

\$GYHUVH 3RVVHVVLQR LQ WKH 6WDWH RI)ORUL &RQVLGHUWLRQV

'RQRYDQ \$ 0F)DUODQH
\$GMXQFW 3URIHVVRU + :D\QH +XLJHQJD 6FKRRO RI %XVLQHVV DQG (QWUHSUHQHUXVKLS 1RYD 6RXWKHD
&RUUHVSROGLQ'RORWKRUS 0F)DUODQH 3URIHVVRU + :D\QH +XLJHQJD 6FKRRO RI %XVLQHVV DQG (QWU
(PD\LRQRYDQ#QRYD HGX
5HF 'DVBULO \$FF 'DWB\ 3XE 'DWB\
&RS\ULJKW 0F)DUODQH \$ 7KLV LV DQ RSHQ DFFHVV DUWLFOH GLVWULEXWHG XQGHU WKH WHUPV RI WK
XVH GLVWULEXWLRQ DQG UHSURGXFWLRQ LQ DQ\ PHGLXP SURYLGHG WKH RULJLQDO DXWKRU DQG VRXU

\$EVWUDFW

SRVVHVVLQR ZKHUH RQH ZKR EH
ILUHDUP RU RWKHU GDQJHURXV ZH
,W LV D IDFW WKDW WLWOH WR ODQG PD\ EXLOWP RWUD (HORQ) p e p w @ Gk h e w k l a
7KLV SDSHU H[DPLQHV DGYHUVH SRVVHVVLQR ZKLOO DGYHUVH SRVVHVVLQR QDGVW
UHTXLUPHQWV RI DGYHUVH SRVVHVVLQR ZKHUWKU SRVVHVVLQR QDGVW
E\ SURYLGLQJ JHQHUDO GHILQLWLRQV RI SRVVHVVLQR SRVVHVVLQR DQG HUPKDSQ
SRVVHVVLQR 7KH JHQHUDO HOHPHQWV RU UHTXLUPHQWV RI DGYHUVH SRVVHVVLQR
SUHVHQWHG ZLWK H[DPSOHV RI FDVHV LQ RYLOLPHQWV RI SRVVHVVLQR QDGVW
DSSOLFDWLRQ RI WKH 6WDWXWH LQ WKH 6WDWH RI)ORULGD WR PRGHUO WLPDQV
Qd\$SEA ,QWURGXFWRQ\$GYHUVH SRVVHVVLQR DV D PHDQV RI ZOHUVKLS RU FOLK
YDULHV DFURVV VWDWH ODZV > @ ,Q)ORULGD WKH UHTXLUPHQWV RI SRVVHVVLQR
SRVVHVVLQR LQFOXGH WKH IROORZLQJ SRVVHVVLQR RODDQG DRRPHQ
SRVVHVVLQR PXV SRVVHVVLQR WKH ODQG RSHQVWU SRVVHVVLQR SRVVHVVLQR
PDQQHU VXFK WKDW LW LV LQ FRQIOLFW ZLWKWKH RZHUW UJRW WRWKH
SURSHUW\ WKLV SHUVRQ PXV HLWKHU PLVGHPHDQRU RI WKH LWVW GH
WUDQVIRUPHG LQWR D WUHSDVVHU LI DVNHW ZHDSRQV DUH WKH RYHUGXUWKH
ULJKWIXO RZHU > @ 7KXV WKH ODZ PDNHV VHW E\ WKH GHOLQHWLRQ RI RZHUW
RZHU DQG DGYHUVH SRVVHVVRU ZKHUH WKH WHUP frZQHUG UHIHUV WR WKH
RULJLQDO OHJDO RZHU RI D SURSHUW\ UDWKHU WKDQ WKH DGYHUVH SRVVHVVRU
D SURSHUW\ \$GYHUVH 3RVVHVVLQR 'HILC
8QGHU)ORULGD ODZV JRYHUQLQJ DGYHUVH SRVVHVVLQR \$GSHUWRQ DQG
LQGLYLGXDO RU RFFXSLHU GHILHV DQ RU DFTXLWHG EXHK RQGLQURSWUDG YHUV
SHUVRQDOO\ FRPPXQLFDWHG E\ WKH RZHQIRWRWH SDSHUW SHULILFDWCH DV
WUHSDVVHU GRHV DQ\WKLQJ WR FDXVH GNSMFXFMHG QEWV WKH OSZR SHUDQ\ \$D
WUHSDVVHU LV JXLOW\ RI D PLVGHPHDQRU DRQW RQHIGV WWH GHJSRV VHW RULGDZL
6WDWXWHV VHFWRQ @ > @ \$GGLWLRQSRDSHUW GHWSEOLH DQPLDGHVGH
DGYHUVHO\ SRVVHVVLQJ LW \$QG
UHIHUV WR D PHWKRQ RI DFTXLUL
IRU D VWDWXWRU\ SHULRG XQG
DGYHUVH SRVVHVVRU LV VPRHQ
VWDWXWH RI OLPLDWLRQV 6RPH
TXHVWLRQDEOH OHJDO SUDFWLFH

