

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2009

TITLE OF PAPER : LAW OF PROPERTY

COURSE CODE : L 204

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

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

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QUESTION 1 (Compulsory)

Hlubi is a die hard hunter, and on the 24th of December 2008, he left the village in the afternoon, for a brief hunting excursion. Mother luck was on his side on that day, and he encountered what appeared to be a wild Impala which he shot, and seriously wounded. However, the Impala managed to escape, with Hlubi in hot pursuit. Hlubi's search for the animal proved futile, and he deemed it appropriate to abandon his search for it, with the intention of resuming it the next morning.

When daylight came, Hlubi continued the search, and discovered that the Impala had been found by Ndlovu, who refused to hand it over to him. Actually, the Impala had been captured by Ndlovu a few months earlier, and he had decided to tame it by keeping it in a pen. The Impala had escaped from the pen, some forty-five minutes before being shot by Hlubi.

Give a legal opinion in which you discuss all the legal rights of both Hlubi and Ndlovu.

[25 Marks]

QUESTION 2

A thing which is immovable today may be movable tomorrow Conversely, a movable may be affixed to an immovable by natural or artificial means in such a manner that it loses its identity and becomes an integral part of the immovable thing.

Carefully consider the factors which must be taken into account in determining whether a movable has become an immovable. Illustrate your answer by making reference to case law.

[25 Marks]

QUESTION 3

"In private law, the counterpart of public law, limitations are placed on the enjoyment of ownership rights in property by the law of neighbour relations".

Discuss fully and support your answer by referring to decided cases.

[25 Marks]

QUESTION 4

Mlandvo Motsa executed a will in terms of which his farm at Mantsholo was bequeathed to his three minor children, all boys. The bequest was subject to an important condition: the children were to hold the farm in equal undivided shares until the eldest of the boys, had reached the age of majority. When that event came to pass, the farm would then be divided into three clearly defined portions which would be distributed to the children by casting lots. The child who received the portion with the family home was to pay lobola for the other siblings, if they elected to marry in terms of Swazi Law and Custom.

Consider the registerability or otherwise of these two conditions. In support of your answer, make reference to case law.

[25 Marks]

QUESTION 5

Lenhle Msibi owns a farm at Lomahasha 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, 2007, a similar crime was committed by one Musa Mdluli, who stole two plasma screen television sets, and a Panasonic home theatre system from the farm house. Mbuli also drove away two cows from the farm.

About a month later, Mbuli died in a stolen car at Mbekelweni under very mysterious circumstances. Meanwhile, the two cows stolen by Mbuli have since been inherited by his twenty-four year old son, Mvuzo. One of the cows had a calf a week after Mbuli's death. The two television sets, and the home theatre system devolved upon Mbuli's twenty-one year old daughter, Nakile, who is a B.Com. student at UNISWA. Police investigations have conclusively established that these items were stolen from Lenhle's farm on the night in question.

Advise Lenhle on the legal remedies available to her. If there is more than one remedy to which she may have recourse, state whether these remedies may be available concurrently, alternatively, or otherwise. Give reasons for your answer. What are the rights, if any, of Mbuli's heirs?

[25 Marks]

QUESTION 6

Private ownership of land under Swazi Law and Custom is unknown. It is said that the ownership of land under this regime vests in the King who holds it in trust for the Swazi Nation. Through the Chiefs in the various Chiefdoms, the aforesaid land is distributed to families, but no ownership in such land passes to those families. In the light of the foregoing statement, consider the customary land tenure system in Swaziland and suggest how reforms may be effected on Swazi Nation Land with the aim of improving agricultural production.

[25 Marks]