between Member States.
9. "The European Court of Justice's interpretation of Articles 28 to 30 of the EC Treaty has been a very important factor in the achievement of the single market."

Discuss this statement.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B III & LL.D QUALIFYING YEAR
SEPTEMBER SESSION OF EXAMINATIONS (2009)
ECL 3005 – EUROPEAN UNION LAW

Wednesday 9th September 10.30 am to 13.30 pm

Answer any FOUR questions in all, one from each section and a fourth question from any one of the three sections.

SECTION A

1. "The protection of the European citizen's fundamental rights will be enhanced if the Lisbon Treaty comes into force".
Discuss this statement.
2. "The position of the European Commission as an important part of the Union's institutional balance is reflected in its several powers".
Discuss this statement.
3. "The European Court of Justice has a wide jurisdiction under the EC Treaty and it has used this jurisdiction in order to set out the main blocks of the Union legal order".
Discuss this statement.

SECTION B

4. "The preliminary reference procedure set out in Article 234 of the EC Treaty rests for its effectiveness on a collaborative process between the national Member State courts and the European courts."
Explain this statement.
5. In what circumstances is the European Commission justified in bringing an action in the European Court of Justice against a Member State of the European Union?
6. Illustrate the role played by the so-called General Principles of Community Law in the Community legal order.

SECTION C

7. “The abolition of customs duties and charges having equivalent effect is central to the idea of a customs union and a common market.”
Discuss with reference to the relevant case-law of the European Court of Justice.
8. “The *Keck* judgment was a reaction to the *Sunday Trading* cases but does not constitute a radical departure from previous principle.”
Discuss, including references to the ‘post-Keck’ judgments of the European Court of Justice.
9. “Article 90 of the EC Treaty is intended to guarantee the complete neutrality of internal taxation as regards competition between domestic goods and imported products.”
Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III & QUALIFYING YEAR
MAY/JUNE 2010 SESSION OF EXAMINATIONS
EUROPEAN UNION LAW – ECL 3005
MONDAY 31st MAY 9.15am -12.15pm

ANSWER FOUR QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS. All questions carry equal marks, and each part of Question No.2 carries half of the marks allotted to that question.

SECTION A

1. “The Lisbon Treaty came into force in December 2009 and brought with it new institutions and a new institutional balance”.

Discuss this statement.

2. “The Lisbon Treaty has ushered in a new and clearer picture of (a) the respective competences of the Union on the one hand and of the Member States on the other hand, and (b) changes to the legislative process in the Union.”

Discuss this statement by reference to the main innovations as reflected in the Treaty on European Union and the Treaty on the Functioning of the European Union.

(Marks for this question are divided equally between (a) and (b))

3. “The Court of Justice can be credited or criticised, depending on one’s point of view, with ‘constitutionalising’ the Treaties.”

Discuss this statement, using examples from the case law of the Court of Justice to illustrate your points.

SECTION B

4. In what way do the doctrines of direct effect, indirect effect and state liability enhance the effectiveness of European Union law at the national level?

5. Explain why Craig and De Burca, writing about the preliminary reference procedure, conclude that: "The original conception of the relationship between national courts and the ECJ does not however capture reality. Many of the developments have transformed this from a *horizontal* and *bilateral* relationship to a *vertical* and *multilateral* relationship".

6. 'The development of human rights protection in the EU legal order nurtured by the Court of Justice has found its culmination in the Lisbon Treaty'.

Discuss.

SECTION C

7. "The prohibition of taxes that discriminate against imports is central to the single market ideal. Should a Member State seek in some way to discriminate against 'imports' from another Member State through differential taxes once the goods are in its territory, it will find that Article 110 TFEU (ex Article 90 EC) proscribes such conduct."

Discuss and illustrate how the Court of Justice has dealt with such attempts.

8. What defences can be raised by a Member State against a charge that it has breached Article 34 TFEU (ex Article 28, EC) (which prohibits quantitative restrictions and measures having equivalent effect to quantitative restrictions)?

9. In your opinion, did the *Keck* judgment (Case C- 267/268/91) resolve the interpretation problems that existed with regard to what is now Article 34 TFEU (ex Article 28 EC) prior to the handing down of that judgment of the European Court of Justice?

Explain with reference to case law before and after this judgment.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LLB III YEAR & QUALIFYING YEAR

SEPTEMBER 2010 SESSION OF EXAMINATIONS

EUROPEAN UNION LAW – ECL 3005

ANSWER FOUR QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS. ALL QUESTIONS CARRY EQUAL MARKS.
Monday 6th September 9.15 am to 12.15 pm

SECTION A

1. “The Lisbon Treaty, which came into force on 1 December 2009, brought about some key changes in regard to the institutions of the Union.” Explain this statement.
2. “The protection of Fundamental Rights in Europe is set to take a major leap forward as a result of the coming into force of the Lisbon Treaty”. Discuss this statement.
3. Select any ONE of the Institutions of the Union, and show how its role and powers within the Union institutional architecture have changed over the years since the inception of the Communities over fifty years ago.

SECTION B

4. How is the infringement procedure (Articles 258 and 260 TFEU) meant to ensure that Member States properly fulfil their obligations under EU law?
5. “The Court of Justice of the European Union has developed a rich body of jurisprudence on the so-called General Principles of Union law, drawing inspiration from various sources. The Court has used these general principles in a number of different ways, primarily as aids to interpretation and as grounds for judicial review”. Discuss this statement by reference to main judgments of the Court of Justice.

6. Show how the Court of Justice, *on the basis of the need to boost the effectiveness of EU law*, established and developed key concepts and doctrines under EU law that are not expressly stated in the Treaties.

SECTION C

7. "Article 34 TFEU (ex-Article 28EC) was originally interpreted as outlawing only those national measures which had an obvious protectionist intent and effect. This interpretation was swept away in the *Dassonville* judgment (Case 8/74)".

Discuss this statement with reference to the subsequent case-law of the Court of Justice.

8. Discuss the significance of the *Keck & Mithouard* judgment (Case C- 267/268/91) in relation to the development of the free movement of goods.

9. Discuss with reference to case-law of the Court of Justice the relationship between the first and second paragraphs of Article 110 TFEU (ex-Article 90EC).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III & QUALIFYING YEAR
JUNE 2011 SESSION OF EXAMINATIONS
EUROPEAN UNION LAW – ECL 3005
Wednesday 1st June 9.15am -12.15pm

ANSWER FOUR QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS. All questions carry equal marks.

NOTE: Where a question provides a choice as between two parts of a question, the candidate must choose to answer either part (a) or part (b) but not both, so that only one part of the question may be answered and will count for marking purposes; each of those parts carries the full marks for that question.

SECTION A

1. “The Lisbon Treaty came into force in December 2009 and brought with it new institutions and a new institutional balance. Many believe that *in the institutional sphere* it is the intergovernmental elements that have won the battle against the supranational elements in the Treaties as revised by the Lisbon Treaty.”

Discuss this statement.

2. “The Lisbon Treaty may not have given the Treaties the name of a “constitutional” document(s) but through its provisions it has without a doubt increased the constitutional elements in the Treaties as amended by it.”

Discuss this statement by reference to the main innovations introduced into the amended Treaty on the European Union and the ‘new’ Treaty on the Functioning of the European Union.

3. "Human rights protection in the EU legal order was nurtured initially by the Court of Justice of the Union, but since the coming into the force of the Lisbon Treaty it has become a key pillar in Union primary law for the protection of the individual, binding the institutions of the Union and the Member States in equal measure and to the same effect."

Discuss this statement.

SECTION B

4. Explain as fully as you can the doctrine of Direct Effect in EU Law, and show by reference to cases decided by the Court of Justice of the Union how that Court is under constant pressure to expand the application of this doctrine in the case of Directives which have failed to be implemented at the national level.

5. Explain, and illustrate by reference to decided cases:

EITHER (a): the preliminary ruling procedure as set out in Article 267 of the TFEU, its role, and the limits that the Court of Justice has set upon its use by national courts or tribunals;

OR (b): The enforcement action set out in Article 258 of the TFEU, its role, and the defences which Member States have NOT been successful in raising in such an action before the Court of Justice of the Union.

6. Explain, by reference to the case law of the Court of Justice of the Union on Article 263 TFEU (ex Article 230 of the EC Treaty):

EITHER (a): the *locus standi* of the 'individual' under that provision;

OR (b): the interpretation of the grounds of review set out under that provision for the annulment of a Union act.

SECTION C

7. In what way does the prohibition on discrimination in internal taxation contained in Article 110 TFEU (ex Article 90, EC Treaty) complement the provisions of Articles 28 – 30 TFEU (ex Articles 23-25, EC Treaty)?
8. “The *Keck* judgment, which formalised a difference in treatment between measures categorised as either ‘product requirements’ or as ‘selling arrangements’, described this new approach to be taken by the Court of Justice as a necessary re-examination of the previous case law of the Court on Articles 34 -36 TFEU (ex Articles 28 – 30 EC Treaty.”

Discuss, with reference to the case law of the Court that came before, and after, the *Keck* judgment.

9. Explain, and illustrate the workings of, the ‘rule of reason’ introduced by the Court of Justice in the context of Article 34 TFEU (ex Article 28 of the EC Treaty) by its seminal judgment in *Cassis de Dijon*?

UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III & QUALIFYING YEAR
SEPTEMBER 2011 SESSION OF EXAMINATIONS
EUROPEAN UNION LAW – ECL 3005

Friday 2nd September 2011 9.15am – 12.15pm

ANSWER FOUR QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION
AND A FOURTH QUESTION FROM ANY ONE OF THE THREE
SECTIONS. All questions carry equal marks.

SECTION A

1. “The biggest winner at Lisbon among the EU institutions, in terms of power and influence over the making of EU legislation, was the European Parliament”.

Discuss this statement.

2. “The protection of human rights in the European Union has taken several steps forward since the coming into force of the Lisbon Treaty.”

Explain this statement.

3. “The principle of state liability (the *Francovich* Principle) provides the ultimate protection to the individual citizen against failure on the part of his/her State to comply with Union law in such a way that such failure prejudices the interests of such citizen.”

Show, through the judgments of the Court of Justice, how the principle operates to achieve the purpose set out in the above statement.

SECTION B

4. “Both the doctrine of supremacy of Union Law and the doctrine of direct effect operate directly upon the courts of the Member state.”

Explain this statement.

5. "The Court of Justice of the EU once said that the preliminary ruling procedure in Article 267 of the TFEU (ex Article 234 EC Treaty) is a process of collaboration between it and the courts of the Member States."

To what extent has the relationship altered into a vertical one, with national courts occupying the lower level and the Court of Justice operating as a 'superior' Court?

6. What must an individual seeking an annulment of EU legislation prove in order to establish his/her/its 'standing' before the Court of Justice of the EU for the purpose of Article 263 TFEU (ex Article 230 EC Treaty)?

SECTION C

7. Distinguish between customs duties and charges having equivalent effect and explain with reference to case-law how they are regulated by the Treaty on the Functioning of the European Union (TFEU).

8. To what extent is national fiscal autonomy in relation to internal taxation of goods preserved notwithstanding the prohibition in Article 110 TFEU (ex Article 90 EC Treaty)?

9. With reference to case-law, distinguish between 'dual burden rules' and 'equal burden rules' in the context of quantitative restrictions and measures of equivalent effect, and explain how this distinction was affected by the Sunday Trading cases and how the Court of Justice sought to remedy the resulting situation.

UNIVERSITY OF MALTA

FACULTY OF LAWS

MAY/JUNE 2012 EXAMINATION SESSION

LLB III YEAR & LLD QUALIFYING YEAR

ECL3005 EUROPEAN UNION LAW

Wednesday, 6th June 2012, 9:15 – 12:15

ANSWER FOUR (4) QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS. All questions carry equal marks.

SECTION A

1. The status of human rights within the EU legal order has changed dramatically since the Communities were founded in the 1950s. Explain how the Court of Justice of the European Union and successive treaty revisions have been instrumental for bringing about such a change and consider the present status of human rights protection in the EU.
2. 'The existence, scope and exercise of EU competence and the institutional balance of power within the EU were key elements in the reform process that culminated in the Lisbon Treaty, against the background of the perennial debate on intergovernmentalism v supranationalism'.

Discuss.

3. Explain how the Court of Justice through its conception of the 'new legal order' and of 'the requirement of effectiveness of EU law' has developed the principles of primacy (supremacy) of EU law and state liability for breach of EU law.

SECTION B

4. The judicial interpretation of Article 230 EC was problematic, and it has been very difficult for individuals to challenge the legality of EU action directly before the EU courts. Article 263 TFEU was designed to alleviate this difficulty through an amendment of Article 230 EC. With reference to the CJEU's case law how far is it easier now for non-privileged applicants to have *locus standi* before the EU courts?

P.T.O.

5. Discuss the ways in which the Court of Justice has been instrumental in ensuring that the individual is able to enforce rights conferred on him by directives.
6. To what extent can it be said that the relationship between the Court of Justice and the national courts in the preliminary reference procedure has changed over the years to one where the Court of Justice sits in a superior position to that of the national courts?

SECTION C

7. 'All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, [intra-Union] trade are to be considered as measures having an effect equivalent to quantitative restrictions'.

Discuss the above statement with reference to the mandatory requirements in the *Cassis de Dijon* (Case 120/78).

8. Discuss *Gourmet International Productions* (Case C-405/98) and explain to what extent, if at all, it has altered *Keck* (Cases C-267 & 268/91).
9. (a) Distinguish by reference to case law the difference between the first and second paragraph of Article 110 TFEU.

OR

(b) 'The distinction between customs duties Article 30 TFEU and Internal Taxation Article 110 TFEU can be difficult to draw, but it is nevertheless a crucial distinction, as the legal implications are very different'.

Discuss.

UNIVERSITY OF MALTA

FACULTY OF LAWS

SEPTEMBER 2012 EXAMINATION SESSION

LLB III YEAR & LLD QUALIFYING YEAR

ECL3005 EUROPEAN UNION LAW

Monday, 3rd September 2012, 9:15 – 12:15

ANSWER FOUR (4) QUESTIONS IN ALL, I.E. ONE FROM EACH SECTION AND A FOURTH QUESTION FROM ANY ONE OF THE THREE SECTIONS. All questions carry equal marks.

SECTION A

1. 'Treaty reform is a continuation of politics by other means. The Lisbon Treaty represents the culmination of a decade of attempts at Treaty reform. In substantive terms the many complex Treaty changes should not mask the basic fact that each successive Treaty amendment has seen an increase in the areas over which the EU has competence'.

Discuss.

