

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION PAPER, JULY 2009**

**TITLE OF PAPER : LAW OF PROPERTY**

**COURSE CODE : L 204**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS :**

- 1. ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION 1.**
- 2. QUESTIONS ONE (1) IS COMPULSORY.**

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**QUESTION 1** (Compulsory)

The Mfomfo Pulp Company, in keeping with its expansion scheme, has acquired a tract of land in a farm area for the purposes of building a second pulp mill to relieve the workload on the machinery in the old mill. Adjoining the pulp company's new land is Sihle Mamba's property, a farm on which he has been growing vegetables for the past fifteen years.

Six months later, the construction of the mill was completed. In order to discharge any water and wasteful effluents from its operations, the pulp company, laid underground water pipes only five metres away from Mr. Mamba's property. After almost six years of operations, the water pipes burst, a fact unknown to the pulp company, and caused a seepage of water and other toxic liquids. This affected not only the pulp company's own land, but also Mr. Mamba's land. Actually, it had catastrophic effects on the latter's land since he lost almost all his vegetables for that year. An agricultural expert has confirmed Mr. Mamba's greatest fear: that even if the seepage were to stop, it would take another six years before the soil regained its normal productivity.

Advise Mr. Mamba on his legal rights.

[25 Marks]

**QUESTION 2**

"Ownership of property involves the exercise of complete dominion over it". Critically examine this statement with reference to public and common law limitations on proprietary rights in Swaziland.

[25 Marks]

**QUESTION 3**

Vuka owned a prime piece of land at Motshane. While he was suffering from an incurable heart condition, his doctor, and longtime business partner Philani, persuaded him to sell the land to him. Philani paid E35,000.00 (thirty five thousand Emalangeni) for the property whose market value was E500,000.00 (five hundred thousand emalangeni). Philani had actually explained that the property was losing value because of the construction of a sewerage system by the Motshane City Council. This coincided with Vuka's own thinking.

Philani had further informed Vuka that he would sub-divide the land and give the other portion to Makhosi, Vuka's only minor son, when he reached the age of majority, otherwise relatives would grab the entire property as soon as Vuka died.

Although the agreement of sale was oral, Vuka later signed all the necessary documents to effect valid transfer of the property to Philani who became the owner upon registration. No sooner had ownership been passed, than Philani resold the entire property to Mncedisi for E500,000.00 (five hundred thousand Emalangeni).

Unknown to Philani, prior to the sale, Vuka had granted grazing rights to Delani, a neighbouring landowner. Mncedisi had once heard of this agreement, but he hated cattle, and was determined to ensure that no cattle grazed on his land. Further, the Registrar of Deeds had not cancelled a mortgage bond over the property for a debt of E100,000.00 (one hundred thousand emalangen) owed by Vuka to the First National Bank. This meant that the value of the land is about E100,000.00 less than the price Mncedisi had paid for it. Mncedisi is also not happy because Philani has failed to give him possession in respect of the property.

Meanwhile Vuka has recovered, and is now clear headed, having realized that he had been hoodwinked by Philani. He now wants his land back.

Advise Vuka, Mncedisi, and Delani, as to their legal rights and remedies. Make reference to case law.  
[25 marks]

#### **QUESTION 4**

Outline the major differences, if any, between real and personal rights. Illustrate your response by reference to case law.

[25 Marks]

#### **QUESTION 5**

One of the saddest legacies of colonialism in Africa is that the indigenous people were left landless. Large tracts of land were confiscated by the colonialists through a number of mechanisms: concessions, purchases and outright confiscation. Consider some of the ways in which post-independent Swaziland has sought to redress the land imbalance created by the concessions era of the 1880s.

[25 Marks]

#### **QUESTION 6**

With reference to case law, discuss the factors which influence the decision of a court on the issue of whether a movable thing has become an immovable one.

[25 Marks]