

COLLEGE OF LAW

SCHOOL OF LAW: DEPARTMENT OF JURISPRUDENCE

FOUNDATIONS OF SOUTH AFRICAN LAW (FLS102-W)

TUTORIAL LETTER 103/2005

Dear Student

This tutorial letter contains information about the following:

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1 LECTURER FOR 2005

The course leader for 2005 will be:

Professor H van den Bergh
(tel: (012) 429-8497, e-mail: vdberh@unisa.ac.za)

Please contact her if you have any problems with the contents of the course.

2 INSTRUCTIONS IN THE STUDY GUIDE

We have had a number of inquiries from students regarding the meaning of words and phrases used in the instructions for students appearing in the study guide. We trust that the following explanations regarding these instructions will make it quite clear what you are expected to do.

You need not study / It is not necessary to study / Ignore / Read if you wish / Disregard / Read if you are interested: Sections indicated by these words/phrases/terms need not be read or studied. You may simply read through it if you wish to do so: it might add some perspective to the section you are studying.

Read / Only read / Read briefly / Simply read / Merely read / Read through / Take note of / Simply note / Note: Sections indicated by any of these words/phrases/terms need not be studied for examination purposes. They must, however, be read for insight and perspective. The work following such sections will be more comprehensible if you have the necessary background.

Read carefully / Study / Study carefully / Study well / You must know the content / Read with (great) attention / Study in broad outline / Study in broad terms / Study thoroughly / Take special note / Read and understand / Read and make sure that you understand (have a thorough understanding of) / Make sure that you understand and can explain / Paragraph or section or concept is important / Make sure that you know it / Make sure that you have a proper grasp of it / Know / Know well / Know by heart: Sections indicated by these words/phrases/terms need to be studied well for examination purposes.

You should also note that some of the questions set for the self-evaluation assignment which you are expected to do, and for which you also receive a commentary, will again be asked in the examination paper. They may appear in the same format (eg an essay-type question as an essay-type question) or in a different format (eg, a part of an essay-type question may be asked in the true/false section). Any question in the assignment, even those originating from sections you were only instructed to read, may be asked in the examinations since we shall assume that all students have done the assignment and studied the commentary containing the correct answers. In this way students who have worked hard during the semester and who have done everything they were expected to do in order to master the course, will benefit.

3 GLOSSARIUM

We regularly receive inquiries from students relating to the meaning of Latin terms used in this course (and many others!). Although Tutorial Letter 102/2005 contains a list of Latin terms (with English and Afrikaans translations), it is not complete.

A booklet (76 pages) containing a compilation of Latin words and phrases generally used in law with English translations entitled *Glossarium* (literally meaning a vocabulary or glossary of antiquated or foreign words that need explanation) by Dr Theo Rood was recently published. This book is now available directly from the author at a reduced price of R60-00 for registered students.

To order, please forward your **name, mailing address** and **student registration number** together with a **cheque** to the amount of R60-00 (made payable to Proctrust Publications) or a **photocopy of a cash deposit slip** to the amount of R60-00 (paid into the account of Proctrust Publications, ABSA Bank, account number 01043960306, ref no 10010868004) to:

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We trust that this book will be of assistance to you in all your legal studies as well as your profession after completion of your degree.

4 ASSIGNMENTS 01, 02 AND 03

ASSIGNMENT 01: SELF-EVALUATION ASSIGNMENT

This assignment is set in the format of Section A of the examination paper. It is a self-evaluation assignment. That means that you must not submit your answers to the university. You must answer the questions and then mark your own answers, using the commentary which we provide in this tutorial letter.

Question 1: Law of Things

- 1.1 Name **two** derivative modes of acquisition of ownership in Roman law. (1)
- 1.2 Name and briefly discuss the five requirements which were set for *usucapio* (prescription) in classical Roman law. (10)
- 1.3 Quintus has an usufruct over a herd of cattle. Due to an unusual drought he concludes an agreement with the owner of the cattle to sell the herd and invest the money. Is Quintus entitled to the interest accruing on the amount invested? Motivate your answer. (3)

Question 2: Law of Obligations

- 2.1 Name **two** of the *contractus re* (real contracts) in Roman law. (2)
- 2.2 Name **three** of the duties of the lessor in a Roman contract of lease. (3)
- 2.3 Briefly discuss the extension of the application of the *actio legis Aquiliae* in Roman law. (6)

[25]

IMPORTANT ANNOUNCEMENT**ASSIGNMENT CONTRIBUTING TO FINAL MARK**

The university authorities have decided that at least one assignment per semester in each module must be submitted **for a mark contributing to the final mark for the module**. One of the reasons for this step is that a student is required to provide proof that he or she “actively studied” before writing the (final) examination.