2. Is the Court of Justice of the European Union a Constitutional Court?
3. Discuss the impact, if any, that the Lisbon Treaty amendments have had on the development of Human Rights law in the European Union.

SECTION B

4. 'The *Plaumann* test (Case 25/62) is still the leading authority and remains so after the Lisbon Treaty for those cases where individual concern must be proven'.

Discuss.

5. What considerations should a national adjudicating body take into account in order to decide *whether or not* to refer a question to the Court of Justice of the European Union and if so *when* and *what* to refer?

6. Explain the role Case 152/84 (*Marshall*) and subsequent judgements played in developing the doctrine of direct effect for directives.

SECTION C

7. 'The ECJ made it clear from the outset that the application of Article 30 TFEU (customs duties) depends on the duty or charge, and not on its purpose.'

Discuss.

8. Explain the *Sunday Trading* saga and show how *Keck* (Cases C-267 & 268/91) & *Gourmet International Productions* (Case C-405/98) clarified matters.

9. 'Article 34 TFEU can bite if the national rule favours domestic goods over imports, even if the case, on its facts, is confined to products and parties from one Member State.'

Discuss.

UNIVERSITY OF MALTA

FACULTY OF LAWS

MAY/JUNE 2013 EXAMINATION

LL.B. (III Yr)

ECL 3005 -- European Union Law

Monday 3rd June 2013 09:15am -12:15pm

Instructions to Candidates: Answer FOUR questions only choosing at least one question from each section. All questions carry equal marks.

Section A

1. "The European Parliament is the most democratic institution of the EU, as its members are elected by direct universal suffrage of all citizens of the EU. Treaty after Treaty has progressively empowered this institution as a way to democratise the EU, transforming it from a mere consultative chamber into an important co-decision institution for most EU legislation and for the adoption of the EU budget. Among other powers and rights given to the Parliament, the appointment of the Commission requires its consent; and it has the authority to establish temporary committees of inquiry, to receive petitions from citizens, to elect the European Ombudsman, to put oral or written questions to the Commission and to the Council. Moreover, the Commission is responsible to the Parliament, which may vote on a motion of censure entailing the resignation of the Commission as a body".

Discuss.

2. "The doctrine of supremacy of EU law had no formal basis in the Treaty, but was developed by the Court of Justice of the European Union on the basis of its conception of the 'new legal order'. According to the Court, any norm of EU law takes precedence over any provision of national law, including the national constitutions."

Discuss.

3. "Procedural rights such as the rights of the defense, the right to a hearing, the right to effective judicial protection and the duty to give reasons have all been the subject of the Kadi Cases I & II (Cases C-402 & 415/05, Case T-85/09) within the context of a claim of violation of fundamental human rights".

Discuss this statement by reference to the judgments of the Court of Justice of the EU.

Section B

4. Article 288 TFEU states that: 'A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States' whereas 'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. It has been suggested that, partly because of the doctrine of direct effect, the distinction between Regulations and Directives has become increasingly blurred.

Discuss.

5. "The so-called *Francovich* Principle of State of Liability, named after the first case in which the Court of Justice stated it, makes a Member State liable to its own citizens when that State fails to fulfill its obligations under the Treaty, but this depends on the fulfillment of certain conditions".

What are the conditions which have to be satisfied before a national Court can hold the State liable towards an individual and how has the Court further developed the principle of state liability in cases subsequent to the *Francovich* Case?

6. The standing rules on direct actions under Article 263 TFEU have generated significant case law since the very inception of the EEC. The primary reason for this 'failure rate' has been the requirement of individual concern as interpreted in the *Plaumann* case.

Discuss with reference to the more recent case law

7. The relationship between national courts and the Court of Justice of the EU is reference-based. It is not an appeal system. No individual has a right to appeal to the CJEU.

Discuss.

Section C

8. Article 30 TFEU prohibits not only customs duties, but also charges having an equivalent effect.

Discuss.

9. Discuss the notion of '*market access*' when interpreting Article 34 TFEU

10. What is the rationale for the mandatory requirements and what is the relationship between the mandatory requirements and Article 36 TFEU.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2013 EXAMINATION
LL.B. (III Yr)
ECL 3005 – European Union Law
2013 09:15am -12:15pm

Instructions to Candidates: Answer FOUR questions only choosing at least one question from each section. All questions carry equal marks.

Section A

1. The three institutions directly involved in the legislative process of the European Union are the Commission, the European Parliament and the Council.

Discuss the function and role of each institution with particular reference to their role in the legislative process of the European Union.

2. Through its conception of the 'new legal order' and the requirement of 'effectiveness' of EU law, the Court of Justice of the European Union (CJEU) has developed two distinct but related doctrines, (i) the doctrine of supremacy of EU law, and (ii) the doctrine of state liability for breach of EU law.

Discuss.

3. The Treaty of Lisbon is essentially an amending Treaty; it amended the Treaty on European Union and the EC Treaty, renaming the later the Treaty on the Functioning of the EU (TFEU).

To what extent if any, the Lisbon amendments are a reflection of the previously proposed Constitutional Treaty?

Section B

4. Article 258 TFEU empowers the Commission of the European Union to bring an action against a Member State if it considers that the latter has failed to fulfill an obligation under the treaties.

Discuss.

5. The Court of Justice of the European Union (CJEU) has developed the doctrine of direct effect, indirect effect and incidental horizontal direct effect of directives in order to ensure that (a) the rights of EU citizens are adequately protected by EU law, and (b) the member states remain accountable for failure to observe and implement EU law.

Discuss.

6. Explain with reference to case-law the grounds of review under Article 263 TFEU.

7. The relationship between national courts and the Court of Justice of the European Union (CJEU) has been transformed by the development of precedent, *acte claire*. These developments have made national courts EU courts in their own right.

Discuss.

Section C

8. The case-law concerning Article 110 TFEU can be controversial. This is in part because the Treaty language requires the Court of Justice of the EU to make decision about difficult matters, such as whether goods are similar to each other or whether a differential tax regime is protective of home State products.

Discuss.

9. With reference to case-law distinguish between dual burden rules and equal burden rules and explain how this distinction was affected by the Sunday Trading cases and how the Court of Justice sought to remedy the situation.

10. What type of defenses can one bring against Article 34 TFEU?

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
MAY/JUNE 2014 EXAMINATION

L.L.B. (III Yr)

ECL 3000 – European Union Law

Friday 6th June 2014 09:15am -12:15pm

Instructions to Candidates: Answer FOUR questions only choosing at least one question from each section. All questions carry equal marks.

Section A

1. Prior to the coming into force of the Lisbon Treaty the limits of competence of the European Union were not defined by the Treaty. This led to substantial disagreement regarding the extent of competence of the Union in given areas of law and policy. The reform process aimed to change this and with the adoption of the Lisbon Treaty, the Treaty on the Functioning of the European Union contains provisions which streamline the EU's competences classifying them into three categories: (i) exclusive, (ii) shared and (iii) supporting, coordinating or supplementary. Closely linked to EU competence is the principle of subsidiarity, first introduced in the Maastricht Treaty and retained in the Lisbon Treaty. Its function is to regulate the exercise of the EU's competence.

Discuss.

2. Member States must observe European Union law. They must fulfill their obligations under the Treaties. The development of the doctrines of Supremacy of EU law and State Liability in Damages was intended to enforce the obligations of Member States to observe EU law.

Do you agree with this statement? Discuss by reference to both doctrines, including relevant case law.

3. General principles of law, which include fundamental human rights, are increasingly playing a central role in the judicial protection of individual rights. However, the Court of Justice of the European Union has often held that while it protects fundamental human rights, such rights are not absolute rights, and where certain objectives are seen as essential for the Union, individual rights must yield to the common good.

Discuss.

Section B

4. The doctrine of Direct Effect in EU law applies in principle to all binding EU law including treaty provisions, regulations, directives and decisions. However, the direct effect of directives has always been controversial and the Court of Justice of the European Union has held that directives are not capable of horizontal direct effect.

Discuss this statement.

5. On October 3, 2013, the Court of Justice of the European Union (CJEU) (Case C-583/11P) in the *Inuit* case delivered a judgment where it for the first time ruled on the meaning of 'regulatory acts'. The CJEU decided to stick to the interpretation of 'regulatory acts' given by the General Court and dismissed the appeal.

Discuss with reference to case law the background of the Lisbon amendments relating to the notion of direct and individual concern in Article 263 paragraph 4 TFEU, AND how the CJEU interpreted the said amendments in subsequent case law after 2009.

6. 'There is a clear danger that, given the disparate national legal traditions of the Member States, Union law will develop differently in the national courts. If this were to happen, individuals and businesses would be operating under different rules and many of the benefits of an open Union and a genuine internal market would be lost. (...) The only effective way of doing this is to provide that ultimate authority for deciding the meaning of Union law should reside in one court - the Court of Justice of the European Union (CJEU)'.

Discuss the above with reference to Article 267 TFEU and the relevant case-law highlighting the relationship that exists between the CJEU and the national courts.

Section C

7. Article 28(1) TFEU provides that the Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

With reference to the applicable case-law explain in detail the above provision.

8. With reference to case-law, explain and highlight the differences and/or similarities between the defences of Article 36 TFEU and the mandatory requirements.
9. The judgement in Keck Case-292/92 represents a serious step towards establishing areas of national regulation where it is (and it is not) legitimate for Article 34 TFEU to intervene.

Discuss.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2014 EXAMINATION
LL.B. (III Yr)
ECL 3000 – European Union Law

Wednesday 3rd September 2014 09:15am -12:15pm

Instructions to Candidates: Answer FOUR questions only choosing at least one question from each section. All questions carry equal marks.

Section A

1. Discuss the ways in which the Court of Justice of the European Union (CJEU) has been instrumental in ensuring that the individual is able to enforce rights conferred on him by directives by reference to landmark rulings delivered by the CJEU.

2. "The doctrine of supremacy of EU law had no formal basis in the Treaty, but was developed by the Court of Justice of the European Union on the basis of its conception of the 'new legal order'. According to the CJEU, any norm of EU law takes precedence over any provision of national law, including the national constitutions."

Discuss.

3. General Principles of law have been referred to as 'superior norms' of European Union law, the violation of which may result in the annulment of Union measures as well as national measures implementing Union measures.

Discuss this statement in the light of two of the rules of administrative justice: (i) proportionality; (ii) legal certainty and non-retroactivity; (iii) the principles of natural justice; (iv) the duty to give reasons and the right to due process or legal redress.

Section B

4. "The so-called Francovich Principle of State Liability, named after the first case in which the Court of Justice stated it, makes a Member State liable to its own citizens when that State fails to fulfill its obligations under the Treaty, but this depends on the fulfilment of certain conditions".

What are the conditions which have to be satisfied before a national Court can hold the State liable towards an individual and how has the Court further developed the principle of state liability in cases subsequent to the Francovich Case?

5. With reference to case law explain how the enforcement (or 'infringement') action procedure laid down by Article 258 TFEU, whereby the Commission is empowered to bring an action against a Member State, works?
6. On October 3, 2013, the Court of Justice of the European Union (CJEU) (Case C-583/11P) in the *Inuit* case delivered a judgment where it for the first time ruled on the meaning of 'regulatory acts'. The CJEU decided to stick to the interpretation of 'regulatory acts' given by the General Court and dismissed the appeal.

Discuss with reference to case law the background of the Lisbon amendments relating to the notion of direct and individual concern in Article 263 paragraph 4 TFEU, AND how the CJEU interpreted the said amendments in subsequent case law after 2009.

Section C

7. What type of defenses can be raised by a Member State facing an allegation of a breach of Article 34 TFEU?
8. Discuss the notion of 'market access' when interpreting Article 34 TFEU
9. Article 30 TFEU prohibits not only customs duties, but also charges having an equivalent effect.

Discuss with reference to case law.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II HONS. AND LL.B. III HONS.
ECL2001 and ECL3000 – EUROPEAN UNION LAW

Friday 5th June 2015

11.30AM - 2.35PM – Reading time: 11.30 – 11.35am. Duration of exam: 11.35am – 02.35pm.

Instructions to Candidates: Answer THREE questions in all, answering ONE question from EACH Section. Candidates have five minutes of reading time, from 11.30am to 11.35 am. They may not begin to write until the reading time period is over. All questions carry equal marks.

SECTION A (Answer ONE question from this section)

EITHER

1. *Either:* (a) “The Doctrine of Supremacy of Union Law may be ‘absolute’ for the Court of Justice but is accepted only conditionally by the Supreme Courts of the Member States.”

Discuss by reference to Court of Justice of the EU (CJEU) and some relevant national case law;

or: (b) “The Doctrine of Direct Effect has evolved through the case law of the Court of Justice of the EU (CJEU) in such a manner as to establish effective supremacy of Union law over conflicting national law.”

Discuss this statement by reference to the case law of the Court of Justice.

OR

2. “The Court of Justice of the European Union (CJEU) has always been, and remains, in full control of the identification and development of the General Principles of Union Law”.

Discuss this statement by reference to the principle of protection of human rights under EU law.

SECTION B (Answer ONE question from this section)

EITHER

3. “In the *Inuit* case (Case C-583/11P) the Court of Justice of the European Union (CJEU) delivered its first ruling on the meaning of ‘regulatory acts’ in Article 263 TFEU. The CJEU confirmed the interpretation of ‘regulatory acts’ given by the General Court and dismissed the appeal.”

Discuss, with reference to case law, the background to the Lisbon amendments relating to the notions of direct and individual concern in Article 263 TFEU paragraph 4, explaining how the new provision differs from its predecessor, namely Article 230 paragraph 4 EC Treaty.

OR

4. “The relationship between national courts and the Court of Justice of the EU is reference-based. It is not an appeal system. The respective roles of the Court of Justice and of a national court are clearly distinct and defined.”

Discuss.

SECTION C (Answer ONE question from this section)

EITHER

5. Explain the importance in the relevant context of **ANY THREE** of the following judgments :

- a) *Sociaal Fonds voor de Diamantarbeiders* (Cases 2&3/69);
- b) The *Keck* Case (Cases C 267 & 268/91);
- c) The *Humblot* Case (Case 112/84)
- d) *Commission v Ireland* (Buy Irish) (Case 249/81)

(All sub-questions carry equal marks)

OR

6. What defences can be raised by a Member State facing an allegation of a breach of Article 34 TFEU (prohibition of quantitative restrictions and measures having equivalent effect), and in what circumstances can they be resorted to?

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. II HONS. AND LL.B. III HONS.

ECL2001 and ECL3000 – EUROPEAN UNION LAW

Thursday 3rd September 2015

8.30AM - 11.35AM – Reading time: 8.30 – 8.35am. Duration of exam
8.35am – 11.35pm.

