



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER
2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW209

TITLE OF PAPER: LAW OF PROPERTY 1 (FULL-TIME)

TIME ALLOWED: 3 HOURS

Instructions

1. Answer four (4) Questions including Question 1.
2. Question One (1) is compulsory.

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

QUESTION ONE (Compulsory)

Sebenele and Mukelwe bought a farm together, and became co-owners thereof. Before doing so, they concluded a contract to the effect that they would effect subdivisions of the farm. This subdivision entailed that the farm would be divided into three (3) portions. In terms of their agreement, they would transfer ownership of the portion to each of them while remaining co-owners of the third portion. They further agreed that should one of them establish a township on his separate portion, the other party would acquire a right to one half of the profits from selling the stands in the township.

These conditions were embodied in a notarial deed and registered against the title deed of the farm with the intention of establishing them as a burden against that title. This subdivision eventually came to pass, and the parties (Sebenele and Mukelwe) were owners of such portions.

Mukelwe claims that the conditions, that were still registered against the title deed of each portion, created creditors rights and not real rights. He alleges that the conditions were registered in error. Sebenele strongly disagrees and has approached you for legal advice.

Write a detailed legal opinion on the given set of facts. Cite relevant case law in support of your assertions. (25 marks)

QUESTION TWO

- (a) With the assistance of case law, discuss the three standards applied by the courts to determine whether a movable thing has become immovable. In your response refer to at least three different decided cases. (10 marks)
- (b) Define comprehensively what possession is. Explain the two components of his right. In this explanation, refer to the examples made below and elaborate on the various mental attitudes with which the same things held.

Five people are all in actual corporal control of diamonds. All five of them carry the diamonds in their pockets.

- i) The first is a twenty-three year old woman who is holding the diamond on behalf of her friend Refilwe. She is well aware that the diamond belongs to Refilwe, who gave it to her as a pledge for a debt.
- ii) The second is a thirty-seven year old man who is unaware of the presence of the diamond in his pocket. The diamond in this instance was placed in his pocket by the person sitting next to him, who is afraid that the police might search them and find the diamond.

- iii) The third is Sibongile, a thirty year old lady who is carrying the diamond for her friend who owns the diamond, but whose pocket has a hole in it through which the diamond might be lost.
- iv) The fourth in a two year old toddler, whose mother placed the diamond in the baby's pocket for good luck.
- v) The last person is a twenty-five year old man who holds the diamond in his pocket in the firm belief that it is his property. (15 marks)

(Total: 25 marks)

QUESTION THREE

- a) Clearly distinguish between property and things. In your response explain the characteristics of a thing. (10 marks)
- b) With examples give an exposition of the personalist, as well as the Classical theories. Explain what these theories seek to shed light on. How do you as a student Property Law student benefit from the ideas expounded by the proponents of these theories. (15 marks)

(Total: 25 marks)

QUESTION FOUR

The applicant approaches the court as a matter of urgency for an order reinstating him in his possession of Shop No. 12, Senzelwe Shopping Centre, Mbabane. He took occupation on 15th of May, 2019 by virtue of a lease agreement with the respondent. In terms of the lease agreement, the applicant is not permitted to sell and/or serve alcohol on the premises after twelve midnight. The lease agreement between the parties contains a term which entitles the landlord (respondent herein) to take control of the premises if the tenant (applicant) contravenes any of the terms of the lease. The applicant upon occupation, proceeded to serve alcohol to his friends and to hold rowdy parties until the break of dawn. The neighbours complain to the landlord. The landlord removes the locks from the building occupied by the applicant, and proceeds to fit new locks. This occurs on the 22nd of May 2019 at or about 6.30 a.m.

When the applicant arrives at 12 noon on the very same day he finds that the keys he has no longer work on the locks. He is thereby deprived of the access to the shop. The applicant proceeded to engage his own locksmith who drilled out the new locks, and promptly replaced these with his own locks to which he had his own keys.

The Landlord on the 27th of May 2019 discovers this, and removes the main door to the premises, and installs an automated door, which can only be opened with the use of a digital key-card.

The respondent soon after receiving the court process requiring him to respond to the application before court, approaches your office for legal assistance. In your advice to him, explain to him what the applicant must allege and prove in order to succeed in his

application for the remedy of the mandament van spolie(or spoliation order). Advise the respondent on the defences he may raise, and his prospects of success. Substantiate your answer with reference to case law. (25 marks)

QUESTION FIVE

- a) X and his friend go on a hunting expedition. X mortally wounds a kudu. The Kudu manages to escape into the thick bush. X gives up the search when night falls, with the intention though of resuming the search at first light. Menzi and his friends stumble upon the carcass during the night and slaughter it for meat. They take their respective packages of meat to their homes. X accuses Menzi and his friends of theft.

Isolate the legal issues herein. How would the courts handle this dispute? (10 marks)

- b) Mr. and Mrs. Mkhonta are Vika's grandparents. They are lovers of game, and they keep six impalas, a couple of Kudus as well as an ostrich in an enclosed camp. All of these animals have names, given to them by the Mkhonta family. These animals were purchased at an auction, from a well-known game farmer who marks all of his animals with the initials S.K. (his full name is Sifiso Khumalo). Late one evening a herdboy employed by the couple inadvertently left the gate open and all the animals escaped.

Zonke and his friends were hunting near the Mkhonta Farm. They shot and killed three of the Kudus. Mr. and Mrs. Mkhonta claim the value of these animals from Zonke and his friends.

Discuss the legal issues raised herein in view of the findings of the court in *Lamont v Heyns* 1938 TPD 22. (15 marks)

(Total: 25 marks)