

**COLLEGE OF LAW
SCHOOL OF LAW
DEPARTMENT OF JURISPRUDENCE**

FOUNDATIONS OF SOUTH AFRICAN LAW (FLS102-W)

TUTORIAL LETTER 103/2006

Dear Student

This tutorial letter contains (1) comments on Assignments 01 and 03, (2) general comments on the assignments, (3) information about the examination, and (4) corrections to be made in the study guide.

1 COMMENTS

1.1 Comments on Assignment 01 (written assignment)

Section A: The law of things

Question 1

1.1 No, Rufus is not entitled to take his sword back with force. Martialis was a *mala fide* possessor and this form of possession falls under *possessio ad interdicta*, or possession protected by means of interdicts (pp 11-12 of the study guide). Martialis would be able to apply for an interdict against Rufus, the *interdictum utrubi*, to regain possession of the sword (p 17 of the study guide).

1.2 No, Silvius would not be able to become owner of the sword through prescription. A requirement for acquiring ownership through prescription is that the object must be a *res habilis* (capable of civil ownership). A stolen thing does not qualify as a *res habilis* (p 41 of the study guide).

Question 2

Constitutum possessorium is applicable here (p 37 of the study guide).

Question 3

3.1 Pledge (*pignus*) is the best form of real security in this case (pp 77-78 of the study guide). In the case of pledge, the debtor relinquishes possession of the thing until all outstanding debt has been paid. However, the debtor retains ownership of the thing.

3.2 Hypothec (*hypotheca*) is the best form of real security to employ here (pp 78-79 of the study guide). The advantage of hypothec is the fact that the debtor retains possession as well as ownership of the thing used as security. Serverus could thus offer his farm implements to Sulpicius under a hypothec, but still retain possession of them and earn an income to repay his debt.

Section B: The law of obligations

Question 1

No, Lucius does not have a legal remedy. The contract *in casu* is a loan for use and this contract falls under the category of real contracts. The requirements for the constitution of a real contract are consensus and delivery of the object of the contract (p 156 of the study guide). Boranus has not yet delivered the cart to Lucius, and no contract has come into existence between them yet. Thus Lucius cannot hold Boranus accountable on the grounds of breach of contract.

Question 2

No, Zasius is not entitled to repayment of the purchase price. In the present case the contract of purchase and sale was *perfecta* because there was consensus on the *essentialia* of the contract and no suspensive condition (p 120 of the study guide). Because the contract was *perfecta*, the risk of damage to or destruction of the object for sale passed to the buyer. Since the risk lies with Zasius, he can not reclaim the purchase price.

Question 3

3.1 *Actio furti manifesti* with which four times the value of the stolen object can be claimed (p 175 of the study guide).

3.2 *Actio furti nec manifesti* with which twice the value of the stolen object could be claimed. (p 175 of the study guide).

1.2 Comments on Assignment 03 (multiple-choice questions)

Question 1

(1) is the correct option. The *ius civile* was applicable to Roman citizens, while the *ius gentium* was applicable to foreigners (pp xiv-xv of the study guide).

Question 2

(4) is the correct option (p 7 of the study guide). (1) is incorrect since a real right can only be enforced against someone who encroached on the person's right to a thing, and not against anyone (p 3 of the study guide). (2) is incorrect since using the footpath did not benefit the dominant tenement. The *praedio utilitas* requirement was not complied with (p 64 of the study guide). (3) is incorrect since nonreplaceable things could not be used in a contract of loan for consumption (pp 5, 158 of the study guide).

Question 3

(3) is the correct option. X could not acquire ownership of Y by means of prescription since one of the requirements for prescription was not complied with. There was no *iusta causa* (just cause), for Y just arrived on X's farm – there was no legal transaction (p 42 of the study guide). When answering a question like this (3b), you should approach it analytically. The first step would have been to determine what the requirements for prescription are, and then you should apply them to the facts supplied, thus ascertaining whether all the requirements for prescription have in fact been complied with.

Question 4

(2) is the correct option. (1) is incorrect in view of the *superficies solo cedit* rule which determines that everything permanently attached to land becomes part thereof. This is therefore a case of *accessio*, and land is always the principal object. The owner of the land will also be the owner of the buildings on the land (p 50 of the study guide). (3) is incorrect since a personal servitude could be constituted over both movables and immovables (p 68 of the study guide). (4) is incorrect. The creditor received both ownership and possession of the thing (p 76 of the study guide).

Question 5

(4) is the correct option. See pp 96-97 of the study guide.

