

# PVL3701 – Definitions and Short Questions

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## Definitions

### 1) Ownership [7]

Ownership is the most comprehensive real right a person can have with regard to a thing. In principle, a person can act upon and with this thing as he/she pleases. This apparent freedom is restricted, however, by the law, and the rights of others.

### 2) Co-ownership [5]

Co-ownership can be defined as the situation where two or more persons own the same thing at the same time, in undivided shares. Two forms of co-ownership can be distinguished, namely free co-ownership, and bound co-ownership.

### 3) Bound co-ownership [3]

Bound co-ownership exists where there is an underlying legal relationship between the co-owners which determines the basis of their co-ownership, for example, a marriage in community of property.

### 4) Possession (in its broad sense) [5]

Possession in the broad sense can be described as a real relationship between a legal subject and a thing, characterised by two elements:

1. A physical element (*corpus*)
2. A mental element (*animus*)

### 5) Bona fide possessor [4]

A bona fide possessor can be defined as a person who is not recognised as the owner of the thing because he/she does not comply with the requirements for establishing ownership, but who has the intention of an owner, on the incorrect assumption that he/she is in fact the owner.

### 6) Mala fide possessor [3]

A person who is aware of the fact that he/she is not legally recognised as the owner of a thing, but who nonetheless has the intention of an owner.

### 7) Bona fide unlawful holder [4]

The bona fide unlawful holder can be defined as a person who physically controls the thing unlawfully (for the sake of the benefit he/she derives from it), but is unaware of the fact, since he/she is under the incorrect impression that he/she has the necessary permission or legal ground to control it.

### **8) Right of retention (lien) [5]**

A lien can in general be defined as a limited real right to secure the claim of a person who has spent money or done work on another person's thing. It entitles the lienholder to keep the thing until he/she has been paid.

### **9) Servitude [7]**

A limited real right to another person's thing. It confers special entitlements and use of enjoyment on the holder, who enjoys these entitlements as either the owner of a particular piece of land (land servitude) or in a personal capacity (personal servitude).

### **10) Personal servitude [5]**

A limited real right granting the servitude holder specific entitlements and use of enjoyment with regard to the movable or immovable thing of another, in his/her personal capacity, for a specific period of time or for his lifetime, or in the case of a legal person, for a maximum of 100 years.

### **11) Restrictive conditions [6]**

Restrictive conditions can be defined as a category of limitations on ownership which are either registered against the title deed of property, or not so registered and imposed in terms of a statute or based on a contract and are in the interests of land-use planning.

### **12) Pledge [7]**

A limited real right over the pledgor's thing, delivered to the pledgee as security for repayment of the principal debt that the pledgor or a third party owes to the pledgee.

### **13) Mortgage [5]**

A limited real right over a thing belonging to the mortgagor in order to secure repayment of a debt owed by the mortgagor or a third party to the mortgagee.

### **14) "Labour tenant" in terms of the Land Reform Act [3]**

A person who has the right to reside on a farm and also to use the land for cropping or grazing, in return for his/her labour.

### **15) Expropriation as a form of acquisition of ownership [5]**

Expropriation can be defined as an original method of acquiring ownership, in terms of which the state acquires ownership of a movable or immovable thing without the consent of the owner, against payment of compensation.

### **16) Building (*inaedificatio*) [5]**

Building can be defined as an original method of acquiring ownership, in terms of which a movable thing (accessory thing) becomes attached to land (principal thing) in such a manner that it loses its independence and forms an entity with the land, thereby becoming part of the landowner's land.

### **17) Prescription [5]**

Prescription can be defined as an original method of acquiring ownership, in terms of which a person who controls (possesses) a thing openly and as if he/she were the owner for an uninterrupted period of thirty years becomes its owner.

### **18) Appropriation [5]**

Appropriation can be defined as the unilateral taking of physical control of a thing that does not belong to anyone (*res nullius*), but is within the sphere of law, with the intention of becoming its owner.

