

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**EXAMINATION PAPER MAY 2006**

**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**

Briefly define:

- (a) ownership (6)
- (b) nuisance (5)
- (c) co-ownership (5)
- (d) judicial pledge (4)

**[20]****QUESTION 2**

Briefly compare:

- (a) consumable and non-consumable things (5)
- (b) bound and free co-ownership (5)
- (c) *bona fide* and *mala fide* unlawful holdership (4)
- (d) pledge and notarial bond (6)

**[20]****QUESTION 3**

- (a) Name three remedies available to an owner to protect ownership. (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 in terms of which they undertake to register a servitude over their farm in favour of S's farm, "Highlands".
  - (i) Before the servitude can be registered, S dies and 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 has been registered, S sells the farm and the new owner now wishes to use the road. Is he entitled to do so? Substantiate your answer. (2)

**[20]****QUESTION 4**

- (a) Briefly distinguish between *bona fide* and *mala fide* possession (2)
- (b) Carefully read the following facts from *Vasco Dry Cleaners v Twycross* 1979 (1) SA 603 (A) and then answer the questions below: During 1967 Z sold his dry cleaning business, called Vasco Dry Cleaners, to X. It was a term of the contract of sale that, in respect of the dry-cleaning machinery included in the sale, the passing of ownership would be suspended until the purchase price had been paid in full. At the end of June 1972 the balance still due to Z was R 4 650-00. X was in financial difficulties and in order to avoid the repossession of the machinery

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by Z, he sought and obtained financial assistance from Twycross, his brother-in-law. X and Twycross accordingly entered into a written agreement on 28 June 1972 in terms of which Twycross was to pay the balance still due to Z. It was agreed that on such payment to Z ownership of the machinery would pass to Twycross, who agreed to sell the machinery to X for a purchase price of R 4 700-00 payable on or before 30 June 1973. It was further agreed between X and Twycross that ownership of the machinery would not pass to X until the purchase price had been paid in full to Twycross. They agreed that if the purchase price was not paid, Twycross would be entitled to obtain the return and repossession of the machinery.

In November 1972, X sold the business, including the machinery to a new owner. In the deed of sale X warranted that it was the owner of the machinery. The new owner of Vasco Dry Cleaners was not aware of the contract between Twycross and X. X failed to pay Twycross the sum of R 4 700-00. Twycross wishes to claim the machinery from the new owner.

The new owner of Vasco Dry Cleaners was not aware of the contract between Twycross and X. X failed to pay Twycross the sum of R 4 700-00. Twycross wishes to claim the machinery from the new owner.

- (i) Which form of delivery was used to transfer ownership from Z to X? Briefly describe this form of delivery. (5)
  - (ii) Which remedy can be used by Twycross to claim the machinery? State the requirements for this remedy and will Twycross succeed in proving all the requirements for successful reliance on this remedy? (5)
  - (iii) Which other form of delivery could be relevant in this set of facts? Discuss the applicability of this form of delivery. (5)
  - (c) Does the Constitution of the Kingdom of Swaziland, 2005 make provision for deprivation as opposed to expropriation? Briefly discuss. (3)
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#### QUESTION 5

- (a) X and Y are seriously affected by the baboons that destroy their mealies. X installs an apparatus to chase away the baboons close to 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 with reference to authority. (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, 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 Q prove for successful reliance on this remedy and what can she claim? Will Q succeed in the circumstances? (4)
- (c) X and his wife Y, married in community of property, are co-owners of the farm, "Waterford" (one undivided piece of land). Q and R are also co-owners of their farm, "Pulang". They purchased the farm jointly before they were married. Which type of co-ownership does the

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following persons have

- (i) X and Y
- (ii) Q and R

(2)  
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#### QUESTION 6

- (a) Q and R draft a will in which they provide that on their death S and his son, Ss, will inherit the farm "Pulang". They provide further that the farm must be divided into two when Ss reaches the age of majority and that the drawing of lots will determine who gets which portion of the farm. Furthermore they provide that the heir who gets the portion with the homestead must pay an amount of money to the other heir. Will it be possible to register the provisions with regard to the division of the farm and the payment of the sum of money after their death against the title deed of the farm? Advise them fully with reference to authority. (10)
- (b) S decides to build a dairy and stables on Waterford, the farm of X and Y. He buys all the equipment from the cooperative, with which to build the dairy. The cooperative reserves ownership of the equipment. S builds the dairy and the stable with bricks and a cement floor. He installs all the pipes and tanks for the milk. Two years after he has started the dairy and before the cooperative has been fully paid, S becomes insolvent and the trustee of his insolvent estate argues that all the structures and equipment are movable assets which form part of his estate. X and Y claim that they became co-owners by means of accession, and the cooperative claims that it is the owner. Who is owner? Substantiate your answer. (10)  
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#### QUESTION 7

- (a) Distinguish between a prospecting licence, an exclusive prospecting licence and a special prospecting licence as set out in the *Mining Act 5 of 1958* (Swaziland). (10)
- (b) Z leases a part of the farm, "Waterford" from its owners, X and Y. Although Z has a very successful cattle farm, he decides to begin large-scale maize farming and other grain crops. Z is very busy and gets a foreman to take over the farming on Waterford on his behalf. 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 becomes insolvent. X and Y wish to attach the tractor to secure payment of the outstanding rent. Advise them on their legal position. (5)
- (c) X and Y purchase their farm implements from K, the cooperative, in terms of a credit agreement. The cooperative is not prepared to grant credit to X and Y unless they give security that the instalments will be paid. They agree that K will reserve ownership. Before X and Y have paid the last instalment they become insolvent. Advise K as to his legal position. (5)  
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**TOTAL: 100 MARKS**