Instructions to Candidates: Answer **THREE** questions in all, answering **ONE** question from **EACH** Section. Candidates have five minutes of reading time, from 8.30am to 8.35 am. They may not begin to write until the reading time period is over. All questions carry equal marks.

SECTION A (Answer one question from this Section)

1. Explain, by reference to the main cases decided by the Court of Justice of the European Union, the essential content of *ANY TWO* of the following General Principles of EU Law:
 - (a) Protection of Human Rights
 - (b) Legitimate Expectations
 - (c) Proportionality
 - (d) Due Process
 - (e) Equality

 2. “Under EU Law, not only does the individual enjoy rights which can be directly enforced against a Member State and others, but he is given various mechanisms whereby those rights can be enforced.”
Discuss and illustrate this statement.
-

SECTION B (Answer one question from this Section)

3. The ‘*locus standi*’ rules for the bringing of direct actions under Article 263 TFEU, as interpreted by the Court of Justice, have proven very difficult for an individual to satisfy. The primary reason for this ‘failure rate’ has been the requirement of *individual concern* as interpreted in the *Plaumann* case.

Discuss the above statement, with special reference to the more recent case-law of the Court of Justice.

4. With reference to case-law, explain how the enforcement (or 'infringement') action procedure laid down in Article 258 TFEU, whereby the Commission is empowered to bring an action against a Member State, works?
-

SECTION C (Answer one question from this Section)

5. With reference to case-law of the Court of Justice, distinguish between 'dual burden' rules and 'equal burden' rules *and* explain how this distinction was affected by the Sunday Trading cases and how the Court of Justice of the European Union sought to bring greater clarity to the law.
6. Explain by reference to case-law of the Court of Justice of the European Union the meaning of the second paragraph of Article 110 TFEU on discrimination in internal taxation.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
EXAMINATION SESSION JUNE 2016
LL.B.HONS 2ND YEAR
ECL 2001 – EUROPEAN UNION LAW
FRIDAY 3RD JUNE 2016

Duration of Examination: 10.05am TO 1.05 pm. Reading time: 10.00am to 10.05 am

Instructions to Candidates: Answer THREE questions in all, making sure that you answer ONE Question from EACH of the three sections. All questions carry equal marks.

Section 1 – Answer ONE question from this section

1. “The development of the doctrines of Supremacy of EU law and of State Liability in Damages by the Court of Justice was intended to ensure as far as possible that national courts play their part in ensuring that the Member States fully fulfil their obligations under the Treaties.”
Discuss this statement.

2. “The Court of Justice developed the idea of General Principles of Union Law without much help from the Treaties themselves, but this has proven to be vital in developing a legal order that protects the rights and interests of the individual under Union Law”.

Discuss this statement by reference to the Court’s main case law on **ANY TWO** of the following:

- (a) Proportionality,
- (b) Equality,
- (c) Due Process,
- (d) Legitimate Expectations.

3. “The process of respect for fundamental rights and human rights WITHIN the EU legal order has culminated in the giving of legal force to the Charter of Fundamental Rights of the Union by the Lisbon Treaty, but problem areas still remain, including the question of EU accession to the European Convention of 1950”.

Discuss this statement.

Section 2 – Answer ONE question from this section

4. “Article 267 TFEU has been of seminal importance for the development of the EU legal order and EU law. It is through preliminary rulings that the Court of Justice of the EU guides national courts in the interpretation and application of the Treaties and of EU secondary legislation.”

Show by reference to some main judgments of the Court how the Court achieves this.

5. Article 258 TFEU establishes the infringement action procedure, giving the Commission broad power to bring infringement proceedings against any Member State which it considers to be in breach of its obligations under EU law.

Explain how the Commission proceeds against a Member State considered by it to be in breach, and what consequences flow or can flow from a finding by the Court of Justice that the Member State is actually in breach.

6. “The rules on standing for individuals to sue for annulment of Union acts under Article 263 TFEU have proven difficult to overcome. The primary reason for this ‘failure rate’ has in the past been the requirement and interpretation of the concept of ‘individual concern’ ”.

Discuss with particular reference to the present version of Article 263 and the more recent case-law.

Section 3 - Answer ONE question from this section

7. “The abolition of customs duties and charges having equivalent effect was and remains central to the European Union customs union and single market.”

Explain the terms in which the Treaty on the Functioning of the EU prohibits the type of national measure referred to in the statement as between Member States by reference to the *main* judgments of the Court of Justice in the matter.

8. Provide an overview of the basic principles applied by the EU data protection regime to the processing of personal data.

9. “In connection with the harmonisation of Company Law in Europe, there has been a running battle between the ‘incorporation doctrine’ and the ‘real seat’ (siege reel) doctrine. But recent case law of the Court of Justice appears to be favouring the more liberal approach to freedom of establishment for companies represented by the incorporation doctrine.”

Discuss this statement with reference to the recent case-law of the Court of Justice.

10. “ Whereas Title IX TFEU (Employment Policy) places emphasis on a ‘soft law’ approach which also includes a multilateral monitoring procedure for national employment policies within the Union, Title X (Social Policy) mainly envisages ‘hard’ law-making in the field of social policy which includes real involvement of the European Social Partners in this process.”

Discuss.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS
SEPTEMBER 2016 EXAMINATION

LL.B. Hons II Years

ECL 2001 – European Union Law

Saturday 10th September 2016

Reading Time: 8.30 a.m. – 8.35 a.m.

Duration of Examination: 8.35 a.m. – 11.35 a.m.

Instructions to Candidates: Answer any THREE questions choosing ONE FROM EACH SECTION. All questions carry equal marks.

Section A

1. The wide scope of the treaties led to an inevitable situation of conflict between national law and EU law. To resolve such conflict, the Court of Justice of the EU (CJEU) developed the doctrine of supremacy, also referred to as ‘primacy’ of EU law. In addition, the CJEU developed a second doctrine, the doctrine of State liability, which not only enables the individual to claim financial redress before the national court, but also ensures further enforcement of Union law.

Discuss the two doctrines and relevant case law.

2. Within the context of the General Principles of EU law, discuss any **two** of the following:
- a) The principle of proportionality and relevant case law;
 - b) The most salient aspects of the judgments delivered by the Court of Justice of the European Union in the Kadi Cases (Kadi I and Kadi II), and the ruling delivered in the case Johnston v. Royal Ulster Constabulary;
 - c) the principle of legitimate expectations and non-retroactivity and relevant case law.

(Each sub-section carries equal marks)

3. The development of protection of human rights as part of the general principles of Union law has been gradual. In the early case law of the CJEU we witness the Court's reluctance to entertain any human rights claims based on national constitutional law (Stork v. High Authority, Case 1/58). However, we see a gradual moving away from such an approach, to a more embracing approach of human rights as forming part of the general principles of Community law (EU law today).

Discuss the development of the protection of human rights within the EU legal order, making reference to relevant case law which has contributed towards such development.

Section B

4. The relationship between national courts and the Court of Justice of the European Union (CJEU) has been transformed by the development of precedent and the *acte clair* doctrine. These developments have made national courts EU courts in their own right.

Discuss.

5. With reference to case-law, explain how does the enforcement (or 'infringement') action procedure laid down by Article 258 TFEU, whereby the Commission is empowered to bring an action against a Member State, works?
6. Article 263 TFEU provides the basis for a direct challenge to the legality of Union acts. In an annulment action under this article, natural or legal persons, as non-privileged applicants, have limited *locus standi* to challenge the legality of Union acts.

Discuss by reference to pertinent case law of the CJEU.

Section C

7. What is the scope of Articles 28 to 30 TFEU (*re Customs Union*)? Explain by reference to case law.
8. Discuss the principles of the freedom of establishment of companies with reference to recent case law of the Court of Justice of the European Union (CJEU).

9. Title IX of the Treaty on the Functioning of the European Union (TFEU) entitled 'Employment Policy' places an emphasis on soft law rather than hard-law making. On the other hand, Title X of the TFEU entitled 'Social Policy' focuses mainly on two aspects (i) hard-law making and (ii) involvement of the European Social Partners in law-making within the Employment and Social Policy sphere.

Discuss by reference to decision-making processes under each title.

10. The central rules of data privacy law embody a set of largely procedural principles. Provide an overview of these basic (or 'core') principles with particular reference to the EU data protection regime.

END OF PAPER

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. (Hons) II yr.

MAY/JUNE 2017 EXAMINATION SESSION

ECL 2001 - EUROPEAN UNION LAW

DATE: MONDAY 29TH MAY 2017

DURATION OF EXAMINATION: 10.00AM to 1.05PM

INSTRUCTIONS TO STUDENTS:

Choose ANY 3 questions answering ONE from EACH section:

(Each question carry equal marks)

Section A

1. 'The Treaty on the Functioning of the European Union (TFEU) classifies the various domains of activity of the Union into 'categories and areas of Union competence', each 'category' being comprised of a number of 'areas.' These categories are contained in Articles 2 to 6 TFEU having as objective, the division of competences between the Union and the Member States while conferring upon the Union the competences to attain objectives in common. Intimately linked to this division of competences are the principles of subsidiarity and proportionality.

Discuss.

2. There is no express Treaty reference to the supremacy (also 'primacy') of European Union Law over domestic law. The Court of Justice of the EU (CJEU) has repeatedly held that supremacy is implied in the Treaty. In the Judgment of the Court of 15 July 1964. - *Flaminio Costa v E.N.E.L.* - (Reference for a preliminary ruling) - Case 6/64, the explanation of the Court as to the reasons underlying such doctrine are as clear as they are logical. This case has served as a fundamental basis for the development of supremacy into a refined doctrine which attempts to provide solutions where conflict between national law and EU law arises, and with regard to which, the Treaties are silent.

Discuss with reference to doctrine and relevant case law.

3. Explain the doctrine of 'direct effect'. Discuss to what extent EU directives are capable of direct effect, including the ways in which, even though directives do not have horizontal direct effect, they can impact on national law.

Section B

4. On October 3, 2013, the Court of Justice of the European Union (CJEU) (Case C-583/11P) in the *Inuit* case delivered a judgment where it for the first time ruled on the meaning of 'regulatory acts'. The CJEU decided to stick to the interpretation of 'regulatory acts' given by the General Court and dismissed the appeal.

Discuss with reference to case law the background of the Lisbon amendments relating to the notion of direct and individual concern in Article 263 paragraph 4 TFEU, and how the CJEU interpreted the said amendments in subsequent case law after 2009.

5. The EU's system of judicial protection guarantees that decision-making is legally accountable. Pursuant to Article 263 TFEU validity of legally binding acts of the EU institutions could be subject to judicial review by the Court of Justice of the European Union (CJEU). Once admissibility for the challenge under Article 263 has been established the grounds or substantive merits must be proved.

Discuss.

6. "There is a clear danger that, given the disparate national legal traditions of the Member States, Union law will develop differently in the national courts. If this were to happen, individuals and businesses would be operating under different rules and many of the benefits of an open Union and a genuine internal market would be lost. (...) The only effective way of doing this is to provide that ultimate authority for deciding the meaning of Union law should reside in one court - the Court of Justice of the European Union (CJEU)".

Discuss the above with reference to Article 267 TFEU and the relevant case-law highlighting the relationship that exists between the CJEU and the national courts.

Section C

7. What is the difference, if at all, between an 'agreement', a 'concerted practice' and a 'decision by an association of undertakings' in terms of Article 101 TFEU?

8. What is the meaning of an 'abuse of a dominant position' under Article 102 TFEU?
Is it dependant on any particular outline analysis on the relevant market?

9. State aid granted to undertakings could distort competition, undermining the very idea of a level playing field between undertakings in the EU. However, Article 107 TFEU provides that there could be certain exceptions when state aid could be deemed compatible with the internal market.

Discuss with reference to relevant case law.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS

LL.B. (Hons) II yr.

ECL 2001 EUROPEAN UNION LAW

Saturday 2nd September, 2017

Duration of Examination: 8.30am to 11.35am

INSTRUCTIONS TO STUDENTS:

EXAMPLE: Choose 3 questions answering one from EACH section:

(Each question carries equal marks)

Section A

1. The doctrine of direct effect is central to EU law. It has been developed by the Court of Justice of the European Union (CJEU) and its jurisprudence has become more complex over the years.

Discuss the meaning of this doctrine, focusing in particular upon the extent to which directives could have direct effect.

2. Discuss any **two** of the following:
 - a. Regulations, Directives and Decisions, as legal acts of the European Union;
 - b. Legislative Acts of the Union as introduced by the Lisbon Treaty (Art. 289 TFEU);
 - c. Delegated (Art. 290 TFEU) and Implementing Acts (Art. 291 TFEU) post-Lisbon.
3. When joining the European Union, the Member States transfer a portion of their sovereignty to it. This means that each Member State must play the game according to the same rules. From this follows that EU law must override national law in the event of a conflict. If this were not so, Member States could avoid the application of EU rules which are disadvantageous to their interests by passing conflicting legislation.

Discuss this statement in the light of the primacy or supremacy of EU law over national domestic law including national constitutional law.

Section B

4. Explain the preliminary reference procedure under Article 267 TFEU and evaluate its

importance for the consistent application of EU law across Member States.

5. With reference to case-law, explain how the enforcement (or 'infringement') action procedure laid down by Article 258 TFEU, whereby the Commission is empowered to bring an action against a Member State, works?
 6. Article 263 TFEU provides the basis for a direct challenge to the legality of Union acts. In a direct action for annulment action under this article, natural or legal persons, as non-privileged applicants, have limited *locus standi* to challenge the legality of Union acts. Discuss by reference to pertinent case-law developed by the CJEU.
-

Section C

7. Article 102 TFEU is concerned with the rendering unlawful the abuse of a dominant position as enjoyed by a firm in the marketplace.

Explain the nature and concept of *abuse* with reference to the jurisprudence of the CJEU.

8. Pursuant to Article 106 of the Treaty on the Functioning of the European Union (TFEU), the Member States could implement and maintain special measures which derogate from rules on competition guaranteed by the Treaty.

With reference to relevant case-law, discuss to what extent public monopolies and undertakings entrusted with exclusive rights to provide services of general economic interest (SGEIs) could be 'excluded' from application of such rules.

9. The wording of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) establishes four-fold criteria for definition of state aids.

With reference to relevant case-law, discuss what would constitute state aid.

