



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PRIVATE LAW

EXAMINATION PAPER

COURSE CODE : LLB 205/ LLB306
COURSE TITLE : LAW OF PROPERTY
DURATION : 3 Hours
DATE : 30 May 2019

INSTRUCTIONS TO CANDIDATES:

1. Answer 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

A seller owns Greenacre, a piece of land occupied by a grocery store and a parking lot. A buyer contacts the seller to express interest in buying Greenacre. The buyer and the seller then tour Greenacre together. At the end of the tour, standing in the parking lot, the buyer says to the seller, "I'll give you RTGS\$1,500,000 cash for the whole thing." The seller responds, "That sounds good; let's do it."

Two days later, the buyer sends a check for RTGS\$500,000 to the seller. The check is accompanied by a letter that reads, "*Here is a down payment on Greenacre.*" One week after sending the down payment, the buyer hires a company to repave Greenacre's parking lot, at a cost of RTGS\$50,000. The buyer also has a lighted sign installed at the entrance to Greenacre, with the words "Greenacre Shopping Center" in stylized script. The sign costs RTSGS\$15,000.

To raise the remainder of the purchase price, the buyer sells two office condominiums for RTGS\$500,000 each. The market value of the condominiums is RTGS\$650,000 each, but the buyer accepts a lower price in order to sell the condominiums quickly.

Thirty days after the tour of Greenacre, the buyer calls the seller to schedule the closing date. The seller informs the buyer that the seller has decided to keep Greenacre, because he believes that property values in the area are about to rise. The buyer insists that the parties have a contract, and tenders the remaining RTGS\$1,000,000 to the seller. The seller refuses the tender, denies that the parties had a contract, and offers to return the buyer's previous payment of RTGS\$500,000.

The buyer then sues the seller for breach of contract, seeking specific performance of the agreement to sell Greenacre. In his answer, the seller denies that the parties had a contract.

At trial, the facts outlined above are presented through the testimony of the buyer and the seller, accompanied by documentation proving the buyer's condominium sales and expenditures on Greenacre.

Assume that all such evidence is fully admissible, and that the facts are not in dispute. Advise the Buyer on the remedies available to him. [**25 marks**]

Question 2

Nomsa has an on-going lease agreement with Rawson Properties Estate Agents in terms of which she is leasing a 3 bed roomed house in Mount Pleasant, Harare. The owner of the house is Chipso who is currently working in the Australia. The lease agreement was signed on the 31st of December 2018 and expires on the 31st of December 2019 subject to a two months termination notice on either side. Chipso secured permanent residence in the Australia in May 2019 and she decided to dispose of her Mount Pleasant house. She instructed Rawson Properties estate agents to sale the property and they proceeded to advertise the house and Robert Root bought the house in terms of an agreement concluded on 02 June 2019. Nomsa was advised of the proposed sale of the house 31 March 2019 and in fact was given a right of first refusal. Unfortunately she did not have money to bid for the house but she is still in occupation. Now

Robert Roots wants to move into the house Nomsa is failing to get alternative accommodation and is resisting eviction.

Advise Nomsa and Robert Root of their duties, rights and any available remedies. **[25 marks]**

SECTION B

Question 3

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.

[15marks]

With reference to the new constitution and relevant case law, discuss how the courts attempt to strike a balance between constitutional rights and nuisance. Discuss in relation to any form of nuisance and any constitutional rights. **[10 marks]**

Question 4

Discuss the derivative form of acquisition of ownership. Distinguish between abstract and causal system and highlight which system is applicable in the Zimbabwean law of property. **[25 marks].**

Question 5

Write brief notes on the following concepts showing their importance in the law of property:

(a) *actio rei vindication*

[10 marks]

(b) *mandament van spolie*

[15 marks]

Question 6

Examine the nature of and distinction between praedial and personal servitudes. **[25 marks]**

Question 7

How does the Constitution of the Zimbabwe 2013 balance the right of an individual to private property with the rights of communities to access resources? Use case law to illustrate your answer. **[25 marks]**

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