

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER JULY 2005

TITLE OF PAPER : PROPERTY LAW

COURSE CODE : L403

TIME ALLOWED : 3 HOURS

MARKS ALLOCATED : 100 MARKS

INSTRUCTIONS : ANSWER ANY FIVE QUESTIONS

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[TURN OVER]

QUESTION 1

Briefly define:

- (a) remedy (5)
 - (b) nuisance in wider sense (5)
 - (c) ownership (5)
 - (d) lien (right of retention) (5)
- [20]

QUESTION 2

Briefly compare:

- (a) consumable and non-consumable things (5)
 - (b) original and derivative methods of acquisition of ownership (5)
 - (c) lawful and unlawful holdership (4)
 - (d) pledge and notarial bond (6)
- [20]

QUESTION 3

(a) Briefly distinguish between:

- (i) thing and legal object (4)
- (ii) nuisance in a wide sense and nuisance in a narrow sense (6)
- (iii) ownership and limited real rights (4)

(b) Briefly discuss

- (i) the real agreement as an element of the transfer of ownership (2)
 - (ii) the difference between the abstract and causal systems of transfer of ownership (4)
- [20]

QUESTION 4

- (a) Name the remedies of co-owners against each other. (3)
- (b) What are the different methods of termination of possession and holdership? (6)
- (c) Q and R bequeath their farm to Y on condition that the farm must be excluded from the joint estate of X and Y.
Can this condition be registered against the title deed of the property and what is the effect of such a condition? (3)
- (d) Q and R have an agreement with S (the owner of the farm, "Highlands") in terms of which they undertake to register a servitude of way over their farm in favour of Highlands.

[TURN OVER]

- (i) Before the servitude can be registered, S dies. His wife now wishes to use the road. Is she entitled to use the road? Substantiate your answer. (2)
- (ii) After the servitude has been registered, S dies and his wife now wishes to use the road. Is she entitled to use the road? Substantiate your answer. (2)
- (iii) Before the servitude can be registered, S sells the farm and the new owner wishes to use the road. Is he entitled to use the road? Substantiate your answer. (2)
- (iv) After the servitude is registered, S sells the farm and the new owner wishes to use the road. Is he entitled to use the road? Substantiate your answer. (2)

[20]

QUESTION 5

- (a) Briefly discuss women's access to land in Swaziland. (6)
- (b) Discuss **two** of the remedies available to the co-owner. (8)
- (c) Briefly discuss the tacit hypothec of the credit grantor. (6)

[20]

QUESTION 6

- (a) X and Y are seriously affected by the baboons that destroy their mealies. X installs an apparatus to chase away the baboons on the boundary with his neighbour. The apparatus makes loud noises at regular intervals during the day and the night. The neighbour writes a letter to X and Y to complain about the noise during the night, but X ignores it and refuses to speak to his neighbour on the telephone. The neighbour approaches you for legal advice. Advise the neighbour fully on the applicable remedy, the basis for this remedy and the requirements for a successful reliance on the remedy. Refer to case law. (10)
- (b) Q is the owner of a car. T, a thief, steals the car.
 - (i) T changes the engine and registration numbers and sells the car to Z. Can Q claim the car from Z. If so, which action is applicable and what must she prove to be successful with her claim? (4)
 - (ii) Because T is afraid of being caught by the police, he sets fire to the car and destroys it. Can Q institute the *actio ad exhibendum* against T? What must she prove and what can she claim? Will Q succeed in this situation? (4)
- (c) Define an improvement lien. (2)

[20]

QUESTION 7

Z leases a part of the farm, "Waterford" from X and Y. Although Z farmed very successfully with cattle on the farm, he decides to begin large-scale farming with maize and other grain crops. Z is very busy and gets a foreman to take over the farming on Waterford on his behalf. The foreman lives with his wife and children in a house on the farm. Z has purchased a tractor on credit from K, the cooperative which he stores together with his other farm implements in the shed on Waterford. Z registers a notarial bond over his green trailer, his Yamaha generator and his John Deere harvester in favour of the bank where he has overdraft facilities. Initially

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Z's farming operations go well but after he has a large failure with his crop as a result of drought, he can no longer pay the rent. The only income X and Y have is the rent. They warn Z to pay the rent and then consult their attorney. X wants the attorney to attach the foreman's furniture, the tractor, all the farm implements, the trailer, the harvester and the generator.

With reference to existing case law, what will the attorney advise X with regard to the attachment of the

- (a) foreman's furniture (5)
 - (b) tractor (5)
 - (c) farm implements (5)
 - (d) trailer (5)
- [20]

TOTAL: 100 MARKS