UNIVERSITY OF MALTA
FACULTY OF LAWS

ECL2001 - EUROPEAN UNION LAW

Wednesday 30th May 2018

DURATION OF EXAMINATION: 8.30AM - 11.35AM

INSTRUCTIONS TO STUDENTS:

Choose ANY 3 questions answering ONE from EACH section:

(Each question carry equal marks)

Section A

1. 'The principle of conferral is intrinsically linked to the principle of subsidiarity. The former principle underlies the division of competences between the Union and the Member States. Article 1 TEU declares that 'the Member states confer competences on the Union to attain objectives they have in common'. The Union is to act 'only within the limits of the competences conferred on it by the Member States in the Treaties to attain the objectives set out therein' (Art. 5(2) TEU). Articles 2 to 6 TFEU specifically classify such competences. On the other hand, the principle of subsidiarity serves as a yardstick against which the EU institutions are to determine whether or not to exercise Union competence. Except in the area of exclusive competence, the Union is to act only when the objectives can be better achieved at Union level rather than at local or regional level (Art. 5(3) TEU).

Discuss by reference to the competences of the EU and the principle of subsidiarity.

2. 'The wide scope of the treaties has led to an inevitable situation of conflict between national law and EU law. To resolve such conflict, the Court of Justice of the European Union (CJEU) developed the doctrine of supremacy, also referred to as 'primacy', of EU law. In addition, the CJEU developed a second doctrine, the doctrine of State liability in damages, which not only enables the individual to claim financial redress before the national court, but also ensures further enforcement of Union law.

Discuss the two doctrines and relevant case-law.

3. The Court of Justice of the European Union (CJEU) has developed the doctrines of direct effect and indirect effect in order to ensure that (a) the rights of EU citizens are

adequately protected by EU law, and (b) the member states remain accountable for failure to observe and implement EU law. Discuss.

Section B

4. Explain the preliminary reference procedure under Article 267 TFEU and evaluate its importance for the consistent application of EU law across Member States.
5. 'Natural and legal persons face formidable obstacles in bringing a direct action against an act of a Union institution before the Union courts'. Discuss with particular reference to the doctrine of 'locus standi' of the CJEU, including the relevant case law.
6. The EU's system of judicial protection guarantees that decision-making is legally accountable. Pursuant to Article 263 TFEU validity of legally binding acts of the EU institutions could be subject to judicial review by the Court of Justice of the European Union (CJEU). Once admissibility for the challenge under Article 263 has been established the grounds or substantive merits must be proved.

Discuss the four grounds of judicial review.

Section C

7. EU competition law aims to root out business practices that threaten market integration and harm consumers. Article 101(1) TFEU is interpreted broadly, to catch all arrangements between businesses with these harmful effects.

Discuss.

8. *United Brands* is a frequently cited precedent in EU competition law. It covers, amongst other things, issues of market definition, the concept of a dominant position, and several types of abuse under Article 102 TFEU.

Discuss.

9. Article 107(1) does not define state aid. The CJEU and the Commission have, as might be expected, taken a broad view. Discuss the above statement with reference to case-law.

END OF PAPER

UNIVERSITY OF MALTA
FACULTY OF LAWS

ECL 2001 - EUROPEAN UNION LAW

Wednesday 5th September 2018

Duration of Examination: 8.30AM - 11:35AM

INSTRUCTIONS TO STUDENTS:

Choose ANY 3 questions answering ONE from EACH section:

(Each question carry equal marks)

Section A.

1. The Lisbon Treaty has introduced categories of competences of the European Union in order to lessen the difficulties connected with identifying the limits of EU competence. There are now categories of competences which have legal effects on EU and Member State power: (i) exclusive competence, (ii) shared competence or (iii) competence only to take supporting, coordinating or supplementary action. Intimately connected to the three main categories of competence is the principle of subsidiarity.

Discuss with particular reference to the competences of the EU and the principle of subsidiarity

2. The wide scope of the treaties has led to an inevitable situation of conflict between national law and EU law. To resolve such conflict, the Court of Justice of the European Union (CJEU) developed the doctrine of supremacy, also referred to as 'primacy', of EU law. In addition, the CJEU developed a second doctrine, the doctrine of State liability in damages, which not only enables the individual to claim financial redress before the national court, but also ensures further enforcement of Union law.

Discuss the two doctrines and relevant case-law.

3. Article 288 TFEU states that: 'A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States' whereas 'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. It has been suggested that, partly because of the doctrine of direct effect, the distinction between Regulations and Directives has become increasingly blurred.

Discuss

Section B

4. "The so-called *Francovich* Principle of State of Liability, named after the first case in which the Court of Justice stated it, makes a Member State liable to its own citizens when that State fails to fulfill its obligations under the Treaty, but this depends on the fulfillment of certain conditions".

What are the conditions which have to be satisfied before a national Court can hold the State liable towards an individual and how has the Court further developed the principle of state liability in cases subsequent to the *Francovich* Case?

5. The standing rules on direct actions under Article 263 TFEU have generated significant case law since the very inception of the EU (previously EEC). The primary reason for this 'failure rate' has been the requirement of individual concern as interpreted in the *Pavani* case.

Discuss with reference to the more recent case-law

6. The relationship between national courts and the Court of Justice of the EU is reference-based. It is not an appeal system. No individual has a right to appeal to the CJEU.

Discuss.

Section C

7. Examine the notion of 'undertaking', the single economic entity doctrine and the concept of 'decisions of associations of undertakings' and explain their relevance in the application of Article 101(1) of the TFEU.
8. What does the concept of 'a dominant position' in Article 102 of the TFEU mean?
9. State aid granted to undertakings could distort competition, undermining the very idea of a level playing field between undertakings in the EU. However, Article 107 TFEU provides that there could be certain exceptions when state aid could be deemed compatible with the internal market.

Discuss with reference to relevant case law.

END OF PAPER.

University of Malta
Faculty of Laws
June 2019 Examination Session
ECL2001 EUROPEAN UNION LAW

Date: Thursday 6th June 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ANY THREE (3)** questions answering **ONE (1)** from **EACH** section: (Each question carry equal marks)

Section A

1. 'Prior to the coming into force of the Lisbon Treaty the limits of competence of the European Union were not defined by the Treaty. This led to substantial disagreement regarding the extent of competence of the Union in given areas of law and policy. The reform process aimed to alleviate this and with the adoption of the Lisbon Treaty, the Treaty on the Functioning of the European Union (TFEU) contains provisions which streamline the EU's competences classifying them into three categories: (i) exclusive, (ii) shared and (iii) supporting, coordinating or supplementary. Closely linked to EU competence is the principle of subsidiarity, first introduced in the Maastricht Treaty and retained in the Lisbon Treaty. Its function is to regulate the exercise of the EU's competence.

Discuss the competences of the Union as contained in the TFEU and its correlation with the principle of subsidiarity.

2. The wide scope of the treaties led to an inevitable situation of conflict between national law and EU law. To resolve such conflict, the Court of Justice of the EU (CJEU) developed the doctrine of supremacy, also referred to as 'primacy', of EU law. In addition, the CJEU developed a second doctrine, the doctrine of State liability, which not only enables the individual to claim financial redress before the national court, but also ensures further enforcement of Union law.

Discuss the two doctrines and relevant case-law.

3. The doctrine of Direct Effect in EU law applies in principle to all binding EU law including treaty provisions, regulations, directives and decisions. However, the direct effect of directives has always been controversial and the Court of Justice of the European Union has held that directives are not capable of horizontal direct effect.

Discuss this statement.

Section B

4. Explain the preliminary reference procedure under Article 267 TFEU and evaluate its importance for the consistent application of EU law across Member States.
5. Discuss with reference to case-law the background of the Lisbon amendments relating to the notion of direct and individual concern in Article 263 paragraph 4 TFEU, and how the CJEU interpreted the said amendments in subsequent case law after 2009.
6. "The General Principles of EU Law, such as legal certainty, proportionality, legitimate expectations, precautionary principle and so on, were developed by the Court of justice of the European Union, and are 'superior' norms in the EU legal order'.

Choose any TWO general principles of European Union Law and show how these principles work, and their effect, in the EU legal order by reference to some main judgements of the Court of Justice of the European Union.

Section C

7. Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anti-competitive business practices.
Explain the type of business practices Article 101 TFEU aims to prohibit.
8. According to Article 3 (1) and (4) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation) a 'concentration' is deemed to arise where there is a change of control on a lasting basis.
9. 'According to the well-established case law of the Court of justice of the European Union, the notion of what constitutes state aid is an objective and legal concept defined directly by Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)'.

With reference to relevant case-law, discuss the four-fold criteria of what constitutes state aid.

University of Malta
Faculty of Laws

September 2019 Examination Session

ECL 2001 EUROPEAN UNION LAW

Date: Tuesday 3rd September, 2019 Duration of Examination: 8:30AM - 11:35AM

INSTRUCTIONS TO STUDENTS:

Choose **ANY THREE (3)** questions answering **ONE (1)** from EACH section.

Each question carries equal marks.

Section A

1. 'The Treaty on the Functioning of the European Union (TFEU) classifies the various domains of activity of the Union into 'categories and areas of Union competence', each 'category' being comprised of a number of 'areas.' These categories are contained in Articles 2 to 6 TFEU having as objective, the division of competences between the Union and the Member States while conferring upon the Union the competences to attain objectives in common. Intimately linked to this division of competences are the principles of subsidiarity and proportionality. Discuss.
2. The Court of Justice of the European Union (CJEU) has developed the doctrines of direct effect and indirect effect in order to ensure that (a) the rights of EU citizens are adequately protected by European Union law, and (b) the Member States remain accountable for failure to observe and implement EU law. Discuss.
3. The Member States must observe European Union law and must fulfil their obligations under the Treaties. The development of the doctrines of Supremacy of European Union law and State Liability in Damages was intended to enforce the obligations of Member States to observe EU law. Do you agree with this statement? Discuss by reference to both doctrines, including relevant case.

Section B

4. "The so-called Francovich Principle of State Liability, named after the first case in which the Court of Justice of the European Union (CJEU) stated it, makes a Member State liable to its own citizens when that State fails to fulfill its obligations under the Treaty, but this depends on the fulfillment of certain conditions." What are the conditions which have to be satisfied before a national Court can hold the State liable towards an individual and how has the CJEU further developed the principle of State Liability in cases subsequent to the Francovich Case?

5. With reference to case-law, explain how does the enforcement (or 'infringement') action procedure laid down by Article 258 of the Treaty on the Functioning of the European Union, whereby the Commission is empowered to bring an action against a Member State, works? Discuss with reference to the more recent case-law.

6. The European Union's system of judicial protection guarantees that decision-making is legally accountable. Pursuant to Article 263 of the Treaty on the Functioning of the European Union (TFEU) validity of legally binding acts of the EU institutions could be subject to judicial review by the Court of Justice of the European Union (CJEU). Once admissibility for the challenge under Article 263 of the Treaty on the Functioning of the European Union has been established the grounds or substantive merits must be proved. Discuss the four grounds of judicial review.

Section C

7. Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits any type of price-fixing agreement. Would the recommendation on appropriate prices taken by an association of undertakings fall within the scope of Article 101 TFEU?

8. What is the meaning of a 'dominant position' under Article 102 of the Treaty on the Functioning of the European Union (TFEU)? Is it dependant on any particular analysis of the relevant market?

9. 'The second step in the state aid analysis consists of an assessment of whether an aid measure, which is in principle prohibited by Article 107(1) Treaty on the Functioning of the European Union (TFEU), could still be acceptable because it is "compatible" with one of the objectives listed in Article 107(2) and (3) TFEU.' With reference to relevant case-law, discuss certain exceptions when state aid could be deemed as actually pursuing a legitimate objective, and can therefore become compatible with EU law.



L-Università
ta' Malta

FACULTY OF LAWS
DEPARTMENT OF EUROPEAN AND COMPARATIVE LAW
JUNE/JULY 2020 EXAMINATION SESSION

ECL2001 EUROPEAN UNION LAW

Friday, 12th June 2020

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

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

Telephone: 2340 3251; 2340 2786

Email: laws@um.edu.mt

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

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

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

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

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

.....

Answer all three questions within the required word count. All questions carry equal marks.

1. A Finnish company was formed, allegedly to defraud the creditors of one of its founders. The company took the assets of the individuals setting it up, and for the legal purposes, this process put the assets of those individuals beyond the reach of their creditors. Certain creditors sought to have the 'founders contract', which is one way of setting up a company in Finnish law, voided for lack of consideration or, in the alternative, on the ground that it was a sham transaction, vitiated by the lack of a lawful clause.

The defendants argued that under the Article 11 of the EU First Company Directive 68/151/EEC, which provided an exhaustive list of the grounds on which the nullity of a company may be declared, lack of consideration or lack of lawful cause was not mentioned. Directive 68/151/EEC was not implemented in Finland although the prescribed time limit for its implementation had elapsed. The Finnish court asks the CJEU on the Article 267 TFEU whether Article 11 of the said Directive was directly effective and whether it prevented a declaration of nullity on grounds other than an enumerated in the provision.

You have been nominated as the Advocate General on the above case. **Please give your opinion about how you would decide the case, and in doing so, please make reference to other judgements of the CJEU and expand on the doctrines involved.**

(Max 1000 words)

2. Mention and discuss three rights/procedures that a private individual may use while litigating EU law and explain briefly how an individual can use the right/procedure.

For example, an individual has a right to write to the EU Commission to ask the Commission to investigate a possible breach of an EU law by a Member State. It is then up to the Commission's discretion whether to investigate.

(Max 330 words per point, i.e. approx. 1000 words in all)

3. The CEOs of four companies that produce luxury hotel toiletries for the EU market meet yearly to discuss the industry in general and developments that are taking place. At one particular meeting, they agree informally over a drink to set the minimum discount each of the companies can grant their respective distributors which supply the hotel toiletries to hotel

operators. They also discuss their present operating and future business plans and decide to enter into discussion with a Chinese exporter, attempting to enter the EU market, in order to reach an understanding to avoid cut-throat competition.

One of the CEOs, however, did not reveal that it had also secured a state-of-the-art production facility from the Maltese Government. In return for relocating its production facility to one of the industrial parks in Malta, the Maltese Government afforded the CEO's production company favourable commercial lease rates which differ to those afforded to competing production plants.

- (a) Is any of the discussion held between the CEOs in breach of Article 101 of the Treaty on the Functioning of the European Union (TFEU)? Would Article 101 TFEU apply to the discussion to be held between the CEOs and the Chinese exporter? AND
- (b) In order for competing production plants to be able to take action against the Maltese Government, what are the conditions that such a measure must meet to be regarded as 'aid' within the meaning of Article 107 (1) TFEU?

