COLLEGE OF LAW

SCHOOL OF LAW: DEPARTMENT OF JURISPRUDENCE

THE FOUNDATIONS OF SOUTH AFRICAN LAW (FLS102-W)

Tutorial Letter 104/2005

Dear Student

This tutorial letter contains the commentary on Assignment 02, in other words, the multiple-choice assignment for FLS102-W for students registered for the first semester. We refer you to Tutorial Letter 103/2005 where the issue of assignments is discussed fully. Those of you who have done the assignment, will now already have a few marks to your credit which will count toward your final examination result. The other students will just have to work a little harder when preparing for the examination! Keep in mind that submission of the assignment is not a requirement for writing the examination: all students registered for the course will automatically be submitted to the examination.

MULTIPLE CHOICE QUESTIONS

Question 1

(3) (a) is correct, (b) is incorrect.

The things mentioned in (a) were the only *res mancipi* that were recognised. These were the things that were regarded as very valuable by the Romans. All things that were not *res mancipi,* were classified as *res nec mancipi*. It is not correct to say that all things were *res nec mancipi,* because *res nec mancipi* obviously did not include *res mancipi* (textbook p 145).

Question 2

(1) (a) and (b) are correct.

Possession is protected by means of different interdicts. (See your textbook regarding the issue of protection of possession and the various interdicts which are of relevance.)

For the acquisition of possession, two elements were required, namely the *corpus*-element (physical control) and the *animus*-element (the intent to be in possession of a thing). It is said that possession was acquired *corpore et animo*, thus both elements had to be present (textbook p 151).

Question 3

(2) Primus will not succeed because Tertius had become the lawful owner of the slave by means of *usucapio* (prescription).

All the requirements are present in order for Tertius to acquire ownership by means of prescription.

- ★ Tertius received the slave from a non-owner. Secundus did not acquire ownership of the slave because there was no *iusta causa.*
- ★ The slave was a *res habilis*. There was no *vitium* attached to it and it was a *res in commercio.*
- ★ There was a *iusta causa* present, namely the contract of purchase and sale between Secundus and Tertius.
- ★ Tertius was *bona fide*, at the time of receiving the slave he believed that he became owner of the slave.
- ★ Tertius was in possession of the slave, both the *corpus* and *animus* elements were present.
- ★ He was in possession of the slave for a sufficient period of time, as required by Justinian, namely three years (textbook pp 175 - 177).

(1) is wrong, Secundus did not acquire ownership by means of prescription, because in his case there was no *iusta causa.* (He did not receive the slave by reason of a donation or contract of purchase and sale or an inheritance.)

(3) is wrong. Ownership was acquired by *usucapio* (prescription), not by means of *mancipatio*.

Question 4

(4) *constitutum possessorium*

This is the mode of delivery where ownership passes to the transferee (Secundus), but the transferor (Primus) remains in possession of the thing on the ground of an agreement between the parties (textbook p 171).

Question 5

(1) (a) and (b) are correct

The two main categories of servitudes are real and personal servitudes. The most important difference between the two is that the former is exercised for the benefit of the land of which the holder of the right is owner, and the latter is exercised by the holder of the right is his personal capacity.

A servitude is a limited real right and all limited real rights are per definition *iura in re aliena*, that is, a right to another person's thing (textbook p 191).

Question 6

(4) (a) is incorrect and (b) is correct

Only possession is transferred to the pledgee, not ownership. If the debtor still wants to utilize the thing offered as real security in order to earn an income, hypothec is the best form of real security to use. In the case of hypothec, neither ownership nor possession is transferred to the creditor (textbook pp 202 - 204).

Question 7

(2) Aulus must pay since he purchased an *emptio spei* (a wish)

The general rule is that the performance must exist at the time of conclusion of a contract of purchase and sale. There are two exceptions on this rule, namely the *emptio spei* and the *emptio rei speratae*. An *emptio spei* is the purchase of a wish, the purchaser takes a gamble: he is held liable for the purchase price even if the thing never comes into existence, as in this case. An *emptio rei speratae* is the purchase of an object hoped for, and is conditional upon the expected future object coming into existence (textbook pp 316).

Question 8

(3) (a) is correct, (b) is incorrect

Mutuum (loan for consumption) is a contract of loan with regard to a consumable object. This means that the borrower has to give an equivalent object back to the lender.

However, *mutuum* was a contract of loan of any consumable thing, it was not limited to food. Money is also a consumable thing (textbook p 269).

Question 9

(1) (a) and (b) are correct

In both the cases of letting and hiring of services and the *locatio conductio operarum* the parties were liable for *culpa levis abstracto* and they therefore had to act like a *bonus paterfamilias*, that is a good or careful father of the family. In the case of the former it would definitely include that the employer had to provide safe working conditions for the employee. In the case of *locatio conductio operarum* there was a maxim *imperitia culpae adnumeratur*, which meant that the contractor's lack of skill would amount to negligence (textbook pp 291-295).

Question 10

(2) is correct

(1) is incorrect as there was no category of *obligatio criminalis*

(3) is incorrect. Mistake with regard to the object of the contract had the result that the contract was void *ab initio.*

(4) is wrong because *mutuum* was a unilateral contract (textbook pp 226 269).

TRUE/FALSE QUESTIONS

Question 11

True (1)

Normally it is said that a contract of purchase and sale is *perfecta* when consensus has been reached over the object, the nature of the contract and the purchase price and there is no suspensive condition. This has the same meaning as this statement, namely that only payment of the purchase price and delivery of the thing are still lacking (textbook p 329).

Question 12

False (2)

The original *lex Aquilia* made provision for the slaying of a four-footed animal or a slave and the burning, braking or fracturing of any other object (textbook p 366).

Question 13

True (1)

A limited real right is a real right over a thing belonging to another person. Ownership is the strongest or most comprehensive real right. This means that an owner has far more competencies regarding a thing that the holder of a limited real right (textbook p 134).

Question 14

True (1)

The owner could institute the *rei vindicatio* against any person who infringed upon his right unlawfully. The *rei vindicatio* came from the *ius civile*, which meant that it was only available for Roman citizens (textbook p 183).

Question 15

False (2)

The required form of *mens rea* for theft was intent. A person had to have the intent to steal before he could be found guilty of theft (textbook p 360).

Question 16

False (2)

It is true that ownership was the most comprehensive right that a person could have with regard to a thing. An owner's right to dispose of his thing was however not truly absolute and unlimited. Think about the limitations placed upon ownership by the law of nuisance (textbook p 162).

Question 17

False (2)

Possessio ad interdicta and *possessio civilis* were the two categories of protected possession. *Possessio naturalis* was unprotected possession (textbook pp 153-155).

Question 18

True (1)

The *causa contractus* of a real contract was the delivery of the object of the contract (textbook p 267).

Question 19

False (2)

In iure cessio was a formal mode of transfer of ownership, but *traditio* was an informal mode (textbook pp 168 -169).

Question 20

False (2)

The Romans had a closed system of contracts, meaning that they only recognised a limited number of types of contracts (textbook p 224).

We trust that you have enjoyed this assignment and found it instructive. When you prepare for the examination, you must keep in mind that the format of the examination paper will resemble that of assignments 1 and 2. Furthermore some of the questions set in the assignments might be used again in the examination. That does, of course, mean that those of you who have done the assignments and studied the commentaries, will benefit in the examination.

With kind regards

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