

- (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	(3)
(ii)	consumable thing	land	[20]
(iii)	divisible thing	the sea-shore	

## 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]

## QUESTION 3

Distinguish between:

- (a) land/praedial servitudes and personal servitudes (8)
- (b) lawful holders and unlawful holders (2)
- (c) original and derivative methods of acquisition of ownership (6)
- (d) real rights and personal rights under the following headings:
- (i) object
  - (ii) absoluteness
  - (iii) preference
  - (iv) publicity

(4),  
[20]

## QUESTION 4

- (a) T steals Q's car. T takes the car to Highway Motors, which undertakes to:
- (i) install a new crank shaft
  - (ii) install a device to improve petrol consumption
  - (iii) replace the upholstery with leather upholstery

In terms of their agreement, T would pay R 600-00, R 200-00 and R 300-00 to Highway Motors for the above services respectively. On passing the garage, Q sees her car and institutes the *rei vindicatio* against Z, the owner of Highway Motors. Z, who was *bona fide* all the time, and who was under the impression that T was the owner of the car, relies upon his lien and alleges that he is entitled to keep the car until the full R1 100-00 has been paid for his services.

Discuss Z's legal position. (15)

- (b) S decides to develop a part of his farm Highlands as a residential township. It appears that a regional development plan in terms of a physical planning scheme provides that the area is to be utilised for agricultural purposes only.

S approaches you for legal advice. Fully advise S on his legal position.

(5)  
[20]

[TURN OVER]

## QUESTION 5

- (a) Employees from the local authority, without notice and without the proper authority, start to break up the dam on S's farm and dig trenches across his land. This is all part of an extensive sewerage system which also crosses S's farm. While working on the farm, they use some of the farm implements which S bought on credit with reservation of ownership from the cooperative. Their use of these implements renders them useless. Discuss the remedy available to S with reference to the requirements for that remedy and to case law. (10)
- (b) D, E, F and G work on *Pulang*, a farm belonging to Q and R. D and E live on the farm and have the right to use a portion of the farm for cropping or grazing purposes in exchange for the work they perform for Q and R. F and G work on the farm, are paid a monthly wage and reside there. Because of continual crop failures Q and R are forced to reduce their farming activities. As a result they must evict some of the workers on the farm.

Indicate which statutes the parties could possibly invoke in support of their claims and briefly explain why these statutes could be applicable.

(10)  
[20]

TOTAL MARKS:

[100]

- (f) two limitations imposed on ownership in terms of the law and mention one example of each class of limitation (3)  
[20]

## QUESTION 3

Distinguish between:

- (a) nuisance in a narrow sense and nuisance in a wide sense (4)
- (b) the *actio ad exhibendum* and the *condictio furtiva* under the following headings: (10)
- (i) what can be claimed
  - (ii) who can claim
  - (iii) against whom can be claimed
- (c) delivery with the short hand and *constitutum possessorium* and illustrate the difference between the two with reference to examples (6)  
[20]

## QUESTION 4

- (a) Z rents a billiard room in Newtown from S. In terms of the lease agreement Z is not allowed to serve alcohol on the premises or keep the billiard room open after twelve at night. S and Z insert a term in the agreement entitling S to take control of the premises if Z contravenes any of the terms of the lease. Z serves alcohol to his friends on the premises and holds rowdy parties until sunrise. The neighbours complain to S. S removes the locks from the building and fits new locks. He locks all entrances to the premises and effectively debar Z from using or entering the premises. Z applies for a spoliation order. Will Z succeed? Substantiate your answer with reference to the nature of the remedy, the requirements for successful reliance on the remedy and the relevant judgment. (7)
- (b) S bought harvesting machinery from Z. He borrowed money from X and Y to pay for the machinery. Z delivered the machinery to S, who used it on his farm. S then sold the machinery at the same price that he had paid for it to his parents, X and Y, and leased it back from them. S becomes insolvent and X and Y claim the machinery from the insolvent estate, relying on the *rei vindicatio*. They claim that they became owners in terms of *constitutum possessorium*. The trustee of the insolvent estate opposes their *rei vindicatio*. On what grounds can he oppose their claim? Fully substantiate your answer with reference to case law. (9)
- (c) Wm Spilhaus sold a number of loose components of an irrigation system to Pumps for Africa with the explicit reservation of ownership, until the purchase price was paid in full. Before the purchase price was paid, Pumps for Africa installed the irrigation system on the farm of Konstanz Properties. The latter paid Pumps for Africa, but in turn it failed to pay Wm Spilhaus. Konstanz Properties claimed the pumps and the connections in the pumphouse. They rely on their ownership of the pumps and connections. Discuss the court's application of the intention requirement in the case of building. (4)  
[20]

