

VRAAG 5

- (a) B en C, plaasarbeiders van S, okkupeer en bewerk 'n gedeelte van *Highlands*. S het 'n onderonise met sy werkers en hulle weier om te werk. S verwyder hulle meubels en klere uit hulle huise. Hy breek hulle huise af. Daarna verbrand S al hulle meubels en klere, asook die materiaal waarvan hulle huise gebou is. B en C verlang onmiddellike teruggewe van hulle besittings.
- (i) Adviseer B en C oor die mees geskikte remedie en oor die vereistes vir 'n geslaagde beroep op hierdie remedie. (3)
- (ii) S beweer dat B en C tydens die relevante tyd nooit in beheer van hulle huise was nie aangesien hulle op 'n ander deel van die plaas gebly het waar hulle besig was om te oes. Sal S slaag met hierdie verweer? Motiveer u antwoord. (2)
- (iii) S opper die verweer dat dit onmoontlik is om die meubels, klere en boumateriaal terug te gee aangesien dit vernietig is. Sal S slaag met hierdie verweer? Motiveer u antwoord met verwysing na regspraak. (5)
- (b) Daar is 'n windpomp op X en Y se plaas wat hulle nie meer gebruik nie. S koop dit by hulle. Sy pa neem hom na die windpomp en wys dit aan hom. Hy sê: "Hier is die windpomp. Jy moet dit kom afbreek en wegneem". S onderneem om dit te doen so gou as wat hy tyd kry. Vir ses maande besoek S nie sy ouers of verwyder die windpomp nie. Z nader X en Y en bied aan om die windpomp te koop. Hulle verkoop dit aan Z. Z verwyder die windpomp en rig dit op sy plaas op. S eis lewering van die windpomp van Z met die *rei vindicatio*.
- (i) Wat moet S bewys om met die *rei vindicatio* te slaag? (10)
- (ii) Sal S daarin slaag om al die vereistes van die *rei vindicatio* te bewys (verwys na die wyse waarop eiendomsreg verkry is in hierdie voorbeeld)? [20]
- Motiveer u antwoord met verwysing na regspraak. (10)

TOTAAL PUNTE: [100]

VRAAG 3

Onderskei tussen:

- (a) vrye en gebonde mede-eiendomsreg. Gee een voorbeeld van elk. (5)
- (b) onteiening en ontneming (5)
- (c) *kustingbrief* en dekkingsverband (8)
- (d) die objek van 'n saaklike reg en die objek van 'n persoonlike reg (vorderingsreg) (2)
[20]

VRAAG 4

- (a) Bespreek *Ex parte Geldenhuys* (1926 OPD 155) met besondere verwysing na die *subtraction from the dominium*-toets. (8)
- (b) Wat is die oogmerk met die herstelproses en tot watter datum kon eise ingevolge die *Wet op die Herstel van Grondregte* 22 van 1994 ingestel word? (4)
- (c) S huur 'n motor van 'n motorverhuuringsagentskap. Ingevolge die huurooreenkoms is S aanspreeklik vir alle skade aan die motor. S gaan met vakansie en versoek Z, sy skoonsuster, om die motor in haar motorhuis te parkeer solank hy weg is. Sy staan sy versoek toe. Een Saterdag verwyder Z die motor uit die motorhuis en neem haar dogter na die dokter. Die motor word van die dokter se parkeerarea gesteel. Geen spoor kan van die motor gevind word nie en die motorverhuuringsagentskap eis die motor van S. Aangesien S nie in staat is om die motor terug te besorg nie, betaal hy die motorverhuuringsagentskap en eis die geld van Z.
 - (i) Watter aksie is toepaslik?)
 - (ii) Wat is die vereistes vir hierdie aksie? (8)
 - (iii) Sal S slaag? [20]Verwys na regspraak.