### **19) Legal object [2]**

Every object with which a legal subject has a legally recognised relationship.

### **20) Law of things [6]**

A branch of private law which consists of a number of legal rules that determine the nature, content, vesting, protection, transfer, and termination of various real relationships between a legal subject and a thing, as well as the rights and duties ensuing from these relationships.

### **21) Land servitude [5]**

A land servitude can be defined as a limited real right to the land of another (servient tenement) which confers on the owner of the dominant tenement, in principle, permanent, defined entitlements of use and enjoyment with regard to the servient tenement.

### **22) Kustingbrief [5]**

A *kustingbrief* can be defined as a special mortgage over an immovable thing to secure a principal debt that has been incurred in respect of the purchase of that thing where the deed of hypothecation is registered simultaneously with the deed of transfer of the particular thing.

### **23) Thing [5]**

A thing may be defined as a legal object that is an independent part of the corporeal world, is external to humans, subject to human control, and is useful to humans.

### **24) Real remedy [7]**

A real remedy can be defined as a legal process with its own purpose, for which certain requirements are set and which protects, maintains, or restores a particular real relationship in a specific way.

### **25) Manufacture (*specificatio*) [4]**

Specification can be defined as an original method of acquiring ownership in terms of which ownership is acquired by the unauthorised production of a completely new thing, using a thing belonging to another.

### **26) Attornment [5]**

Attornment can be defined as a derivative method of transferring ownership where the transferor, the transferee, and a third party (who is in control of the thing and will continue to control it) agree that the third party will control the thing on behalf of the transferee as owner.

### **27) Real right [5]**

A real right can be defined as a lawful real relationship between a legal subject and a thing which confers direct control over the thing on the legal subject, as well as the relationship between the legal subject and all other legal subjects who must respect this relationship.

### **28) *Actio ad exhibendum* [4]**

The *actio ad exhibendum* can be defined as an action in terms of which the owner can claim the market value of the thing from a person who destroyed or alienated the thing with a mala fide intention.

### **29) Expropriation as contemplated in section 25 of the Constitution [4]**

Expropriation is the legitimate imposition of limitations that involve the actual taking away or acquisition of private property by the State. Property may be expropriated only in terms of law of general application, for a public purpose or public interest, and subject to payment of compensation.

## Short questions

NAME:

### 1) The sources of the current law of things in order of priority [6]

1. The Constitution
2. Statutory law
3. Case law
4. Common law (Roman-Dutch)/indigenous law

### 2) The requirements for the application of the *actio ad exhibendum* [3]

1. Alienation or destruction of the thing
2. Mala fide intention of the person who alienated or destroyed the thing
3. Loss incurred by the owner of the thing

### 3) Three ways in which a servitude is terminated [3]

1. Expiry of the period for which it was established
2. Agreement
3. Prescription
4. Merger
5. Abandonment
6. Expropriation

### 4) The requirements for the *condictio furtiva* [4]

1. Ownership or retention of a lawful interest from the date of the theft to the date of the institution of the action
2. Theft or removal of the thing with deceitful intent
3. If the action is not instituted against the thief or deceitful remover, that the defendant is the heir of the former

### 5) Circumstances that have to be considered in terms of section 25(3) of the Constitution when an amount of compensation for expropriation must be determined [5]

1. The purpose of expropriation
2. History of acquisition and use of the property
3. Current use of the property
4. Market value of the property
5. Extent of direct state investment in acquisition of the property

### 6) The requirements for attornment [3]

1. A tripartite agreement between the transferor, the transferee, and the third party holder in terms of which the holder will continue to hold for the transferee and no longer for the transferor

2. The holder should exercise physical control at the moment of transfer from the transferor to the transferee

**7) The two categories of limitations on ownership and give one example of each [4]**

1. Limitations imposed by law, such as statutory limitations
2. Limitations imposed by the rights of other legal subjects, such as limited real rights

