

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2016

TITLE OF PAPER : LAW OF PROPERTY

COURSE CODE : L204

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)

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 6th of December, 1936 this property was leased to African Theatres Ltd.

The original Lessors formed the company "Libalele Lilanga (Pty) Ltd", and transferred the immovable property to it in 1930. By means of a notarial agreement concluded on the 11th of May, 1931, Libalele Lilanga (Pty) Ltd, and African Theatres Ltd amended the terms of the original lease in certain aspects. 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 lease undertook to proceed with erection of 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 1 762 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 as 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, lightning and cinema projection equipment. Air-conditioning equipment with the necessary ancilliary fittings and ducting was also fitted.

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

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

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

[25 Marks]

QUESTION 2

Your clients are Mr. Motsa and Ms Manana. They are formerly residents of a squatter camp which was situated at Phephela Extension, zone six, Manzini District. Mr. Motsa had occupied his corrugated iron shack for two years, whilst Ms Manana had lived in hers for three weeks. Their shacks were demolished eighteen months ago by the employees of the Manzini City Council, and their corrugated iron sheets were completely wrecked during this exercise.

The Municipality had affected the demolition after several warnings to the occupants of the squatter camp (verbal and written) and it was made succinctly clear to them that their shacks were erected in contravention of the local authority's zoning and building regulations.

During the said demolition, the employees of the municipality had also attached and impounded the livestock of the inhabitants of the camp, as well as their motor vehicles.

Your clients wish to be put back in possession of their property. Advise them on the best possible legal course of action that they can pursue, as they are presently homeless.

[25 Marks]

QUESTION 3

- a) Sabelo, has registered right of way over Qondile and Richard's farm. Sabelo allows Zweli, his neighbour, to use this road to access the main roan. Qondile and Richard request Zweli orally and in writing not to use the road. They indicate to him that the servitude is available to Sabelo only. Zweli ignores their request and persists in using the road. Qondile and Richard also ask Sabelo to revoke his permission to Zweli. Sabelo and Zweli refuse to cooperate.

Advise Qondile and Richard on their legal rights and the legal remedies open to them. Refer to case law in support of the advice rendered.

[15 Marks]

- b) While Sebentile is busy levelling the ground with her grader to put plan crops in the ground, she digs up on old chest containing gold coins and diamond jewels. Sebentile leases the farm from Zinhle and Banele.

The coins are very old and no-one knows where they came from. Sebentile claims that she has become the owner of the coins by finding the treasure trove.

Zinhle and Banele also claim that the coins and the jewellery are theirs because these were discovered on their land. Will Zinhle and Banele be successful? Substantiate your answer fully.

[10 Marks]

[25 Marks]

QUESTION 4

Lenhle Msibi owns a farm at Lomahasha where she has her home. For the past two years, the farm has been plagued by a series of burglaries, where the thieves have made off with some of her livestock, including goats and cows. On the night of the 12th of October, 2009, a similar crime was committed by one Musa Mbuli. Musa stole two LCD screen television sets, a Panasonic home theatre system and a laptop from the farm house. Musa also stole two goats from the farm.

About a month later, Musa died in a stolen car at Mbekelweni under very mysterious circumstances. Meanwhile, the two goats stolen by Musa have since been inherited by his twenty year old son Mihla. One of the goats had a kid a week after Musa's demise.

The two television sets, and the hometheatres system devolved upon Musa's twenty – three year old daughter, Nobuhle who is an Environmental Science student at UNISWA. Police Investigations have conclusively established that these items were stolen from Lenhle's farm on the night in question.

Advise Lenhle on the legal remedies available to her. If there is more than one remedy to which she may have recourse, state whether the remedies may be available concurrently, alternatively, or otherwise. Give reasons for your answer.

What are the rights, if any, of Mbuli's heirs?

[25 Marks]

QUESTION 5

a) Define the following:-

a. A pledge

[5 Marks]

b. *Kustingbrief*

[5 Marks]

c. Covering bond

[5 Marks]

b) Melusi'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 Melusi. The Company cancels the insurance contract and collects the car from panel beater. Melusi now claims the car from the Insurance Company, which refuses to release the car to him.

Discuss the legal right of:

i. Melusi

[5 Marks]

ii. The Insurance Company

[5 Marks]

[TOTAL: 25 Marks]

QUESTION 6

Fezile and Sabelo are married in community of property and they executed a mutual will, in terms of which it was provided that upon the death of one of the spouses, their daughter Buhle, and their nephew (Sinaye), would inherit their five hectare farm which is situated in Vuvulane.

It was stipulated in the will that the farm would be divided when Buhle reached the age of 21 years, and that the drawing of lots would determine who got which portion of the farm. It was further provided that the heir who received the portion of the farm upon which the farmhouse stood, should pay an amount of E250,000,00 to the other heir.

The same will be granted a usufruct to the children's maternal grandmother, in terms of which she was to inhabit the farm house for the rest of her natural life. The couple was assured by their attorney that the provisions regarding the division of the farm, the payment of the sum of money, and the life-long usufruct, after their death, would be registered against the title deed of the farm.

Discuss the legal questions that arise here, and support your response with relevant case law.

[25 Marks]