



## **SCHOOL OF LAW**

**NLLB206 LAW OF PROPERTY**

**END OF FIRST SEMESTER EXAMINATIONS**

**JAN/JUN 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.
4. Credit is given for neat, logical and well written work.

## **Section A**

Answer 2 questions from this section.

### **Question 1**

- a) Briefly explain any three theories explaining the concept of property. [12]marks]
- b) Discuss the suitability of any 2 of the above theories to any 2 modes of original acquisition of property. [13marks]

### **Question 2**

It is alleged that in the modern Zimbabwean property law, the right of ownership is now miniscule. Discuss this view in the light of any three of following areas:

- a) Planning law
- b) Environmental law
- c) Criminal Law
- d) Family law [25marks]

### **Question 3**

For this question choose either 3 (a) or 3 (b).

Spoliation proceedings do not result in a fair and justifiable outcome as they do not delve into the merits of a case. In your view, is there any justification to keep the spoliation remedy in Zimbabwean law? [25marks]

**or**

### **Question 3 (b)**

Discuss the main differences between the remedies available to protect ownership and those meant to protect possession in property law. In your discussion use at least 2 examples of remedies for ownership and 2 examples for possession. [25marks]

## **Section B**

Answer any 2 questions from this section.

### **Question 4**

Z was employed by Africa University as a plumber. To enable him to attend to water and sewer pipe faults at odd hours Z was allowed to stay in a university house on campus and given the use of a university car. Z was not entitled to these items in terms of his conditions of service

as such. The items were merely meant to make his work possible since water bursts could occur at any part of the campus at odd hours.

Z was subsequently charged of misconduct, found guilty and dismissed from employment. Dissatisfied by the hearing process Z appealed to the Labour Court against his dismissal by the university. In the meantime, Z was given one month notice to vacate the university house and to surrender the car immediately. Z refused to surrender both arguing that since he appealed his dismissal in the Labour court, he had a right to retain the car and house despite his dismissal. The University's position is simply that it is the owner of the car and house and as such, it wants them back for use by current employees.

- a) As the legal counsel of Z write an opinion advising Z of his chances of success in retaining the house and the car in the circumstances given. [15marks]
- b) Explain whether a registered servitude is a personal or a limited real right in Zimbabwean law. [5marks]
- c) How does neighbour law limit the right of ownership to land? [5marks]

### Question 5

Tsola was employed by Value Furnishers as the credit controller. In his functions he interacted with debtors of the company and could collect payments from them for onward transmission to his employer. With intent to steal, Tsola collected a combined total \$16 000 from 3 debtors of Value Furnishers. He gave the clients forged receipts and pocketed the proceeds. After an investigation the employer discovered that Tsola had been stealing. The company security department led by the manager procured a confession from Tsola and a statement stating that he had used the money he "stole" to buy two cars a Pajero and a Toyota Noah.

Armed with that confession and without the participation of either the police or the courts the security manager personally collected the 2 vehicles from Tsola's garage and delivered them to the company. In the meantime a report has been made to the Police by Value Furnishers but the police are yet to arrest or charge Tsola of any offence.

After consulting a lawyer and receiving certain advice, Tsola is aggrieved in the way the two cars were taken from him by the security manager. He is also alleging that whatever confession he signed was extracted by force and threats. He says he was assaulted and threatened with disappearance if he did not sign the already prepared confession. He has decided to approach the courts for a remedy to protect his possession of the cars.

As a graduate of Africa University law school advise Tsola of the following:

- a) The type of remedy that he can seek on the basis of the above facts. [5marks]
- b) The prospect of success of the claim or claims he can make to the courts. [15marks]
- c) What principles of law were affected or could be impacted by the conduct of Value Furnishers in resorting to self-help in the above case? [5marks]

### Question 6

Gandiwa bought a vacant stand from Potiphar in December 2020 for \$18 000. Gandiwa started to develop the stand in 2021 by building a double storey building on the stand. During the building approval process with the local authority, Gandiwa would use Potiphar's name on the papers since cession or transfer of the stand had not been done. By December 2021 the construction work was completed and only a few touch ups remained that included electrical wiring, ceiling and painting.

Between December 2020 and December 2021 Gandiwa never requested Potiphar to transfer ownership of the property to him. In his mind he wanted to take transfer once the structure on the stand was complete. In mid-2021 Potiphar faced serious financial trouble. In order to get some breathing space Potiphar obtained a loan of \$80 000 from CBZ Bank. This took place in July 2021. As security for the loan, Potiphar used the stand he sold to Gandiwa as collateral. Of the loan he borrowed Potiphar repaid just two instalments of \$2000 per month only. Thereafter, he defaulted payments leading the bank to foreclose on the loan of \$80 000 which had now ballooned to \$120 000 after interest had been added to the sum.

In January 2022 the bank issued summons and served them on Gandiwa at his house for payment of \$120 000 with interest and an order declaring the stand bought by Gandiwa executable to pay the loan. Potiphar did not defend the proceedings neither did he advise Gandiwa of the threat to the stand. In June 2022, the bank attached the stand and advertised it for sale. When Gandiwa learnt of the imminent sale of his property for the first time, he approached his legal advisor. The legal advisor immediately filed an urgent application to stop the threatened sale of the property arguing as follows:

- i) The property now belonged to Gandiwa and could not be sold for Potiphar's debts. [10marks]
- ii) Gandiwa never received any court papers in the case and it was wrong for the bank to attach the property without having notified or sued its current owner (Gandiwa). [8marks]
- iii) The mortgage bond that led to the attachment of the stand was wrongly placed on the property in July 2021 since by then ownership in the property had passed to Gandiwa in January 2020 when the sale was finalised. [7marks]

Your task is to respond to the three issues raised by Gandiwa's attorneys indicating the prospects of success of each ground.

**End of Examination Paper**