**8) Two reasons why it is important to distinguish between movable and immovable things [2]**

1. It affects the formalities and requirements for transfer of ownership
2. In the execution of a judgment debt and in insolvency, the debtor's movable assets are sold before the immovables
3. Several statutes distinguish between movables and immovables
4. Private international law distinguishes between movables and immovables
5. In criminal law, theft is only possible with regards to movables, and arson with regard to immovables
6. Alienation of a minor's immovable assets in the minor's estate requires permission from the High Court if the asset is worth a certain value

**9) The requirements for a successful reliance on an interdict [3]**

1. A clear right
2. An actual or reasonably apprehended violation of a right
3. No similar protection by any other remedy

**10) An example of delivery with the short hand [2]**

Where a transferee is a buyer in terms of an instalment agreement and acquires ownership by means of delivery with the short hand on payment of the last instalment.

**11) The requirements for a successful reliance on the *rei vindicatio* [3]**

Plaintiff must prove:

1. He is the owner
2. The thing exists and is identifiable
3. The defendant is in control

**12) The requirements for successful reliance on the spoliatio remedy [4]**

1. The applicant must have enjoyed peaceful and undisturbed control of the thing

2. The respondent must have disturbed the applicant's control in an unlawful manner

**13) Four ways in which a mortgage can be extinguished [4]**

1. Merger
2. Prescription
3. Extinction of the principal debt
4. Destruction of the mortgaged thing
5. Express or tacit renunciation of the mortgage by the mortgagee
6. Court order

**14) Three entitlements of ownership and give an example of each [3]**

1. Use (e.g. drive your car)
2. Alienate (e.g. sell or donate your car)
3. Burden (e.g. grant mortgage over land)
4. Consume or destroy (e.g. burn your law textbooks)
5. Control (e.g. hold your handbag)
6. Vindicate (e.g. claim from third person with *rei vindicatio*)

**15) Four valid defences that may be raised against spoliation remedy [4]**

1. The applicant did not have peaceful and undisturbed control at the time of spoliation
2. The respondent did not disturb the applicant's control
3. The disturbance was not unlawful
4. It is impossible to restore control
5. The applicant waited too long in making the application

**16) Three defences that can be raised against a *rei vindicatio* by a defendant who is in control of an owner's thing [3]**

1. Estoppel
2. Purchaser in good faith of a sale of execution
3. Statutory limitations on eviction

**17) Name the criteria applied by the courts to determine whether a movable thing is attached to an immovable thing in such a fashion that it becomes part of the immovable (industrial accession) [3]**

1. Nature and purpose of the attached thing
2. Manner and degree of attachment
3. Intention of the person annexing it or the owner of the movable

**18) The requirements for a successful reliance on acquisition of ownership by means of appropriation [5]**

Physical control; of a thing which does not belong to anyone (but within the sphere of law; with the intention of becoming the owner.

**19) Two basic forms of security [2]**

1. Personal security
2. Real security

**20) Two remedies available in the case of non-compliance with conditions of title [2]**

1. Interdict
2. Aquilian (delictual) claim for damages

**21) Two limitations imposed on ownership in terms of the law, and give one example of each class of limitation [3]**

1. Statutory limitations (e.g. Firearms Control Act)
2. Neighbour law (e.g. nuisance)

**22) The requirements for estoppel [4]**

1. Representation
2. Fault
3. Detriment
4. Causal connection

**23) Five ways in which ownership is terminated by operation of law [5]**

1. Accession
2. Prescription
3. Manufacture
4. Insolvency
5. Attachment and sale in execution
6. Expropriation

**24) One statute that promotes the redistribution of land [1]**

Provision of Land and Assistance Act

**25) Three different situations that can be distinguished under constructive delivery [3]**

1. Symbolic delivery
2. Delivery with the long hand
3. Bills of lading

**26) Three chief methods by which possession is terminated [3]**



1. Death of the possessor
2. Destruction of the thing
3. Termination of the legal relationship through: loss of physical control or; loss of the mental element (intention of an owner)

