

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

TITLE OF PAPER : LAW OF PROPERTY I

COURSE CODE : LAW 209

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER FOUR (4) QUESTIONS.**
- 2. QUESTION ONE (1) IS COMPULSORY.**

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QUESTION 1 (Compulsory)

Sabelo and Mike bought a farm together as co-owners. Before doing so, they concluded a contract to the effect that they would subdivide the farm into three portions, and then transfer ownership of one portion to each of them while remaining co-owners of the third portion. They further agreed that, should one of them establish a township on his separate portion, the other party would acquire a right to one half of the profits from selling the stands in the township. These conditions were embodied in a notarial deed and registered together with the title deed of the farm with the intention of establishing them as a burden against that title. Eventually the farm was subdivided into several smaller portions, and the parties (Sabelo and Mike) were owners of such portions.

Mike claims that the conditions, that were still registered against the title deed of each portion, created creditors rights and not real rights. He alleges that the conditions were registered in error. Sabelo vehemently disagrees and has come to you for advice.

Write a detailed legal opinion in the given set of facts. Cite relevant case law in support of your assertions. (25 marks)

QUESTION 2

- a) Discuss the various tests which are applied to determine whether a specific right is real or a personal (creditors) right. Where relevant, use decided cases to substantiate your assertions. (15 marks)
 - b) Explain in detail the test(s) which is used to determine which is the principal thing, an accessory and/or an auxiliary. Give examples to support your answer. (5 marks)
 - c) Name the sources of the current law of things in order of priority. (5 marks)
- (Total: 25 marks)

QUESTION 3

- a) With the assistance of case law, discuss the three standards applied by the courts to determine whether a movable thing has become immovable (reference must be made to not less than three different decided cases). (10 marks)
- b) Define comprehensively what possession is. Explain the two components of this right. In your explanation, refer to the examples mentioned below and elaborate on the various attitudes with which the same thing is held.

Five people are all in actual corporeal control of diamonds. All five of them carry the diamonds in their pockets.

- i) The first person is a two year old baby, whose mother placed the diamond in the baby's pocket for luck.
- ii) The second person is thirty-seven years old, and is unaware of the presence of the diamond in his pocket. In this case the diamond was placed in his pocket by the person sitting next to him, who is afraid that the police might search them and find the diamond.
- iii) The third person is twenty years old, and holds the diamond in her pocket in the firm belief that it is her property.
- iv) The fourth person is twenty-three years old, and is well aware of the fact that the diamond belongs to Rachel, her friend, who gave it to her as a pledge for a debt.
- v) The fifth person is thirty years old, and is carrying the diamond for her friend, who owns the diamond, but whose pocket has a hole in it through which the diamond might be lost.

(15 marks)

(Total: 25 marks)

QUESTION 4

Mazwi is a seasoned hunter. He sets a bird trap in the woods and goes home. While he rests peacefully at his place of abode, a bird is caught in the trap. Thabo, a young lad of 14 years of age is walking along the woodland path the next day and happens upon the bird caught in the trap. Being the animal lover he is, he decides to set the bird free. Just before this can happen Mazwi comes along and stops him from doing so.

On the previous evening whilst he was on his way home, Mazwi actually shot, and seriously wounded an Impala. The Impala however, managed to escape, wounds and all, with Mazwi in hot pursuit. Mazwi looked for the wounded animal, to no avail, until night fell and it became too dark to continue the search. He abandoned the search, and resumed it the next morning. It is at this point that he finds Thabo trying to free the bird in the trap, but instead Thabo flees with the bird in the trap, and runs to his home.

Mazwi pursues the boy all the way home, and when he arrives he finds that Simelane, Thabo's father, busy nursing an Impala that looks very much like the one that he shot at, and wounded the previous evening. Simelane has been keeping the Impala in a pen. For the past two days, but it had managed to escape the previous afternoon, and had been shot by Mazwi within fifteen minutes of escape. Mazwi claims that both the Impala and the bird as his own. Simelane and Thabo vehemently oppose these claims.

Advise Simelane, Thabo and Mazwi on their respective legal rights. Can Simelane claim compensation for the medical costs that he incurred in caring for the Impala.

(25 marks)

QUESTION 5

The applicant herein approaches the Court as a matter of urgency for an order reinstating him in his possession of shop No. 3 in the Zoe Shopping Centre, Mbabane. He took

occupation on the 15th of May, 2016 in pursuance of a lease agreement with the respondent. In terms of the lease agreement, the Applicant is not permitted to sell and/or serve alcohol on the premises, or stay open after twelve midnight. The lease agreement between the parties contains a term which entitles the landlord (respondent) to take control of the premises if the tenant (applicant) contravenes any of the terms of the lease. The applicant upon occupation, proceeded to serve alcohol to his friends and holds rowdy parties until sunrise. The neighbours complain to the landlord (respondent). The landlord removes the locks from the building occupied by the applicant, and proceeds to fit new locks. This occurs on the 20th of May, 2016 at about 7.30 a.m.

When the applicant arrives at 1:00 p.m. on the same day he finds the keys he has no longer work on the locks. He therefore could not gain access to the shop. The applicant proceeded to acquire the services of his own locksmith, and drilled out the new locks and promptly replaced these with his own locks to which he had his own keys.

The Landlord, on the 22nd of May, 2016 discovers this, and removes the main door to the premises, and installs an automated door, which can only be opened with the use of a digital key-card.

The respondent soon after receiving the court process calling upon him to respond to the application made to court, approaches your office for legal advice. In your advice to the respondent state what the applicant must prove to succeed in his application for the remedy of Mandament Van Spolie. Advise the respondent on the defences he may raise, and his prospects of success. Substantiate your answer with reference to case law.

(25 marks)