

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATION, JULY 2013**

**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.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GIVEN BY THE  
INVIGILATOR.**

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

- a) B and C, farm workers of S, occupy and cultivate a portion of Highlands. S has an argument with workers and they refuse to work. S removes their furniture and clothing from the houses. He breaks down their houses. Thereafter S burns their furniture and clothing, as well as the materials with which the houses were built. B and C want immediate restoration of their possessions.
- i) Advise B and C on the most appropriate remedy and what the requirements for successful reliance on this remedy are: (5)
- ii) 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 crops. Will S succeed with this defence? Substantiate your answer. (5)
- iii) S raises the defence that it is impossible to restore the furniture, the clothing and the building materials, since they had been destroyed. Will S succeed with this defence? Substantiate your answer with reference to case law. (5)
- b) There is a windmill on the farm of X and Y, which they no longer use. S purchases it from them.

His father takes him to the windmill and shows it to him. He says: "Here is the windmill. You must come and dismantle it and take it away". S undertakes to do this as soon as he has the time. For six months S does not visit his parents or remove the windmill. Z approaches X and Y and offers to buy the windmill. They sell it to Z. Z removes the windmill and erects it on his farm. S claims delivery of the windmill with the rei vindication from Z.

- (i) What must S prove to succeed with the rei vindication?
- (ii) Will S succeed in proving all the requirements for the rei vindication (refer to the way in which ownership was acquired in this example)? Substantiate your answer with reference to case law. (10)

[TOTAL: 25 MARKS]

### **QUESTION TWO**

Mlandvo Motsa executed a Will in terms of which his farm at Luve was bequeathed to his three children, all boys. The bequest was subject to an important condition: the Children were to hold the farm in equal undivided shares until the eldest of the boys, had reached the age of majority. When that event came to pass, the farm would then 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, 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 3**

- a) Melusi and Zinhle are seriously affected by monkeys that destroy their mealie crop. Melusi installs an apparatus to chase the monkeys away. The apparatus is placed close to the boundary with his neighbour. The device makes loud noises at regular intervals during the day and also through the night. The neighbour writes a letter to Melusi to complain about the noise during the night, but Melusi ignores it and refuses to speak to his neighbour on the telephone. The neighbour has approached you for legal advice. Advise the neighbour fully, with reference to legal authority. (15 marks)
- b) Briefly distinguish between original and derivative methods of acquiring ownership. (10 marks)
- [25 MARKS]

### **QUESTION 4**

“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.” Consider the factors which must be taken into account in determining whether a movable has become immovable.

Illustrate your answer by referring to case law.

[25 MARKS]

### **QUESTION 5**

Briefly define:

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

[25 MARKS]

### **QUESTION 6**

Vuka owned a prime piece of land at Mliba. While he was suffering from an incurable heart condition, his doctor, and longtime business partner Phila, persuaded him to sell the land to him.

Phila paid E35,000.00 (thirty five thousand Emalangeni) for property whose market value was E500,000.00 (five hundred thousand Emalangeni). Phila had actually explained that the property was losing value because of the construction of a sewerage system by the Mliba City Council. This coincided with Vuka's own thinking.

Phila had further informed Vuka that he would sub-divide the land and give the other portion to Makhosi, Vuka's only minor son, when he reached the age of majority, otherwise relatives would grab the entire property as soon as Vuka died.

Although the agreement of sale was oral, Vuka later signed all the necessary documents to effect valid transfer of the property to Phila who became the owner upon registration. No sooner had ownership passed, than Phila resold the entire property to Mncedisi for E500,000.00 (five hundred thousand Emalangeni)

Unknown to Phila, prior to the sale, Vuka had granted grazing rights to Delani, a neighbouring landowner. Mncedisi had once heard of this agreement, but he hated cattle, and was determined to ensure that no cattle grazed on his land. Further, the Registrar of Deeds has not cancelled a mortgage bond over the property for debt of E100,000.00 (one hundred thousand Emalangeni) owned by Vuka to First National Bank. This meant that the value of the land is about E100,000.00 (the hundred thousand Emalangnei) less than the price that Mncedisi paid for it. Mncedisi is also not happy because Phila has failed to give him possession in respect of the property.

Meanwhile, Vuka has recovered and is now clear-headed. He has realized that he had been hoodwinked by Phila. He now wants his land back.

Advise Vuka, Mncedisi and Delani, as to their legal rights and remedies. Make reference to case law. [25 MARKS]