

08:30

11/11/05

F. HALL

EXAMS OFFICE  
USE ONLY

**University of the Witwatersrand, Johannesburg**

Course or topic No(s)

LAWS 147

Course topic names(s)  
Paper Number & title

FOUNDATIONS OF SOUTH  
AFRICAN LAW / RECEPTION

Examination / Test\* to be  
held during month(s) of (\*delete  
as applicable)

NOVEMBER 2005

Year of study  
(Art & Science leave blank)

FIRST

Degrees / Diplomas for which  
this course is prescribed  
(B<sup>Sc</sup> (Eng) should indicate which branch)

LLB / BA (LAW) / BCOM (LAW)

Faculty/ies presenting candidates

COMMERCE, LAW AND  
MANAGEMENT

Internal examiner(s)  
and telephone extension  
number(s)

PROF G ABRAHAM	X 78459
MR J-L SERFONTEIN	X 78464
MS S FODOR	011 789 9402
MS K PILLAY	X 78470

External examiner(s)

PROFESSOR D VAN DER MERWE  
(UNIVERSITY OF JOHANNESBURG)

Special materials required (graph/music/drawing  
paper maps, diagrams, tables, computer cards, etc)

NONE

Time allowance

Course no: LAWS 147 Hours 2

Instructions to candidates  
Examiners may wish to use this space to indicate,  
inter alia,  
the contribution made by this  
examination or test towards the year mark, if  
appropriate

- Write your lecturer's name on the front cover of every answer book that you hand in.
- Students must answer a TOTAL of FOUR questions in accordance with the instructions on page one of the question paper
- Total marks for this paper: 40
- This examination counts 40% of the overall year mark for the Foundations course.

**Internal Examiners or Heads of  
Departments are requested to sign  
the declaration overleaf**

### **Instructions:**

There are **two** sections with **three** questions each. **One** question from each section is **compulsory** and **one** is **optional**. Students must only do **four** questions **in total**. This examination will constitute 40% of your year mark and will count 40 marks in total.

### **Section A**

#### **Question one (Compulsory)**

Quintus the Jew is living in Rome as, a merchant of good Sallernian wine and making a very good living. As a reward for his wife who will turn 50 in the year 135 AD, he wants to buy a small seaside villa near Rome for their enjoyment and possible retirement. The only villa on the market belongs to an unscrupulous client of Quintus, Senator Marcus Flavius. Quintus approaches Flavius and the latter agrees to sell the villa to him. They transfer the villa to Quintus via traditio.

Eight months later Flavius threatens to evict Quintus because the villa has now become very fashionable and the price he could now get for the villa has increased twofold. Flavius is ready to repay Quintus the original amount Quintus paid for the villa, but Quintus refuses to be intimidated by Flavius and insists that although he did not use the correct mode of transfer of the property he is at least in the process of becoming Quiritrian owner through the passage of time. Flavius is not interested in these legal trivialities and uses his position as a Roman senator to remove Quintus with force from the villa, because according to Flavius he is still the Quiritrian owner of the villa.

Explain all the remedies available to both parties throughout this scenario using both the abstract and causal theories of the transfer of ownership.

[10]

#### **Question two (Optional)**

Explain in full the difference in classic Roman law between dominium (ownership) and possessio (possession).

[10]

#### **Question three (Optional)**

Discuss in full the rights 'in re aliena' (rights in the property of another) in classical Roman law.

[10]

[Total marks for Section A: 20]

## **SECTION B**

### **Question one (Compulsory)**

The remarkable feature of the consensual contracts of classical Roman law was that they crossed the immeasurable divide between form and content with great ease. Both the stipulation and the contract of sale developed into a virtually open-ended system of contract which could contain whatever one desired.

Discuss these remarkable characteristics of the Roman law contracts of Stipulatio and Emptio et venditio.

[10]

### **Question two (Optional)**

Gluttonicus is a wealthy Roman citizen. He goes to the sunny coastal town of Pompeii for a little shopping, rest and relaxation from the politics of the capital. One day, while wondering through the crowded market place, Gluttonicus happens upon the renowned slave trader Expensivibus. In amongst Expensivibus' slaves, is one Wretchedexterus, an apparently young and healthy North African man, with all his teeth. Gluttonicus decides that he must have this young slave as a waiter in his upmarket Restaurantium and Vomitorium. He checks Expensivibus' notice board and sees that Wretchedexterous' is problem free. After verbally confirming this with the slave dealer, he happily hands over the 50 gold pieces to Expensivibus and sends Wretchedexterous back to Rome. A little over 6 months later, things begin to go horribly wrong with Wretchedexterus — his teeth are all gone, he is continually ill and has oozing sores all over his forearms. Gluttonicus begins to lose custom in his Restaurantium. What are Gluttonicus' options? What were the distinctive features of the agreement he entered into? Whom should he contact? Does he have a remedy, and if so what is it?

[10]

### **Question three (Optional)**

Discuss critically the seller's duty to provide warranties against the eviction of the buyer in classical Roman law.

[10]

[Total marks for Section B: 20]

[TOTAL marks for this paper: 40]

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