



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PRIVATE LAW

EXAMINATION PAPER

COURSE CODE : LLB 205/ LLB 306
COURSE TITLE : LAW OF PROPERTY SUPPLEMENTARY EXAM
DURATION : 3 Hours
DATE :

INSTRUCTIONS TO CANDIDATES:

1. Answer any FOUR questions only.
2. Choose at least ONE question from each section.
3. Each question carries 25 Marks.
4. Start each question on a new page of your answer sheet.

SECTION A

Question 1

Bob sells his house to Mary who pays cash for it and takes immediate occupation. Mary decides that it would be too expensive to register the transfer as she has heavily borrowed to purchase the house. Two months later, and unbeknown to Mary, Bob sells the same house to Melissa for cash. The sale is followed by registration of transfer of the house in favour of Melissa. Melissa has now instituted vindicatory proceedings against Mary.

Advise Melissa and Mary on their respective rights over the house. **[10 marks]**

Question 1 (b)

What requirements does a legal object have to comply with to qualify as a thing? Name and give a brief description of each requirement. **[15 marks]**

Question 2(a)

You are an intern at the Mvumi & Partners. You are approached by Ms Gugu, an important client with your firm, who advises you that she is a lessee of a commercial property in Chisipite. Eighteen months ago, she entered into a contract of lease with Mr Moyo, the lessor. Mr Moyo and Ms Gugu entered into a contract of lease, in terms of which Ms Gugu would occupy premises belonging to Mr Moyo and use these premises to run a business buying and selling lawnmowers. A clause in the contract reads as follows: "*Lessor retains the right to withhold access to the premises, without notice, should Lessee enter into any business on the premises other than the buying and/or selling of lawnmowers*". After the contract of lease has been in existence for six months, Mr Moyo locks the doors of the premises and refuses to grant access to Ms Gugu. Mr Moyo alleges that Ms Gugu has begun trading in garden gnomes as well as in lawnmowers. Ms Gugu wishes to have possession returned to her, and wants to institute the *mandament van spolie* against Mr Moyo.

Advise her whether there is a legal basis for such an action; and, if so, as to their prospects of success. **[10 marks]**

Question 2 (b)

With reference to case law, discuss the following three factors that are used to determine whether conduct amounts to nuisance.

- a) Benefit to the doer
- b) Locality
- c) Extent of harm.

[15 marks]

SECTION B

Question 3

With reference to the Prescription Act [Chapter 8:11], discuss the regulation of the following:

- a) Servitudes
- b) Ownership
- c) Limited real rights

[25 marks]

Question 4

- (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) 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. [15 marks]

[Total for Question 2: 25 Marks]

Question 5

Owen bought a car from Zimaco. The instalment payment scheme in terms of which the car was bought stipulates that ownership is not transferred on delivery but reserved to the seller pending payment of the final instalment. Before payment of the final instalment, Owen sells the car and delivers it to Peter, subsequently; Zimaco claims the car back from Peter claiming that the last payment was not paid. Owen, who in the meantime has had

second thoughts about selling the car, pays the final instalment to Zimaco and then claims the car back from Peter stating that he is now the new owner because he paid the final instalment that the sale to Peter was invalid and that he wants the car back. Advise Peter on his legal rights.

[25 marks]

Question 6

Discuss the main features and distinctions between praedial and personal servitudes.

[25 marks]

*****END OF QUESTION PAPER*****