

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LAW OF PROPERTY - LLB 205

DURATION: 3 HOURS

20 NOV 2019

INSTRUCTIONS TO CANDIDATES

1. Answer **three** questions.
2. Section A is compulsory.
3. Choose two questions from section B.

Materials allowed in exam

Constitution of Zimbabwe, 2013.

INFORMATION FOR CANDIDATES

1. Notes, handouts and textbooks are not allowed into the examination.
2. Cellphones are not allowed into the examination room.
3. Begin each answer to a full question on a fresh page.

**NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING
UNTIL INSTRUCTED TO DO SO.**

SECTION A

Question one

Bruce entered into an Agreement with Mr Jones to construct a swimming pool on what he believed to be Mr Jones' property. After completion of the swimming pool, Bruce learned that the property was owned by Mr Jones's daughter named Lydia Jones. In the meanwhile, Mr Jones left the country so that Bruce's contractual claim against him became ineffective and useless.

- i) Bruce approaches you for legal advice concerning this claim. He wants to know how the principles of indirect unjustified enrichment and the *actio negotiorum gestorum* can be used to his advantage in claiming the amount owing from Mrs Lydia Jones instead of Mr Jones for the construction of the swimming pool. [20]
- ii) Mrs Jones avers that allowing Bruce to successfully rely on the principles of indirect enrichment and the *actio negotiorum gestorum* in a case such as this would conflict with the established principle of *paritas creditorium*. How true is this submission? [10]

SECTION B

Question two

Vimbai Kurima wishes to buy 250 chicks and the necessary feed from Irvines whose farm is located in Harare. She then drives from Bindura to Irvines' farm in Harare where she carefully examines the chicks and the feed. The chicks are in an enclosed area next to a shed.

Vimbai and Irvines agree that the chicks need to be inoculated hence Vimbai undertakes to arrange for the necessary inoculations to be done by the local veterinarian in the next few weeks. Irvines also hands Vimbai one of the keys to the shed. Thereafter Vimbai pays Irvines the purchase price for both the chickens and the feed in cash.

A month later, Irvines estate is sequestrated. Vimbai hears of this insolvency and drives to the farm to claim his chicks and the feed. However, the trustees of Irvines' insolvent estate alleges that Vimbai is not the owner of both the chicks and the feed and that she should lodge a claim against Irvines' insolvent estate for the non-delivery of the goods purchased.

- i) Discuss fully, citing appropriate legal authority, whether Vimbai acquired ownership of the chicks and the feed [15]
- ii) Outline and explain the forms in which delivery of both movable and immovable property may take. [5]

Question three

A legal system that recognises and supports the principles of freedom of testation and of contract must also recognise and protect the notion of private ownership. Critically discuss this assertion. [20]

Question four

On the 18th of July 2010, Batanai Investments, represented by the Group Legal Advisor entered into an agreement of sale with a man named Pius Chauke for the sale of three stands in Borrowdale; namely: lot 1, lot 2, and lot 3.

Mr Chauke had earlier on purchased these stands from the estate of Brian Black, as per agreement of sale dated 5 January 2010. However, Mr Chauke was unable to raise the amount of money required to purchase these properties. Batanai Investments then agreed to purchase these properties from him as per the subsequent agreement of sale mentioned above.

A conveyancer named Tembani was appointed to carry out the related conveyancing work on behalf of Batanai Investments. However, upon payment of the purchase price to Pius Chauke by Batanai Investments, Tembani transferred these properties into his own estate and went on to resale the properties to Mr Masocha who had offered a more lucrative price than the one tendered by Batanai Investments.

On the 13 of August 2019 when the Group Chairman of Batanai Investments visited Lot 1, Lot 2 and Lot 3 he was shocked to discover that the properties were now under the ownership of Mr Masocha. The Group Chairman believes that these properties belong to Batanai Investments hence he wants to take legal action to this effect.

- i) Advise the group chairman about his prospects of success in claiming ownership over these properties. [10]
- ii) What are the legal consequences of this transaction to Mr Masocha and Tembani? [5]

Mathonsi J in *Zavaza & another v Tendere & Others HH 740-15 HC 8382/14* made the following remarks:

'It would appear that conveyancing laws of this country are not foolproof because fraudsters continue to exploit the weakness in the procedure for registration of transfers to defraud innocent property seekers'. 'There is a pressing need for reforms to be introduced in conveyancing rules in order, not only to modernise the system, but also to render the system foolproof and hopefully protect property owners'.

- iii) In line with this observation, what recommendations would you submit to the learned Judge as viable measures to strengthen conveyancing laws in Zimbabwe? [5]

Question five

Critically discuss the findings in *Glens Removals & Storage (Pvt) Ltd. V Mandala [2017] ZWCC 6* on the constitutional effects of sale in execution clauses (*parate executie*) with regards to Real Security Rights. [20]