



PVL201-T

October/November 2005

LAW OF PROPERTY

100 Marks

Duration : 2 Hours

EXAMINERS :

FIRST :

MR PD BRINK

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SECOND :

PROF SJ SCOTT

This paper consists of 3 pages.

ANSWER ALL THE QUESTIONS

QUESTION 1

Define:

- (a) ownership (6)
 - (b) personal servitude (6)
 - (c) manufacture (*specificatio*) (4)
 - (d) *actio ad exhibendum* (4)
- [20]

QUESTION 2

- (a) Name the:
 - (i) requirements for the *rei vindicatio*, as well as three restrictions on its application (6)
 - (ii) three different situations that can be distinguished under constructive delivery (*traditio ficta*) (3)
 - (iii) three chief methods by which possession is terminated (3)
 - (iv) five orders that the Land Claims Court can make in terms of section 35(1) of the *Restitution of Land Rights Act 22 of 1994* (5)

[TURN OVER]

- (b) Things can be classified according to their relation to humans or to their inherent characteristics and qualities. Rearrange the second column below so that the examples listed in the second column correspond to the things in the first column:

(i)	<i>res publica</i>	cigarettes	
(ii)	consumable thing	land	
(iii)	divisible thing	the sea-shore	(3)
			[20]

QUESTION 3

- (a) Distinguish between:
- (i) original and derivative methods of acquisition of ownership (4)
 - (ii) lawful holder, *bona fide* unlawful holder and *mala fide* unlawful holder and give one example of each (7)
 - (iii) suspension and interruption of prescription (5)
- (b) What does the ownership of a sectional title owner consist of in terms of the *Sectional Titles Act 95 of 1986*? (4)
- [20]

QUESTION 4

- (a) S has entered into an agreement with Q and R in terms of which they grant him the right to use the road over their farm to the farm *Waterval*. This agreement is in writing, but it is not registered. Q and R sell the farm and the new owner, who knows about the servitude agreement, refuses to allow S to use the road. Did S obtain a real right? Briefly substantiate your answer with reference to case law. (5)
- (b) How was the subtraction from the *dominium*-test formulated in *Ex parte Geldenhuys* (1926 OPD 155)? (7)
- (c) Indicate what the position is if co-owners cannot reach agreement on the subdivision of their common property. (5)
- (d) Name the criteria applied by the courts to determine whether a movable thing is attached to an immovable thing by means of building (*inaedificatio*). (3)
- [20]

QUESTION 5

- (a) S hands ostrich feathers to Z to sell on his behalf. Z is unable to sell all the feathers. Z advances a large sum of money to S and agrees that he will try to sell the feathers, if necessary at a public auction. The feathers will serve as a pledge object for repayment of the money which Z has advanced to S. Z sells the feathers at a public auction and buys them at a very low price. S avers that this sale is invalid since it was executed in terms of an invalid summary execution clause (*parate executie*-clause). Will S succeed? Substantiate your answer with reference to case law. (8)
- (b) M approaches the court for an interdict ordering the respondent, Ceres Municipality, to prevent acorns and the leaves of oak trees growing alongside the streets of Ceres from falling onto his property. M avers that the oak trees constitute a nuisance on his property in that the falling oak leaves have blocked the gutters of his building, thereby causing rainwater to damage the walls of the building. Fully discuss the way in which the court approached this problem in *Malherbe v Ceres Municipality* (1951 (4) SA 519 (A)). (9)
- (c) X and Y donate that part of their farm which their son, S leases from them to S. They obtain permission to subdivide the farm and S erects a fence on the new boundary. He fetches X and Y and together they drink a toast at the new gate. X says to S: "Son, I am glad that this piece of land is now your property!" Did S become owner of the land? Substantiate your answer. (3)
[20]

TOTAL MARKS: [100]

UNISA



PVL201-T

oktober/November 2005

SAKEREG

100 Punte

Tydsduur : 2 uur

EKSAMINATORE :

EERSTE :

TWEEDE :

MNR PD BRINK

DR P BAKKER

PROF SJ SCOTT

MEV IM KNOBEL

Hierdie vraestel bestaan uit 3 bladsye.

