

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

RE-SIT/SUPPLEMENTARY EXAMINATION, JULY 2017

TITLE OF PAPER : THE LAW OF PROPERTY II

COURSE CODE : LAW210

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

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QUESTION ONE (Compulsory)

Phila Msibi owns a farm at Lobamba 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 2015, a similar crime was committed by one Musa Motsa. Musa stole two widescreen television sets, a Panasonic Music system and four tablets (Samsung brand). Musa also stole two goats from the farm.

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

The two television sets, and the home music system devolved upon Musa's twenty-four year daughter, Velite who is a student at the University of Swaziland. Police Investigations have conclusively established that these items were stolen from Phila's farm on the night in question.

Advise Phila 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 Phila's heirs.

[25 MARKS]

QUESTION TWO

- a) What is the purpose of neighbour law. (10 marks)
- b) The Applicant and the Respondents were registered owners of two pieces of land with a common boundary. The Applicant averred that the Respondents had erected certain structures during 2011 which encroached on the Applicants' land. The Applicant sought a declaratory order in the High Court that the Respondents had no right in the structures and that the Respondents had to remove them at their own cost from the Applicant's property. The Respondents do not deny that the encroachments restricted the full exercise of the Applicant's rights of ownership, but argued that the Applicant had lost his right to claim removal of the encroaching structure through his application instituted in December 2016. The Respondents claim that the Applicant had lost this right to claim removal by virtue of the so called "year-and-a-day rule", in terms of which an owner could not insist on the removal of an encroachment if he had not objected to the encroachment within a year and a day.

Advise the parties on all of the legal issues that arise in the given scenario. Explain to them their respective prospects of success in the court action.

(15 marks)

(Total: 25 Marks)

QUESTION THREE

Discuss in detail four public law limitation on the enjoyment of ownership rights in property in Swaziland. [25 MARKS]

QUESTION FOUR

Briefly discuss the following:

- a) Ownership (5 marks)
- b) Lien (5 marks)
- c) Pledge (5 marks)
- d) Co-ownership (5 marks)
- e) Traditio Tonga manu (5 marks)

(Total: 25 Marks)

QUESTION FIVE

- a) Philile and Muzi are co-owners of the farm, and of their car. The farm implements were purchased from a company known as X + Y Investments (Pty) Ltd, in terms of a credit agreement. The company reserved ownership of the farm implements. Philile and Muzi owe Barclays Bank E250,000.00, and to secure this debt, the bank has a mortgage over the farm. Philile's mother, Mrs. Zungu, has a right of habitation over the old homestead where she lives at present. Simile has a right of way and drives over Philile and Muzi's farm, everyday to reach the main road. Explain in sufficient detail nature and type of the real rights that each of the following parties have:

- i) Philile and Muzi (3 marks)
- ii) X + Y Investments (Pty) Ltd (3 marks)
- iii) Mrs. Zungu (3 marks)
- iv) Barclays Bank (3 marks)
- v) Simile (3 marks)

- b) What are the different methods of termination of ownership? (10 marks)

(Total: 25 marks)