**27) Five orders that the Land Claims Court can make in terms of section 35(1) of the Restitution of Land Rights Act [5]**

1. Restoration of land
2. Grant by the State of an appropriate right to alternative state-owned land
3. Payment of compensation by the State
4. Inclusion of the claimant as a beneficiary of a State support programme
5. Grant of alternative relief

**28) Six ways in which a pledge can be extinguished [6]**

1. Discharge of the debt
2. Destruction of the pledged article
3. Merger
4. Prescription
5. Pledgee's renunciation of the pledge
6. Court order

**29) Four types of housing development schemes that can be established in terms of the Housing Development Schemes for Retired Persons Act [4]**

1. A sectional title scheme
2. A share block scheme
3. Membership of or participation in a club
4. A registered long-term lease

**30) Two elements of possession [2]**

1. Physical element
2. Mental element

**31) Conditions under which movables belonging to third persons are subject to the landlord's tacit hypothec as stated in Bloemfontein Municipality v Jackson's Ltd [6]**

When goods belonging to a third person are brought onto leased premises with the knowledge and consent of the owner of the goods, and with the intention that they shall remain there indefinitely for the use of the tenant, and the owner, being in a position to give notice of his ownership to the landlord, fails to do so, and the landlord is unaware that the goods do not belong to the tenant, the owner will thereby be taken to have consented to the goods being subject to the landlord's tacit hypothec, and liable to attachment.

**32) Two requirements for the applicability of an enrichment lien (right of retention) as emphasised in Buzzard Electrical [2]**

1. Unjustified enrichment of the owner
2. At the expense of the person who claims to exercise a lien over the thing

## **DISTINGUISH BETWEEN:**

### **1) Land and personal servitudes [8]**

1. Land servitudes are created in favour of a piece of land. Personal servitudes benefit someone in their personal capacity
2. Land servitudes last indefinitely. Personal servitudes can be granted only for a specific period (not more than the holder's lifetime or 100 years if a legal person)
3. Land servitudes may be established over immovable things only. Personal servitudes may be established over movables and immovables
4. Land servitudes are alienated together with the land. Personal servitudes are inseparably attached to the holder's person and are in no way transferable

### **2) Lawful and unlawful holders [2]**

A lawful holder is a person who physically controls the thing with the owner's permission or another legal basis in order to derive some benefit from it.

An unlawful holder physically controls the thing in order to derive some benefit from it, without the owner's permission or any other legal ground for his control.

### **3) Original and derivative methods of ownership [6]**

Original methods are used when there is no co-operation from a predecessor in title; in other words there is no transfer of ownership. This form of acquisition is not limited to things belonging to no-one. E.g. appropriation.

Derivative methods occur with the co-operation of a predecessor in title. The predecessor in title should have been the owner and entitled to transfer ownership (no-one can transfer more rights to another than he has himself). The right is transferred to the new owner with the advantages and disadvantages attached to that right. E.g. buying someone's car.

### **4) Real rights and personal rights under the following headings: (i) Object; (ii) Absoluteness; (iii) Preference; (iv) Publicity [4]**

**Object:** The object of a real right is a corporeal thing. The object of a personal right is a performance.

**Absoluteness:** Real rights are absolute in principle. Personal rights are relative in principle.

**Preference:** In the case of insolvency, a real right always enjoys preference over other rights. This principle does not apply to personal rights (with a few exceptions)

Publicity: The establishment of a real right requires some form of publicity. The establishment of personal rights does not require publicity.

### **5) Ownership, possession, and holdership [10]**

Ownership is always a lawful real relationship and therefore a real right. It is the most comprehensive real right a person can have with regard to a thing. A person can act with the thing he owns as he pleases.

Possession is the physical control of a thing with the intention of the owner. It is always unlawful and therefore only a real relationship, not a real right.

Holdership is the physical control of a thing with the intention to derive a benefit. It could be lawful or unlawful. A lawful holder has a real right. An unlawful holder has a real relationship.

