

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

TITLE OF PAPER : THE LAW OF PROPERTY II

COURSE CODE : LAW 210

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- i) ANSWER ANY FOUR (4) QUESTIONS.**
- ii) QUESTION ONE IS COMPULSORY.**

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QUESTION ONE

- a) The Appellant herein alleges in his court papers that the respondent's predecessor in title allowed slate waste to accumulate in a place where it was being washed onto the Appellant's land. The Respondent's land borders on the Appellant's land, and the Respondent's operates a slate quarry on his land. The Appellant argues that the Respondent has failed to take the necessary steps to deflect The further carrying of slate by flood water from his land to the Appellant's land.

The Appellant had applied for an order interdicting the Respondent from allowing the nuisance of the slate waste to be washed by the river water across the boundary between the two farms towards the Appellant's land. The court a quo did not make a finding in the Appellant's favour. He has taken the matter further to the Supreme Court of Swaziland.

Discuss the Appellant's prospects of success in his chosen course of action. Cite relevant case law in support of your assertions. (15 marks)

- b) Discuss the criteria of reasonableness in relation to the concept of nuisance. Refer to the three principles that the courts are to take into account in the application of the said criterion (*Rand Waterand v Bothma* 1997(3) SA 120 (0)).

(10 marks)

TOTAL:25 MARKS

QUESTION TWO

- a) S is the owner of a car and X, a thief steals the car. X changes the registration number of the vehicle and sells it to Y. How can S claim his car from Y. Which action will be appropriate, and what must S prove in order to succeed in the claim.

(10 marks)

- b) Consider in the alternative that X (the thief), in fear of being caught by the Police, sets the car alight and it is totally destroyed. Which action would be appropriate in the given scenario, since S has come to you to find out if the *Actio Ad Exhibendum* would provide him with the desired relief.

(5 marks)

- c) According to which case are the guidelines and requirements for the way of necessity established? Name the case and state the said requirements. Give examples to substantiate your response.

(10 marks)

TOTAL: 25 MARKS

QUESTION 3

Dudu owns a prefabricated house. In the last ten years, Dudu has moved her house three (3) times. Two years ago Dudu moved, for the third time to Mhlume. She was granted a forty-nine (49) year lease by Gregory.

In recent months, relations between Dudu and Gregory have become quite strained. In addition, the house has an extension wing made of cement, sand and bricks. Some of the material belong to her, whilst some the bricks belong to Siviwe, and she had given these to Dudu for safe keeping only, and not for use.

Both sets of bricks are identical in make, style, colour and appearance. In terms of value, Siviwe's bricks outweigh those of Dudu. The extension wing of the house has a deep foundation, and is firmly attached to the land. Further, the extension wing is linked to one of the walls of the prefabricated house, and forms an appearance of one continuous structure.

Paul a Construction Engineer, was hired by Dudu to install a flowing water and sewage system. The system is embedded and attached firmly on the land. The cost of the installation is E15,000. At the time of construction, Dudu and Paul signed an agreement giving ownership of the drainage system structures and equipment to Paul until full and final payment of the agreed upon monthly instalments was completed.

Dudu has since failed to pay the full amount, and is in arrears of the monthly instalments. Meanwhile, Gregory has not been paid the agreed rentals for the past six months, and now claims Dudu's house as security. Gregory is threatening to sell the house if he is not paid the money due in arrear rentals within three months. Under the lease agreement the lessor (Gregory) is entitled to repossess the land together with all permanent improvements thereon if Dudu fails to pay the monthly rentals for a continuous period of four months.

Discuss the legal rights, and remedies, if any that are available to:

- | | |
|----------------|-----------|
| i) Dudu | (7 marks) |
| ii) Siviwe | (6 marks) |
| iii) Paul; and | (6 marks) |
| iv) Gregory | (6 marks) |

TOTAL: 25 MARKS

QUESTION 4

- a) Sabelo is involved in a car accident. The car is insured with Vista Insurance Brokers. Sabelo takes the car to Emandla Panel Beaters for repairs. After the car has been repaired and paid for by the Vista Insurance Company, the company releases that the premium has never been paid. Vista cancels the insurance contract and collects the car from the panel beater's workshop. Vista refuses to

give the car to Sabelo, and Sabelo claims the car with the *Rei Vindicatio* from Vista.

Will Sabelo be successful? Substantiate your answer full with reference to legal authority. (15 marks)

b) Define the following:

- i) A pledge (5 marks)
- ii) A kusting brief (5 marks)

TOTAL: 25 MARKS

QUESTION 5

a) While Sihle is busy levelling the ground with her grander to put plant crops in the ground, she digs up an old chest containing gold coins and diamond jewels. Sihle leases the farm from Banele and Zweli.

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

Zweli and Banele also claim that the coins and the jewellery are theirs because these were discovered on their land. Will Zweli and Banele be successful? Substantiate your answer fully. (10 marks)

b) Discuss the following:

- i) Attornment (5 marks)
- ii) Estoppel (5 marks)
- iii) Constitutum Possessorium (5 marks)

TOTAL: 25 MARKS