



**SCHOOL OF LAW**

**NLLB206: PROPERTY LAW**

**END OF SECOND SEMESTER EXAMINATIONS**

**APRIL 2025**

**LECTURER: Mr V. Nkiwane**

**DURATION: 3HRS**

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**GENERAL INSTRUCTIONS TO CANDIDATES**

- 1. Answer any FOUR (4) questions.**
- 2. Read all questions before attempting to answer any.**
- 3. Cite relevant authority to support your answers.**
- 4. Write legibly.**

### Question 1

Mavis is a student at the University of Choice. She concludes a contract with Mai Shumba to lease a room at Mai Shumba's house in Morningside. It is agreed, verbally, between the parties that Mavis will not bring alcohol to the premises or hold parties. After three months, Mavis starts bringing over friends during weekends where they drink and party all night. Mai Shumba is upset about this and warns Mavis that she has to stop such conduct or risk being thrown out. However, Mavis tells Mai Shumba that she is entitled to do as she pleases in her room as she is paying for the room. Mai Shumba suspects that apart from drinking and partying, Mavis and her friends are taking and selling drugs. Annoyed that Mavis has defied her instructions, Mai Shumba removes all of Mavis's belongings from her room and deposits them outside her gate, while Mavis is at school. She changes the lock and locks the door. On her return, Mavis finds her belongings outside the gate and is unable to enter her room. Mavis is now in panic as she will be writing her examinations in a few days.

- (a) Advise Mavis if she has any remedy in this situation. Would your answer to the above situation be different if Mai Shumba actually caught Mavis and her friends taking drugs and there was a written provision in the lease entitling Mai Shumba to summarily evict Mavis from the premises on violation of the terms of the lease? **[15 marks]**

"The distinction between movables and immovable is not only theoretical but has practical significance in so far as the law applicable to each category differs significantly".

- (b) Examine the validity of the above statement using relevant examples.

**[10 marks]**

**[Sub-Total: 25 marks]**

### Question 2

In the case of *Gien v Gien* 1979 2 SA 1119, it was stated that:

"The absolute entitlements of the owner exist within the boundaries of the law. The restrictions can emerge from either objective law, or from restrictions placed upon it by the rights of others. For this reason, no owner ever has the unlimited right to exercise his entitlements in absolute freedom and in his own discretion."

To what extent do you agree with the above statement? Your answer should look at both the common law and statute. **[25 marks]**

### Question 3

Mutare Pumps (Pty) Ltd is a company that installs irrigation systems in commercial farms. Mashoko, a wheat farmer in the Fairview area of Mutare, engages Mutare Pumps to install an irrigation system on his farm. Mashoko and Mutare Pumps conclude a contract in which it is agreed that Mutare Pumps will install an irrigation system on Mashoko's farm at a cost of USD \$50 000.00 payable in 12 equal instalments over a period of 12 months. It is agreed that the irrigation system will remain the property of Mutare Pumps until the purchase price is paid in full. The contract further stipulates that failure to pay any one instalment by Mashoko when due, entitles Mutare Pumps to remove the irrigation system

Mutare Pumps proceeds to install the irrigation system as agreed. The irrigation system consists of three pumps, three electric motors, four kilometres of underground pipes and five water tanks. The tanks, weighing 5 tons each, rest on their own weight on specially prepared concrete floors. The tanks can only be removed with great difficulty and a specialised crane is required to achieve this. The pipes are buried at least one metre underground and some of them are encased in concrete. The electric motors are attached to the pump house by nuts and bolts. The pump house consists of a concrete foundation, brick walls and a slate roof. The pumps and electric motors are connected to the electricity supply system in the farm.

After consistently paying his instalments for six months, Mashoko defaults. His estate is declared insolvent. Mutare Pumps immediately demand the return of the irrigation system for breach relying on the clause that entitles them to a return of the irrigation system on the purchaser's default. However, Ncube, who has been appointed liquidator of Mashoko's estate, resists such removal on the ground that the irrigation system is now part of Mashoko's property and forms part of Mashoko's insolvent estate for the benefit of his creditors.