(Max 1000 words (a) and (b) included)



Second Year Law
Compulsory Units Past Papers

Introduction to the PRINCIPLES of TAX

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

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
JANUARY 2008 TEST
PBL3003 -- General Introduction to Principles of Taxation

Monday 28th January 2008

9.15am -- 10.15am

Answer ALL Questions

USE OF CALCULATORS IS ALLOWED

PART I -- PRACTICE

1. Ms. Jackson is a US citizen who works as an international software consultant. In the year in question she visited Malta and provided her services to a Maltese client. Her advice to the Maltese client consisted in an analysis of her client's software system. She spent only 65 days in Malta, and neither established a residence in Malta nor entered into arrangements relating to the acquisition of a Maltese residence. Furthermore, she did not establish a fixed place of business in Malta and always worked from her client's premises. However, she opened a bank account in Malta and remitted funds into her account. In the year in question she derived the following gains and profits:

- (a) EUR15,000 in respect of the activities she performed in Malta for her Maltese client. Ms. Jackson's client settled her fees by depositing funds into her Maltese bank account.
- (b) EUR500 gross bank interest accruing from her Maltese bank account.
- (c) EUR25,000 for services rendered outside Malta (the said sum was remitted into her Swiss bank account).
- (d) EUR14,000 gross bank interest she received from her bank account in Switzerland (50% of the bank interest was remitted into her Maltese bank account).
- (e) EUR20,000 bank interest derived from her US bank account (the interest was not remitted to Malta).
- (f) EUR10,000 rental income derived from the rental of her studio flat in Chicago (the rental income was entirely remitted into her Maltese bank account).

Calculate Ms. Jackson's Chargeable Income and briefly discuss her tax status (25 marks).

2. Mr. Borg was born in Malta in 1973. His mother and father are both domiciled in Malta and were both domiciled in Malta at the time of his birth. In 1997 he joined a Japanese company and went to work for the Japanese company at its head office in Tokyo, Japan. He visits his parents in Malta every year and spends around a month a year at his parent's house in Valletta. His contract with the Japanese company is a contract for a definite term and will expire in 2010. He always intended to return to Malta upon the expiry of his contract with the Japanese company. In the year in question he derived the following income:
- (a) A gross salary of EUR200,000 he received in terms of his contract of employment with the Japanese company. Mr. Borg retained his salary in a bank account which he holds with a Japanese bank.
 - (b) EUR1,000 derived from the sale of securities listed with the Maltese Stock Exchange. The gain was immediately transferred to Mr. Borg's bank account in Japan.
 - (c) EUR3,000 interest accruing from a bank account he opened in Switzerland.
 - (d) EUR12,000 derived from the sales of securities listed on the London Stock Exchange. The gain
 - (e) EUR1,500 derived from the rental of a flat in Swieqi. The rental income was received in cash and is kept in his mother's jewellery box in Swieqi.

P.T.O.

In the year in question Mr. Borg incurred the following expenditure:

- (a) EUR2,500 travelling expenses to visit his parents in Malta.
- (b) EUR500 bank fees in order to open his bank account in Switzerland.
- (c) EUR300 donation to a Heritage Organisation.
- (d) EUR500 donation to political refugees.
- (e) EUR400 paid to settle for the fees of his grandparent's home for the elderly.
- (f) EUR200 School fee paid in respect of his natural son, Mark. Mark attends a primary school named by the Minister.
- (g) EUR3,000 to financially support Ms. Zammit, mother of his natural son Mark.
- (h) A capital loss of EUR2,000 incurred in connection with the shares he holds on the Turkish Stock Exchange.
- (i) EUR10,000 bank interest in respect of a loan he used to acquire his flat in Swieqi. The loan is held with his Japanese bank account.

Calculate Mr. Borg's Chargeable Income. (25 marks)

PART II - THEORY.

- 3. Discuss (briefly) the (i) definition of Plant Machinery, (ii) Industrial Building and Structure AND (iii) Nature of Capital Allowances (25 marks).
- 4. Discuss (briefly) the importance of the judgement of the Court of Appeal in CIR vs Alfred Caruana (App.Civ.Nru 266/2005/01-10/01/07) (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
September 2008 TEST
PBL3003- Principles of Taxation

Monday, 1st September 2008

9.15AM – 10.15AM

Answer ALL Questions

USE OF CALCULATORS IS ALLOWED

PART I – PRACTICE

1. Mr. Vella was born in Malta to Maltese domiciliaries in 1973. He is a Maltese national. He got married to a Maltese domiciliary in 2000. He lived in Malta up to 2001, when he took up employment with a foreign company. Mr. Vella's wife and daughter remained in Malta but he had to leave Malta to work abroad. He intends to return to Malta for good upon the expiry of his contract with the foreign company, in 2010. Mr. Vella visits Malta whenever he is on leave, spending in the aggregate around 30 days in Malta in every calendar year (including calendar year 2008). In calendar year 2008 he received the following gains and profits:
- (a) EUR5,000 bank interest from a Maltese bank account.
 - (b) EUR3,000 gross bank interest from his Swiss bank account (the bank interest was not received in Malta).
 - (c) A salary amount to EUR45,000 paid by his foreign employer (the salary was not received in Malta).
 - (d) EUR10,000 rental income derived from the rental of his flat in Bugibba. The rent was received in cash.

Calculate Mr. Vella's chargeable income (in terms of the Income Tax Acts) for calendar year 2008 and briefly discuss his tax status (25 marks).

2. Mr. Slater is a British tourist who visited Malta in 2008. He did not enjoy his holiday in Malta and does not intend to return to Malta. He spent not more than 60 days in Malta and performed some odd jobs in the course of his stay. In the course of the year 2008 he derived the following gains and profits:
- (a) A gross salary of EUR200,000 he received in terms of his contract of employment with his British employer. Mr. Slater deposited all his salary in a Maltese bank account.
 - (b) A dividend of EUR3,000 derived from a company listed on a foreign stock exchange. The foreign dividend was not received in Malta.
 - (c) A profit of EUR6,000 derived from the sale (the sale took place in Malta) of his stamp collection. Mr. Slater had built up the collection over a period of 20 years.
 - (d) A profit of EUR5,000 derived from the sale (the sale took place in Malta) of his coin collection. Mr. Slater had been collecting coins since he was a schoolboy.
 - (e) A profit of EUR3,000 from the sale (the sale agreement was executed in Malta, the acquirer of the business is a Maltese resident) of his internet business (a news portal for retired war veterans).
 - (f) A profit of EUR2,000 in respect of restoration services rendered in Malta to several Maltese clients.

Calculate Mr. Slater's chargeable income (in terms of the Income Tax Acts) for 2008. (25 marks)

PART II - THEORY

3. Discuss (briefly) the notion of Ordinary Residence (when applies to Bodies of Persons) in tax law (25 marks).
4. Discuss (briefly) the importance of the judgement of the Of Appeal (Civil, Superior) in *Chev Antonio Cassar Torregiani, C.B.E., Ne. vs Nutar Dr Vincenzo Gatt Ne.* (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
TEST

PBL3003 – General Introduction to Principles of Taxation

Answer ALL Questions

Thursday, 29th January, 2009
2.15PM – 3.15PM

USE OF CALCULATORS IS ALLOWED

PART I – PRACTICE

1. Klima Limited is a company which was incorporated in Bermuda but which is effectively managed and controlled from Malta. In calendar year 2009 Klima Limited received the following gains and profits:
- (a) EUR500,000 arising from operations conducted via a permanent establishment situated within the Maltese Continental shelf;
 - (b) EUR300,000 derived in respect of consultancy services offered to a Chinese client. The Chinese client settled Klima Limited's fee by direct wire transfer to Klima Limited's bank account in China. Klima Limited intends to retain the funds received from the Chinese client in its Chinese Bank Account.
 - (c) EUR5,000 bank interest from a Maltese bank account.
 - (d) EUR3,000 gross bank interest from its Swiss bank account (the bank interest was not received in Malta).

Calculate Klima Limited's chargeable income (in terms of the Income Tax Acts) in respect of calendar year 2009 (25 marks).

2. Mr. Barker is a British born pensioner who visited Malta in 2007 as a tourist. He really enjoyed his stay in Malta. He returned to Malta in 2008 to establish his chief residence in Malta. He could not find a suitable villa for purchase so he decided to rent a flat in Sliema. Mr. Barker derived the following gains and profits in calendar year 2009:
- (a) A dividend of EUR20,000 derived from a company listed on a foreign stock exchange. The foreign dividend was not received in Malta.
 - (b) A profit of EUR6,000 derived from the sale (the sale took place in Malta) of his collection of fine prints. Mr. Barker had build up the collection over a period of 20 years.
 - (c) A profit of EUR5,000 derived from the sale (the sale took place in Malta) of his coin collection. Mr. Barker had been collecting coins since he was a schoolboy.
 - (d) Foreign bank interest of EUR100,000 which was not remitted to Malta.

Calculate Mr. Barker's chargeable income (in terms of the Income Tax Acts) in respect of calendar year 2009. (25 marks)

PART II - THEORY

- 3. Discuss (briefly) the Participation Exemption and the conditions pertinent to the exemption (25 marks).
- 4. Discuss (briefly) the importance of the judgement of the Constitutional Court in *Pig Breeding Company Limited vs Avukat Generali U L-Kummissarju Tat-Taxxi Interni*. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
January 2010 TEST
PBL3003 – General Introduction to Principles of Taxation

Monday 25th January, 2010

10.30AM – 11.30AM

Answer ALL Questions

USE OF CALCULATORS IS ALLOWED

1. Maltija B.V is a company which is registered with the Registry of Companies in Amsterdam, the Netherlands. It was decided that as from this year the company will be managed and controlled from Malta. Maltija B.V will derive the following income:
 - (a) a (trading) royalty from a French client amounting to EUR1,000;
 - (b) bank interest from its Swiss bank account amounting to EUR10,000 (50% of which will be received in Malta);
 - (c) trading profits from its German branch amounting to EUR50,000 (the latter will be retained in a bank account in Guernsey);
 - (d) a dividend of EUR20,000 from a fully owned Irish subsidiary. The dividend will be received in the company's Maltese bank account.
 - (e) a profit of EUR50,000 derived from the disposal of the company's office premises in the Netherlands.

Calculate the company's chargeable income for the year by giving reasons. (25 marks).

2. Is it correct to say that the State's right to tax over-rides the right to property? Comment briefly with reference case law of the European Court of Human Rights, the European Convention on Human rights and the Constitution of Malta (25 marks)
3. Discuss (briefly) the badge of trade Supplementary work with reference to case Law. (25 marks).
4. Discuss (briefly) the participation exemption contemplated in Article 12 (1) (u) of the income Tax Act. (25 marks).

**UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III YEAR**

**PBL3003 – GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION
(JANUARY 2010 RE-SIT)**

MONDAY 6TH SEPTEMBER 2010

9.15AM – 10.15AM

**ANSWER ALL QUESTIONS.
EACH QUESTION CARRIES 25 MARKS.**

1. Discuss briefly the concept of management and control of companies.
2. Discuss briefly capital allowances.
3. Discuss briefly badges of trade.
4. Discuss the leading cases on retrospective tax legislation.

**UNIVERSITY OF MALTA
FACULTY OF LAWS
LLB III YEAR**

**PBL3003 – GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION
(MAY/JUNE 2010 RE-SIT)**

TUESDAY 7TH SEPTEMBER 2010

9.15AM – 10.15AM

**ANSWER ALL QUESTIONS.
EACH QUESTION CARRIES 25 MARKS.**

1. Discuss the domicile of companies.
2. Discuss tax exemptions which apply to non-residents.
3. Discuss the consequences of tax evasion.
4. Discuss expenses of a private nature which are allowed for tax purposes.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III

PBL3003 – GENERAL INTRODUCTION TO PRINCIPLES OF
TAXATION

FRIDAY 17TH JUNE 2011

10.30AM – 11.30AM

ANSWER ALL Questions

USE OF CALCULATORS IS ALLOWED

All questions carry equal marks.

1. What is the Flat Rate Foreign Tax Credit ? (include a computation in your explanation)
 2. Briefly explain the refundable tax credit system.
 3. What is a Permanent Establishment and why is it an important concept?
 4. What is the procedure to contest (challenge) a tax assessment raised by the Commissioner of Inland Revenue?
-

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
February 2012
PBL 3003 - General Introduction to Principles of Taxation

Thursday, 2nd February 2012

2.15P.M. – 3.15P.M.

Answer ALL Questions

USE OF CALCULATORS IS ALLOWED

1. Mr. Higgin, a pensioner, ordinarily resides in Malta but he is not domiciled in Malta. In the relevant year, Mr. Higgins received the following:
 - (a) A pension of EUR10,000. The pension was paid by the British social security agency to Mr. Higgin's bank account in Jersey. Mr. Higgin did not receive the pension in Malta;
 - (b) A capital gain of EUR15,000 from the sale of a flat in Berkshire, England. The capital gain was transferred to Mr. Higgin's Maltese bank account;
 - (c) A capital gain of EUR6,000 from the sale of Mr. Higgin's antique collection. The collection was sold by auction in Malta but the capital gain was transferred to Mr. Higgin's Jersey Bank Account;
 - (d) A dividend of EUR500 from a company listed on the Maltese Stock Exchange;
 - (e) Bank interest of EUR500 from Mr. Higgin's Jersey bank account. The interest was not received in Malta;
 - (f) Bank interest of EUR1,000 from Mr. Higgin's Maltese bank account; and
 - (g) A Maltese State pension of EUR7,000.Calculate the chargeable income (giving reasons) of Mr Higgins for the relevant year. Give reasons for your calculations (25 marks).
2. Discuss the main income tax rules which apply to temporary residents. (25 marks)
3. Discuss 1 of the following recent cases:
 - (a) The decision of European Court of Human Rights in *Oao Neftyanaya Kompaniya Yukos ('Yukos') v. Russia*; OR
 - (b) The decision of the First Hall Civil Court (Constitutional Jurisdiction) in *Carter Neil v. Onorevoli Priministru et*(25 marks).
4. Briefly discuss the concept of ordinary residence when applied to a body of persons and its relevance in income tax law. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
June 2012 TEST
PBL3003 – General Introduction to Principles of Taxation

Friday 15th June, 2012

2.15pm – 3.15pm

Answer ALL Questions.

USE OF CALCULATORS IS ALLOWED.

1. Discuss the Participation Exemption. (25 marks).
2. Discuss the Flat Rate Foreign Tax Credit (FRFTC). Include a worked example in your explanation. (25 marks).
3. Discuss one of the following:
 - (a) The concept of Permanent Establishment for tax treaty purposes; OR
 - (b) The concept of residence for tax treaty purposes; OR
 - (c) Unilateral Relief; OR
 - (d) Tax evasion.

