



## **SCHOOL OF LAW**

**NLLB206 LAW OF PROPERTY**

**END OF SECOND SEMESTER EXAMINATIONS**

**APRIL/MAY 2024**

**LECTURER: C. MUNGUMA**

**DURATION: 3HRS**

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### **GENERAL INSTRUCTIONS TO CANDIDATES**

1. Do NOT write your name on the answer sheet.
2. Answer **any 2 questions from Section A** and **any 2 questions from section B.**
3. Begin your answer for each question on a new page.

## SECTION A

### Question 1

- a) Discuss the personalist and the classical theories as the basis for a distinction between real and personal rights in the law of property. [20 marks]
- b) Explain the type of right that is created by a long lease in Zimbabwean property law. [5 marks]

### Question 2

- a) With the aid of case law and examples discuss the entitlements that an owner has with regard to a thing he owns? [18 marks]
- b) Explain the rights of co-owners in a property. [7 marks]

### Question 3

- a) The spoliation remedy is a poor solution to regulate the rights of the parties to any property dispute. Discuss. [20marks]
- b) Explain the differences if any, between an interdict and a spoliation order? [5marks]

## SECTION B

### Question 4

C, the seller sold a piece of land to M. After paying the full purchase price, C refused and neglected to transfer the property to M who was forced to obtain a court order to compel transfer. Before transfer of the property could be effected in terms of the order, a bank which was owed money by the seller C, caused a mortgage bond to be registered over the property to secure a loan. M objected to the bank's action and applied to the High Court for the bank to cancel the mortgage bond. M argued that since he had become the beneficial owner of the land upon payment of the purchase price to C, the mortgage bond was wrongly placed on the property. M further argued that the fact that the land was still registered in the seller's name was not conclusive proof that he was still the owner of the property at the time the mortgage bond was registered. He further asserted that the fact that a court had ordered C to transfer the property to him prior to the registration of the bond meant that he had superior rights over those of the bank.

Assume that you are **a court handling** the above case, write your judgement on each point raised by M in his case. Your answer must be in numbered parts addressing specific points raised by M. [25marks]

### Question 5

W who had lost his land through a sale in execution purported to sell the same to Jena for \$50 000. At the time of the transaction, Jena was not aware that W was no longer the owner of the property since title was still in the name of W. Three months after the purchase, Jena started to make improvements on the land which was vacant at the time of the sale. Jena caused foundations to be dug and filled with concrete. He also constructed a single story house to slab level. The cost of this plus the builder's fees was \$8000. At that point, the purchaser of the property in the sale in execution H, approached Jena and advised him verbally that he was the true owner of the property and asked Jena to stop construction work at the site. Jena was shown all the paperwork proving ownership including the sale in execution agreement and receipts. A recently registered title deed in the name of H was also produced and shown to Jena. Despite receiving that information, Jena proceeded to build the superstructure of the house to gable level at a cost of \$20 000. Before he had built to that level, H had sent some young men to force the builders to stop construction work. Jena reported the young men to the police and was able to continue building until he got to the gable level. In the dispute, H's stance is that he does not like any of the improvements made by Jena and wish to see them removed from the property.

- a) Arising from the above facts how would you classify Jena as a possessor at the following points:
  - i) When he took possession of the stand before he was advised of the rights of H?  
[3marks]
  - ii) When he constructed a structure to gable level on the stand?  
[3marks]
- b) Assuming that H seeks eviction of Jena from the land, would he succeed? Explain fully.  
[7marks]
- c) In the event that Jena is evicted from the land, would his claim for improvements in the sum of \$28 000 plus builder's fees of \$10 000 succeed?  
[12marks]

### Question 6

It is alleged that the right to property in Zimbabwe is no right at all as it is subject to so many limitations and restrictions. Analyse this assertion with reference to **constitutional** provisions, **statutory** provisions and Zimbabwean **case law**.

[25marks]

**End of Examination Paper**