[TURN OVER]

## QUESTION 5

- (a) X and Y are co-owners of a farm. They built a road on the farm, which they use to transport lime to the market. Without X's knowledge and approval Y gives permission to a neighbour, Z, to use the road so that he can transport his lime to the market. X was unhappy about this. It is alleged that a contract was concluded between Y and Z in terms of which Y undertook to transport the lime on behalf of Z, using the road over the farm. X is unhappy about the heavy traffic on the road and asks Y to revoke his permission to Z. X also asks Z to discontinue his activities. Neither Y nor Z takes any notice of X's requests. Advise X on the applicable remedies, the legal principles involved and her chances of success. Refer to case law. (8)
- (b) S sells a part of his farm to Z, a developer, who wants to develop a township on the land. After Z has obtained permission for the development, he lays out the area in terms of township establishment legislation as Newtown Extension 1. Newtown Extension 1 consists of 30 stands of 500 square metres each. Against the title deeds of each stand in Newtown Extension 1 conditions of title are inserted into all the title deeds which provide that only a single residential dwelling house shall be erected on the stand. Explain how a court would go about determining whether the restrictive condition constitute a deprivation in terms of section 25 of the 1996 Constitution. (5)
- (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)
- (d) X and Y are co-owners of the farm Waterford. X dies and Y is his only heir. Y starts a nursery on the farm. She spends a lot of money on getting the business off the ground. A few months later, there is a fire on the farm. Both the nursery and a section of the farm house are destroyed. Some antique furniture and paintings are also ruined. A number of pieces of furniture which were badly damaged are thrown on the municipal rubbish dump from which other people remove the usable items. Y was not fully insured and in order to cover her losses she sells the remaining antique furniture and paintings. However, she is not able to meet all her obligations and she is declared insolvent.

State four methods by which ownership is terminated in this example with reference to the factual situation in the question. (4)  
[20]

TOTAL: [100]

**QUESTION 3**

Distinguish between:

- (a) real right and entitlement (5)
- (d) deprivation and expropriation (6)
- (c) causal and abstract systems of the transfer of ownership (5)
- (d) nuisance in the narrow sense and nuisance in the broad sense (4)

**[20]****QUESTION 4**

- (a) A company, Durban Oil, operated an oil refinery on its land situated within the municipal area of Durban City Council. The latter, when assessing the company's land for rating purposes, took into account the value of certain steel tanks which were part of the refinery. These tanks were used for storing unfinished and finished products. The valuers regarded the steel tanks as buildings on the land and therefore part of the immovable property. Durban Oil objected to the valuation and argued that the tanks were not buildings and therefore not part of the land. They regarded the tanks as movable things. Will Durban Oil succeed in their objection to the valuation? Substantiate your answer with reference to the relevant case law. (10)
- (b) X and Y purchase their farm implements in terms of a credit agreement from the cooperative, K. K reserves ownership until X and Y have paid the final instalment. X and Y pay a fairly high rate of interest to the cooperative and Q, X's father-in-law, undertakes to pay the full amount to the cooperative. X and Y can then repay the money to him in instalments. The cooperative transfers ownership to Q.
- (i) What form of transfer of ownership applies here? (1)
- (ii) Explain the operation of this form of delivery with reference to case law. (9)

**[20]****QUESTION 5**

- (a) A number of dwellings were erected on land belonging to X, without the latter's consent. The unauthorised dwellings were demolished by X and the materials with which the dwellings had been constructed were burnt. Y applied for a spoliation order restoring control of her dwelling.
- (i) What would Y have to prove to succeed with this remedy? (3)
- (ii) Will Y succeed in these circumstances? Refer to case law. (7)
- (b) X and Y purchase their farm implements from K, the cooperative, in terms of a credit agreement. The cooperative is not prepared to grant credit to X and Y unless they give security that the instalments will be paid. They agree that K will reserve ownership. Before X and Y have paid the last instalment they become insolvent. Advise K as to his legal position. (5)
- (c) Q is the owner of a car. T, a thief, steals the car. T gives the car to his son, Tt, to use. Can Q institute the *condictio furtiva* against Tt? Substantiate your answer and briefly mention the requirements for this remedy. (5)

**[20]****TOTAL MARKS: [100]**