

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LAW OF PROPERTY - LLB 221

2022

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

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

07 OCT 2022

No Materials allowed in the exam

INFORMATION TO 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

Answer all questions in this section

Question one

Mr Nyoni is employed by an International organisation which posts him to various parts of the world and he is currently stationed in Belarus. In 2008 he identified an underdeveloped piece of land (the property), Stand no 1405/25 Chipadze Town in Bindura and went on to purchase this property in August 2008. He then took transfer of this property in that same month and held title by Deed of Transfer Number 997/2008. However, he did not commence developing this area soon afterwards owing to his sojourn in foreign territories in pursuit of his career objectives.

In 2015, when he arrived in Zimbabwe and attempted to develop his property, he discovered to his amazement that Mr Brown had already built a house on his property. Upon further investigations, he discovered that a stranger by the name of Nhamoinesu Shuro who solely runs an Estate Agency known as Shuro Housing Estate had advertised the property on its website thereby attracting the interest of Mr Brown. A sale agreement was entered into between them and signed on 14 June 2014 in terms of which the property was sold for US\$ 8 000.

It appears that Mr Shuro had taken transfer of the property by Deed of Transfer Number 1680/2011. The conveyance of the property from Mr Nyoni to Mr Shuro was handled by one Blessing Nyati, a conveyancer practicing at Machera and Chinono Legal Practitioners of Bindura. Mr Nyoni never sold his property and never instructed Mr Nyati to transfer it to Mr Shuro. Only Mr Nyati knows what transpired and how he successfully transferred this property without the consent of Mr Nyoni.

- i) Mr Nyoni intends on gaining his property back from Mr Brown. Carefully consider the necessary steps and requirements he should fulfil for him to redeem his property. Also consider the remedies available to Mr Brown in such a case. [20Marks]
- ii) How will your answer differ from the answer above if the property involved was a laptop instead of a house? [5Marks]
- iii) Outline and discuss the three available delictual remedies aimed at protecting possession/ownership. [5 Marks]

Total [30]

SECTION B

Answer any two questions from this section

Question Two

The Ministry of Local Governance and Public Works issued an unconditional two weeks eviction notice to all residents of Chipadze community to pave way for a government joint venture mining project together with a Chinese mining company in the area. However, the Chipadze 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 Chipadze community mobilisation forum explaining to them about these two concepts:

Expropriation of Land; and 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 Marks]

Question three

Mr Ncube owned a car that was damaged in an accident whilst being driven by his brother named James. James was insured by Zimnat Insurance. Following the accident, Zimnat instructed Global Cars Panel Beaters to carry out the necessary repairs to the car for which Zimnat fully paid.

Later on, Zimnat discovered that James had not paid any premiums to his insurance policy. Consequently, Zimnat cancelled the policy and took possession of the car. Mr Ncube then instituted a claim for return of his car on the grounds of ownership relying on the *actio rei vindicatio*. However, Zimnat countered his submission on the basis that it had acquired a lien over the car because they had spent money to repair it.

You have been invited by all affected parties to offer a legal solution to this sophisticated set of facts using the principles of an enrichment action and/or its corollary doctrine of *negotiorum gestio gerendi* principle. [20 Marks]

Question Four

In January 2022, Mr Shuvai leased his property titled stand number 561 of Lot 2, Aerodromes in Bindura to Lantare, an adult Zimbabwean male citizen studying law at ZEGU. Their lease agreement had the following terms :

- a) Lantare will pay 100USD on the first day of each month directly to Mr Shuvai
- b) Mr Shuvai will offer his property to Lantare for a period of one year.

Following this lease agreement, Lantare proceeded to make his Rental payments for January and gained access to the property wherein he brought in his assets that include a laptop valued at 300USD, a bunk bed valued at 100USD and a small bedroom fridge valued at 150USD.

However from February 2022, Lantare defaulted in paying rentals for a period exceeding 8 calendar months.

- i. Mr Shuvai feels let down and approaches you to offer him legal advice as to how he can secure payment the arrear rentals. Furthermore, Mr Shuvai no longer wants to Lantare at his property since he is not paying rentals. Advise him. [14Marks]
- ii. Discuss the meaning of the following terms:

- a) *Iura in re aliena*
- b) *Ius praefereendum*
- c) *Cession in securitatem debiti*

[6 Marks]