(25 marks).
4. Briefly discuss the concept of domicile when applied to an individual and its importance in income tax law. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEAR
PBL3003 – GENERAL INTRODUCTION TO PRINCIPLES OF
TAXATION (January 50%)

TUESDAY 11th SEPTEMBER, 2012

9.15 A.M. – 10.15 P.M.

Answer **ALL** questions

USE OF CALCULATORS IS ALLOWED

1. Briefly discuss the tools which are used in the Income Tax to establish jurisdiction to tax. (25 marks)
2. Discuss the use of the concept of management and control in the OECD Model. (25 marks)
3. Discuss the legal consequences of tax evasion. (25 marks)
4. Discuss the jurisdiction of the Administrative Review Tribunal in Income Tax matters. (25 marks)

3 Answer either 3 (a) or 3 (b). Every part of question 3 (a) and 3 (b) carries equal marks.

3 (a) Malta Company Limited is a company which was registered in Malta. It holds some shares in a Turkish Limited Liability Company. Explain (i) the definitions and rules which need to be addressed to establish whether the Turkish Company will be treated as a participating holding of Malta Company Limited; and (ii) the tax benefits associated with the holding of a participating holding. (25 marks).OR

3 (b) Answer questions (i) and (ii)

Riches Limited is a company registered in Jersey. It is not effectively managed and controlled in Malta and it did not establish a permanent establishment in Malta. In 2012, it received the following income:

- Interest income of EUR10,000 received with respect to capital sum held in a Maltese bank account;
- A royalty of EUR30,000 derived from a client who is a Maltese resident company. The royalty referred to the use of a registered trademark.

- (i) Calculate Riches Limited's chargeable income for 2012; **AND ANSWER (ii)**
- (ii) Riches Limited intends to dispose of an apartment (property purchased as an investment) situated in Malta. It intends to sell the apartment for EUR300,000 in 2013. Riches Limited's projected capital gain will of EUR80,000. Riches Limited had bought the apartment in 2010 for EUR200,000. The apartment is not situated in a designated area. Explain to the Riches Limited its options (if any at all) under Articles 5 (Capital Gains) and 5A (Property Transfers Tax) of the Income Tax Act and explain how the transfer will be taxed. (25 marks).

4 Discuss the judgement delivered by the Constitutional Court in the case John Geranzi v. Kummissarju tat-taxxi Nterni et. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. III YEARS
January 2013 TEST
Principles of Taxation

Thursday 31st January, 2013

2.15pm – 3.15pm

Answer Questions 1, 2, 3 and 4

USE OF CALCULATORS IS ALLOWED

1. Foreigners Limited is a company which was incorporated in Cyprus in 2009. In 2011 it moved the seat of management and control to Malta. In 2012 Foreigners Limited received the following gains and profits:
 - (a) EUR500,000 from the disposal of its office in Cyprus. The gain on disposal was not received in Malta.
 - (b) EUR30,000 from the disposal of the furniture used in the office in Cyprus (fixed asset). The gain on disposal was received in Foreigners Limited's bank account in Malta.
 - (c) EUR15,000 gross bank interest generated from capital deposited with a Maltese bank account.
 - (d) EUR100,000 trading income derived from activities worldwide. Only 50% of the trading income was received in Malta.

Calculate Foreigners Limited's chargeable income for 2012. (25 marks).

2. Mr. Tobbs was born in the UK in 1988. He is a law student who is studying at the University of Malta. He has been living in Malta for the past 3 years. He spends 200 days a year in Malta. Upon completion of his studies, he intends to return to the UK. Explain the application of the rules on jurisdiction to income tax to Mr. Tobbs. (25 marks)

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III

**PBL3003 – GENERAL INTRODUCTION TO PRINCIPLES OF
TAXATION**

THURSDAY, 30TH MAY, 2013

2.15P.M. – 3.15P.M.

Answer Questions 1, 2, 3 and 4

USE OF CALCULATORS IS ALLOWED

1. Explain the conditions for the application of any 2 of the following. In your answers, include tax computations.
 - (a) The Flat Rate Foreign Tax Credit;
 - (b) Unilateral Relief;
 - (c) Double Tax Treaty Relief;

(25 marks)
2. Explain the Refundable Tax Credit System discussing how it works. (25 marks)
3. Explain the procedure to contest an income tax assessment. (25 marks).
4. Article 12 of the Income Tax Act contains tax exemptions which tend to encourage foreign investors to invest in Malta. Identify two (2) such exemptions and explain the rules envisaged in the relevant tax exemptions. (25 marks).

UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. III YEARS

PBL3003 – GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

Monday 16th June, 2014

1.00pm – 2.00pm

Answer questions 1, 2, 3 and 4. Where a question is divided into sub-sections, every sub-section carries equal marks.

USE OF CALCULATORS IS ALLOWED

1. Malta Company Limited ('MCL') is a company that was registered in Malta and its objects clause incorporates an article that empowers MCL to receive foreign income account profits. MCL has received a foreign source passive royalty of EUR100,000 net of foreign income tax at 10%. MCL possesses evidence of tax paid abroad and a certificate of an auditor confirming that the royalty is allocated to MCL's FIA.

Explain, giving reasons, whether MCL is entitled to use:

- (a) The Flat Rate Foreign Tax Credit;
- (b) Unilateral Relief;
- (c) Double Tax Treaty Relief.

In your answer, include tax computations. (25 marks)

2. Explain how the Refundable Tax Credit System applies to dividend distributions of taxed profits by companies registered in Malta. Explain how the refundable tax credit system would apply to the distribution of MCL's (the company described in question 1) foreign income account passive royalty. (25 marks)
3. HCL, a company registered in Malta holds interests in a number of non-resident bodies of persons namely:
 - (a) The entire equity share capital of a Belgian registered company that is similar to a Maltese company.
 - (b) A partnership interest in a Dutch partnership similar to a Maltese Partnership En Commandite. The Dutch partnership's statute provides for capital divided in shares. The Dutch partnership's statute provides that HCL holds 50% of the shares in the Dutch Partnership, is entitled to 50% of the partnership's profits available for distribution and the right to vote.
 - (c) A portfolio shareholding (less than 1% shareholding) equity shares of a company that is listed on the New York Stock Exchange.
 - (d) Bonds issued by a Greek company.

Explain whether HCL will be entitled to avail itself of the Participation Exemption with respect to income paid to it by the bodies of persons mentioned in (a)-(d) above. (25 marks)

4. Explain the income tax treatment of Barranija Limited, a company incorporated in the Netherlands that is managed and controlled in Malta. In your answer, include a basic tax computation. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2nd & 4th YEAR
JUNE 2016 EXAMINATIONS

PBL 3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

DATE: FRIDAY 10th JUNE 2016

READING TIME: 4.00PM TO 4.05PM

DURATION OF EXAMINATION: 4.05PM TO 5.05PM

INSTRUCTIONS TO STUDENTS:

Answer Questions 1, 2, 3 and 4. All questions and sub-questions carry equal marks.

USE OF CALCULATORS IS ALLOWED

1. Mr. Koller is the Financial Controller of a Maltese registered company named K Limited. He is a German citizen born to German domiciled parents. He grew up and studied in Germany and works for a group of companies which is owned by a German company named K AG. In 2014, the group assigned Mr. Koller to its Maltese company. The assignment contract will terminate in 2020 when Mr. Koller will return to Germany and to his previous post. Mr. Koller finds Malta's climate too hot and has declared to family and friends that he looks forward to returning to Germany and resents the fact that he must spend over 300 days every calendar year in Malta.

In basis year 2015, Mr, Koller received the following gains or profits;

- (a) EUR4,000 in bank interest generated from funds held in his Swiss Bank Account. The Bank interest was not transferred to Malta;
- (b) EUR300,000 from the sale of an apartment in Dresden. This foreign source capital gain was transferred to Mr. Koller's Maltese bank account;
- (c) A salary of EUR200,000 paid by K Limited. The salary was paid to Mr. Koller's Maltese bank account;
- (d) A performance bonus (an additional salary) of EUR50,000 paid to Mr. Koller by K AG for services rendered to K Limited in Malta. The performance bonus was transferred to Mr. Koller's Swiss Bank Account
- (e) A capital gain of EUR10,000 from the sale of his coin collection at an Auction held in Malta.

Determine (giving reasons):

- (i) Mr. Koller's ordinary residence;
- (ii) Mr. Koller's domicile;
- (iii) Mr. Koller's chargeable income (taxable income and capital gains in Malta) for basis year 2015.

(25 marks)

2. The Income Tax Act contemplates a number of mechanisms which eliminate international double taxation. Identify 4 such mechanisms, discussing them briefly. (25 marks)

3. For computational purposes, the Income Tax Act classifies taxpayers in different categories (individuals, companies, bodies of persons, residents/ non-residents). Briefly, explain the relevant rules. (25 marks)

4. Malta Company Limited ('MCL') is a company registered in Malta that owns shares and interests in a number of foreign registered companies. In basis year 2015 it received the following gains or profits:

- (i) A dividend distributed by an Italian company in which it holds a 99% equity shareholding;
- (ii) A dividend distributed by a German company in which it holds a 50% equity shareholding;
- (iii) Royalties paid by one of MCL's shareholders;
- (iv) Interest paid by one of MCL's shareholders;
- (v) Profits attributable to MCL's Permanent Establishment in Libya.

Determine (giving reasons) which of (i) to (v) above will be subject to the participation exemption. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 2nd & 4th YEAR
SEPTEMBER 2016 EXAMINATIONS

EXAMINATION: PBL 3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

DATE: WEDNESDAY 7TH SEPTEMBER 2016

READING TIME: 8.30AM to 8.35AM

DURATION OF EXAMINATION: 8.35AM to 9.35AM

INSTRUCTIONS TO STUDENTS:

Answer Questions 1, 2, 3 and 4. All questions and sub-questions carry equal marks

USE OF CALCULATORS IS ALLOWED

1. Discuss the Participation Exemption.
(25 marks)
2. What are capital allowances and with respect to which assets may they be availed of?
(25 marks)
3. Discuss the refundable tax credit system.
(25 marks)
4. In the relevant year, Mr. X was neither ordinarily resident nor domiciled in Malta. In the relevant year Mr. X derived the following income:
 - (a) Malta source employment income (paid by a Maltese resident employer) of EUR2,000;
 - (b) A Malta source capital gain of EUR500 from the sale of a stamp collection;
 - (c) A brokerage fee of EUR1,000 paid in respect of an apartment in Valletta;
 - (d) A brokerage fee of EUR10,000 paid in respect of an apartment in London. 50% of the brokerage fee was transferred to Mr. X's bank account in Malta;
 - (e) Local (gross) bank interest of EUR500 that was transferred to Mr. X's bank account in Geneva.

Compute Mr. X's chargeable income in the relevant year.
(25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B.HONS 2nd YEAR / LL.B.HONS 2nd WITH L.P.OPTION/
PROGRAMME
JUNE 2017 EXAMINATIONS
PBL 3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

Monday 12th June 2017

EXAMINATION TIME: 10.00am-11.05am

INSTRUCTIONS TO STUDENTS:

ANSWER QUESTIONS 1, 2, 3 and 4. All questions and sub-questions carry equal marks.

USE OF CALCULATORS IS ALLOWED

1. Mr. Borg is seventy years old. He is a citizen of Malta; born in Malta to Malta domiciled parents. When Mr. Borg was 5, Mr. Borg was fostered by his uncle who lived in the UK and Mr. Borg moved to the UK. Mr. Borg grew up and studied in the UK and spent most of his life in the UK. He married an English lady and established a family in the UK where he had his permanent home and habitual abode. Mr. Borg's daughters never came to Malta because Mr. Borg severed all ties with his parents. Mr. Borg's Maltese parents died in 2000 and when they passed away Mr. Borg discovered that they bequeathed onto him (transmission causa mortis) the ownership of a townhouse in Valletta. Consequently, as from 2000, Mr. Borg has been visiting Malta year after year. Mr. Borg stays in Malta from 1 October to 1 June spending the rest of the year travelling. During his absence from Malta, Mr. Borg rents out the Valletta property to tourists.

In basis year 2016, Mr. Borg received the following gains or profits;

- (a) EUR5,000 in bank interest generated from sums held in bank accounts in Jersey. The Bank interest was not transferred to Malta;
- (b) EUR200,000 from the sale of an apartment in London. This foreign source capital gain was transferred to Mr. Borg's Maltese bank account;
- (c) A capital gain of EUR20,000 from the sale of his late Uncle's coin collection (the capital gain was realised at an Auction sale held in Malta).
- (d) A capital gain of EUR10,000 from the sale of his late Uncle's collection of books and prints (the capital gain was realised at an Auction sale held in Geneva).

Determine the following in terms of / for the purposes of the Income Tax Act (giving reasons):

- (i) Mr. Borg's ordinary residence;
 - (ii) Mr. Borg's domicile;
 - (iii) Mr. Borg's chargeable income (taxable income and capital gains in Malta) for basis year 2015.
- (25 marks)

2. The Income Tax Act contemplates a number of tax deductions. Identify 5 deductions, discussing them briefly. (25 marks)

3 Discuss the Participation Exemption as regulated by article 12(1)(u) of the Income Tax Act. (25 marks)

4 Briefly discuss the notion of Badges of Trade, explaining its relevance to tax law. (25 marks).

UNIVERSITY OF MALTA
FACULTY OF LAWS

PBL3003 General Introduction to Principles of Taxation

Date: Tuesday 12th September 2017

Duration of Examination: 10.00am to 11.05am

INSTRUCTIONS TO STUDENTS:

ANSWER ALL QUESTIONS

USE OF CALCULATORS IS ALLOWED

1. Briefly discuss the Refundable Tax Credit System and the Tax Accounting System. (25marks)
2. Briefly explain the remittance basis of taxation.(25marks)
3. Briefly discuss the distinction between capital and income explaining why the distinction is important in Income tax law.(25marks)
4. List 5 forms of income which are exempt from Income Tax.(25 marks)

University of Malta
Faculty of Laws
May/June 2018 Examinations

PBL3003 General Introduction to Principles of Taxation

Date: Tuesday 26th June 2018

Duration: 8:30am - 9:35am

INSTRUCTIONS TO STUDENTS:

Answer **ALL FOUR (4)** questions.

1. Briefly explain the rules contained in the Income Tax Act governing jurisdiction to tax. (25 marks)
2. Discuss 2 important income tax exemptions that encourage foreign direct investment. (25 marks)
3. Briefly explain the rules governing income tax objections, assessments and appeals. (25 marks)
4. Briefly explain the distinction between income and capital gains explaining the relevance of the distinction. (25 marks)

University of Malta
Faculty of Laws

PBL3003 – General Introduction to Principles of Taxation

Date: Wednesday 12th September 2018

Duration of Examination: 10:00am– 11:05am

INSTRUCTIONS TO STUDENTS:

Answer **ALL FOUR (4)** questions. Each question carries 25 marks.

