

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2011

- 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)

Mamba, a hunter, left his home on Friday morning for a one-man hunting expedition. At about 6 pm in the evening, Mamba spotted a wild elephant. He shot it, seriously wounding the elephant. However, the elephant managed to escape, with Mamba, in hot pursuit.

As it was rapidly getting dark, Mamba decided to temporarily abandon the chase. He decided to continue the search at day-break. He also needed a good-night's rest after an arduous day.

When he resumed the search the next morning, Mamba discovered that the elephant had been found by Zwane, who introduced himself as the Secretary-General of the Swaziland Animal Rights Group. Zwane had brought two Veterinary Assistants who were busy administering treatment to the wounded elephant. When Mamba asked for the elephant to be handed to him, Zwane refused. After a heated argument, it transpired that the elephant had previously been captured by the Swaziland Animal Rights Group, and put in protective custody for its own good. Zwane was then put in charge of the elephant whom he named Billy. Zwane then introduced Billy, the elephant, to a series of exercises which were intended to train the animal. In the last month, Billy had left his enclosure twice, but had always returned of his own accord. This was his third time out, and had been away for four days (which was the longest period he had ever been away).

Mamba does not care, nor is he interested in the philosophy or politics of the Swaziland Animal Rights Group. To him, the elephant is his meat, and he wishes to take it home with him.

Give a legal opinion in which you discuss:

- i) The legal rights and remedies, if any, of Mamba. (12 marks)
- ii) The legal rights, and remedies, if any, of Zwane. (13 marks)

[Total: 25 Marks]

QUESTION 2

Evan, a prosperous land owner, owns a block of offices on Gwamile Street, Mbabane. Three years ago, Evan let one of the offices to an Economics consultant, Mr. Cele. Mr. Cele had a slow start in business. Unexpectedly, the privatisation policy being implemented has led to a lot of people losing their jobs, and businesses. The process has affected, very adversely, Mr. Cele's earnings, and he is now deeply in debt. He is in arrears of E15,000.00 (fifteen thousand Emalangeni) on his rent. Evan's repeated demands for payment have produced no result. Instead,

Mr. Cele has continued to ask for more time to try and raise the money with which to pay.

During the Christmas break, when Mr. Cele had closed his business for the festive season, Evan instructed his locksmith, Zulu, to change the lock on Cele's office door. No sooner had Zulu finished changing the lock, and was preparing to leave the door, then he saw Cele drive into the car park. Zulu did not wish to argue with Cele, so he quietly proceeded to his vehicle, and quickly drove off.

In the meantime, when Cele arrived at his office door, he noticed that the locks had been changed. He immediately made arrangements to change the locks. He drove to a nearby General Store, bought new locks, and armed with necessary tools, drilled out the locks that were fixed by Zulu, and installed his own.

After learning of Cele's action, Evan approaches you for legal advice.

Give your opinion on:

- a) Cele's legal rights and remedies, if any; (10 marks)
 - b) Evan's legal rights and remedies, if any. (15 marks)
- [Total: 25 Marks]

QUESTION 3

Motsa executed a will in terms of which his farm at Mliba, was bequeathed to his three children. The children at the material time were all minors. The bequest was subject to an important condition: the children were to hold the farm in equal undivided shares until the eldest of the children, had reached the age of majority. When that event came to pass, the farm would then be divided into three clearly defined portions which would be distributed to the children by casting lots. The child who received the portion with the family home was to pay lobola for the other siblings, (as they were all boys) if they elected to marry in terms of Swazi Law and Custom.

Consider the registerability or otherwise of these two conditions. In support of your answer, make reference to case law. [25 Marks]

QUESTION 4

A) Define the following concepts, include examples:

- i) Personal Servitude (5 marks)
- ii) Constitutum Possessorium (5 marks)

B) X and Y are seriously affected by baboons that destroy their mealies. X installs an apparatus to scare the creatures away. The apparatus is situated on the boundary with the neighbour.

The said apparatus makes loud noises at regular intervals during the day, as well as the night. The neighbour writes a letter to X and Y, complaining about the noise during the night. X ignores the letter, and refuses to speak to the neighbour on the telephone. The neighbour approaches you for legal advice.

Advise him fully on the applicable remedy. Give details about the basis of the remedy, and the requirements for successful reliance on the remedy. Refer to case law. (15 marks)
[Total: 25 Marks]

QUESTION 5

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.

Carefully consider the factors that must be taken into account in determining whether a movable has become an immovable. Illustrate your answer by referring to case law.

[25 Marks]

QUESTION 6

- (a) Mention the ways in which ownership may be terminated. (5 marks)
- (b) Distinguish between a singular and a composite thing. (5 marks)
- (c) Discuss the public law limitations that are placed on the enjoyment of ownership rights in Swaziland. (15 marks)

[Total: 25 Marks]