

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2019

TITLE OF PAPER : THE LAW OF PROPERTY II

COURSE CODE : LAW 210

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

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

QUESTION ONE (Compulsory)

“The provisions of the Compulsory Acquisition of Property Act 10/1961 are incongruous to Section 19 of the Constitution of Eswatini, 2005”.

Do you agree with the statement? In your response give an indepth exposition on the pertinent provisions of the Act as well as that of the constitution. Evaluate whether the provisions of the Act can be allowed to stand in light of the protection offered by the supreme law of the land. (25 marks)

QUESTION 2

Section 8 of the Land Speculation Control Act 8/1972 creates the Land Speculation Control Board (LCB). The Land Management Board is created by the Constitution of the Kingdom of Eswatini (Section 212). Give a detailed exposition on the functions and powers of each of these boards. Do you perceive an overlap in terms of the roles of respective boards? If so, how would you propose that the legislature addresses an issue of possible reform in this area of the law? (25 marks)

QUESTION 3

Malungisa Mnguni manufactures and supplies paving stones. One of his customers was a builder who traded as P.K. Mnguni. The parties agreed that ownership of the goods remained vested in the supplier until the goods were paid for and that the supplier shall repossess all goods not paid for. The builder had purchased the paving stones, in order to fit these for Mr Gwebu. Mr. Gwebu paid the builder, but the builder failed to pay Mr. Mnguni. The builders estate was later sequestrated after the business was declared insolvent by the Court. Mr. Mnguni instituted rei vindicatio proceedings against the said Mr. Gwebu, for the returned of the paving stones. Mr. Gwebu is determined to oppose these proceedings, and has entered a plea of estoppel.

Write a detailed legal opinion on the facts presented above. Advise the respective parties to this legal dispute on their rights, and whether they will be able to adequately support their cases before the courts. Cite legal authority to support your responses hereto.

(25 marks)

QUESTION 4

Mr. Mdluli was a lessee of a motor vehicle and bore the risk of damage to the car. Mr. Mdluli went on holiday and left his house in the care of a family member. The family member took the car on a joy ride, without Mdluli's permission. He drove it to the shopping mall; where he parked, and locked it. The car was stolen from the parking lot. Mr. Mdluli has approached you for legal advice as he intends to institute legal proceedings against the family member who drove the car without his permission.

Advise Mr. Mdluli about the suitability of the following actions (and his Chances of success in each case):

- a) The Rei Vindicatio
- b) The Condictio Furtura
- c) The Delictual Claim

Cite relevant case law in support of your assertions.

(25 marks)

QUESTION 5

Sabelo Sibandze is an extremely reclusive man. He has recently purchased a house in the Zondo Residential Estate, in Manzini. This estate is situated in the inner city, and is occupied by all manner of people from different walks of life. There is a neighbourhood nursery school about five hundred metres from Sabelo's house, as well as a music school which is a bit closer to his house than the nursery school.

Sabelo has instituted legal proceedings against the owners of the music school, as well as those of the nursery school. He seeks an order interdicting these owners from causing a disturbing noise in their business premises. Sabelo's complaint is based on what he contends to be the unacceptable level of noise, particularly the music, during the music lessons, as well as the constant singing and shouting of the many school children as they play in the school yard. He complains that the noise takes place on a regular basis, and therefore this entitles him to interdictory relief prohibiting the owners of the schools from continuing to conduct their business in a manner that disturbs him.

The respondents in these proceedings have approached you for legal advice. Explain to your clients the nature of the proceedings instituted against them, and whether they stand a chance in an effort to defend themselves in a successful manner against these proceedings.

(25 marks)

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