BEANTWOORD AL DIE VRAE

VRAAG 1

Definieer:

- | | | | |
|-----|-------------------------------------|------|---|
| (a) | eiendomsreg | (6) | 5 |
| (b) | persoonlike serwituut | (6) | 3 |
| (c) | saakvorming (<i>specificatio</i>) | (4) | |
| (d) | <i>actio ad exhibendum</i> | (4) | 4 |
| | | [20] | |

VRAAG 2

- | | | | |
|-------|---|-----|---|
| (a) | Noem die: | | |
| (i) | vereistes vir die <i>rei vindicatio</i> sowel as drie beperkings op die toepassing daarvan | (6) | 6 |
| (ii) | drie verskillende situasies wat onderskei kan word by konstruktiewe lewering (<i>traditio ficta</i>) | (3) | |
| (iii) | drie hoofmetodes van beëindiging van besit | (3) | 3 |
| (iv) | vyf bevele wat die Grondeisehof kan maak ingevolge artikel 35(1) van die <i>Wet op Herstel van Grondregte</i> 22 van 1994 | (5) | |

[BLAAI OM]

(b) Sake kan volgens hulle verhouding met mense of volgens hulle inherente kenmerke en eienskappe ingedeel word. Herrangskik die tweede kolom hieronder sodat die voorbeelde wat in die tweede kolom gelys word, ooreenstem met die sake in die eerste kolom:

(i)	<i>res publica</i>	sigarette	
(ii)	verbruikbare saak	grond	
(iii)	deelbare saak	die strand	(3) [20]

VRAAG 3

- (a) Onderskei tussen:
- (i) oorspronklike en afgeleide wyses van eiendomsverkryging (4) 33
 - (ii) regmatige houer, *bona fide* onregmatige houer en *mala fide* onregmatige houer en gee een voorbeeld van elk (7) 6
 - (iii) skorsing en stuiting van verjaring (5) 2
- (b) Waaruit bestaan die eiendomsreg van 'n deeltiteleienaar ingevolge die *Wet op Deeltitels* 95 van 1986? (4) 34
[20]

VRAAG 4

- (a) S sluit 'n ooreenkoms met Q en R ingevolge waarvan hulle hom die reg verleen om die pad oor hulle plaas na die plaas "Waterval" te gebruik. Hierdie ooreenkoms is op skrif, maar dit is nie geregistreer nie. Q en R verkoop die plaas en die nuwe eienaar, wat van die serwituutooreenkoms weet, weier om S toe te laat om die pad te gebruik. Het S 'n saaklike reg verkry? Motiveer u antwoord kortliks met verwysing na regspraak. (5) 3
- (b) Hoe word die "subtraction from the *dominium*"-toets in *Ex parte Geldenhuys* (1926 OPD 155) geformuleer? (7) 6
42
- (c) Dui aan wat die posisie is indien mede-eienaars nie kan ooreenkoms oor die onderverdeling van hulle gemeenskaplike eiendom nie. (5)
- (d) Noem die kriteria wat die hof aanwend om te bepaal of 'n roerende saak deur bebouing (*inaedificatio*) aan 'n onroerende saak aangeheg is. (3) 45
[20]

VRAAG 5

- (a) S oorhandig volstruisvere aan Z om dit namens hom te verkoop. Z kan nie al die vere verkoop nie. Z skiet 'n groot som geld voor aan S en stem in dat hy sal probeer om die vere op 'n openbare veiling te verkoop, indien nodig. Die vere dien as pandsaak vir betaling van die geld wat Z aan S voorgeskiet het. Z verkoop die vere op 'n openbare veiling en koop dit teen 'n baie lae prys. S beweer dat hierdie koopkontrak ongeldig is omdat dit ingevolge 'n ongeldige parate eksekusie-klousule uitgevoer is. Sal S suksesvol wees? Motiveer u antwoord met verwysing na regspraak. (8)
- (b) M nader die hof om 'n interdik teen die respondent, Ceres Munisipaliteit, te verkry om te verhoed dat akkers en blare van akkerbome wat langs Ceres se strate groei, in sy erf val. M beweer dat die akkerbome 'n oorlas op sy eiendom veroorsaak het omdat die blare die geute van sy gebou verstop het, en die reënwater gevolglik die mure van die gebou beskadig het. Bespreek die wyse waarop die hof hierdie probleem in *Malherbe v Ceres Municipality* (1951 (4) SA 519 (A)) benader het volledig. (9)
- (c) X en Y skenk daardie deel van hulle plaas wat hulle seun, S, by hulle huur, aan S. Hulle kry toestemming om die plaas te onderverdeel, en S rig 'n draad op die nuwe grens op. Hy gaan haal X en Y, en hulle drink saam 'n heildronk by die nuwe hek. X sê vir S: "Seun, ek is bly hierdie stuk grond is nou jou eiendom!" Het S die eienaar van die grond geword? Motiveer u antwoord. (3)
[20]

TOTALE PUNTE: [100]