

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2018

TITLE OF PAPER : LAW OF PROPERTY I

COURSE CODE : LAW 209

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER FOUR (4) QUESTION INCLUDING QUESTION 1.**
- 2. QUESTION ONE (1) IS COMPULSORY.**

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QUESTION ONE (Compulsory)

Motsa executed a valid will in terms of which his farm at Mliba was bequeathed to his three children. The children at the material time were all minors. The bequest was subject to an important condition: the children were to hold the farm in equal undivided shares until the eldest of the children, had reached the age of majority. When that event came to pass, the farm would then be divided into three clearly defined portions which would be distributed to the children by casting lots. The child who received the portion with the family home was to pay lobola for the other siblings, (as they were all boys) if they elected to marry in terms of the customary law of Eswatini.

Consider the registerability or otherwise of these two conditions. In support of your answer, make reference to case law. (25 marks)

QUESTION TWO

A thing which is immovable today may be movable tomorrow. Conversely, a movable may be affixed to an immovable by natural or artificial means in such a manner that it loses its identity and become an integral part of the immovable thing. Consider the factors that the courts take into account in determining whether a movable has become immovable. Illustrate your responses by referring to case law.

In your response elucidate on the legal importance of the distinction between movables and immovables, and explain how the distinction affects other branches of the law. (25 marks)

QUESTION THREE

- a) Critically analyse the two important theories that seek to distinguish between real and personal rights. (10 marks)
 - b) Distinguish between property and things. In your explanation highlight and explain the characteristics of a thing. (15 marks)
- (Total: 25 marks)

QUESTION FOUR

Eva a prosperous land owner, owns a block of offices on Gwamile Street, Mbabane. Eva let one of the offices to an I.T. Consultant, Mr. Zulu. Mr. Zulu had a slow start in business. Not only that, but the economic down turn led to many of Mr. Zulu's clientele closing down their businesses, and this adversely affected his earnings. He is now swimming in debt. He is in arrears of E50,000.00 (fifty thousand Emalangeni) on his rent. Eva's repeated demands for payment have produced no result. Instead, Mr. Zulu has continued to ask for more time to try and raise the money with which to pay.

During the Christmas break, when Mr. Cele had closed his business for the festive season. Eva instructed his locksmith, Sukati, to change the lock on Zulu's office door. No sooner had Sukati finished changing the lock, and was preparing to leave the door, then he saw Zulu drive into the car park. Sukati did not wish to engage in a confrontation with Zulu, so he quietly made his way to his vehicle, and quickly drove off.

In the meantime, when Zulu arrived at his office door, he noticed that the locks had been changed. He immediately made arrangements to change the locks. He drove to a nearby Supermarkets and purchased new locks, and armed with the necessary tools, drilled out the locks that were fixed by Sukati, and installed his own.

After learning of Zulu's action, Eva approaches you for legal advice. Give him a detailed legal opinion on the following:

- a) Zulu's legal rights (10 marks)
- b) Evan's legal rights (15 marks)

Support your responses with legal authority and possible defences were appropriate.
(Total: 25 marks)

QUESTION FIVE

- a) The police conduct a raid at Sabelo's home. They find four kilograms of dagga in a hidden compartment under his four year old son's sleeping mattress. Sabelo is arrested and charged with possession of dagga. According to the charge levelled against Sabelo, he was in contravention of the Pharmacy Act of 1929, and the Opium and Habit forming Drugs Act also of 1929.

Examine the concept of possession, and outline its constituent parts in view of the scenario in the factual matrix above. (10 marks)

- b) Distinguish the Declaratory Order from the Interdict. (10 marks)
(Total: 25 marks)