

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
EXAMINATION PAPER MAY 2008

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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THE INVIGILATOR**

QUESTION 1

Define:

- (a) manufacture (*specificatio*) (5)
 (b) attornment (5)

Name:

- (c) the requirements for estoppel (4)
 (d) 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 (6)
[20]

QUESTION 2

Define:

- (a) pledge (5)
 (b) *kustingbrief* (5)
 (c) personal servitude (7)
 (d) improvement lien (3)
[20]

QUESTION 3

- (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 4

Define:

- (a) ownership (6)
 (b) real right (4)

Name:

- (c) six ways in which ownership is terminated by operation of law (6)
 (d) one statute that limits ownership of immovables in Swaziland (1)
 (e) one statute that limits ownership of movables in Swaziland (1)
 (f) the different types of nuisance (2)

[20]**QUESTION 5**

- (a) Discuss *Ex parte Geldenhuys* (1926 OPD 155) with special reference to the *subtraction from the dominium* test. (8)
- (b) Briefly discuss the limitations on ownership. (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.
 Which action is applicable? What are the requirements? Will S succeed? Substantiate your answer with reference to case. (8)

[20]**QUESTION 6**

- (a) S's farm is close to the urban area of Newtown. S has little time for the farm and he wants to start limiting his farming operations. He obtains permission to subdivide the farm. S sells another portion of his farm to a developer, Z, who wishes to develop the land as a township. After obtaining permission to develop the land as a township, Z lays out the township as Newtown Extension 1 in terms of the provincial township establishment legislation. Newtown Extension 1 comprises 30 stands of 500 square metres each. Against the title deeds of each stand in Newtown Extension 1 conditions of title are inserted which provide the following:
- (1) "Only a single residential house shall be erected on the stand."
 - (2) "No dairy farming is permitted on the stand."
 - (3) "The buildings erected on the stand shall be built of brick with tiled roofs."
 - (4) "The stand shall not be used for business purposes."

Z, one of the residents in the new township, decides to open a restaurant in her house. N, one of the neighbours, wishes to apply for an interdict prohibiting Z from opening the restaurant. Will N succeed with an interdict? What must be proved to succeed? (5)

[TURN OVER]

- (b) 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 E 600-00, E 200-00 and E 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 E1 100-00 has been paid for his services.

Discuss Z's legal position.

(15)

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QUESTION 7

- (a) Discuss the problems facing a modern property-law lawyer in Swaziland today. (5)
- (b) Briefly discuss the relationship between a landowner and the holder of mineral rights on the land. (5)
- (c) Discuss the sections in the Constitution of the Kingdom of Swaziland, 2005, dealing with land. (10)

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TOTAL: 100 MARKS