1. Briefly explain capital allowances. (25 marks)
2. Briefly explain the participation exemption. (25 marks)
3. Briefly discuss the concept of domicile and its application in the Income Tax Act. (25 marks)
4. Briefly explain the taxation of companies. (25 marks).

University of Malta
Faculty of Laws

June 2019 Examination Session

PBL3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

Date: Wednesday 26th June 2019

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

INSTRUCTIONS TO STUDENTS:

Answer ALL **FOUR (4)** questions.

Each question carries 25 marks.

1. Briefly explain the notions of 'domicile' and 'management and control' explaining their relevance to the Income Tax Act. (25 marks)
2. Briefly explain the concept of Badges of Trade explaining the concept's relevance to the Income Tax Act. (25 marks)
3. Briefly discuss some exemptions and deductions that encourage multinational companies to establish subsidiaries in Malta. (25 marks)
4. Briefly explain why the Income Tax Act may be described as contemplating 3 taxes in one. (25 marks)

University of Malta
Faculty of Laws

September 2019 Examination Session

PBL3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

Date: Friday 13th September 2019 **Duration of Examination:** 11:30AM - 12:35PM

INSTRUCTIONS TO STUDENTS:

Answer **ALL FOUR (4)** Questions. Each question carries 25 marks.

1. Briefly explain Malta's rules governing jurisdiction to income tax.
2. Explain the rules governing Income tax deductions, relating to expenditure on plant and machinery and industrial buildings and structures.
3. Explain the participation exemption.
4. List the chargeable assets, the transfers of which are subject to income tax on capital gains.

University of Malta
Faculty of Laws
January/February 2019 Examination Session

PBL2014 PUBLIC CORPORATIONS

Date: Friday 1st February 2019

Duration of Examination: 10:00AM - 11:05AM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from the following. All questions carry equal marks.

1. Explain and describe the different kinds of controls over public corporations in Malta.

2. a. Explain the main characteristics of a public corporation in Malta (75 marks).
b. Describe the way in which such corporations may be set up in Malta (25 marks).

3. Explain the common provisions relating to financial matters and control regarding public corporations.

University of Malta
Faculty of Laws

June 2019 Examination Session

CVL2008 LAW OF PROPERTY

Date: Saturday 15th June 2019

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

INSTRUCTIONS TO STUDENTS:

Students must answer Question 1 in Section A, any ONE (1) question from Section B and any ONE (1) question from Section C; 3 questions in all. Each question must be answered on a different script.

SECTION A (COMPULSORY) (34 marks)

1. Fifteen years ago, Construction Limited developed a plot of land into a ground floor maisonette and an overlying tenement at first floor level, the latter having an independent entrance adjacent to the front garden of the maisonette. The ground floor maisonette has exclusive access to the internal shaft and to a 5-metre deep yard at the back, running the whole back width of the maisonette. The overlying tenement had a bathroom window which opens onto the internal shaft, and two bedrooms at the back having windows overlooking the back yard. The roof and airspace were accessible only from the first floor tenement. Within a month of completion, Construction Limited sold the maisonette to George and also sold the first floor tenement, including the roof and airspace, to John.

In 2008, John obtained a building permit to build an extension to his first floor tenement, consisting in a balcony at first floor level over part of the back yard. George objected to the development. In order to avoid legal expenses, the parties settled verbally that John would convert his two back windows into two doors and construct the new balcony on the airspace of George's back yard. No public deed was ever signed. In consideration of John having an extended balcony, they also agreed that George could build new stairs in his back yard leading to John's roof and build a washroom on John's roof. Later that same year John sold his first floor tenement to Phil. When Phil bought the property, the back doors and balcony, and George's stairs and washroom were already in place.

Phil and his family are very noisy and irritating neighbours. They persist in causing constant disturbance to George, who lives on his own. George has constantly objected to this disturbance but to no avail. As a result, George and

Phil are not on speaking terms. On 15th May 2019, on returning home from work, George finds that his stairs leading to Phil's roof and the washroom have been pulled down completely. He later discovered that Phil obtained a development permit to build two new apartments on his roof. The approved plans show that each new unit will have windows overlooking the internal shaft and a window and balcony overlooking the back yard.

- (a) Advise George on his remedies against Phil in respect of the pulling down of the stairs and the washroom, and prepare him for possible defences which Phil may raise. (10 marks)
- (b) Advise George on his petitory rights, if any, on such stairs and washroom. (8 marks)
- (c) Advise Phil on his rights, if any, to retain the doors and balcony for his first floor apartment. (8 marks)
- (d) Advise Phil on his rights, if any, to open new windows and construct new balconies overlooking George's tenement, and his remedies to enforce his rights. (8 marks).

SECTION B (33 marks)

Students are required to answer any one of the following two questions:

- 2. Discuss the obligations of the usufructuary.
- 3. Consider (a) the grounds for and (b) effects of the termination or dissolution of emphyteusis.

SECTION C (33 marks)

Students are required to answer any one of the following two questions:

- 4. Notwithstanding the introduction of new provisions directed to facilitate the termination of community of property, partition and sale by licitation remain the most practical and effective remedies. Do you agree? Discuss.
- 5. Expropriation is about the compulsory acquisition of private property by the State against the payment of what should be fair compensation. In so far as expropriations of land effected prior to the coming into force of the Government Lands Act (Chapter 573 of the Laws of Malta) are concerned, has this law improved the situation which previously prevailed, from a procedural and substantive position?

University of Malta
Faculty of Laws
January/February 2019 Examination Session

CVL2015 LAW OF PERSONS

Date: Friday 25th January 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ONE** case and answer **ALL** component questions.

You are expected to cite relevant local jurisprudence and case law of the ECHR and make reference to comparative law as appropriate.

Case ONE

Alison and Roy met as colleagues but began a relationship shortly afterwards. Unexpectedly, Alison becomes pregnant and some months later gives birth to a healthy baby girl, Charlene. Roy was not expecting to become a father and had never really thought about the prospect. Shortly after the discovery, Roy takes on a job abroad and leaves the country without Alison's knowledge without acknowledging the child as his own. When Charlene turns four, Alison turns to drugs and begins to neglect Charlene. Eventually she is entered into a drug rehabilitation programme by her family who take over the care of Charlene in the meantime. That same year Roy returns to Malta, intent on doing right by his daughter; he intends on acknowledging Charlene and playing an active role in her life. Alison on the other hand has not yet recovered and continues to receive treatment for her dependency on narcotics.

- (a) What is parental authority and how is it exercised? (15 marks)
- (b) When may a parent be deprived of parental authority? (15 marks)
- (c) When do a parent's rights of parental authority cease? (15 marks)
- (d) Which of the parents enjoy parental authority? Explain why or why not. (20 marks)
- (e) If a parent loses rights of parental authority, is it possible for that parent to re-acquire the rights of parental authority? If so, how? (15 marks)
- (f) Are either Alison or Roy bound to pay maintenance to Charlene? If so, explain how much maintenance is quantified under Maltese law. (20 marks)

Case TWO

Carl and Lara got married in the year 2010. Throughout the course of their marriage Lara and Carl had three children, Karl, Marielise and Daniel aged nineteen, eighteen and four respectively. Carl is a hairdresser who recently set up a new salon with two part-time employees. Lara is a manager at a popular boutique hotel. Their son, Karl, is currently unemployed and has yet to decide whether to attempt to sit for his A-levels or find a job. Their daughter, Marielise, has just started reading for a degree in medicine at the University. Their youngest son, Daniel, suffers from a slight mental impairment and requires special attention as a result.

Sadly, due to a lack of communication and a number of violent outbursts by Carl, the spouses begin experiencing serious difficulties in their marriage. Initially, the couple begin to discuss the possibility of an amicable settlement. Unfortunately, the negotiations are abruptly terminated after Carl finds out that Lara has had an affair with a colleague and that this affair has been going on for around two years. Upon finding out about his wife's infidelity, Carl pushes his wife against a wall and insults her and leaves the matrimonial home and has not returned since.

Since an amicable settlement is no longer possible, Carl decides to initiate formal proceedings. However, before doing so, he comes to you with the following questions:

- (a) What is the definition of 'maintenance' according to the Maltese Civil Code and why is it due? (10 marks)
- (b) What is meant by the phrase 'pendente litem'? (5 marks)
- (c) How is maintenance calculated under Maltese law? (10 marks)
- (d) What factors will most likely be taken into consideration by a Court when quantifying maintenance? (15 marks)
- (e) With regards to maintenance due for the needs of the children, Carl would like to know:
 - i. Whether he is expected to pay maintenance for the needs of his son, Karl and his daughter, Marielise, and if so, for how long? (15 marks)
 - ii. For how long he will be expected to pay maintenance for the needs of his son, Daniel? (15 marks)
- (f) Is Carl bound to supply maintenance to his wife? (15 marks)
- (g) May Carl claim maintenance from Lara? (15 marks)

Case THREE

Natassja and Robert have been married for the past six (6) years and are the parents of a child Rocco of three (3). Due to serious incompatibility of characters, including also problems arising in view of Natassja's frequent absences from the Island, allegedly for work purposes and/or to visit her family abroad, Robert has opted to file for separation from his wife. During the pendency of these proceedings Robert discovers that Natassja is pregnant with a second child. He informs you that the child cannot be his as they live separately and he has not had sexual contact with her for over two (2) years. In the meantime Rocco has been living with him and is being looked after by himself with the help of his girlfriend Lena. Natassja has barely ever shown any interest in the child. He also informs you that Lena is currently expecting his child. He fixes a meeting at your office in order to seek your advice as to the following queries which he poses to you.

- (a) Will Robert be indicated as the father of Natassja's child in the child's act of birth even though the couple has been separated de facto for the past two years? Justify your answer with reference to particular provisions of the law. (10 marks)
- (b) What are the differences, if any, in the rights and obligations arising between Robert and (i) Rocco, his child born in wedlock, (ii) the child he is expecting from Lena and (iii) the child Natassja is currently expecting, depending on whether or not any action is necessary or taken from his end to contest his paternity of Natassja's second child? Justify your answers with reference to particular provisions of the law (20 marks)
- (c) Should Robert be indicated as the father of Natassja's second child, will he be able to contest this and, if yes, how? Should your answer be in the affirmative, explain in detail the procedure, including against whom any action must be instituted and the necessary evidence, that is required by law for the successful repudiation of paternity. (20 marks)
- (d) Is there a particular time-frame within which Robert may, if necessary, contest his paternity of the child? Explain your answer in detail having regard to the facts of the case decided by the European Court of Human Rights in the names of Mizzi v. Malta, to the legal principles outlined therein and to the consequent historical development of Maltese law pertaining to filiation. (25 marks)
- (e) With regards to Rocco, can Natassja escape from her obligations towards him by leaving the Island and/or by not involving herself in his upbringing? Explain your answer in detail, justifying it with reference to particular provisions of the law which might be applicable as well as to relevant case-law describing and regulating the institute of maintenance. (25 marks)

University of Malta
Faculty of Laws

January/February 2019 Examination Session

CML2010 DUTIES OF TRADERS AND COMMERCIAL INTERMEDIARIES

Date: Wednesday 30th January 2019

Duration of Examination: 08:30AM-10:35AM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions.

All questions carry equal marks.

Answer each question on a separate script.

1. To what extent, if at all, is an *unregistered well-known trademark* protected under Maltese law when the proprietor of the mark does not carry on any business in Malta. (50 marks).
2. "Traders shall not, for the purpose of competition, spread news capable of prejudicing the business or trade carried on by other persons" (article 34(1) of the Commercial Code). Analyse this provision in the light of the decided cases and discuss how the provisions of article 32A of the Commercial Code regarding comparative advertising affect its application. (50 marks).
3. The trader's duty to keep trade books acquires a much wider significance with regard to limited liability companies. Discuss. (50 marks).
4. Discuss the duties that a manager has towards his principal. (50 marks).

University of Malta
Faculty of Laws

June 2019 Examination Session

CRL2007 SUBSTANTIVE CRIMINAL LAW 2

Date: Friday 21st June 2019

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

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions from the following **FOUR (4)** questions:

1. Answer both the below:

- (a) With reference to case-law (jurisprudence), analyse the crime of transmission, communication or passing on diseases or conditions in terms of Article 244A of the Criminal Code; (80 marks)
- (b) Briefly discuss the constitutive elements of the offence of Defilement of Minors (Article 203(1) of the Criminal Code) as highlighted by the various Courts Judgements. (20 marks)

2. Answer both the below:

- (a) Our law does not define “perjury”. Moreover, the constituent elements of this offence are explained by doctrine and jurisprudence rather than by the law itself. Whilst explaining the relative provisions of law and the constituent elements thereof, analyse the correctness of these two statements. (80 marks)
- (b) Write notes on any three (3) of the following (20 marks):
 - i. *Dolus indeterminatus determinatur ab exitu*;
 - ii. Distinguish between *animus necandi* and *animus nocendi*;
 - iii. The defences stipulated under Article 251A(3) of the Criminal Code to the crime of harassment;
 - iv. The crime of blackmail which is punishable under Article 250 of the Criminal Code;

3. Answer both the below:

- (a) Act XIII of 2018 revamped one of the fundamental elements in the sexual offences by replacing the element of "violence" with that of "consent". Discuss briefly these changes and do you think that this change has upgraded the regime of sexual offences? (80 marks)
- (b) Write notes on any three (3) of the following: (20 marks)
- i. Define the actus reus consisting of "*imprudence, carelessness, unskilfulness in his art or profession*" for the purposes of Article 225 of the Criminal Code dealing with involuntary homicide;
 - ii. The crimes which refer to miscarriage under Title VIII of the Criminal Code (of crimes against the person);
 - iii. Supervening accidental causes;
 - iv. The Punishable means, prevailing under Article 248A(2) of the Criminal Code, by virtue of which a person is trafficked for the purposes of exploitation in the production of goods or provision of services;

4. Answer both the below:

- (a) With reference to case-law (jurisprudence), analyse the circumstances by means of which a willful homicide may be deemed to be excusable in terms of Article 227 of the Criminal Code. (80 marks)
- (b) Briefly explain the meaning of the phrase "criminal proceedings" used in the provisions dealing with subornation of witnesses and perjury. (20 marks)

University of Malta
Faculty of Laws
January/February 2019 Examination Session

CRL2006 SUBSTANTIVE CRIMINAL LAW 1

Date: Wednesday 6th February 2019 **Duration of Examination:** 8.30AM - 10.35AM

INSTRUCTIONS TO STUDENTS:

Answer any **TWO (2)** questions from the following.