The assignment will count 10% towards a student’s final mark for the module.

HOW WILL THIS WORK? We will explain by way of an example: Your **final mark** for the module will be a combination of your **mark for the assignment** and your **examination mark**. Say you receive a mark of 70% for your assignment: 10% of 70 is 7. You will therefore carry forward 7 marks towards your final mark. If you are awarded a mark of, say, 48% in the examination, this will count 90% of the final mark: 90% of 48 is 43,2 = 43. Your final mark will therefore be calculated as follows: 7 (assignment) + 43 (examination mark) = 50 (final mark). The examination paper still counts 100 marks, but because the examination mark contributes only 90% towards the final mark, a student who failed to submit the assignment (or who obtained 0% for the assignment) will have to obtain at least 55% in the examination to pass the module ((90% of 55 is 49.5 = 50).

CLOSING DATES FOR THE ASSIGNMENT: The closing dates for the assignment are as follows:

First semester: **20 March 2005**
 Second semester: **31 August 2005**

No extension: The closing date for the assignment will be adhered to very strictly due to the fact that automatic admission to the examination applies for this module and because the commentary on the assignment will be dispatched to you on the closing date already. **Consequently no extension whatsoever will be granted for submission of the assignment and you are requested not to apply for extension under any circumstances.**

PLEASE CONSULT THE BOOKLET *Unisa: Services and Procedures* FOR INFORMATION AND INSTRUCTIONS REGARDING THE COMPLETION OF A MARK-READING SHEET.

ASSIGNMENT 02: ASSIGNMENT FOR 1ST SEMESTER STUDENTS

PLEASE NOTE THAT ONLY STUDENTS REGISTERED FOR THE FIRST SEMESTER MUST DO THIS ASSIGNMENT

Closing date: 1st semester: 20 March 2005

Answer all the questions on the mark-reading sheet, using an HB-pencil.
The unique number to be filled in on the mark-reading sheet is: **204977**

This assignment is set in the format of sections B (multiple-choice questions) and C (true/false statements) of the examination paper. You must answer the questions on the mark-reading sheet provided and submit it before the submission date (20 March 2005).

No extensions can be granted: The assignment is marked by computer.

The mark which you obtain for this assignment will be taken into consideration: it will constitute 10% of your final mark for the examination. For many students this might mean the difference between passing or failing, or between passing with a distinction or without one. You are strongly advised to do this assignment.

Question 1

Indicate the **correct** statement:

- (a) Land and buildings in Italy, certain rural praedial servitudes, slaves and certain beasts of draught and burden were classified as *res Mancipi*.
 - (b) All things, regardless of its value, were *res nec Mancipi*.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct; (b) is incorrect
 - (4) (a) is incorrect; (b) is correct (1)

Question 2

Indicate the **correct** statement:

- (a) Possession could be protected by means of possessory interdicts.
 - (b) Although possession is a factual situation, a second element, namely the will to possess, was necessary in order to acquire possession.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct, (b) is incorrect
 - (4) (a) is incorrect, (b) is correct (1)

Question 3

While Primus was away on holiday, his slave Servus wandered off to the neighbouring farm belonging to Secundus where he lived and worked for three years. Secundus wished to sell some of his slaves and believing that Servus was his own slave sold Servus to Tertius by means of *mancipatio*. Tertius had been in possession of Servus for three years when Primus found out about this. Primus instituted an action against Tertius.

Indicate the **correct** statement:

- (1) Primus will not succeed because Secundus had become lawful owner of the slave by means of *usucapio* (prescription).
- (2) Primus will not succeed because Tertius had become the lawful owner of the slave by means of *usucapio* (prescription).
- (3) Primus will not succeed because ownership was acquired by formal sale followed by delivery.
- (4) (1) and (2) are correct. (1)

Question 4

Indicate the **correct** statement:

Primus agrees to sell his wagon to Secundus on condition that he (Primus) may rent the wagon for a period of six months and they conclude such an agreement. Which form of delivery would take place?

