

## ANSWERS STUDY UNIT 8

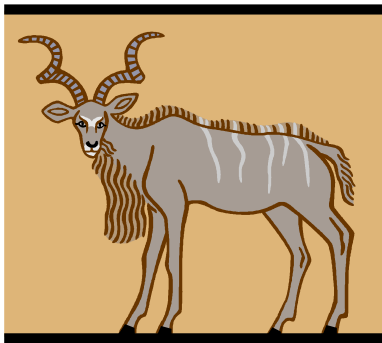
☀ Question (no number) pg 189

Answer:

The applicable case here is *R v Mafohla* (1958 (2) SA 373 (SR)).

The question asks of you to indicate whether the state will be able to prove that S was the owner of the kudu.

According to the decision in *R v Mafohla* (1) S would not be the owner of the kudu. (1) That is so because S could not have become the owner of the kudu by means of appropriation. (1) Appropriation or occupation is an original method of acquisition of ownership which can be defined as the unilateral taking of physical control (1) of a thing which does not belong to anyone, (1) but which is within the sphere of law (1) with the intention of becoming its owner. (1) (Study Guide pg 92-93)



The element which causes a problem for purposes of this question is the control element. Physical control is essential for the acquisition of ownership by means of appropriation. Where wild animals are wounded, but actual physical control is not taken, appropriation does not take place. (1) The physical control element refers to the physical or actual control exercised over the thing. The degree of actual contact required for physical control to be established is usually greater in the case of movables such as the kudu. (1) The state will

therefore not succeed, because S never took control of the kudu. (Study guide pg 189)

☀ Question 2 pg 191

Answer:

The answer to this question appears on page 192 of the Study Guide.



## ANSWER STUDY UNIT 9

- ☀ Discuss the Aquilian action as an action for the protection of possession and holdership, under the following headings:
- (i) nature of the action (1)
  - (ii) who can claim? Motivate your answer. (3)
  - (iii) against whom action can be instituted? (2)
  - (iv) what can be claimed? (1)

Answer

- (i) The aquilian action is a delictual action. (1)
- (ii) Modern law recognises that other persons besides the owner may have a patrimonial interest in the thing or in control of the thing, and therefore owners, (1) lawful holders (1) and *bona fide* possessors (1) can institute this action.
- (iii) A person who has culpably (1) and unlawfully (1) damaged the thing can institute the action.
- (iv) Damages can be claimed. (1) (Study Guide pg 215)

## ANTWOORDE STUDIE-EENHEID 8

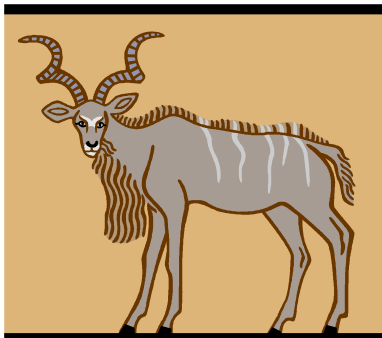
- ☀ Vraag (geen nommer) bl 189

Antwoord:

Die toepaslike saak hier is *R v Mafohla* (1958 (2) SA 373 (SR)).

Hierdie vraag vra dat u aandui of die staat sal kan bewys dat S die eienaar van die koedoe was.

Ingevolge die beslissing in *R v Mafohla* (1) sal S nie die eienaar van die koedoe wees nie. (1) Dit is so omdat S nie by wyse van toe-eiening die eienaar van die koedoe kon word nie. (1) Toe-eiening is 'n oorspronklike wyse van eiendomsverkryging wat omskryf word as die eensydige uitoefening van fisiese beheer (1) oor 'n saak wat aan niemand behoort nie, (1) maar wat binne die regsverkeer val (1) met die bedoeling om die eienaar daarvan te word. (1) (Studiegids bl 92-93)



Die element wat probleme vir doeleindes van hierdie vraag veroorsaak is die beheerelement. Fisiese beheer is noodsaaklik vir die verkryging van eiendomsreg by wyse van toe-eiening. Toe-eiening vind nie plaas wanneer wilde diere gewond word, maar waarvoor fisiese beheer nie geneem word nie. (1) Die fisiese beheerelement verwys na die fisiese of werklike beheer wat oor die saak uitgeoefen word. Die graad van werklike kontak wat vereis word vir fisiese beheer om bewerkstellig te word is gewoonlik meer in die geval

van roerende sake soos die koedoe. (1) Die staat sal dus nie slaag nie, omdat S nooit beheer oor die koedoe geneem het nie. (Studiegids bl 189)

☀️ Vraag 2 bl 191

Antwoord:

Die antwoord op hierdie vraag is op bladsy 192 van die Studiegids.



## ANTWOORD STUDIE-EENHEID 9

☀️ Bespreek die aquiliese aksie, as aksie vir die beskerming van besit en houerskap onder die volgende opskrifte:

- (i) aard van die aksie (1)
- (ii) deur wie kan die aksie ingestel word? Motiveer u antwoord. (3)
- (iii) teen wie kan die aksie ingestel word? (2)
- (iv) wat kan geëis word? (1)

Antwoord:

- (i) Die aquiliese aksie is 'n deliktuele aksie. (1)
- (ii) Die moderne reg erken dat persone anders as die eienaar (1) 'n vermoënsregtelike belang (1) in die saak of die beheer van die saak kan hê. Dus kan eienaars, (1) regmatige houers (1) en *bona fide* besitters (1) hierdie aksie instel.
- (iii) 'n Persoon wat die saak opsetlik (1) en onregmatig (1) beskadig het kan die aksie instel.
- (iv) Skadevergoeding kan geëis word. (Studiegids bl 215)