### **6) Conventional or express mortgages, and tacit mortgages. Give an example of each [4]**

An express mortgage is established by a mortgage agreement and registration. An example of an express mortgage is a notarial bond.

Tacit mortgages are not created by agreement and registration, but by operation of law, independent of the creditor and debtor's will. An example of a tacit mortgage is a tacit hypothec, lien, etc.

### **7) Property and things [5]**

Everything that forms part of a person's estate can be described as "property". Property therefore includes a variety of assets such as things (e.g. car, computer), personal rights (creditors' rights), and immaterial property rights.

A thing is a specific asset (legal object) in a person's estate, i.e. an independent part of the corporeal world which is external to humans, subject to human control, and is useful and valuable to humans.

### **8) Ownership and the entitlements of ownership [3]**

Ownership is the (most comprehensive) real right a person can have with regard to a thing. The capacities conferred on the person by virtue of the right of ownership are called entitlements. Entitlements of ownership therefore emanate from the right of ownership.

### **9) Delivery with the short hand and *constitutum possessorium*, and illustrate the difference with reference to examples [6]**

According to the short-handed delivery method, no transfer of physical control takes place, since the transferee is already in control of the thing, although not as owner. For example, the transferee may be a buyer in terms of an instalment sale

and on payment of the last instalment he acquires ownership by means of delivery with the short hand.

*Constitutum possessorium* is in a certain sense the very opposite of delivery with the short hand. Here the transferor retains physical control over the thing of which he has agreed to transfer ownership to the transferee. It is only the intention towards the thing that undergoes a change. For example, X buys a watch from a jeweler and leaves it with the jeweler for cleaning.

## **10) The law of property and the law of things [2]**

Property law (in the broad sense) refers to everything that forms part of a person's estate.

The law of things regulates legal relationships between legal subjects in regard to a particular object, that is, a thing.

## **11) Real security and personal security [4]**

Personal security occurs where a person binds himself personally to the creditor for the performance of the debtor's obligation. In this case, the security receiver obtains only a personal right against the surety.

In the case of a real security, the security receiver obtains a limited real right over a thing, as security for the fulfilment of the debtor's obligation.

## **12) Delivery with the short hand and delivery with the long hand. Refer to examples [7]**

According to the short-handed delivery method, no transfer of physical control takes place, since the transferee is already in control of the thing although not as owner. For example, the transferee may be a buyer in terms of an instalment sale and on payment of the last instalment he acquires ownership by means of delivery with the short hand.

Delivery with the long hand applies where transfer of the thing is not possible because of its size or weight. In this case the thing to be transferred is pointed out to the transferee in the presence of the thing. The transferee is placed in a position enabling him to exercise physical control. The transferee must be placed in the position that he and he alone can deal with the thing.

## **13) Suspension of prescription and interruption of prescription [4]**

Suspension is the temporary suspension of a period of prescription. Here the period that has already run does not lapse, but the course is suspended and can recommence at a later date.

In the case of interruption, the period of prescription that has already run is terminated and the period of prescription must begin to run *de novo*.

#### **14) Ownership and limited real rights [6]**

The difference between ownership and limited real rights lies in the fact that ownership is a real right over one's own thing, whereas limited real rights are real rights to another person's thing. Furthermore ownership is the most comprehensive real right a person can have to a thing, whereas limited real rights are fundamentally limited in scope. For example, in principle the owner of a piece of land can use it as he/she wishes, whereas the entitlements of a usufructuary (limited real right holder in terms of a personal servitude) are clearly defined.

#### **15) Nuisance in a narrow sense and nuisance in a wide sense [4]**

Nuisance in a narrow sense occurs where a neighbour's right of personality or entitlement of use is infringed by, for example, noise or smell.

Nuisance in a wide sense results in damage to property.

