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**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION, JULY 2014**

**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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INVIGILATOR.**

**QUESTION ONE [COMPULSORY]**

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The original lessors owned certain immovable property situated at the corner of Mahlokohla road and Vumani Street in Mbabane. A building (comprising a theatre, a restaurant and other accommodation), which is known as "The Playhouse", stands upon this property. In terms of a notarial lease agreement entered into on the 6<sup>th</sup> of December, 1936, this property was leased to African Theatres Ltd.

The original lessors, formed the Company "Nali Lilanga (PTY) LTD", and transferred the immovable property to it in 1930. By means of a notarial agreement concluded on the 11<sup>th</sup> of May, 1931, Nali Lilanga (PTY) LTD, and African Theatres LTD amended the terms of the original lease in certain respects. The following terms of the lease are relevant:-

- "1) The lease was for a period of 50 years from 1 January, 1927, to 31 December, 1976.
- 2) The lessee had the right to renew the lease for a further 49 years from 1 January, 1977 to 31 December 2025.
- 3) The lessee undertook to proceed with the erection of the theatre and other buildings on the said immovable property to a value of not less than E55,000.
- 4) On the termination of the lease or any renewal for any cause whatsoever, all buildings and improvements on the immovable property were to "revert to and ipso facto become the absolute property of the lessors without their having to pay or being liable to the lessees for any compensation in respect of the said buildings or improvements."

The original lessee duly erected the theatre and other buildings upon the immovable property and such buildings were named "The playhouse". The buildings were solidly constructed and were elaborately furnished and ornamented in a manner designed to give the appearance of an early English theatre.

The buildings were large, comprising of a theatre with 1762 seats on two levels, a foyer, gallery, restaurant, and other accommodation. The theatre building was equipped with all that was necessary for its use as a theatre, or cinema and restaurant complex and was put to use for these purposes. The building has been used for the said purposes ever since. Amongst the equipment installed in the building when it was erected were theatre seats, fitted carpets, lighting and cinema projection equipment. Air conditioning equipment with the necessary ancilliary fittings and ducting who also fitted.

The lease was terminated and the lessee claimed that the theatre seats, fitted carpets, lighting and cinema projection equipment as well as the airconditioning equipment with the necessary ancilliary fittings and ducting remained movable and that as the owner it was entitled to remove them from the theatre.

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Will African Theatres Ltd succeed in claiming the above equipment from the landlord (Nali Lilanga (Pty) Ltd)?

Fully discuss the issues raised herein with reference to relevant case law.

**[25 MARKS]**

### **QUESTION TWO**

- a) Jordashe supplied R. Motors with motor vehicles to be sold by R. Motors. Jordashe retained ownership of the vehicles until the last instalment had been paid by R. Motors with the explicit agreement that R Motors was not permitted to transfer ownership of the vehicles without Jordashe's consent. On inspection of the premises where the vehicles were displayed, Jordashe representative established that the vehicles were registered in the name of R. Motors. These registrations were effected by means of false documents. Unbeknown to Jordashe, in the meantime, R Motors had also entered into a floor plan agreement with ABSA Bank in terms of which it sold and delivered (by means of Constitutum Possessorium) certain vehicles to ABSA Bank. As owner of the vehicles in question, Jordashe wishes to attach them.

Advise Jordashe on all the legal issues that arise herein, as well as his prospects of success.

**[15 marks]**

- a) B sows mealies on the land he leases from his parents, X and Y. Before he can reap the crops, the term of his lease expires and his parents do not renew the lease. Discuss the legal position of the parties involved.

**[10 marks]**

**[25 MARKS]**

### **QUESTION THREE**

Bongani is affected by rabbits that invade his land, and eat up all of his vegetable crop. Bongani decides to erect and install a device that will scare the rabbits away. He strategises and creates a device that makes loud exploding noises, and he places this device along the boundary. The device has attached to it a timing mechanism which ensures that the loud explosions are emitted at three hour intervals twenty-four hours around the clock.

The said explosives are accompanied by plumes of smoke, and Melizwi who is Bongani's neighbour is quite perturbed by all of this.

Melizwi decides to approach his neighbour Bongani to speak to him about the noise and the smoke. He has tried on four occasions to pay Bongani a visit, in order to lodge his complaint, but he has not been able to find him at home. He has also noticed a steam of water that has started to flow from Bongani's property onto his own property. This too is

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a cause of complaint for Melizwi and he writes a letter to Bongani wherein he details all of his problems. He is not sure if the letter has reached Bongani, as he posted it the previous week.

Melizwi now approaches you for legal advice. Advise him fully, with reference to legal authority. He tells you that he water seepage has now caused his rose bushes to wilt, and all of this is causing him grave distress.

**[25 MARKS]**

#### **QUESTION FOUR**

- a) 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 has neither visited his parents nor removed the windmill. Z approaches X and Y and offers to buy the windmill. They sell it to him. Z removes the windmill and erects it on his farm. S becomes insolvent and the trustee of his insolvent estate claims that the windmill is part of the insolvent estate. Z denies this and argues that he is the owner of the windmill.

Fully advise the trustee on the legal position. Refer to applicable case law and discuss this fully. **[10 marks]**

- a) The claimant 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 approaches 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 so-called 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 being paid to S. S had the vehicles removed from L's business premises.

Q claims the cars from S with the *rei vindication*.

Is there any possibility that S may retain control of the vehicles? Substantiate your response with reference to the appropriate defence and its requirements. Cite relevant case law. **[15 marks]**

**[25 MARKS]**

**QUESTION FIVE**

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“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.”

Focus on the public law limitations, and critically analyse the various pieces of legislation. **[25 MARKS]**

**QUESTION SIX**

Write brief, but comprehensive notes on the following:

- a) An improvement lien; **(7 marks)**
  - b) Personal servitudes; and **(10 marks)**
  - c) Differentiate between a covering bond and kusting brief. **(8 marks)**
- [25 MARKS]**