For each question you must reply to both the (a) and the (b) parts of the question.

1. Answer both the below:

- (a) Carefully examine the definition of the offence of theft under our law (as propounded by Carrara). Also discuss the aggravations "by means" and "by person" to the offence of theft. (80 marks)
- (b) What are the sources on which the offences relating to "Of Computer Misuse - Articles 337B - 337H of the Criminal Code" are based? Is there a need for these sources to be international instruments? (20 marks)

2. Answer both the below:

- (a) "The meaning of document for the purpose of forgery cannot be considered in isolation from the rule that it must 'tell a lie about itself'" – Smith and Hogan. Comment on the above statement in relation to the different kinds of falsity, namely, material, personal nominal and ideological. (80 marks)
- (b) How important, if at all, is the element of a mode of action for the crime of conspiracy under our law? Explain with reference to both articles 57 and 48A of the Criminal Code (20 marks)

3. Answer both the below:

- (a) "Maltese law does not consider the crime of arbitrary exercise of pretended rights to be one against property, but a crime against the administration of justice and public administrations". Explain in detail why this is so, including reference to applicable local case law and jurists. (80 marks)
- (b) Briefly explain the differences between public documents and private writings in the context of the offences of forgery (20 marks).

4. Answer both the below:

- (a) To what extent, if at all, is the element of "lack of authorisation" important in the commission of crimes relating to computer misuse? Illustrate your arguments with examples from the law. (80 marks)
- (b) Briefly explain the offence of bribery under our law. (20 marks)

University of Malta
Faculty of Laws

June 2019 Examination Session

PBL2015 ADMINISTRATIVE LAW

Date: Wednesday 12th June 2019

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

INSTRUCTIONS TO STUDENTS:

This exam paper is divided into 2 sections: Section A (34 marks) and Section B (66 marks).

SECTION A: Answer Sections 1(a) OR 1(b) AND 2(a) OR 2(b)

1. Answer **EITHER** Question (a) OR (b):

- (a) The Act on Standards in Public Life establishes the office of Commissioner for Standards in Public Life with authority to investigate breaches of ethics and abuse of power by Ministers, Members of Parliament and certain categories of members of their staff known as 'persons of trust'. The Ombudsman Act provides that "it shall be the function of the Ombudsman to investigate any action taken by or on behalf of the Government, or other authority, body or person to whom this Act applies, being action taken in the exercise of their administrative functions". A is an inmate at a Correctional Facility who feels that the conditions of his detention are unhealthy and appalling. After unsuccessfully petitioning the Correctional Facility management and its Director A writes to the Minister responsible for the Correctional Facility demanding that steps be taken to improve the conditions of his detention and particularly the bad state of the cell where he is housed. Having received nothing more than an acknowledgment of receipt of his letter despite the lapse of two months, A writes to both the Ombudsman and to the Commissioner for Standards in Public Life claiming abuse of power both by the Director of the Correctional Facility and by the Minister who, he claims, have ignored his letters due to the political beliefs which he used to manifest many years ago. The Ombudsman Act includes a provision whereby the Ombudsman may refrain from investigating a claim if alternative means of redress are available and a case officer at the office of the Ombudsman writes to A informing him that the Ombudsman considers that adequate means of redress are available through the claim made with the Commissioner for Standards in Public Life. Feeling destined

to 'fall between two stools' **A** seeks your advice as to how he should respond to the letter from the Ombudsman's case officer and whether, should the worst happen and both the Ombudsman and the Commissioner for Standards in Public Life refuse to investigate the case, there would be other means of redress which he may resort to. (17 marks)

OR

- (b) A foreign national landed in Malta in 2018. He sought and was granted refugee status under the Refugees Act. In 2019 the Security Service reports to the Minister that it received (confidential) intelligence from a foreign security service that **B** has links to many members of a terrorist organisation and the Security Service therefore proposes to the Minister that he should be removed from Malta 'as a danger to the security of Malta' in terms of Article 9 of the Refugees Act which provides as follows: **"9. (1) A person shall not be expelled from Malta or returned in any manner whatsoever to the frontiers of territories where, the life or freedom of that person would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (2) The provisions of subarticle (1) shall not apply to a refugee in respect of whom there are reasonable grounds for regarding him as a danger to the security of Malta, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community."**

The Minister informs **B** of his intention to issue an order declaring him as 'a danger to the security of Malta' without giving any further explanation and grants **B** two weeks to make submissions in writing to contest that decision. In his submissions **B** produces evidence of the likelihood of his being tortured or killed if he were to be returned to his native country and also argues that his presence in Malta does not constitute a danger to Malta's security since he was never involved in acts of terrorism. An immigration officer examines **B**'s submissions and recommends to the Minister that an order should be issued for **B**'s removal. **B** is not given a copy of the immigration officer's report and when he is served with the Minister's order of removal he seeks judicial review of the same arguing that the Minister's decision was unreasonable, that the procedures adopted were unfair and that the order for his removal violated Articles 2 and 3 of the European Convention on Human Rights on the right to life and on the protection against torture and inhuman or degrading treatment. You are asked by an NGO working with refugees to give an opinion on the issues raised by the above facts and in particular (1) On the extent to which a reviewing Court can be expected to review the

Minister's decision that **B** constituted a danger to the security of Malta and on the circumstances, if at all, in which such a court would be likely to quash such a decision and (2) On whether the 'rules of natural justice' have been adhered to. (17 marks)

AND

2. Answer **EITHER** Question (a) **OR** Question (b):

- (a) **C** a high ranking civil servant who resigned his post after being involved in an apparent attempt to cover-up of a scandal involving false invoicing (by others unconnected with him) of his department, claims a pension under a special law granting a right to a pension to high ranking civil servants even if they resign prior to reaching retirement age provided they have given the State 'reputable service'. The officer entrusted by the Director of Social Security, who administers the pension scheme, to examine **C**'s claim concludes that **C** did not qualify for the pension as he did not meet the requirement of 'reputable service' even though he was never dismissed and never charged in court or before a disciplinary tribunal for his actions. The Director, without examining the claim any further, adopts the case officer's conclusion and informs **C** that he is not entitled to the pension and that his request is therefore denied. **C** appeals to the Social Security Arbiter who is entitled by law to annul the Director's decision only if he concludes that the decision was 'manifestly unreasonable'. Upon examining the evidence the Arbiter concludes that **C** ought to have been granted a pension and therefore annuls the Director's decision and orders the payment of the pension to **C**. The chain of reasoning of the Arbiter's decision shows that little consideration was given to whether the Director's decision was 'manifestly unreasonable' but it rather indicates that the Arbiter had decided on humanitarian grounds. Nevertheless in its concluding paragraph the Arbiter's decision states that the Director's decision was 'manifestly unreasonable' and was therefore being annulled. The Director is entitled to appeal the Arbiter's decision only on a point of law to the Court of Appeal. Advise him whether such an appeal is worth pursuing or not and for what reasons. (17 marks)

OR

- (b) The 'Farmers' Markets (Regulation) Act' (fictional) ('the Act') regulates the issuing of licences for the operation of market stalls at 'farmers' markets' and requires that persons wishing to operate such stalls have to be licensed by the 'Department of Agriculture' ('the Department'). A section of the Act requires that the Department, in considering whether or not to

issue a licence to any person, should take into account whether it considers that the applicant is a 'a bona fide farmer and a fit and proper person to hold a licence'. Licences to run stalls at farmers' markets are viewed by a number of philanthropic organisations as possible tools for the rehabilitation of a number of persons with a problematic past and the Department is petitioned by a number of such organisations to establish a policy favourable to the social purpose of rehabilitation of such persons. The philanthropic organisations propose that they would arrange for the person concerned to do part-time work on a farm for which they would pay him themselves and then they would assist that person to apply for a stall at a farmers' market in the running of which their personnel would in practice assist him against a share of turnover which would go in part to them and in part to the philanthropic organization. The Authority does not consider it wise to establish such a general policy but, acting only upon the request of an organisation working for the welfare of ex-prisoners, grants a licence to *D* who has just been released from prison after serving time for people smuggling and grievous bodily harm. *E* who had applied for a stall at a farmers' market and has a clean conduct certificate but was not given a licence on account of the fact that the Department considered him as 'an amateur gardener not a farmer' (an analysis which is substantially correct) feels aggrieved by the decision of the authority to grant a licence to *D* and not to him and moreover to grant it despite being aware of the rather convoluted arrangement with the philanthropic organisation. Examine *E*'s prospects if he had to pursue the matter in court. (17 marks)

SECTION B: Answer ANY TWO (2) Questions (33 marks each)

3. 'Like the Maltese language, Maltese Administrative Law has many sources but its basis is still clearly attributable to one main basic structure and source.' Discuss this statement with reference only to the sources and structure of Maltese Administrative law.
4. 'Maltese law and case law do not distinguish a separate legal regime or separate rules for governmental liability in tort. Any ultra vires act gives rise to ordinary civil liability. Matters are kept very simple.'. Do you consider this statement as substantially correct and, if so, to what extent?
5. 'The similarities between the Ombudsman Act, article 22 sub-articles (1) and (2) (which deal with findings of the Ombudsman), and 469A COCP, are not a mere coincidence: the law maker intentionally set up one institution to complement the other.' Give your views for agreeing or disagreeing with this statement.

6. Discuss whether and to what extent the laws on 'data protection' and 'freedom of information' reflect the practical application of the Administrative law principles of legality, openness and proportionality.
7. 'There is no effective machinery for the parliamentary control of delegated legislation and judicial control is so restricted that it is only exercised "once in a blue moon"'. Analyse this statement with reference to the procedures for the parliamentary and judicial control of delegated legislation in Malta.

**University of Malta
Faculty of Laws**

June 2019 Examination Session

**CML3009 COMMERCIAL OBLIGATIONS COMMERCIAL SALE AND CREDIT
INSTRUMENTS**

Date: Friday 28th June 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ONE (1)** question from **Section A** and **ONE (1)** question from **Section B**.

All questions carry equal marks.

Answer each question on a separate script.

Section A

1. Discuss two of the essential requisites of a bill of exchange, the absence of which would invalidate the bill.
2. The countermanding of a cheque (stop-payment) is incompatible with the rules governing bills of exchange. Discuss this statement.

Section B

3. "The Commercial Code treats various aspects of obligations differently from the Civil Code." To what extent do you agree with this statement?
4. When contracting parties are not in the presence of each other, the moment of conclusion of a contract is of paramount importance. Discuss.

University of Malta
Faculty of Laws
June 2019 Examination Session
ECL2001 EUROPEAN UNION LAW

Date: Thursday 6th June 2019

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

INSTRUCTIONS TO STUDENTS:

Choose **ANY THREE (3)** questions answering **ONE (1)** from **EACH** section: (Each question carry equal marks)

Section A

1. 'Prior to the coming into force of the Lisbon Treaty the limits of competence of the European Union were not defined by the Treaty. This led to substantial disagreement regarding the extent of competence of the Union in given areas of law and policy. The reform process aimed to alleviate this and with the adoption of the Lisbon Treaty, the Treaty on the Functioning of the European Union (TFEU) contains provisions which streamline the EU's competences classifying them into three categories: (i) exclusive, (ii) shared and (iii) supporting, coordinating or supplementary. Closely linked to EU competence is the principle of subsidiarity, first introduced in the Maastricht Treaty and retained in the Lisbon Treaty. Its function is to regulate the exercise of the EU's competence.

Discuss the competences of the Union as contained in the TFEU and its correlation with the principle of subsidiarity.

2. The wide scope of the treaties led to an inevitable situation of conflict between national law and EU law. To resolve such conflict, the Court of Justice of the EU (CJEU) developed the doctrine of supremacy, also referred to as 'primacy', of EU law. In addition, the CJEU developed a second doctrine, the doctrine of State liability, which not only enables the individual to claim financial redress before the national court, but also ensures further enforcement of Union law.

Discuss the two doctrines and relevant case-law.

3. The doctrine of Direct Effect in EU law applies in principle to all binding EU law including treaty provisions, regulations, directives and decisions. However, the direct effect of directives has always been controversial and the Court of Justice of the European Union has held that directives are not capable of horizontal direct effect.

Discuss this statement.

Section B

4. Explain the preliminary reference procedure under Article 267 TFEU and evaluate its importance for the consistent application of EU law across Member States.
5. Discuss with reference to case-law the background of the Lisbon amendments relating to the notion of direct and individual concern in Article 263 paragraph 4 TFEU, and how the CJEU interpreted the said amendments in subsequent case law after 2009.
6. "The General Principles of EU Law, such as legal certainty, proportionality, legitimate expectations, precautionary principle and so on, were developed by the Court of justice of the European Union, and are 'superior' norms in the EU legal order'.

Choose any TWO general principles of European Union Law and show how these principles work, and their effect, in the EU legal order by reference to some main judgements of the Court of Justice of the European Union.

Section C

7. Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anti-competitive business practices.
Explain the type of business practices Article 101 TFEU aims to prohibit.
8. According to Article 3 (1) and (4) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation) a 'concentration' is deemed to arise where there is a change of control on a lasting basis.
9. 'According to the well-established case law of the Court of justice of the European Union, the notion of what constitutes state aid is an objective and legal concept defined directly by Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)'.

With reference to relevant case-law, discuss the four-fold criteria of what constitutes state aid.

University of Malta
Faculty of Laws

June 2019 Examination Session

PBL3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

Date: Wednesday 26th June 2019

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

INSTRUCTIONS TO STUDENTS:

Answer ALL FOUR (4) questions.

Each question carries 25 marks.

1. Briefly explain the notions of 'domicile' and 'management and control' explaining their relevance to the Income Tax Act. (25 marks)
2. Briefly explain the concept of Badges of Trade explaining the concept's relevance to the Income Tax Act. (25 marks)
3. Briefly discuss some exemptions and deductions that encourage multinational companies to establish subsidiaries in Malta. (25 marks)
4. Briefly explain why the Income Tax Act may be described as contemplating 3 taxes in one. (25 marks)

University of Malta
Faculty of Laws

September 2019 Examination Session

PBL3003 GENERAL INTRODUCTION TO PRINCIPLES OF TAXATION

Date: Friday 13th September 2019 **Duration of Examination:** 11:30AM - 12:35PM

INSTRUCTIONS TO STUDENTS:

Answer **ALL FOUR (4)** Questions. Each question carries 25 marks.

1. Briefly explain Malta's rules governing jurisdiction to income tax.
2. Explain the rules governing Income tax deductions, relating to expenditure on plant and machinery and industrial buildings and structures.
3. Explain the participation exemption.
4. List the chargeable assets, the transfers of which are subject to income tax on capital gains.