Advise both Mutare Pumps and the Liquidator Ncube of their respective rights and liabilities in this matter, if any. **[25 marks]**

### Question 4

Two years ago, Xola inherited a large sum of money from his late father. He decided to set up an executive car hire business in the hope of attracting rich tourists who come to Mutare as his main clients. He bought five luxury cars, including the latest BMW. After only a few months, Xola realised that he was not making any money out of the business as most tourists preferred to hire cheaper cars than top of the range luxury cars. He decided to sell four of the cars and remained with the BMW, his favourite. However, because of the worsening economic situation, Xola realises that he cannot afford to keep the BMW and decides to sell it to his best friend Chengetai at a discounted price of USD \$60 000.00. It is agreed that Chengetai will pay by bank transfer. Chengetai invites Xola to accompany him to the bank where he duly

completes transfer formalities for his bank, People's Bank to transfer S60 000.00 to Xola's account with ABC Bank. The bank teller tells Chengetai, to Xola's hearing, that the money will be credited within 24 hours.

Xola is satisfied that he will get his money and decides to hand over the car keys and registration book to Chengetai. Chengetai convinces Xola to write a document which states that the car has been "sold" to him as he wants to drive out of town and does not want problems with the police since the name on the registration book does not match his. Xola writes the letter and they both sign it.

Three hours after after collecting the car, Chengetai offers the car for sale to Fast Cars, a car dealership in Harare for \$50 000.00. The manager is surprised that Chengetai is selling a car he has just recently bought. However, Chengetai offers an ingenious but plausible explanation. He also shows him the registration book and the document written by Xola to show that the car belongs to him. The car dealer pays Chengetai \$50 000.00 and collects the car and registration documents.

The following day Xola discovers that the transfer has not gone through due to lack of funds. In the meantime, Chengetai has disappeared and cannot be traced. Xola finds out that Fast Cars now have possession of the car and are claiming ownership over it.

Advise Xola and Fast Cars of their rights and liabilities in this matter. **[25 marks]**

### **Question 5**

- (a) Susan wishes to obtain a loan from her bank to purchase a piece of land. She has been told by the bank that she must provide security for the loan. Explain the meaning and role of security in the field of lending and borrowing in a modern economy. **[5 marks]**
- (b) Sam and Jane are planning to retire and live on a farm. They are informed that a small farm is available for sale in the Juliasdale area of Nyanga. As they do not have enough cash in hand to purchase the farm, they approach their bank with a view to getting a loan. The bank advises them that there are three possible loan arrangements that can be made.

#### **Option 1**

They can register a bond on the farm in favour of the bank.

#### **Option 2**

They can register a bond on their expensive Range Rover motor vehicle.

### Option 3

They can provide someone else who will repay their loan should they fail to pay. In this instance, they have indicated that they have a wealthy son, Tim, who is willing to make himself available.

- (a) Identify the different types of security applicable in each of the three options and explain the consequences of each form of security. Your answer must also show how these forms of security differ from each other. **[5 marks]**
- (b) Explain to the bank the effect of each form of security in the event of the debtor becoming insolvent. **[20 marks]**

**[Sub-Total:25 marks]**

### Question 6

- (a) Distinguish between delivery *brevi manu* and *constitutum possessorium* and explain why courts tend to closely scrutinise transactions where these forms of delivery are alleged to have taken place. **[5 marks]**
- (b) “The constitutional property concepts of expropriation’ and ‘deprivation’ have been a subject of intense controversy in the courts and academic literature, in different jurisdictions.” In light of the Constitutional Court’s decision in *Mike Campbell (Pty) Ltd v The Minister of National Security Responsible for Land, Land Reform and Resettlement SC 49/07*, and other relevant authorities discuss the meaning of compulsory acquisition and expropriation and show why it is important to distinguish between expropriation and compulsory acquisition. **[20 marks]**

**[Sub-Total: 25 marks]**

**TOTAL MARKS: 100**

**END OF QUESTION PAPER**