- (1) *traditio de manu in manum* (delivery from hand to hand)
- (2) *traditio longa manu* (delivery with the long hand)
- (3) *traditio brevi manu* (delivery with the short hand)
- (4) *constitutum possessorium* (fictitious delivery) (1)

Question 5

Indicate the **correct** statement:

- (a) A distinction is made between personal servitudes (where the right was exercised for the benefit of the person himself) and a real or praedial servitude (where the right was exercised for the benefit of land of which the holder was the owner).
 - (b) A servitude is an example of an *ius in re aliena*.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct, (b) is incorrect
 - (4) (a) is incorrect, (b) is correct (1)

Question 6

Indicate the **correct** statement:

- (a) Ownership of a pledge was transferred by the pledgor to the pledgee in order to constitute a contract.
 - (b) One of the advantages of a hypothec was that it was not necessary to transfer the object to the creditor.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct and (b) is incorrect
 - (4) (a) is incorrect and (b) is correct (1)

Question 7

Auleus walked past Balbus and saw that Balbus has his fishing tackle with him. Auleus therefore reached an agreement with Balbus to buy all the fish that Balbus will catch that afternoon for 10 *aurei* irrespective of the size of the catch. Balbus returned in the evening with no fish and demanded 10 *aurei* from Auleus.

Indicate the **correct** statement:

- (1) Auleus does not have to pay as Balbus did not perform in terms of the agreement.
- (2) Auleus must pay as he purchased an *emptio spei* (a wish).
- (3) Auleus must pay as he purchased an *emptio rei speratae* (an object hoped for)
- (4) Auleus does not have to pay as no agreement was formed because the catch was not in existence at the time of the conclusion of the sale. (1)

Question 8

Indicate the **correct** statement:

- (a) In the case of *mutuum* (loan for consumption) the parties agreed that a thing or things would be lent by one of the parties to the other for consumption and that the latter would return a similar thing or things at a later stage.
 - (b) In the case of *mutuum* the obligation was only possible with regard to food such as wine, oil and corn.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct, (b) is incorrect
 - (4) (a) is incorrect, (b) is correct (1)

Question 9

Indicate the **correct** statement:

- (a) In the case of *locatio conductio operarum* (letting and hiring of services) the employer had to provide safe premises.
 - (b) In the case of *locatio conductio operarum* the employee's lack of skill would amount to negligence.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct; (b) is incorrect
 - (4) (a) is incorrect; (b) is correct (1)

Question 10

Choose the **correct** statement:

- (1) Roman jurists distinguished between the following obligations: civil obligations; natural obligations; *obligationes stricti iuris*; *obligationes bonae fidei* and *obligationes criminales*.
- (2) The important distinction between Roman law of contract and modern law of contract lies in the Roman law requirement of a *causa contractus*.
- (3) Mistake as to the object of the contract (*error in corpore*) meant that such a contract was voidable.
- (4) *Mutuum* (loan for consumption) was a bilateral contract. (1)

Question 11

A contract of sale was *perfecta* as soon as there was nothing outstanding except payment of the price and delivery of the object sold.

- (1) True
- (2) False (1)

Question 12

In its original guise the *Lex Aquilia* only catered for the unlawful killing of slaves.

- (1) True
- (2) False (1)

Question 13

A limited real right only existed over a thing of another and it could never be as comprehensive as ownership.

- (1) True
- (2) False (1)

Question 14

The *rei vindicatio* is the real action used to protect ownership and comes from the *ius civile*.

- (1) True
- (2) False (1)

Question 15

Negligence is the required form of *mens rea* for theft (*furtum*).

- (1) True
- (2) False (1)

Question 16

Ownership was the most comprehensive real right which could exist with regard to a thing. A Roman owner therefore had unlimited and absolute rights with regard to his thing.

- (1) True
- (2) False (1)

Question 17

Possessio naturalis was protected physical control.

- (1) True
- (2) False (1)

Question 18

A *contractus re* only came into existence once the parties had reached consensus and the thing had been delivered.

- (1) True
- (2) False (1)

Question 19

In iure cessio and *traditio* were both formal methods of transfer of ownership in Roman law.

- (1) True
 (2) False (1)

Question 20

Roman law utilised a general principle of contract in terms of which any agreement could constitute a contract if the essential requirements were met.

- (1) True
 (2) False (1)

ASSIGNMENT 03: ASSIGNMENT FOR 2ND SEMESTER STUDENTS

PLEASE NOTE THAT ONLY STUDENTS REGISTERED FOR THE SECOND SEMESTER MUST DO THIS ASSIGNMENT

PLEASE CONSULT THE BOOKLET *Unisa: Services and Procedures* FOR INFORMATION AND INSTRUCTIONS REGARDING THE COMPLETION OF A MARK-READING SHEET.

