HEBERT CHITEPO LAW SCHOOL

BARCHELOR OF LAWS HONOURS DEGREE

EXAMINATION QUESTION PAPER

MODULE CODE	**LLB 311**
MODULE NARRATION	**PROPERTY LAW**
DURATION	**3 HOURS**
TOTAL MARKS	**70**
YEAR	**2024**

<u>INSTRUCTIONS TO CANDIDATES</u>

1. *You are advised to read all questions carefully before attempting to answer any.*
2. *Section A is COMPULSORY.*
3. *Answer any <u>TWO</u> Questions from Section B.*
4. *Students are allowed to bring the Constitution of Zimbabwe Amendment (No. 20) Act 2013, the Deeds Registries Act and the Land Acquisition Act into the examination room.*
5. *This examination is 6 pages including the cover page.*

SECTION A

Answer **all** questions in this section.

QUESTION 1

1.1 Ruth recently bought and moved into a house near the Masvingo central business district. The street on which her house is located has several other houses as well as a couple of small businesses and a church. The church has a bell attached to it, and this bell is rung every fifteen minutes daily. The bell chimes part of a tune every fifteen minutes and the full tune every hour. Ruth finds the ringing of the bell to be very annoying as it disturbs her sleep. She approached some of her neighbours to find out if they could all approach the church to request that the ringing of the bell be paused during the night. Her neighbours, however, told her that they had approached the church several times and that at all times they said that doing so would be a violation of their religious practice. Ruth eventually approached the church on her own and she was told that; (a) the bell has been ringing in this way for nearly ten years and (b) it would be very expensive to change the timing mechanism in the bell tower.

Ruth approaches you for legal advice. She wishes to know if she can legally force the church to stop ringing the bell, at least during night time. Advise her. **[10 marks]**

1.2 Miss A has been leasing a flat from Mrs B for 2 years of which ten months have already elapsed. One of the terms of the lease agreement reads as follows:

"Breach of contract:

> In the event of the lessee falling in arrears with payment of the monthly rental or if she breaches the contract in any other way, the lessor becomes entitled to the immediate return of the property. The lessor may take possession of the property without further notice to the lessee.

Miss A fell in arrears with her rental payment and in the same month she was locked out of her flat by Mrs B.

1.2.1 What remedy may Miss A use in this instance? **[1 mark]**

1.2.2 Discuss the requirements for the remedy mentioned in 1.2.1 and Miss A's prospects of success in using the remedy. **[5 marks]**

1.2.3 State the defences that are admissible in law against the remedy identified in 1.2.1 above.

[4 marks]

[Sub-total 20 marks]

QUESTION 2

Distinguish between real rights and personal rights with reference to the Personalist and classical theories.

[10 marks]

[Sub-Total 30 marks]

SECTION B

Answer any **2** questions from this section.

QUESTION 3

3.1 Mr Smith has recently bought a dairy farm at Inyathi District and was surprised to see his neighbour, Bob, driving over a portion of his farm on an almost daily basis. Upon investigating this, it became apparent to Mr Smith that Bob was taking water to his farm by means of an irrigation system which stretched right across Mr Smith's farm. When Mr Smith approached Bob to ask him why he had not first asked permission to do so, Bob was mean in his response, he told Mr Smith that if he had read the title deed to his own farm, he would have seen that he has a servitude, entitling him to do so. Bob further said that he did not need Mr Smith's permission at all and if he didn't know this, he should go back to school. Mr Smith is angry about this rude behaviour and approaches you, as his legal practitioner, to advise him. Explain to Mr Smith the meaning of a servitude and clearly set out the differences between praedial and personal servitudes.

[10 marks]

3.2 In terms of section 57 of the Deed Registries Act on Creation of servitudes, it is stated that:

"(1) save as is provided in any other law, a servitude in perpetuity or for a limited period may, subject to subsections (2), (3) and (4), be created— (a) by a deed prepared in accordance with section fifty-nine or (b) in a deed of grant or transfer of land where it encumbers— (i) the land transferred….."

In what instances will an unregistered praedial servitude bind successors in title? **[5 marks]**

3.3 An owner of a property may burden it with a praedial servitude for the benefit of another person. To effectively create such a servitude, it should be registered in terms of the Deeds Registries Act. What are the requirements for preparation and submission of a deed of servitude?

[5 marks]

[Sub-Total 20 marks]

QUESTION 4

4.1 Michael is in the business of lending people money and receiving it back with interest. Sometime in 2023, he lent Brian USD2 000,00 who had to repay the money in installments of USD100,00 monthly. In order to secure the repayment of the principal debt, Brian pledged his motor vehicle, car keys and registration book as security for the debt to Michael. The terms of the agreement provided that Brian grants Michael the express right to effect change of ownership of the motor vehicle upon Brian's failure to repay the loan on the agreed date. Unfortunately, although Brian had paid half of the principal debt, he did not repay the full loan by the due date, whereupon Michael proceeded to effect change of ownership of the motor vehicle to his own name in terms of the agreement. Brian approaches you as his legal practitioner unhappy with this unforeseen turnaround of events and seeks to recover his motor vehicle from Michael.

In light of a *pactum commissorium* and relevant case law, advise Brian on whether he has a valid claim against Michael and comment on whether the agreement to forfeit the pledged property is lawful and enforceable. **[10 marks]**

4.2 Brian informs you that Michael admitted that prior to Brian's default in repaying the loan, he was using Brian's pledged motor vehicle to obtain extra income for himself. This was done with no agreement to the owner Brian. State the rights and obligations of Michael, the pledge insofar as the pledged property is concerned. **[10 marks]**

[Sub-Total 20 marks]

QUESTION 5

5.1 Mr and Mrs Shoko recently found out about the sale of a farm in Gwanda. They have always wanted a farm and they believe this is an opportunity worth grabbing. As they do not have the required cash upfront to purchase the farm, they approach their bank they have been using for a decade to request a loan. The bank gives them 3 options to secure the debt:

Option 1. They can register a bond on the farm in favour of the bank or

Option 2. They can register a bond on their expensive cars namely the latest BMW car and a Range Rover car or

Option 3. They can have their daughter who is a successful businesswoman agree to and sign an undertaking with the bank to repay the cash loan should her parents, Mr and Mrs Shoko fail to do so.

5.1.1 If Mr and Mrs Shoko opt for option 1 above, which type of security and bond will be registered in the Deeds Office? Briefly explain the consequences thereof. **[5 marks]**

5.1.2 If Mr and Mrs Shoko opt for option 2 above, which type of security and bond will be registered in the Deeds Office? Briefly explain the consequences thereof. **[5 marks]**

5.1.3 If Mr and Mrs Shoko opt for option 3 above, which type of security will be concluded and how does this identified security differ with the one identified in 5.1.2 above. **[5 marks]**

5.2 Section 71(3) of the 2013 Constitution of Zimbabwe provides as follows:

> "(c) the law requires the acquiring authority— (i) to give reasonable notice of the intention to acquire the property to everyone whose interest or right in the property would be affected by the acquisition; (ii) <u>to pay fair and adequate compensation for the acquisition before acquiring the property or within a reasonable time after the acquisition</u>; and (iii) if the acquisition is contested, to apply to a competent court before acquiring the property, or not later than thirty days after the acquisition, for an order confirming the acquisition."

Generally speaking, the determination of a just and equitable compensation is based on a value judgment, which entails weighing rights of both sides, namely the public interest and the interests of those affected. What relevant factors are generally taken into account in the determination of a just and equitable compensation? **[5 marks]**

[Sub-Total 20 marks]

TOTAL MARKS: 70

END OF QUESTION PAPER.