

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2018

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.**

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION ONE (Compulsory)

Busa is affected by rabbits that invade his land, and eat up his entire vegetable crop. He 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 explosives are emitted at three hour intervals, twenty-four hours around the clock. The said explosions are accompanied by plumes of smoke, and Seluleko, Busa's neighbour is quite perturbed by all of this.

Seluleko decides to approach his neighbour Busa to speak to him about the noise and smoke. He has tried on four occasions to pay Busa 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 Busa's property. This too is a cause of complaint for Seluleko and he writes a letter to Busa wherein he details all of his problems. He is not sure if the letter has reached Busa, as he posted it the previous week.

Seluleko now approaches you for legal advice. Advise him fully, with reference to legal authority. He tells you that the seepage has now caused his roses to wilt, and all this is causing him grave distress. (25 marks)

QUESTION 2

Juxtapose the functions of the Land Speculation Control Board to those of the Land Management Board. In your discussion give proper elucidation on which laws establish these boards, and for what purpose. In your view are these boards achieving the purposes for which they were founded? Do you perceive an overlap in the responsibilities and powers bestowed upon the two entities by the "powers that be"?

QUESTION 3

- a) S has a registered right of way traversing over X and Y's Farm – S has allowed his neighbour P to use this road to access the main road. X and Y request P orally and in writing to desist from using the road. They indicate to him that the servitude is only available to S. P ignores their requests and persist in using the road. X and Y also ask S to revoke his permission of P. S and P are not cooperating despite all these endeavours. Discuss the legal position of all of these parties with reference to case law. (15 marks)
- b) Explain the criteria laid down by the Court in Redelinghuis v Bazzoni 1976 (1) SA 110 (T) at 117B, for determining whether one is dealing with a rural or an urban tenement. What was the finding of the court when it applied these principles regarding the applicability of the action *aquae pluviae arcedenda* to the land in casu. (10 marks)

QUESTION 4

- a) State the requirements for the valid creation of a new praedial servitude. (6 marks)
- b) Distinguish between a kustingbrief and a notarial bond. (6 marks)
- c) Veli is the owner of a car. Mandla, a thief, steals the car.
- i. Mandla changes the engine and registration numbers and sells the car to Musa. Can Veli claim the car from Musa. If so, what remedy is applicable and what must he prove to be successful with his claim. (6 marks)
- ii. Because Mandla is afraid of being caught by the Police, he sets the car on fire, and destroys it. Can Veli institute the *actio ad exhibendum* against Mandla? What must Veli prove for successful reliance on this remedy? What can he claim? Will he succeed in the circumstances? (7 marks)
(25 marks)

QUESTION 5

Define with examples the following:

- a) Expropriation (5 marks)
- b) Attornment (5 marks)
- c) Avulsio (5 marks)
- d) Pledge (5 marks)
- e) *Traditio brevi manu* (5 marks)
- (25 marks)