



**QUESTION ONE [COMPULSORY]**

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Ndlovu, Mbuli and Zwane are neighbouring landowners who occupy the farm area of Lubulini, in the Lubombo Region. Mbuli has a registered right of way over Zwane's land, so that he can access the freeway between Lavumisa and Manzini.

Zwane is experiencing serious problems with his two neighbours. Mbuli is allowing his son's friends who are bikers to use the right of way as a racing ground. The races take place between 2.00 p.m. and 10.00 p.m. every Saturday, and this is causing great discomfort to Zwane who suffers from hypertension, as he is subjected to these activities on all weekends when he ought to be resting.

On the other hand, Ndlovu who has a sugar cane plantation, has received an order from a recently established sugar mill which is situated at Nsoko. The road between Lubulini and Nsoko is a bumpy, dirt road, which however, the residents of these areas have always used.

The Sugar Mill has heavy-duty trucks which collect the cane from the farms from which they purchase the cane. These trucks collect the cane at any time of the day, or night, and prefer to use tarred roads in as far as this is possible. Ndlovu, (who is related to Mbuli by marriage, as his daughter is married to Mbuli's son) has agreed with Mbuli that the trucks can use Mbuli's right of way over Zwane's land for the transportation of the sugar cane to Nsoko. This route would cut short the trips of the trucks by about three quarters and since it is also tarred, it is most suitable for these purposes.

Ndlovu's daughter is also expected to bring Umhlambiso (bridal gifts) to the Mbuli homestead on the weekend of the 15<sup>th</sup> of June, 2014. Many of the local dignitaries, as well as the Bishop of the local Anglican Church are expected to be in attendance at this function. Ndlovu opines that, for these purposes, as well, Mbuli's right of way over Zwane's land will be most suitable.

Ndlovu approaches Zwane with these propositions and even offers him a goat as compensation for allowing him to use the right of way, and tells him that he needs this route as a matter of necessity. Zwane is not at all impressed by all of this, and refuses to allow any of this. Zwane tells Ndlovu to use whatever route he has been using all along for his forthcoming pursuits.

Ndlovu feels aggrieved, and tells Zwane that he will be instituting court proceedings so as to obtain a court order which will grant him this right of way.

Advise Zwane, who has now approached you for legal advice on how to handle his two neighbours. He is especially concerned about Ndlovu's threats of court action, and he wants to know what Ndlovu prospects of success would be. He also wants to know what legal route could best take care of the problem that he is experiencing with the bike races that are taking place on his land every Saturday without his consent.

Advise him with reference to relevant authorities.

[25 MARKS]

(2)

**QUESTION TWO**

a) Standard – Vacuum Refining Company operated an oil refinery on its land situated within the Municipal area of Durban City Council. The latter, when assessing the appellant’s land for rating purposes, took into account the value of certain steel tanks which were part of the immovable property. Standard – Vacuum Refining Company objected to the valuation and argued that the tanks were not buildings and therefore not part of the land. They regarded the tanks as movable things. Will standard – Vacuum Company succeed in their objection to the valuation? Substantiate your answer with relevant case law. [15 marks]

b) While Sebentile is busy levelling the ground with her grader to plant crops, she digs up an old chest containing gold coins and diamond rings. Sebentile leases the farm from Zweli and Kwanele.

The coins are very old and no-one knows where they came from. Sebentile claims that she has become the owner of the coins and diamond jewellery, because she found the treasure trove.

Zweli and Kwanele also claim the treasure as theirs, since it was discovered on their land. Will Zweli and Kwanele be successful?

Substantiate your answer fully.

[10 marks]

[25 MARKS]

**QUESTION THREE**

Wakhe is an ardent junk dealer. He has made it his business to go around searching for, and collecting discarded items. He sells this scraps “as is”, or else he reconstructs other items out of the scrap material, and sells them.

On one particular day, whilst he was foraging around the Siphocosini area, he came across a boat that appeared to be abandoned. The boat was on the banks of the Luphohlo Dam. The boat appeared to have been there for quite a long time. He tried to move it only to find that it was firmly embedded in the earth and mire surrounding the dam. The boat is in itself quite heavy, as it weighs about half a ton.

After about a week, Wakhe decides to go back to the Dam, and he boards the boat, and finds a motor on it. He believes that he could get good money for the motor. He ties a rope around the motor, and tries to remove it, but his efforts are in vain as it is screwed on tightly to the base of the boat.

Wakhe then cuts sections of the motor loose, and removes them. Wakhe has since sold the scrap that he removed.

Zungu learns of Wakhe’s activities, and seeks to recover the motor as he alleges that he is the owner of the said boat. He wishes to institute spoliation proceedings against Wakhe.

Referring to case law, identify all the legal issues here and advise Zungu. Further advise him on his prospects of success in the legal course he seeks to pursue.

[25 MARKS]

**QUESTION FOUR**

(a) Define the following:

- i) Specification; [5 marks]
- ii) Kusting brief; and [5 marks]
- iii) Avulsio. [5 marks]

(b) Menzi’s car is involved in a car accident. His car is insured by A & M Insurers, which must indemnify the loss. The Insurance Company instructs a panel beater to effect the repairs and pays him. After the repairs have been completed and paid for by the Insurance Company, the company realises that the premiums have never been paid on the insurance policy by Menzi. The company cancels the insurance contract and collects the car from the panel beaters. Menzi now claims the car from the Insurance Company, which refuses to release the car to him.

Discuss the legal rights of:-

- a) Menzi; and [5 marks]
- b) The Insurance Company. [5 marks]

[25 MARKS]

**QUESTION FIVE**

Muhle is a diehard hunter. On the 26<sup>th</sup> of January, 2014, he left the village in the afternoon, for a brief hunting excursion. Mother luck was on his side on that day, and he encountered what appeared to be a wild Impala which he shot, and seriously wounded. However, the Impala managed to escape, with Muhle in hot pursuit. Muhle’s search for it proved futile as it was getting dark, and he decided to abandon his search, and resume it the following morning.

When daylight came, Muhle continued his search, and discovered that the Impala had been captured by Zwide a few months earlier, and he had decided to tame it by keeping it in a pen. The Impala had escaped from the pen some 30 minutes before being shot by Muhle.

Give a legal opinion in which you discuss all the legal rights of both Muhle and Zwide.

[25 MARKS]

**QUESTION SIX**

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A) S rents a car from a car rental agency. In terms of the lease agreement S is liable for all damage to the car. S goes on holiday and asks Z, his sister-in-law, to park the car in her garage while he is away. She agrees. On Saturday Z removes the car from the garage and takes her daughter to the doctor. The car is stolen from the doctor's parking area. The car cannot be traced and the car rental agency claims the car from S. Since S is unable to return the car, he pays the car rental agency and claims the amount from Z.

- i) Which action is applicable
- ii) What are the requirements
- iii) Will S succeed?

Refer to relevant case law in all of your submissions.

[15 marks]

B) Q is the owner of a car. T, a thief, steals the car, changes the engine and registration numbers and sells the car to Z. The car is written off in an accident involving Z. The wreck is in the control of X, a scrap metal dealer. Advise Q on the nature of and requirements for the most appropriate remedy in the circumstances. Substantiate your answer.

C) Q is the owner of a car. T, a thief, steals the car, but because he is afraid of being caught by the Police, he sets Fire to the car and destroys it completely. Can Q institute the *action ad exhibendum* against T?

What can she claim what must she prove? Will she succeed in this case?

[5 marks]

[25 MARKS]