

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION PAPER, JULY 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)**

Ms Motsa owns a farm at Lobamba, where she has her home. For the past two years, the farm has been frequented by criminals who broke into her house and also stole her livestock. On the night of 6<sup>th</sup> August, 2008, a similar crime was committed by Bonkhe, who stole a plasma screen T.V., a Panasonic Home Theatre system and three goats.

About a month later, Bonkhe died in a stolen car at Luve under mysterious circumstances. Meanwhile, the goats stolen by him, were inherited by his son Sipho. One of the goats gave birth to a male kid, a week after Bonkhe's death. The Electronic appliances devolved upon Bonkhe's daughter, Sihle who is a third year, Social Science student at UNISWA.

Police investigations have conclusively established that these items were stolen from Ms Motsa's farm on the night in question. Ms Motsa has now come to you for legal advice.

Comment fully on the legal remedies available to her. If there is more than one remedy to which she is entitled, state whether these remedies may be available concurrently, alternatively or otherwise. Give reasons for your answer. What are the rights, if any, of Bonkhe's heirs?

(25 marks)

### **QUESTION 2**

Discuss the private law limitations on the enjoyment of ownership rights in property. Support your response with decided cases.

(25 marks)

### **QUESTION 3**

An oral lease agreement was concluded between Sam, the owner of a large Farm suitable for agricultural production and livestock rearing, and Linda. The lease agreement was valid for the duration of Linda's life. In terms of the aforesaid agreement, Linda planted some orange and apple trees on one hundred and fifty hectares of land. An annual rental of E6,000.00 was payable to Sam.

Since he wanted to take full advantage of the land leased to him, Linda obtained a loan facility of E2 million to develop the land from Nedbank Swaziland. After an inspection of the land, and the trees by the representatives of the bank the party agreed to pass a mortgage bond on the leased property to secure the loan "subject to the normal conveyancing formalities". In spite of the fact that the loan was paid to Linda, the necessary formalities regarding registration were not completed.

In the meantime, Sam was having problems with paying the instalments on a loan of E8 million emalangenzi obtained from First National Bank. This bank applied to the Court for a writ of attachment against all immovable properties owned by Sam. In fact a mortgage bond covering all his immovable properties was passed and registered in favour of the First National Bank. Now both Linda and Nedbank have filed objections against the issue of the writ of attachment in respect of the leased property.

Discuss the legal rights of Linda, Nedbank and First National Bank.

(25 marks)

**QUESTION 4**

Private ownership of Land under Swazi Law and Custom is unknown. It is said that the ownership of land under this regime vests in the King who holds it in trust for the Swazi Nation. Through the Chiefs in the various chiefdoms, the aforesaid land is distributed to families but no ownership in such land passes to those families.

In the light of the foregoing statement consider the customary land tenure system in Swaziland and suggest how reforms may be effected on Swazi Nation Land with the aim of improving agricultural production.

(25 marks)

**QUESTION 5**

Briefly define:

- a) Ownership (5 marks)
- b) Nuisance (5 marks)
- c) Lien (5 marks)
- d) Pledge (5 marks)
- e) Co-ownership (5 marks)

Total : 25 marks

**QUESTION 6**

- a) What are the different methods of termination of ownership? (10 marks)
- b) Sonkosi and Mandla bequeath their Farm to Lenhle on condition that the Farm must be excluded from the joint estate of Lenhle and her husband.

Can this condition be registered against the title deed of the property and what is the effect of such a condition? (10 marks)

- c) What is the difference between ownership and limited real rights? (5 marks)

Total : 25 marks