

**LAWS 246
LAW OF PROPERTY
CLASS TEST: 25 MAY 2004
Time allocation: 90 minutes**

Please write your lecturer's name on your answer book

Answer any two of the four questions in section A. Answer question 5 in section B.

Section A
Answer any two questions

1. In *Eriksen Motors v Protea Motors* 1973 (3) SA 685 (A) the Appellate Division introduced an important qualification of the 'cash sales rule' that had been established in the earlier case of *Grosvenor Motors v Douglas* 1956 (3) SA 420 (A).
Discuss this statement.
2. What are the principal differences (if any) between the provisions dealing with acquisitive prescription in the Prescription Act 18 of 1943 and the Prescription Act 69 of 1969?
3. The need to distinguish between creditors' rights (also called personal rights) and real rights is largely restricted to rights in *immovable* property. This is because of the provisions of s 63 (1) of the Deeds Registries Act 47 of 1937.
Discuss why the Act makes it necessary to distinguish between the two types of right.
4. In *Info Plus v Scheelke* 1996 (4) SA 1058 (W) the court held as follows:

'When the full purchase price was paid . . . there was an existing agreement between Wesbank and the plaintiff that the plaintiff would from then onwards hold the motor vehicle as owner. No further agreement was required. The plaintiff did, however, not at that stage have physical control over the motor vehicle. No traditio brevi manu could therefore take place.'

This decision was reversed on appeal in *Info Plus v Scheelke* 1998 (3) SA 184 (SCA). Briefly discuss the basis for this reversal.

(5 marks each: 10 marks)

Section B

5. Amos owned a farm in the Limpopo River valley. He decided to diversify his farming activities and to develop a fruit canning business. To do this he needed to erect new buildings on his land. Anxious not to spend too much money on the project, he contacted Zozo Construction (Pty) Ltd. Zozo specialized in the construction of prefabricated steel structures. The company claimed that it could

'build' a permanent structure in fourteen days with 'no mess and no disruption to ongoing business'. The structures, Amos was promised by Zozo, were 'solid as a rock' and would 'last for fifty years if they were properly taken care of'.

Zozo entered into a contract with Amos to erect a warehouse and a fruit-canning plant on his farm. The warehouse and plant consisted of a number of separate, pre-fabricated steel walls. These were welded together on site and then bolted into concrete foundations. A steel roof was then attached to the structures by means of bolts. The concrete foundations on Amos's land were approximately 2 meters deep with a surface area of approximately five square meters. The structures were erected very quickly, and the fruit-canning operation was able to start almost immediately.

Unfortunately, Amos's business was soon badly affected by the prevailing drought in the area. In order to recover some of his financial loss, Amos decided to get out of the fruit business. He removed and sold all the machinery in the canning plant. However, he left the steel structures in place on the farm.

Warehouse Rental CC, a local business that rented storage space to farmers, entered into an agreement with Amos to buy the steel structures with the intention of removing them from his farm and re-erecting them on their premises in town. In terms of the agreement Warehouse Rental CC would be responsible for the removal of the steel structures and for ensuring the land was not damaged during the process of removal. Amos pointed out the structures to the manager of the company, Biff, at the time of the agreement. Biff said to Amos, 'They're bigger than I thought. I'm going to have to organize labour and transport. I will let you know when we are ready to come and fetch them'. Warehouse Rental CC paid Amos for the steel structures in three instalments, but did not remove them immediately.

Shortly after receiving the payment for the warehouse and canning plant structures, Amos decided to start a new business needing less machinery and capital. He decided, therefore, to start a dried fruit business. Since the steel structures were still in place, Amos used them to store the fruit. The dried fruit business was successful from the outset, and a year later Amos was made an offer he could not refuse. He sold the farm and the dried fruit business to Cimberly for R3 million.

Warehouse Rental CC heard about the sale of the farm and immediately approached Cimberly for permission to remove the two pre-fabricated steel structures. Cimberly refused, claiming that the structures belonged to her.

Advise Warehouse Rental CC on their prospects of success in a rei vindicatio against Cimberly.

(20 marks)

**Total for test: 30 marks
(The test counts for 20% of the year mark.)**