

UNIVERSITY OF SWAZILAND

151

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION, JULY 2012

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. QUESTION ONE (1) IS COMPULSORY.**

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QUESTION 1 (COMPULSORY)

Hlubi is a die hard hunter, and on the 24th of December, 2010, he left the village in the afternoon, for a brief hunting expedition. Mother luck was on his side on that day. He encountered what appeared to be a wild Impala, which he shot, and seriously wounded.

The Impala, however, managed to escape, with Hlubi in hot pursuit. Hlubi's search for the animal proved futile, and he abandoned the search as it was getting quite dark. He intended to resume the search the following morning.

When daylight came, Hlubi continued the search. He discovered that the Impala had been found by Ndlovu, who refused to hand it over to him. Actually, the Impala had been captured by Ndlovu a few months earlier, and he had given it a name, and kept it in a pen.

The Impala had escaped from the pen, some forty-five minutes before being shot by Hlubi.

Give a legal opinion in which you discuss all the legal rights of both Hlubi and Ndlovu. Cite relevant case law.

[25 MARKS]

QUESTION 2

"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 answers by referring to 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 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 obtained from the First National Bank. This bank applied to the Court for a writ of attachment against all his immovable properties which was passed and registered in favour of the First National Bank. Now both Linda and Nedbank have filed objections against the writ of attachment in respect of the leased property.

Discuss the legal rights of Linda, Nedbank and the First National Bank. [25 MARKS]

QUESTION 4

- a) The applicant Q, a car dealer from Manzini, provided L, a second-hand car dealer doing business in Mbabane, with two motor cars for sale on the explicit condition that ownership would not be transferred until the full purchase price had been paid to Q.

L. needed a credit facility and approached S for credit. S. was prepared to provide credit to L. on condition that L furnished real security to S. L concluded an agreement with the defendant S in terms of which the vehicles were sold to S and immediately resold to L in terms of a floor-plan agreement. At no time did either L or S intend that the vehicles should be removed from the physical control of L at his business premises. L further agreed that the resold vehicles would be held by him on behalf of S until the full purchase price had been paid to S by L. L disappeared and subsequently his estate was sequestrated without the purchase price having been paid to S. S had the vehicles removed from L's business premises.

- (i) Q claims the cars from S with the rei vindication. What must Q prove and will he succeed? Substantiate your answer with reference to case law. (10 marks)
- (ii) Is there any possibility that S may retain control of the cars? Substantiate your answer with reference to the appropriate defence and its requirements. Substantiate your answer with reference to case law. (15 marks)
- [25 MARKS]

QUESTION 5

- a) Briefly name and discuss the requirements for a successful reliance on estoppel with reference to applicable case law. (10 marks)
- b) Q is the owner of a car. T, a thief, steals the car.
- i. T charges the engine and registration numbers and sells it to Z. Can Q claim the car from Z? If so, which remedy is applicable, what must she prove to be successful with her claim and what are her chances of success? (5 marks)

- ii) T gives the car to his son M to use. Can Q institute the *Condictio Furtiva* against M? Substantiate your answer and briefly mention the requirements for this remedy. (5 marks)
- iii) T changes the engine and registration numbers and sells it to Z. The car is written off in an accident involving Z. The wreck is in the control of X, a scrap metal dealer. Discuss the applicability the *actio ad exhibendum* in this context. (5 marks)

[TOTAL: 25 MARKS]

QUESTION 6

Define the following concepts, including examples:

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| a) Attornment | (5 marks) |
| b) <i>Constitutum Possessorium</i> | (5 marks) |
| c) Personal servitude | (5 marks) |
| d) Prescription | (5 marks) |
| e) <i>Traditio Longa manu</i> | (5 marks) |

[25 MARKS]