Closing date: 2nd semester: 31 August 2005

Answer all the questions on the mark-reading sheet, using an HB-pencil.
 The unique number to be filled in on the mark-reading sheet is: **341148**

This assignment is set in the format of sections B (multiple-choice questions) and C (true/false statements) of the examination paper. You must answer the questions on the mark-reading sheet provided and submit it before the submission date (31 August 2005).

No extensions can be granted: The assignment is marked by computer.

The mark which you obtain for this assignment will be taken into consideration: it will constitute 10% of your final mark for the examination. For many students this might mean the difference between passing or failing, or between passing with a distinction or without one. You are strongly advised to do this assignment.

Question 1

Indicate the **correct** statement:

- (a) In Roman law, the only requirement for the transfer of a real right was the existence of a legally valid ground (*iusta causa*).
 - (b) A real right could only be enforced against a specific person.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is incorrect, (b) is correct
 - (4) (a) is correct, (b) is incorrect (1)

Question 2

Indicate the **correct** statement:

- (a) Although in Roman law possession was a factual situation, a second element, namely the will to possess, was necessary in order to acquire possession.
 - (b) In Roman law possessors enjoyed considerable protection by means of different actions.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct; (b) is incorrect
 - (4) (a) is incorrect; (b) is correct (1)

Question 3

Albertus stole Darius's horse and sold it to Tertius who was bona fide and believed that Albertus was the owner of the horse. Tertius was in continuous possession of the horse for three years. Tertius did not become owner through *usucapio* because:

- (1) A horse is an immovable thing and three years is not a long enough period of possession.
- (2) Possession for a period of three years is not sufficient to acquire ownership of a movable thing.
- (3) There is no *iusta causa*, because Albertus cannot sell a thing if he does not have ownership over it.
- (4) There attaches a taint to a stolen thing and therefore it can not be the object of prescription. (1)

Question 4

Indicate the **correct** statement:

Primus agrees to sell his wagon to Secundus on condition that he (that is Primus) may rent the wagon for a period of six months and they conclude such an agreement. Which form of delivery would take place?

- (1) *traditio de manu in manum* (delivery from hand to hand)
- (2) *traditio longa manu* (delivery with the long hand)
- (3) *traditio brevi manu* (delivery with the short hand)
- (4) *constitutum possessorium* (fictitious delivery) (1)

Question 5

Indicate the **incorrect** statement:

- (a) In Roman law, the seller was obliged to transfer ownership of the object sold to the purchaser.
 - (b) If Balbus buys a flock of sheep from Aulus, all the lambs born after the contract became *perfecta* will belong to Balbus.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct; (b) is incorrect
 - (4) (a) is incorrect; (b) is correct (1)

Question 6

Indicate the **correct** statement:

- (a) In the case of a real servitude the holder of the servitude exercised the right or benefit in his capacity as owner of the thing.
 - (b) In the case of a personal servitude the holder of the servitude exercised the right or benefit in his personal capacity.
- (1) (a) and (b) are correct
 - (2) (a) and (b) are incorrect
 - (3) (a) is correct, (b) is incorrect
 - (4) (a) is incorrect, (b) is correct (1)

Question 7

Indicate the **correct** statement:

- (a) *Fiducia* was a very effective form of security for the creditor since he obtained possession of the thing as soon as the contract was concluded.
- (b) In the case of *pignus* (pledge) the pledgee was protected by the *actio Serviana* or the *actio quasi Serviana* in terms of which the pledgee could claim possession of the pledged thing from whoever was in possession thereof.

- (1) (a) and (b) are correct
- (2) (a) and (b) are incorrect
- (3) (a) is correct; (b) is incorrect
- (4) (a) is incorrect; (b) is correct (1)

Question 8

Indicate the **correct** statement:

Paulus and Stichus enter into a contract in terms of which Paulus buys a plot of land. In the contract it is stipulated that Plot 1 is sold. Paulus refuses to pay Stichus because he says that the plot which was indicated to him was not Plot 1.