MXVWLILFDWLRQV DQG SXUSRVHV RI DGYHUVH SRVVHVVLQR SURYLGHV VXIILFLH
UDWLRQDOH DV WR ZK\ WKLV SURFHVV LV LPSRUWDQW LW UHZDUGV SHRSOH Z
XVH WKH ODQG IRU XVHIXO SXUSRVH LW SXQLVKHV SHRSOH IRU VOHHSLQJ RO
WKHLU ULJKWV LW HVWDEOLVKHV TXLHW WLWOH E\ PHDQV RI D SURFHHLQJ
HVWDEOLVK D SODLQWLIIdV WLWOH WR ODQG E\ FRPSHOOLQJ WKH DGYHUVH FODL
HVWDEOLVK D FODLP RU EH IRUHYHU HVWRSSHG IURP DVVHUWLQJ LW LW KHO
HOLPLQDWH FRQIOLFWV DQG HVWDEOLVKHV RQH FOHDU RZQHUV RI SURSHUW\
SURYHV WLWOH LQ SURSHUW\ E\ KDYLQJ DQ HYLGHQWLDU\ IXQFWLRQ ZKHUH
RWKHUZLVH QR WLWOH H[LVVV ZKRHYHU LV RQ WKH ODQG LI WKH\ KDYH EHHQ
WKHUH ORQJ HQRXJK WKHQ WKH\ DUH WKH RZQHUV a WKLV LV FRQVLVWHQW ZLV
+ROPHVd 7KHU\ ZKLFK VWDWHV WKDW ZKHQ D PDQ XVHV WKH ODQG RYHU D
SHULRG RI WLPH WKHUH LV D JUDGXDO DVVRFLDWLRQ RI RQH ZLWK WKH RWKHU D
WDNHV URRW LQ KLV EHLQJ DQG FDQQRW EH WRUQ DZD\ ZLWKRXW UHVHQWLQJ W
DFW KRZHYHU KH FDPH WR SRVVHVV WKH ODQG)XUWKHUPRUH ZKHQ WKHUH DUH
PLVWDNHV LQ D GHHG RU FRQIXVLQR RYHU WKH GHVFULSWLRQ RI WKH SURSHUW
DGYHUVH SRVVHVVLQR FDQ VHWWOH WKH PDWWHU

*HQHUDO /HJDO 5HTXLUHPHQWV RU (OPHQWV RI \$GYHUVH
3RVVHVVLQR

DPHQGPHQWV VLJQHG E\ *RYHUQRU 5LFN 6FRWW RQ -XQH > @ VWDWH
WKDW SD\LQJ WKH WD[HV DORQH LV LQVXILFLHQW WR HVWDEOLVK DGYHUVH
SRVVHVLRQ RU FRORU RI WLWOH XQGHU)ORULGD VWDWXWHV %HQW] Y 0F'DQL
6R G >)OD WK '&\$ @ 7KH SURSHU\ LV FRQVLGHUHG
SRVVHVHG RQO\ LI WKH LQGLYLGXDO GRHV RQH RI WKHVH FXOWLYDWHV R
LPSURYHV WKH ODQG RU SURWHFWV WKH ODQG E\ D VXEVDQWLDO HQFORVX
ZKLFK LV XVXDOO\ D IHQFH 0XOOLQV Y &XOEHUW 6R G >)OD
@



UHTXLULQJ DGYHUVH SRVVHVVRUV WR SURYLGH SKRWRJUDSKLF HYLGHQFH RI WK
FRQGLWLRQ RI WKH UHDOW\ LPPHGLDWHO\ SULRU WR ILQDO H[LW IURP LW L
FDVH RI HYLFWLRQ UHTXLULQJ RZQHUV WR SD\ IRU DOO RI WKH DGYHUVH
SRVVHVVRUdV YHULILHG H[SHQGLWXUHV LQFOXGLQJ KR XUO\ UDWH IRU ODERU
LPSURYHPPHQWV WR WKH SURSHU\ DQG IRU WD[HV DQG RWKHU OLHQV DQG
DVVHVVPHQWV SDLG DQG WKH DGYHUVH SRVVHVVRU VKRXOG KDYH WKH ULJKW
ILOH D OLHQ DJDLQVW WKH SURSHU\ IRU WKRVH DPRXQWV DQG SURYLGLQJ I
SURWHFWLRQ IRU DGYHUVH SRVVHVVRUV DJDLQVW DOO DJJUHVVURUV ZKR ZRXO
LQWHUIHUH ZLWK WKHLU SRVVHVVRU\ GRPLQLRQ RI WKH DGYHUVHO\ SRVVHVH
UHDOW\ H[FHSW LQ WKH FDVH RI RZQHU)LQDOO\ +XUW > @ EHOLHYHV WKDW V
ODZV VKRXOG EH FKDQJHG WR DOORZ WKH)ORULGD 6XSUHPH &RXUW WR VWULNH
GRZQ WKH 6KHULIdV DQG /HJLVODWXUHdV HIIRUWV WR OLPLW RU FULPLQDOLJ