

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2010

COURSE NAME : **LAW OF PROPERTY**

COURSE CODE : **L 204**

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

INSTRUCTIONS :

- 1. ANSWER A TOTAL OF FOUR QUESTIONS INCLUDING QUESTION ONE.**
- 2. QUESTION ONE IS COMPULSORY**

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QUESTION 1 (COMPULSORY)

M.N.Z. Construction Company (Pty) Ltd won a tender from the University of Swaziland to build blocks of hostels. The agreement provided that payment of fixed instalments would be made at the end of each month, depending on the progress of the work. Substantial progress on the work was made but UNISWA defaulted in payment for three consecutive months.

When the work was completed as scheduled, M.N.Z. construction refused to hand over the keys until full payment for the arrears was made. When UNISWA opened for its first semester, almost half of the student population was off-campus, a state of affairs that led to a series of disturbances between the administration, and the students. The Vice-Chancellor approached M.N.Z. Construction Company and pleaded with them to hand over the keys in order to avoid an otherwise explosive situation on Campus. Although the construction Company was clearly reluctant to hand the keys over, it eventually gave in to public pressure. However, only the keys to the student's study rooms were handed over, and the keys to the washrooms were retained by the management of the company. Further, the company made it clear that if no payment on the arrears was forthcoming within a reasonable time, the company would seize the keys at the end of the first semester. UNISWA failed to make the payments. Consequently, the company went back for the keys at the end of the first semester, which it secured. When the second semester opened, the company adamantly refused to handover the keys, and the events of the first semester have now been re-enacted.

UNISWA has approached you for legal assistance. Give a detailed legal opinion on this matter, and illustrate your views by making reference to decided cases. (25 marks)

QUESTION 2

Briefly distinguish between:

- a) Delivery with the long hand (*traditio longa manu*) and delivery with the short hand (*traditio brevi manu*) (10 marks)
- b) Original and derivate methods of acquiring ownership (10 marks)
- c) Bonafide and Malafide possession (5 marks)

TOTAL : 25 marks

QUESTION 3

- a) Melusi and Zinhle are seriously affected by monkeys that destroy their mealies. Melusi installs an apparatus to chase away the monkeys close to the boundary with his neighbour. The apparatus makes loud noises at regular intervals during the day and also through the Night. The neighbour writes a letter to Melusi to complain about the noise during the night, but Melusi ignores it and refuses to speak to his neighbour on the telephone. The neighbour has approached you for legal advice. Advise the neighbour fully with reference to legal authority. (15 marks)

b) Vusi is the owner of a car. Zweli, a thief, steals the car.

i) Zweli changes the engine and registration numbers and sells the car to Musa. Can Vusi claim the car from Musa? If so, what must he prove to be successful with his claim? (5 marks)

ii) Because Zweli is afraid of being caught by the police, he sets the car on fire, and destroys it. Can Vusi institute the action ad exhibendum against Zweli? What must Vusi prove for successful reliance on this remedy, and what can be claim? Will he succeed in the circumstances? (5 marks)

TOTAL : 25 marks

QUESTION 4

The right of ownership denoted the fullest bundle of rights that a person may enjoy in respect of property. Consider some of the limitations imposed by our public law on the aforesaid right, with special reference to the Land Speculation Control Act No. 8 of 1972, Section 211 (4) of the Constitution of Swaziland, 2005.

(25 marks)

QUESTION 5

Outline the major differences, if any, between real and personal rights. Illustrate your answer by making reference to decided cases (25 marks)

QUESTION 6

“A thing which is immovable today may be movable tomorrow..... conversely, a movable may be affixed to an immovable by natural or artificial means in such a manner that it loses its identity and becomes an integral part of the immovable thing.” Consider the factors which must be taken into account in determining whether a movable has become an immovable. Illustrate your answer by referring to case law.

(25 marks)