



### **QUESTION ONE (COMPULSORY)**

Kgotso is the owner of a farm situated on the East end of Kubutha Valley. Although purchased some four years back, the farm has never been visited by its owner. The arrangements, in its acquisition, having been handled by Kgotso's conveyancer and attorney; Sizo.

Phila, a prominent Chief of a nearby community, has experienced an acute shortage of arable land in the last few years. Consequently, Phila initiated negotiations with Kgotso for the possible sale of the farm to the community. When the negotiations had reached an advanced stage, Kgotso started apportioning the farm amongst his subjects on the 22<sup>nd</sup> of April, 2013, in the genuine and honest belief that the deal will definitely come through before the end of the month.

The news of this development, did not reach Kgotso until 26<sup>th</sup> of April when Sizo returned from Kubutha, Kgotso instructed her to contact the Land Squatters Control Authority immediately in order to have the squatters evicted from his Land forthwith in terms of Section 2 of the Prevention of Squatters Act No. 1/2013.

Notice of the demolition of the shacks erected by Phila's subjects on the farm was immediately served on both Phila and the squatters on the same day, the 26<sup>th</sup>, by the aforesaid Authority. When Phila received the notice of the eviction order from the Authority, he quickly called on the assistance of his attorney, who persuaded the Authority to delay the execution of the notice in order to allow Phila to use his authority and influence in preventing the squatters removed from Kgotso's farm.

Further, the attorney indicated that two days would be more than enough to have the squatters resettled by Phila, so that they would be out of the place by the 28<sup>th</sup>. Consequently, the shacks were not demolished on the understanding that the squatters would do that on their own under Phila's guidance.

When Sizo visited the scene on the 28<sup>th</sup> she discovered that even more squatters had actually come in and there was no sign whatsoever that they were preparing to leave the farm that day. Sizo was told that Phila had changed his mind about the fate of the squatters. At this stage, Sizo reactivated the eviction process which was carried out on the morning of the 29<sup>th</sup> of April.

When Phila learnt of this development, he instructed his attorney to institute spoliation proceedings on behalf of the squatters, against Kgotso and the Authority.

Consider the chances of success of Phila's action and support your response with reference to case law. [25 MARKS]

## QUESTION TWO

(a) S's farm is close to the urban area of Zone Six. S. has little time for the farm and he wants to start limiting his farming operations. He obtains permission to subdivide the farm. S sells another portion of his farm to a developer, Z, who wishes to develop the land as township. After obtaining permission to develop the land as a township, Z lays out the township on Zone six portion 1, in terms of the provincial township establishment legislation. Zone six portion 1 comprises 30 stands of 500 square metres each. Against the title deeds of each stand in Zone six portion 1 conditions of title are inserted which provide the following:

- 1) "only a single residential house shall be erected on the stand."
- 2) "No dairy farming is permitted on the stand".
- 3) "The buildings erected on the stand shall be built of brick with tiled roofs."
- 4) "The stand shall not be used for business purposes."

Z, one of the residents in the new township, decides to open a restaurant in her house. N, one of the neighbours, wishes to apply for an interdict prohibiting Z from opening the restaurant. Will N succeed with an interdict? What must be proved to succeed?

(10 marks)

(b) T steals Q's car. T takes the car to Mavusane's Panel beaters, which undertakes to:

- i) Install a new crank shaft
- ii) Install a devise to improve petrol consumption
- iii) Replace the upholstery with leather upholstery

In terms of their agreement, T would pay E1000.00., E2000.00 and E3000,00 to Mavusane's Panel beaters for the above services respectively. On passing the garage, Q sees her car and institutes the *rei vindicatio* against Z, the owner of Mavusane's Panel beaters. Z, who was bona fide all the time, and who was under the impression that T was the owner of the car, relies upon his lien and alleges that he is entitled to keep the car until the full E6000.00 has been paid for his services.

Discuss Z's legal position.

(15 marks)

[TOTAL: 25 MARKS]

### **QUESTION THREE**

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 work was completed as scheduled, M.N.Z. Construction refused to hand over the keys until full payment of 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 distances between the administration and the students. The Vice Chancellor approached M.N.Z. Construction and pleaded with them to handover the keys in order to avoid an otherwise explosive situation on campus. Although the construction company was clearly reluctant to hand over the keys over, it eventually gave in to public pressure. However, only the keys to the students' 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 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 hand over the keys and the events of the first semester have now been re-enacted.

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

[25 MARKS]

### **QUESTION FOUR**

The Mfomfo Pulp Company, in keeping with its expansion scheme, has acquired a tract of land in a farm area for the purposes of building a second pulp mill to relieve the workload on the machinery in the old mill. Adjoining the pulp company's new land in Sihle Mamba's property, a farm on which he has been growing vegetables for the past fifteen years.

Six months later, the construction of the mill was completed. In order to discharge any water and wasteful effluents from its operations, the pulp company, laid underground water pipes only five metres away from Mr. Mamba's property. After almost six years of operations, the water pipes burst, a fact unknown to the pulp company, and caused a seepage of water and other toxic liquids. This affected not only the pulp company's, own land, but also Mr. Mamba's land.

Actually, it had catastrophic effects on the latter's land since he lost almost all his vegetables for that year. An agricultural expert has confirmed Mr. Mamba's greatest

fear: that even if the seepage were to stop, it would take another six years before the soil regained its normal productivity.

Advise Mr. Mamba on his legal rights.

[25 MARKS]

### **QUESTION FIVE**

An oral lease agreement was concluded between Sam, who owns a large farm suitable for agricultural production had livestock rearing, and Lindani. The lease agreement was valid for the duration of Lindani's life. In terms of the aforesaid agreement, Lindani planted some apple and orange trees on the 150 hectares of land. An annual rental of E60,000.00 was payable to Sam.

Since he wanted to take full advantage of the land leased to him, Lindani obtained a loan facility of two million emalangenzi to develop the land from Nedbank Swaziland. After an inspection of the Land and the trees by the representatives of the bank, the parties 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 Lindani, the necessary formalities regarding registration were not completed.

In the meantime, Sam was having problems with paying instalments on the loan of eight million Emalangenzi obtained from Standard Bank, Swaziland. The said bank applied to the High Court for a writ of attachment against all the immovable properties belonging to Sam. In fact, a mortgage bond covering all his immovable properties was passed and registered in favour of Standard Bank, Swaziland. Now both Lindani and Nedbank, Swaziland, have filed objections against the issue of the writ of attachment in respect of the leased property.

Discuss the legal rights of:

- Lindani
- Nedbank, Swaziland
- Standard Bank, Swaziland

[25 MARKS]

### **QUESTION SIX**

Briefly discuss the following with examples:

- a) The requirements for estoppel (5)
- b) Bonafide and Malafide possession (5)
- c) The criteria applied by the courts to determine whether a movable thing is attached to an immovable thing by means of accession in such a fashion that it has become part of the immovable thing. (10)
- d) Alluvio. (5)

[25 MARKS]