#### **16) The *actio ad exhibendum* and the *condictio furtiva* under the following headings: (i) What can be claimed; (ii) Who can claim; (iii) Against whom action can be instituted [10]**

- (i) *Actio ad exhibendum*: Market value of the thing at the time of alienation or destruction.  
*Condictio furtiva*: The stolen thing or the highest value of the thing since theft.
- (ii) *Actio ad exhibendum*: The owner.  
*Condictio furtiva*: The owner or person with a lawful interest in the thing.
- (iii) *Actio ad exhibendum*: Former holder who mala fide alienated or destroyed the thing.  
*Condictio furtiva*: Thief or thief's heirs, or the person who removed the thing with deceitful intent.

#### **17) Free co-ownership and bound co-ownership and give an example of each [5]**

In free co-ownership, the co-ownership is the only relationship between the co-owners, e.g. Q and R purchased a farm jointly before they were married.

Bound co-ownership exists where there is an underlying legal relationship between co-owners which determines the basis of their co-ownership, e.g. a marriage in community of property.

#### **18) Expropriation and deprivation [5]**

Expropriation has a narrower meaning than deprivation. Expropriation involves the taking away of private property. Deprivation does not necessarily refer to the taking away of property. In a sense any interference with the use and

enjoyment of private property involves some deprivation with regard to the person who has a right to the property concerned. In this sense, deprivation refers to interference in the wide sense, whereas expropriation refers to interference in the narrow sense. Expropriations are a subspecies of deprivations.

### **19) *Kustingbrief* and covering bond [10]**

A *kustingbrief* is a special mortgage over and immovable thing to secure a principal debt that has been incurred in respect of the purchase of that thing where the deed of hypothecation is registered simultaneously with the deed of transfer of the particular thing.

A covering bond is a special mortgage over an immovable thing securing a future debt. It must be expressly declared to secure a future debt, and a maximum amount must be stipulated. The preference conferred by this bond is determined by the date of its registration, and not by the date on which the debt is incurred.

### **20) Lawful holder, bona fide unlawful holder, and mala fide holder. Give an example of each [7]**

A lawful holder is a person who physically controls a thing with the owner's permission or on another legal basis, with the intention to derive a benefit from it, e.g. a tenant.

A bona fide lawful holder is a person who physically controls the thing unlawfully but unaware of this fact, since he/she is under the incorrect impression that he/she has the necessary permission or legal ground to control it, e.g. a "lessee" who has unknowingly concluded an invalid lease contract.

A mala fide holder is a person who knows that he/she does not have the owner's consent to control the thing, but he/she still exercises physical control over it for the sake of the benefit he/she can derive from it, not with the intention of an owner, e.g. a "lessee" who remains on the leased premises after the lease has expired.

### **21) A real right and an entitlement [5]**

A real right is a lawful real relationship between a legal subject and a thing which confers direct control over the thing on the legal subject, as well as the relationship between the legal subject and all other legal subjects who must respect this relationship.

The term entitlement refers to the content of a right. The entitlements of a real right determine which acts a legal subject may perform in regard to a thing, e.g. may sell or use the thing.

### **22) Causal and abstract systems of the transfer of ownership [5]**

Where a legal system makes the transfer of a real right dependent on a valid underlying contract, in other words where there is a link between the validity of the reason for the transfer and its effectiveness, it is said to adhere to the causal system of the transfer of ownership.

Where, on the other hand, the transfer of ownership is concerned with the intention of the parties to transfer and receive ownership, regardless of whether such intention is supported by a valid underlying agreement, the abstract system of the transfer of ownership is said to be applicable.

### **23) The Sectional Titles Act and the Share Blocks Act in terms of the object and nature of the rights acquired [7]**

Sectional Titles Act:

The object acquired is a unit, which consists of a section (a defined part of a building such as a flat, garage, office, or shop in a building) together with an undivided share in the common property (the land and all permanent structures on the land that do not form part of a section). The nature of the right is a real right (ownership).

Share Blocks Act:

A shareholder in a share block company acquires a personal right to use part of a particular building (flat, office or shop) or a piece of land according to his/her shareholding.