

UNIVERSITY OF SWAZILAND

**FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

EXAMINATION PAPER MAY 2007

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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BY THE INVIGILATOR**

[TURNOVER]

QUESTION 1

Briefly define:

- (a) ownership (7)
 - (b) expropriation as a form of acquisition of ownership (5)
 - (c) possession (in its broad sense) (3)
 - (d) co-ownership (5)
- [20]**

QUESTION 2

Name:

- (a) the sources of the current law of things in order of priority (6)
 - (b) the requirements for the application of the *actio ad exhibendum* (3)
 - (c) the requirements for the *condictio furtiva* (4)
 - (d) three ways in which a servitude is terminated (3)
 - (e) the characteristics of a thing (4)
- [20]**

QUESTION 3

Distinguish between:

- (a) land/praedial servitudes and personal servitudes (8)
- (b) lawful holders and unlawful holders (2)
- (c) original and derivative methods of acquisition of ownership (6)
- (d) real rights and personal rights under the following headings:
 - (i) object
 - (ii) absoluteness
 - (iii) preference
 - (iv) publicity (4)

[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 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.

- (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) T steals Q's car. T takes the car to Highway Motors, which undertakes to:
- (i) install a new crank shaft
 - (ii) install a device to improve petrol consumption
 - (iii) replace the upholstery with leather upholstery

In terms of their agreement, T would pay R 600-00, R 200-00 and R 300-00 to Highway Motors for the above services respectively. On passing the garage, Q sees her car and institutes the *rei vindicatio* against Z, the owner of Highway Motors. Z, who was *bona fide* all the time, and who was under the impression that T was the owner of the car, relies upon his lien and alleges that he is entitled to keep the car until the full R1 100-00 has been paid for his services.

Discuss Z's legal position.

(15)

- (b) S decides to develop a part of his farm Highlands as a residential township. It appears that a regional development plan in terms of a physical planning scheme provides that the area is to be utilised for agricultural purposes only. S approaches you for legal advice. Fully advise S on his legal position.

(5)

[20]

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) S and his friends go for a hunting weekend. S mortally wounds a kudu. The kudu manages to escape into thick bushes. S gives up the search when it becomes dark. On his way home from a party, Z, one of the farm labourers stumbles upon the wounded kudu. He fetches his friends and they slaughter the animal and take the meat to their respective homes. Z is accused of theft of the kudu. The state alleges that S was the owner of the kudu and that Z stole the kudu. To succeed the state will have to prove that S was the owner. Will the state succeed in proving this? Substantiate your answer with reference to case law. (10)
- (b) S has entered into an agreement with Q and R in terms of which they grant him the right to use the road to Waterford that crosses their farm. This agreement is in writing, but it is not registered. Q and R sell the farm and the new owner, who knows about the servitude agreement, refuses to let S use the road. Did S obtain a real right? Briefly substantiate your answer with reference to case law. (10)

[20]**TOTAL: 100 MARKS**

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