- (1) The contract is void as a result of *error in corpore* (mistake regarding the object of the contract).
- (2) The contract is voidable as a result of *error in corpore* (mistake regarding the object of the contract).
- (3) The contract is voidable as a result of *error in nomine* (mistake regarding the name of the object of the contract.)
- (4) None of the above is correct. (1)

Question 9

Indicate the **correct** statement:

Petrus and Quintus agree that Quintus will have the use of Petrus's chariot for six months. Quintus agrees to pay Petrus 600 *denarii*. The contract concluded between the two men is a contract of:

- (1) *commodatum* (loan for use)
- (2) *depositum* (deposit)
- (3) *mutuum* (loan for consumption)
- (4) *locatio conductio rei* (letting and hiring of an object) (1)

Question 10

Error in persona was mistake concerning:

- (1) The object of the contract.
- (2) The description of the object.
- (3) The nature of the act to be performed.
- (4) The identity of the other party. (1)

Question 11

Vis maior or act of God denotes a force which cannot be resisted and include acts of nature, such as an earthquake, lightning, flood, as well as acts of man such as riots and armed robbery.

- (1) True
- (2) False (1)

Question 12

Pledge came into existence by way of agreement and delivery of the object.

- (1) True
- (2) False (1)

Question 13

The action for theft in Roman law was the *actio furti*.

- (1) True
- (2) False (1)

Question 14

The *rei vindicatio* was a real action for the protection of ownership which derived from the *ius gentium*.

- (1) True
- (2) False (1)

Question 15

A limited real right only existed over a thing of another and it could never be as comprehensive as ownership.

- (1) True
- (2) False (1)

Question 16

Ownership was the most comprehensive real right which could exist with regard to a thing. A Roman owner therefore had unlimited and absolute rights with regard to his thing.

- (1) True
- (2) False (1)

Question 17

In Roman law an obligation could be defined as a legal bond between two or more people in terms of which one person (the creditor) could claim a performance from the other (the debtor).

- (1) True
- (2) False (1)

Question 18

A *contractus re* only came into existence once the parties had reached consensus and the thing had been delivered.

- (1) True
- (2) False (1)

Question 19

An owner of property could register a servitude over his own property.

- (1) True
- (2) False (1)

Question 20

Under the extended *Lex Aquilia* the owner of an injured slave had a claim for damages under Chapter 3.

- (1) True
- (2) False (1)

5 COMMENTARY ON ASSIGNMENT 01

Question 1: Law of Things

1.1 There were three derivative modes of acquisition of ownership in Roman law. You were asked to mention two of these modes for one mark. You could have mentioned any two of the following modes of acquisition of ownership for half a mark each:

- 1 *Mancipatio* (½)
- 2 *In iure cessio* (½)
- 3 *Traditio* / Delivery (½)

(For the answer see the textbook, par 9.4.2.)

1.2 Here you should have mentioned the five requirements for *usucapio* and discussed each requirement briefly. Each requirement and its discussion count two marks. For mentioning the requirement correctly (which is underlined in the answer that follows) you can award yourself one mark and for a correct discussion or elaboration on the requirement you can award yourself another mark.

- 1 The thing must have been capable of being acquired in ownership by means of prescription. / The thing must have been a *res habilis*. (1) It is difficult to explain *res habilis*: Generally speaking it referred to all objects which could be traded without restrictions / things which were not obtained by theft or force. (1)
- 2 The thing must have been in possession / *possessio*. (1) Possession was regarded as direct, continuous physical control. (1)
- 3 There must have been a (good) reason / title / *iusta causa*. (1) This meant that there must have been a reason which the law under normal circumstances recognised as sufficient for the passing of ownership. (1)
- 4 The acquirer or possessor must have acted in good faith / *bona fide*. (1) The acquirer or possessor should have been under the *bona fide*, but mistaken, impression that ownership of the object was transferred to him when the object was initially delivered. (1)
- 5 A specific time period / *tempus* must have passed. (1) Different periods were prescribed for different kinds of things. / Classical period: 2 years for immovables (land); 1 year for movables. (1)

(For the answer see the textbook, par 9.4.3(a)(iii).)

- 1.3 No, Quintus is not entitled to the interest accruing on the amount invested. (1) The person entitled to the usufruct, was not allowed to change the nature of the thing given in usufruct. / The usufruct, in terms of the *salva rerum substantia* requirement, had to be exercised while preserving the nature and essence of the thing. (1) An usufruct came to end when the object in respect of which the usufruct existed, ceased to exist. (1)

(For the answer see the textbook, par 10.3.2(a) and par 10.5, as well as the study guide, p 40.)

