

QUESTION 1 (Compulsory)

Mukelwe had purchased a house, including certain specified furniture, from Lungelo. A wooden unit, which matched the surrounding wood panelling, had been built against a wall in the study into which two standard-sized steel cabinets fitted, separated from each other by a wooden cupboard which was part of the built-in unit. The cabinets could easily be detached without in anyway disturbing the unit, or having to undo any screws and nails.

In another room, a bar unit with a wooden counter had been fixed to the floor. When Mukelwe first viewed the house, it had six loose stools in front of the unit. It was apparent from the design of the stools, and the material used in manufacture and decoration that they matched the unit. Neither the stools, nor the cabinets had been specified as being the subject matter of the sale in the agreement. After taking occupation of the house, Mukelwe discovers that Lungelo had removed the cabinets and the stools from the house. He takes issue with this and approaches your office for legal advice.

Explain to your client the principles of law that pertain to movable and immovable things, and how the courts have formulated tests to distinguish between these two classes of things. In the legal opinion rendered to your client, explain in full which of the pieces of furniture is the principal thing and which is the accessory. Substantiate your assertions with case law. (25 marks)

QUESTION 2

Your clients are Mr. Gama and Ms. Motsa. They are formally residents of a squatter camp situated at P & J Extension, zone 3, Manzini District. Mr. Gama had occupied his corrugated iron shack for six weeks, whilst Ms. Motsa had occupied hers for a year. Their shacks were demolished twenty months ago by the employee of the Manzini City Council, and their corrugated iron sheets are completely destroyed during this exercise.

The municipality had effected the demolition after several warnings to the occupants of the squatter camp (verbal and written). In the warnings it was made succinctly clear to them that their shacks were erected in contravention of the local authority's zoning and building regulations. After the demolition the municipality transformed the area into a recreation centre, with a large dam where people can fish and even enjoy boating activities.

During the demolition, the employees of the municipality had also attached and impounded the livestock and vehicles of the inhabitants of the camp.

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

(25 marks)

QUESTION 3

- a) What is the meaning of the term “possession” in your understanding? With examples, discuss the two types of possession. (10 marks)
- b) Vusi opens his mail and finds pornographic material in it. He decides to take it to the Police the next morning on his way to work. In the meantime, he hides it high up in a cupboard in his bedroom. He does this so that his wife and children do not see it. That very night the Police raid his house, and they discover the pornographic material. Vusi is criminally charged with “possession” of pornographic material in terms of the “Indecent and/or Pornographic Photographic Matter Act, No. 6 2000” which prohibits such “possession”.

Vusi argues that he did not “possess” the material because he had no intention of keeping it for himself. Will the court accept his argument? How did the court in *S v Brick 1973 (2) S.A. 571 (A)* define the term possession. (15 marks)
(Total: 25 marks)

QUESTION 4

- a) Define the term “*dominium*” with examples, discuss the logical implications of *dominium*. (10 marks)
- b) Discuss in detail the distinction between property and things. In your response, discuss the various characteristics of a thing. (15 marks)
(Total: 25 marks)

QUESTION 5

Sakhile and Dudu are married in community of property and they executed a mutual will. In terms of the will, it was provided that upon the death of one of the spouses, their daughter Buyile, and their two nephews, Siphon and Muzi would inherit their five hectare farm which is situated in Luve, Manzini Region.

It was stipulated in the Will that the farm would be divided when Buyile 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 farm-house stood, should then pay an amount of E250,000.00 to the other heirs.

The same will further granted a right of habitation to the children’s maternal grandmother, in terms of which she was to inhabit the farm house for the rest of her 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 right of habitation, 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)