



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 :

INSTRUCTIONS TO CANDIDATES:

1. Answer **ALL** questions in **section A**.
2. Choose any **TWO** questions from **section B**.
3. Cellphones are not allowed into the examination room.
4. No other materials are allowed into the examination room.
5. Begin each answer to a full question on a fresh page.
6. Credits shall be given for referring to case law authorities wherever applicable.

SECTION A

Question one

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.

- i) You are invited to write a legal opinion on this issue based on the available facts. Does the set of facts justify the application of a *rei vindicatio* and/or the lien? Motivate your answer (20)
- ii) Assuming that Zimnat does not take the responsibility to repair the damaged car, what other remedies can Mr Ncube rely on to gain the true value of his damaged car from James? (5)
- iii) In case a lien is applicable, what form of lien is best suitable to the set of facts provided in this case? Substantiate your answer relying on applicable legal authority. (5)

[Total 30 marks]

SECTION B

Question two

Critically 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. [20 marks]

Question three

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:

- 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 marks]**

Question four

In 2010, Mr Ndlovu took a loan from CBZ Bank to finance his mining business. CBZ requested him to furnish them with security for this loan hence Mr Ndlovu gladly passed a mortgage over his house in favour of CBZ for the advancement of this loan. The mortgage contract had a sale in execution (*Parate executie*) clause which stipulated that upon default of paying monthly instalments, CBZ will immediately sell Mr Ndlovu's house.

Mr Ndlovu has been facing financial difficulties and failed to pay his monthly instalments for the last three months. CBZ in pursuance of its interest as stipulated in the contract forfeited Mr Ndlovu's house and want to sell it to recover the amount owing for the advanced loan.

- i) Mr Ndlovu feels that loss of ownership over his house by means of a *parate executie* is unconstitutional. He then approaches you for legal advice concerning this matter. Judged against the Constitution, how true is Mr Ndlovu's submission? (12)
- ii) How would your advice differ if Mr Ndlovu had passed a pledge over his car to CBZ instead of a mortgage bond over his house as a form of security? Would the sale in execution clause be still unconstitutional? Substantiate your argument using relevant legal authority to support your advice. (8)

[Total 20 marks]

Question five

Your Mother recently applied to her local municipality to have her building plans of extending the backyard cottage and garage approved. However, her proposed extension was rejected on the grounds that it would be constructed over a servitude registered against her title deed in favour of the local municipality. She therefore asks you as a law student to explain to her about servitudes. Precisely she wants to know how servitudes come into existence, the kinds of servitude recognised in Zimbabwean law, and how these servitudes can be extinguished.

[20 marks]

END OF PAPER