

# ZIMBABWE EZEKIEL GUTI UNIVERSITY

## FACULTY OF LAW DEPARTMENT OF PRIVATE LAW

### NOV/DEC Examination

**COURSE** : Law of Property  
**Course Code** : LLB205  
**TIME ALLOWED** : 3hrs

5 DECEMBER 2018

### INSTRUCTIONS TO CANDIDATES

1. The paper consists of **Two (2) Sections, A and B. Answer One (1) Question from Section A, and Two (2) Questions from Section B.**
  2. Marks for each question are indicated in (...) and/or the total in [...].
  3. The question paper consists of **4 pages** including the cover page. Please ensure you have them all.
  4. Each question should be on a fresh page and every page must be numbered.
  5. Cell phones (and any electronic gadgets) are not allowed into the examination room.
  6. Notes, handouts and textbooks are not allowed into the examination room.
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## Section A

Answer any One (1) question from this Section

### Question 1

Acquisitive prescription may be defined from the view of its requirements, possibly as follows: 'A person who possesses a thing openly and as if he or she were the owner, for an undisturbed period of thirty years, may become owner by prescription'.

See; D L Carey Miller *Land Title in South Africa* (2000) at 160.

Write an essay in which you explain what is meant by the requirement that a person must possess a thing in order to become the owner of that thing by prescription. In your answer you must discuss the possession requirement in terms of the Prescription Act [Chapter 8:11]

[20 Marks]

### Question 2

(a) Section 71(3)(a) of the Constitution of Zimbabwe, 2013 provides that '[... no person may be compulsorily deprived of their property except where [...] the deprivation is in terms of a law of general application [...]'. Also, no law may permit arbitrary deprivations of property.

In light of the above:

- (i) Discuss the meaning of section 71(3) of the Constitution of Zimbabwe in relation to the common law concept of ownership (5 marks)
- (ii) What is meant by the concept of an 'arbitrary' deprivation? (5 marks).

(b) In Zimbabwe, the general rule is that no one may be deprived of their property. However, there are exceptions to this general rule.

In light of the above, discuss the limitations to the right to property inherent in section 71 of the Constitution of Zimbabwe. (10 marks)

[Total for Question 2: 20 Marks]

## Section B: Answer any Two (2) questions

### Question 3

X concluded an agreement with Y to buy 5 windmills from her. At the time of the conclusion of the contract, the 5 windmills were still on Y's farm in Mvurwi district, where they were firmly attached to sizeable concrete slabs on 5 different locations on the farm. When Y accepted and received payment for the 5 windmills from X, she pointed the windmills out to X and said; "There are your 5 windmills. You can come and collect them at your convenience time". Two week later when X arrived at the farm to collect the 5 windmills, he finds out that Y's farm had been sold out to Z, who refused X entry to the farm, claiming that the 5 windmills belonged to him (Z) and that he was not interested in selling them. Y left the country permanently and was reportedly based somewhere in Asia, and her whereabouts cannot be traced.

Advise X regarding his rights and the available remedies. In the course of your answer, refer to relevant case law where applicable.

[25 Marks]

### Question 4

- a) X, your client, is the owner of a farm in Shamva. He received an offer to purchase the farm, and consults you for legal advice. He is of the view that the farm has excellent potential to be developed for ecotourism, and wants the buyer to increase the offer by 35% to reflect the development potential of the farm. The purchaser is not actually convinced of the farm's development potential, and therefore not willing to increase the offer. The purchaser is, however, willing to conclude a separate agreement to the effect that if the farm is eventually developed for ecotourism later, he will share the net profits for such development with X on a 50% each. X is worried about the long term security of such an offer, and although she was of the view that the long-term profit sharing will perhaps earn more money, she thinks that a cash sum right now would offer her more security.

X is considering accepting the purchaser's profit-sharing offer, whilst still enjoying long-term security. With the aid of relevant case law, advise X on this point and explain the possible benefits of your solution. (15 marks)

- b) Explain the distinction between real and personal rights and challenges associated with this distinction. Use an example to illustrate your explanation. (10 marks).

[Total for Question 4: 25 Marks]

### Question 5

**(a)** Z bought a car from Lulu Cars. The installment payment scheme in terms of which the car was bought stipulated that ownership was not transferred upon delivery but reserved to the seller pending payment of the final installment. Before payment of the final installment, Z sells and delivered the car to X. Subsequently, Lulu Cars claims the car back from X claiming that the last installment had not been paid. Z, who in the meantime had second thoughts about selling the car, pays the final installment to Lulu Cars, and then claims the car back from X, stating that he became the owner upon payment of the final installment, that the sale to X was invalid and that he wants his car back.

Advise X of her rights and remedies in this matter.

**(15 marks)**

**(b)** X and Y are co-owners of a farm in Mazowe district in Mashonaland Central Province. Z is the owner of a neighbouring farm. The co-owners, X and Y, built a private road over their farm to transport vegetables from the farm to the market. Y also uses the private road to transport vegetables on a contract basis from Z's farm across the common property of X and Y to the market. She (Y) also gave Z permission to use the private road across the common property of X and Y. One day X alleged that Y's use of the private farm road was unreasonable and disproportionate to his share.

Advise X regarding the principles and remedies concerning free co-ownership, specifically with regard to common property.

**(10 marks)**

**[Total for Question 5: 25 Marks]**

**END OF QUESTION PAPER**