



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 205
COURSE TITLE : LAW OF PROPERTY
DURATION : 3 Hours
LEVEL : 2.2
DATE : 17 FEB 2022

INSTRUCTIONS TO CANDIDATES:

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

No Materials allowed in exam

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.

SECTION A

Question one

Mr Matambanadzo contracted Townhouse Builders Pvt Ltd to construct a Carport on stand 523 of Lot 4 Malonside in Bindura for an agreed fee of US\$ 7000 due and payable upon completion of the task. However, this property is owned by Mrs Nyashanu who happens to be Mr Matambanadzo's biological mother.

Pursuant to this agreement, Townhouse Builders Pvt Ltd construct a Carport on stand 523 of Lot 4 Malonside. However, Mr Matambanadzo has been declared insolvent and is now unable to make the necessary payment in line with the agreed terms of his contract with Townhouse Builders.

You are invited to write a legal opinion on this issue based on the set of available facts and the questions below

- i) Does the law of property within the Zimbabwean context, whether at common law or by means of statute, offer any form of security to Townhouse Builders Pvt Ltd to cushion against loss in situations of this nature? Discuss [10]
- ii) Discuss the available remedy that can be adopted by Townhouse Builders Pvt Ltd to claim the US\$ 7000 from Mrs Nyashanu instead of Mr Matambanadzo. In your discussion, highlight the philosophical challenges that can hinder the success of such a remedy and the exceptions that can be adopted to cure these challenges [20]

TOTAL 30 MARKS

SECTION B

ANSWER ANY TWO QUESTIONS ONLY FROM THIS SECTION

Question Two

On January 2021, Mr Ncube bought a Toyota Runx car on hire purchase from Jumbo Car Sale which is a registered local automobile business enterprise. Part of the agreement of sale for this car stated that Mr Ncube will be entitled to monthly instalment payments of US\$ 500 for a period of 20 months. Pursuant to this arrangement, the Toyota Runx was damaged in an accident whilst being driven by Mr Ncube's brother named James who had been authorised to drive the car by Mr Ncube. James was insured by Zimsecure Insurance and following the accident, Zimsecure Insurance engaged and paid Global Cars Panel Beaters to carry out the necessary repairs to the damaged car.

However, Zimsecure Insurance later on discovered that James had not paid any premiums to his insurance policy. Consequently, Zimsecure Insurance cancelled the policy and took possession of the repaired car from Global Panel Beaters as security for repayment of the amount expended on repairing the damaged car. Mr Ncube then instituted a claim for return of his car on the grounds of ownership relying on the *actio rei vindicatio*. However, Zimsecure

Insurance countered his submission on the basis that it had acquired a lien over the car because they had spent money to repair it.

You are invited to write a legal opinion on this issue based on the available set of facts.

- i) Assess and determine who is the real owner of the Toyota Runx is from the set of given facts [6]
- ii) Does the set of given facts justify the application of a lien as a competent defence against the rei vindicatio brought by Mr Ncube? [7]
- iii) Briefly evaluate the assertion that all actions based on indirect enrichment claims should be denied because of non-compliance with the 'at the expense of' requirement. [7]

TOTAL 20 MARKS

Question three

The Ministry of Land issued an unconditional two weeks eviction notice to all residents of Mwenezi community to pave way for a government joint venture mining project with a Chinese mining company in the area. However, the Mwenezi Residence Association- a local Non-Governmental Organisation has mobilised local residents to resist this eviction as they allege that this is either an expropriation or a deprivation of their land hence it should be done in a constitutionally recognised way.

You have been invited to write a legal opinion to the Mwenezi community mobilisation forum explaining to them about these two concepts:

- i. Expropriation of Land as set out in the Constitution; and
- ii. Deprivation as set out in the Constitution.

You are also tasked to explain how each process should be carried out as stipulated in the Constitution of Zimbabwe and other relevant legal authority. [20]

TOTAL 20 MARKS

Question four

Critically discuss the force and effect of a *parate executie* with regards to mortgages and pledge courtesy of the decision in *Bock v Duburoro* (read together with *Zavaza v Tendere*) [20]

TOTAL 20 MARKS

Question five

- i) Discuss how ownership pass from one predecessor in title to the next for both an immovable and a movable property [6]
- ii) Outline and discuss any **four** methods of constructive delivery recognised in Zimbabwean law of Property [6]
- iii) Real security rights are created expressly, tacitly or judicially. Outline and briefly explain one form of an express real security right, one form of tacit real security right and one judicial security right. [8]

TOTAL 20 MARKS