

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 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)

Lunga Msibi owns a farm at Luhleko, where she has her home. For the past two years, the farm has been plagued by a series of burglaries, where thieves have made off with her livestock, including cows and goats. On the night of the 12th of May 2009, a similar crime was committed by one Mihla Kunene, who stole two LCD television sets, and a laptop from the farm house. Kunene also drove away two goats from the farm.

About a month later, Kunene died in a stolen car at Ezulwini, under very mysterious circumstances. Meanwhile, the two goats that had been stolen by Kunene, have since been inherited by his thirty year old son, Melusi. One of the goats had a kid after Kunene's death. The two television sets, and the laptop, devolved upon Kunene's twenty one year old niece, who is a first year student at the William Pitcher Teacher Training College. Police investigations have conclusively established that these items were stolen from Lunga's farm on the night in question.

Advise Lunga on the legal remedies that are available to him. If there is more than one remedy to which he is entitled pursue, state whether these remedies may be available concurrently, or otherwise. Give reasons for your answer. What are the rights, if any, of Kunene's heirs?

[25 Marks]

QUESTION 2

Private ownership of land in unknown with Swazi law and custom is unknown. It is said that the ownership of land under this regime rests 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 light of the foregoing statement, consider the customary land tenure system of Swaziland, bearing in mind the provisions of the Constitution of Swaziland, 2005, regarding the Land Management Board. Analyze the law, and suggest possible reforms.

[25 Marks]

QUESTION 3

"In private law, the counterpart of public law, limitations are placed on the enjoyment of ownership rights in property by the law of neighbour relations."

Discuss fully, and support your answer by referring to case law.

[25 marks]

QUESTION 4

Bennet owns a prefabricated house. In the last ten years, Bennet has moved his house three times. Two years ago Bennet moved, for the fourth time, to Siteki. He was granted a forty-nine (49) year lease by the lessor, Gilbert.

In the recent months, relations between Bennet and Gilbert, have become strained. In addition, the house has an extension wing made of cement, sand and bricks, some of which are his own,

while others belong to his uncle, Tony. The bricks, cement, and sand belonging to Tony were given to Bennet for safekeeping only, and not for use.

Tony's combined properties are valued at fifty-thousand Emalangeni, as are Bennet's. Both sets of bricks are identical in make, style, colour and appearance.

The extension wing of the house has a deep foundation and is also firmly attached to the land. Further, the extension wing is linked to one of the walls of the prefabricated house, forms an appearance of one continuous structure.

Paul, a construction engineer, was hired by Bennet to install a flowing water and sewage system, embedded and attached firmly on the land, and in the foundation of the house. The cost is ten thousand Emalangeni. At the time of construction, Bennet and Paul signed an agreement giving ownership of the drainage system structures and equipment to Paul until Full and final payment of the monthly instalment was completed.

Bennet has since failed to pay the full amount, and is in arrears of the monthly instalments. Meanwhile Gilbert has not been paid the agreed rent for the last ten months and now claims Bennet's house as security. Gilbert is threatening to sell the house if he is not paid the money due in arrears within three months. Under the lease agreement the lessor (Gilbert) is entitled to repossess the land together with all permanent improvements thereon if Bennet fails to pay the monthly rent for a continuous period of six months.

Discuss the legal rights, and remedies, if any that are available to:

- | | | |
|-------|-----------|-------------------|
| (i) | Bennet | (7 marks) |
| (ii) | Tony | (6 marks) |
| (iii) | Paul; and | (6 marks) |
| (iv) | Gilbert | (6 marks) |
| | | [Total: 25 marks] |

QUESTION 5

- A) Discuss the nature and purpose of the "Subtraction from Dominion Test". In which case was the test formulated? (10 marks)
- B) (i) What are the characteristics of a thing? (5 marks)
- (ii) Distinguish between unlawful holders in bad faith, and unlawful holders in good faith. Give examples. (5 marks)
- (iii) Define, with examples, a lien. (5 marks)
- [Total: 25 marks]

QUESTION 6

- A) X is involved in a car accident. The car is insured with Vista Insurance Brokers. X takes the car to Z for repairs. After the car has been repaired and paid for by Vista, the insurance company realises that the premiums had never been paid. Vista cancels the insurance contract and collects the car from Z. Vista refuses to give the car to X and X claims the car with the rei vindicatio from Vista.

Will X be successful? Substantiate your answer fully with reference to authority.

(10 marks)

- B) B and C are farm workers on a farm owned by S. B and C occupy and cultivate portion of this farm. S has a disagreement with the farm workers and they go on strike. S then removes their furniture from the houses that they occupy, and burns it. He throws their clothing away. He also demolishes their houses, and dumps the building materials in a rubbish dump.

- (i) Advise B and C on the nature of their remedy, and the requirements for successful reliance on this remedy. (5 marks)
- (ii) S raises the defence that a spoliation remedy cannot succeed because restoration of B and C's possessions has become impossible. Will S succeed with this defence? Substantiate your response with case law. (5 marks)
- (iii) 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 crop. Will S succeed with the defence. Substantiate your response by referring to case law. (5 marks)

[Total: 25 Marks]