

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2017

TITLE OF PAPER : LAW OF PROPERTY

COURSE CODE : L 204

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER FIVE QUESTIONS

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QUESTION 1

a) Discuss *Ex parte Geldenhuys* (1926 OPD 155) with special reference to the *subtraction from the dominium* test.

[5 marks]

b) List 5 entitlements of ownership and 5 examples of limitations on ownership.

[5 marks]

c) Vusi is the owner of a car. Zweli, a thief, steals the car.

i) Zweli changes the engine and registration numbers and sells the car to Musa. Can Vusi claim the car from Musa? If so, what remedy is applicable and what must he prove to be successful with his claim?

[5 marks]

ii) Because Zweli is afraid of being caught by the police, he sets the car on fire, and destroys it. Can Vusi institute the action *ad exhibendum* against Zweli? What must Vusi prove for successful reliance on this remedy? And what can he claim? Will he succeed in the circumstances?

[5 marks]

Total

[20 marks]

QUESTION 2

Briefly distinguish between:

(a) Delivery with the long (*traditio longa manu*) and delivery with the short hand (*traditio brevi manu*)

(5 marks)

(b) Original and derivative methods of acquiring ownership

(5 marks)

(c) *Bonafide* and *malafide* possession

(5 marks)

(d) A Kustingbrief and covering bond

(5 marks)

Total

[20 marks]

QUESTION 3

Outline the major differences, if any, between real and personal rights. Illustrate your answer by making reference to decided cases.

Total

[20 marks]

QUESTION 4

- (a) Define servitude. (5 marks)
- (b) State the two main groups into which servitudes are divided. (2 marks)
- (c) Give 3 examples for each of those two main groups identified in 2 above. (3 marks)
- (d) List six different ways in which servitude can be terminated. (6 marks)
- (e) Themba, owner of “Bushland farm”, has an agreement with Mavela, the owner of “Mdzimba farm”, in terms of which Mavela can use the road over his farm free of charge for as long as he live:
- (i) Mavela dies and his wife now wishes to use the road. Themba refuses. Briefly advise Mavela’s wife. (2 marks)
- (ii) The agreement happened to be registered against the title deed of Themba’s farm. Themba still refuses to let Mavela’s wife to use the road. Briefly advise her. (2 marks)

Total [20 marks]

QUESTION 5

- a) B and C, farm workers of S, occupy and cultivate a portion of Highlands. S has an argument with farm workers and they refuse to work. S removes their furniture and clothing from the houses. He breaks down their houses. Thereafter S burns all 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? (3 marks)
- (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. (2 marks)
- (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 marks)
- b) Define the following terms:
- (a) Appropriation (2 marks)
- (b) *Avulsio* (2 marks)
- (c) *Res commercio* (2 marks)
- (d) *Alluvio* (2 marks)
- (e) Fungible thing (2 marks)

Total [20 marks]

QUESTION 6

Bongani is affected by rabbits that invade his land, and eat up his entire vegetables 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 Melizwe who is Bongani's neighbor is quite perturbed by all of this.

Melizwe decides to approach his neighbour Bongani to speak to him about the noise and 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 stream of water that has started to flow from Bongani's property. This too is a cause of complaint for Melizwe 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.

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

Total [20 MARKS]

QUESTION 7

(a) Define restrictive conditions. (5 marks)

(b) Define and explain the operation of the maxim *huur gaat voor koop* [lease overrides sale]. (5 marks)

(c) Mlimi, Kwami's farm manager, buys furniture on credit from Easy Furniture Store. Mlimi tells the manager of the store that he lives on Kwami's farm. The farm owner terminates Mlimi's contract, who in turn rents Mandla's flat in town. He fails to inform the furniture store that he has moved to rented premises. Mlimi fails to pay rent and Mandla applies to court for an order allowing him to attach all movable property on the leased premises. Can the furniture store object to the application for attachment? Substantiate your answer with reference to case law. (10 marks)

Total [20 marks]