Question 6

(2) is the correct option. A material mistake has the effect that a contract is void *ab initio* (p 99 of the study guide).

Question 7

(4) is the correct option. (1) is incorrect, since the Romans had a closed system of contracts (p 88 of the study guide). (2) is incorrect, for *stipulatio* was a verbal contract (p 86 of the study guide). (3) is incorrect, for the *causa contractus* in the case of real contracts was delivery of the object (p 87 of the study guide).

Question 8

(1) is the correct option. See p 135 of the study guide. Although this rule is discussed under the contract of undertaking work (letting and hiring of a piece of work), it was also applicable in the case of a contract of employment (service contract).

Question 9

(4) is the correct option. See p 174 of your study guide where the three forms of theft are discussed. Appropriation was an original method of acquiring ownership (p 45).

Question 10

(4) is the correct option. In terms of the *lex Aquilia* damage might have been caused deliberately or negligently. See p 179 in your study guide.

2 GENERAL COMMENTS ON THE ASSIGNMENTS

Although a large number of students obtained good marks for the assignments (eg 97%, 93% and many more than 75%), most students did not do well. We have marked more than 3000 assignments and have come to the following general conclusions:

It was obvious that most of the students did not work through the study guide systematically in order to familiarise themselves with the content of this new subject before attempting the assignments. These students had apparently merely read the questions and then tried to find the answers, without taking into consideration that law is an interactive science and that the various sections of a specific subject relate to each other. For example, when answering a question on the law of obligations, you should not only study the specific contract(s), but also the general principles of the law of obligations. It is obvious that many students merely submitted their assignments to obtain admission to the examination, and were not concerned about the marks obtained. We understand their position: we are aware that some students had to submit up to ten assignments, that others wrote semester examinations, and that many received their study material quite late. There was consequently not much time to become familiar with the study material. Many students – with disastrous results – tried to answer their assignments on the basis of their general knowledge!

When you answer the questions relating to factual situations (and there will be many in the examination paper!), we would like to point out that you should always start by identifying the problem. Only then should you look at the general principles or requirements applicable, and apply them to the facts. This is also the method followed by legal advisers, lawyers and advocates.

Those students who did the assignments and obtained marks for them will now have a year mark (a possible 25%) which will be taken into account when their final mark is determined. Please note that you now have plenty of time to study for the examination. Study all the work carefully, and make sure that you understand everything. The examination mark constitutes 75% of your final mark, and even those students without a year mark can pass if they work hard!

Many students did not answer the questions, but merely repeated the facts given in the question. No marks were awarded for that. You must answer the question, and then give reasons for your answer.

3 INFORMATION ABOUT THE EXAMINATION

The examination will be written in October, and that means that you still have plenty of time to prepare yourselves well. You must study the study guide carefully, and keep in mind that the assignments and comments on the assignments form part of the study material that has to be studied for the examination. You will find similar questions (and perhaps even identical questions!) in the examination paper. The paper will consist of three sections: Section A, which must be answered directly on the examination paper in the space provided. It will consist of short and longer questions (similar to those in Assignment 01). Some will be scenario questions, whilst others will be purely factual. This section will count 50 marks. Section B will consist of 30 multiple-choice questions (like Assignment 03) which must be answered on a mark reading sheet. Section C will consist of 20 true-or-false questions. In this last section there will be 20 statements, and you will have to indicate whether each statement is true or false. This section must also be answered on a mark reading sheet.

4 CORRECTIONS TO BE MADE IN THE STUDY GUIDE

The study guide which you have received and which you must study for this module is new. Unfortunately, you may find that there are some printing errors in it. Please make the following amendments, and we would appreciate you informing us if you find any more gremlins!

- * p 11: par 2.2 line 5: "A person who had obtained **ownership** a thing ... : please delete "ownership"
- * p 62: par 1.2.1: line 7: "Remember that the **dominant** tenement ..."
- * p 97: Diagram 10: Under (1) "Condition" the heading of the column on the left is "Suspensive condition", and the one on the right must read **Resolutive condition**
- * p 143: par 3.2: line 6: "The **mandator** had to exercise"

We hope that you enjoy this module, and wish you the best of luck with your preparation for the examination. We trust that you will benefit from the module and that it will be of assistance in your further studies. Remember, this course contains the foundations of some of the South African private law modules, and the better you know these foundations, the more you will benefit from this module in your future studies. When studying subjects like the law of things, the law of contracts and the law of delict, you will find that you are already familiar with the basic classifications, terminology, concepts, systems, and so on of these subjects. This knowledge will facilitate your studies and increase your comprehension of the work.

With kind regards

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