Question 2: Law of Obligations

- 2.1 There were four *contractus re* (real contracts) in Roman law. You were asked to mention two of these contracts for two marks. You could have mentioned any two of the following four real contracts for one mark each:

- 1 Loan for consumption / *Mutuum* (1)
- 2 Loan for use / *Commodatum* (1)
- 3 Deposit / *Depositum* (1)
- 4 Pledge / *Pignus* (1)

(For the answer see the study guide, pp 58-59.)

- 2.2 In Roman law the lessor in a contract of lease had five duties. You were asked to name three of these duties for three marks. You could have named any three of the following five duties of the lessor for one mark each:

- 1 The lessor had to *deliver* the object of lease *within a reasonable time after the conclusion of the contract*. (1)
- 2 The lessor had to ensure *undisturbed use and enjoyment* of the object of lease *for the duration of the term of lease*. (1)
- 3 The lessor had to guarantee that the lessee would *not be evicted*. (1)
- 4 The lessor had to *maintain* the object of lease for the entire term of lease. (1)
- 5 The lessor had to act like a *reasonable man* in all his dealings with the lessee during the term of lease. (1).

(For the answer see the textbook, par 15.2.2 (d) and the study guide, p 63.)

- 2.3 This question counts six marks. However, you will notice that the memorandum according which the question is marked provides for more marks. You could have mentioned any six of the following facts for one mark or half a mark each:

- 1 The *praetor*, jurists and Justinian were responsible for the extension and refinement of the *Lex Aquilia*. (1/2)

- 2 The *Lex Aquilia* was adapted to meet the needs of an evolving society. (1/2)
- 3 The extension of the *Lex Aquilia* occurred in respect of the following aspects of the original Act:
- (a) “Slaying (*occidere*)” was extended to include causing of death by means of a direct positive act. The *praetor* extended the application of the Act to include cases where death of slaves and four-footed animals was caused by way of a direct positive act, and not only by means of “slaying” or a “death-blow” as required by Chapter 1 of the Act. (1)
 - (b) The meaning of “*pecus*” (four-footed animals which graze in herds) was extended. The description of “*pecus*” was extended to include other four-footed animals such as pigs, elephants and camels, but two-footed animals and wild animals were still excluded. (1)
 - (c) Instances of wrongful wounding or killing of another’s slaves and animals were also included. The wrongful wounding or killing of another person’s slaves and four-footed animals which could not be brought under the scope of Chapter 1 was incorporated through interpretation into the provisions of Chapter 3 of the Act. (1)
 - (d) Any damage caused by a direct positive act was now included. Any form of damage to property (as opposed to the original requirements of burn, break and smash) caused by a direct positive act was included in the provisions of Chapter 3 of the Act. (1) Immediate physical contact between the wrongdoer and the damaged object was however still an essential requirement. (1)
 - (e) Indirect positive acts now also caused liability. Damage caused by indirect positive acts were also acknowledged for the purposes of liability under the *Lex Aquilia* from the classical period. (1)
 - (f) The element of fault (*mens rea*) was introduced. Since indirect positive acts were sufficient to establish liability in terms of the *lex Aquilia*, the element of guilt / fault was introduced. (1)
 - (g) Malice (*dolus*) or negligence (*culpa*) became requirements for liability. The introduction of the element of fault resulted in malice or negligence becoming requirements for liability in terms of the *Lex Aquilia*. (1)

(For the answer see the textbook, par 19.4.)

6 EXAMINATION PAPER

Although the assignment contributes to your final mark, submission of the assignment is not a prerequisite for admission to the examination in this module. As a registered student for this module, you have automatic admission to the examination, whether you have submitted the assignment or not. The choice whether to submit the assignment or not is yours, but be reminded that should you choose not to submit the assignment, you will forfeit your assignment mark and will have to obtain at least 55% in the exam to pass the module.

Format of the examination paper:

The examination consists of one two-hour paper which counts 100 marks. (As set out in the above example, the examination mark counts 90% of the final mark for the module and the assignment 10%.)

Section A will be in the same format as Assignment 01 (self-evaluation assignment): written answers to essay-type questions.

Sections B and C will be in the same format as Assignment 02 (1st semester students) and Assignment 03 (2nd semester students): multiple-choice and true/false questions to be answered on a mark-reading sheet which will be provided with the examination paper.

We trust that you will be well-prepared for the examination and that you will complete it successfully.

With kind regards

PROFESSOR H VAN DEN BERGH

JANUARY 2005
PRETORIA