

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

EXAMINATION PAPER MAY 2005

TITLE OF PAPER : PROPERTY LAW

COURSE CODE : L204

TIME ALLOWED : 3 HOURS

MARKS ALLOCATED : 100 MARKS

INSTRUCTIONS : ANSWER ANY FIVE QUESTIONS

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QUESTION 1

Define:

- (a) manufacture (*specificatio*) (4)
 - (b) attornment (5)
 - (c) ownership (5)
 - (d) servitude (6)
- [20]

QUESTION 2

Name:

- (a) the requirements for estoppel (4)
 - (b) the three criteria applied by the courts to determine whether a movable thing is attached to an immovable thing by means of accession in such a fashion that it becomes part of the immovable thing (3)
 - (c) six ways in which ownership is terminated by operation of law (6)
 - (d) the guidelines for a successful application for the granting of a way of necessity as set out in *Van Rensburg v Coetzee* (1979 (4) SA 655 (A)) (6)
 - (e) one statute which limits ownership of movables in Swaziland (1)
- [20]

QUESTION 3

Distinguish between:

- (a) free co-ownership and bound co-ownership. Give one example of each. (5)
 - (b) expropriation and deprivation (5)
 - (c) *kustingbrief* and covering bond (8)
 - (d) the object of a real right and the object of a personal right (creditor's right) (2)
- [20]

QUESTION 4

- (a) Discuss *Ex parte Geldenhuys* (1926 OPD 155) with special reference to the *subtraction from the dominium* test. (8)
 - (b) Briefly discuss women's access to land in Swaziland. (4)
 - (c) S rents a car from a car rental agency. In terms of the lease agreement S is liable for all damage to the car. S goes on holiday and asks Z, his sister-in-law, to park the car in her garage while he is away. She agrees. One Saturday Z removes the car from the garage and takes her daughter to the doctor. The car is stolen from the doctor's parking area. The car cannot be traced and the car rental agency claims the car from S. Since S is unable to return the car, he pays the car rental agency and claims the amount from Z.
 - (i) Which action is applicable?
 - (ii) What are the requirements?
 - (iii) Will S succeed?

Refer to case law. (8)
- [20]

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QUESTION 5

- (a) B and C, farm workers of S, occupy and cultivate a portion of Highlands. S has an argument with the farm workers and they refuse to work. S removes their furniture and clothing from the houses. He breaks down their houses. Thereafter S burns all their furniture and clothing, as well as the materials with which the houses were built. B and C want immediate restoration of their possessions.
- (i) Advise B and C on the most appropriate remedy and what the requirements for successful reliance on this remedy are. (3)
- (ii) S avers that B and C were never in control of the houses because, at the relevant time, they were living elsewhere on the farm where they were harvesting their crops. Will S succeed with this defence? Substantiate your answer. (2)
- (iii) S raises the defence that it is impossible to restore the furniture, the clothing and the building materials, since they had been destroyed. Will S succeed with this defence? Substantiate your answer with reference to case law. (5)
- (b) There is a windmill on the farm of X and Y, which they no longer use. S purchases it from them. His father takes him to the windmill and shows it to him. He says: "Here is the windmill. You must come and dismantle it and take it away". S undertakes to do this as soon as he has the time. For six months S does not visit his parents or remove the windmill. Z approaches X and Y and offers to buy the windmill. They sell it to Z. Z removes the windmill and erects it on his farm. S claims delivery of the windmill with the *rei vindicatio* from Z.
- (i) What must S prove to succeed with the *rei vindicatio*?
- (ii) Will S succeed in proving all the requirements for the *rei vindicatio* (refer to the way in which ownership was acquired in this example)?
- Substantiate your answer with reference to case law. (10)

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QUESTION 6

- (a) Infoplus had entered into a written instalment sale agreement for the purchase of a motor vehicle with a bank, which had then ceded its rights to Wesbank (which became owner of the vehicle). The motor vehicle was delivered to Infoplus and registered in its name, but according to the instalment sale agreement, ownership was to remain vested in the seller until receipt of the full amount due by Infoplus. Infoplus's authorised representative, M, then agreed with G, a representative of S Motors, that the motor vehicle would be delivered to the premises of S Motors and that G would attempt to find a purchaser for the motor vehicle at a stipulated price. If found, the prospective purchaser was to be introduced to Infoplus, whereafter the purchaser would pay the full purchase price to Infoplus, which would then pay S Motors its commission. The motor vehicle was duly delivered to S Motors, but neither G nor anyone else acting for S Motors introduced a purchaser to Infoplus.

When M returned from a subsequent trip abroad he established that G had left the employ of S Motors and that the motor vehicle was registered in the name of Scheelke. G had sold the motor vehicle to X, delivering it together with a registration certificate reflecting that S Motors was the registered owner thereof, for substantially less than the stipulated price, after which X had sold and delivered the vehicle to Scheelke.

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Wesbank undertook to repossess the vehicle, but instead concluded an agreement with X in terms of which X paid the total amount outstanding under the instalment sale agreement, thus allowing Scheelke to retain control of the motor vehicle.

Infoplus wishes to claim the vehicle with the *rei vindicatio* from Scheelke. Discuss the requirements for a successful reliance on this remedy and indicate Infoplus's chances of success. Refer to applicable case law and discuss this fully. (10)

- (b) Q is the owner of a car. T, a thief, steals the car, changes the engine and registration numbers and sells the car to Z. The car is written off in an accident involving Z. The wreck is in control of X, a scrap metal dealer. Advise Q on the nature of and requirements for the most appropriate remedy in the circumstances. Substantiate your answer. (5)
- (c) Q is the owner of a car. T, a thief, steals the car, but because he is afraid of being caught by the police, he sets fire to the car and destroys it completely. Can Q institute the *actio ad exhibendum* against T? What can she claim? What must she prove? Will she succeed in this case? (5)
- [20]

QUESTION 7

- (a) There is a windmill on the farm of X and Y, which they no longer use. S purchases it from them. His father takes him to the windmill and shows it to him. He says: "Here is the windmill. You must come and dismantle it and take it away." S undertakes to do this as soon as he has the time. For six months S has neither visited his parents nor removed the windmill. Z approaches X and Y and offers to buy the windmill. They sell it to him. Z removes the windmill and erects it on his farm. S becomes insolvent and the trustee of the insolvent estate claims that the windmill is part of the insolvent estate. Z denies this and argues that he is the owner of the windmill. Fully advise the trustee on the legal position. Refer to applicable case law and discuss this fully. (10)
- (b) The claimant Q, a car dealer from Pretoria, provided L, a second-hand car dealer doing business in Durban, with two motor cars for sale on the explicit condition that ownership would not be transferred until the full purchase price had been paid to Q. L needed a credit facility and approached S for credit. S was prepared to provide credit to L on condition that L furnished real security to S. L concluded an agreement with the defendant S in terms of which the vehicles were sold to S and immediately resold to L in terms of a so-called floor-plan agreement. At no time did either L or S intend that the vehicles should be removed from the physical control of L at his business premises. L further agreed that the re-sold vehicles would be held by him on behalf of S until the full purchase price had been paid to S by L. L disappeared and subsequently his estate was sequestrated without the purchase price being paid to S. S had the vehicles removed from L's business premises.
- Q claims the cars from S with his *rei vindicatio*. Is there any possibility that S may retain control of the cars? Substantiate your answer with reference to the appropriate defence and its requirements. Substantiate your answer with reference to case law. (10)
- [20]

TOTAL: 100 MARKS