PVL201-T

Mei/Junie 2004

SAKEREG

Tydsduur : 2 uur

100 punte

EKSAMINATORE :**EERSTE :**PROF SJ SCOTT
MEV IM KNOBELMNR PD BRINK
DR P BAKKER**TWEEDE :**

PROF JEANNIE VAN WYK

Hierdie vraestel bestaan uit 3 bladsye**BEANTWOORD AL DIE VRAE****VRAAG 1**

Definieer:

- (a) saakvorming (*specificatio*) (4)
- (b) *attornment* (5)
- (c) eiendomstreg (5)
- (d) serwituit (6)

[20]**VRAAG 2**

Noem:

- (a) die vereistes vir estoppel (4)
- (b) die drie kriteria wat deur die howe aangewend word om te bepaal of 'n roerende saak aan 'n onroerende saak gelieg is op so 'n wyse dat dit deur natrekking deel van die onroerende saak geword het (3)
- (c) ses maniere waarop eiendomstreg deur regswerking beëindig word (6)
- (d) die riglyne vir 'n geslaagde beroep op 'n noodweg soos dit uiteengesit is in *Van Rensburg v Coetzee* (1979 (4) SA 655 (A)) (6)
- (e) een wet wat die herverdeling van grond bevorder (1)

[20]

QUESTION 5

- (a) B and C, farm workers of S, occupy and cultivate a portion of Highlands. S has an argument with the farm workers and they refuse to work. S removes their furniture and clothing from the houses. He breaks down their houses. Thereafter S burns all their furniture and clothing, as well as the materials with which the houses were built. B and C want immediate restoration of their possessions.
- (i) Advise B and C on the most appropriate remedy and what the requirements for successful reliance on this remedy are. (3)
- (ii) S avers that B and C were never in control of the houses because, at the relevant time, they were living elsewhere on the farm where they were harvesting their crops. Will S succeed with this defence? Substantiate your answer. (2)
- (iii) S raises the defence that it is impossible to restore the furniture, the clothing and the building materials, since they had been destroyed. Will S succeed with this defence? Substantiate your answer with reference to case law. (5)
- (b) There is a windmill on the farm of X and Y, which they no longer use. S purchases it from them. His father takes him to the windmill and shows it to him. He says: "Here is the windmill. You must come and dismantle it and take it away". S undertakes to do this as soon as he has the time. For six months S does not visit his parents or remove the windmill. Z approaches X and Y and offers to buy the windmill. They sell it to Z. Z removes the windmill and erects it on his farm. S claims delivery of the windmill with the *rei vindicatio* from Z.
- (i) What must S prove to succeed with the *rei vindicatio*? (10)
- (ii) Will S succeed in proving all the requirements for the *rei vindicatio* (refer to the way in which ownership was acquired in this example)? [20]
- Substantiate your answer with reference to case law.

TOTAL MARKS: [100]

QUESTION 3

Distinguish between:

- (a) free co-ownership and bound co-ownership. Give one example of each. (5) ⁴
- (b) expropriation and deprivation. (5) ³
- (c) *kustingbrief* and covering bond (8) ²
- (d) the object of a real right and the object of a personal right (creditor's right) (2) ⁰

[20] ⁰**QUESTION 4**

- (a) Discuss *Ex parte Geldenhuis* (1926 OPD 155) with special reference to the *subtraction from the dominium* test. (8) ⁰
- (b) What is the purpose of the restitution process and until which date could claims be instituted in terms of the *Restitution of Land Rights Act 22 of 1994*? (4) ¹
- (c) S rents a car from a car rental agency. In terms of the lease agreement S is liable for all damage to the car. S goes on holiday and asks Z, his sister-in-law, to park the car in her garage while he is away. She agrees. One Saturday Z removes the car from the garage and takes her daughter to the doctor. The car is stolen from the doctor's parking area. The car cannot be traced and the car rental agency claims the car from S. Since S is unable to return the car, he pays the car rental agency and claims the amount from Z.
- (i) Which action is applicable?)
- (ii) What are the requirements?)
- (iii) Will S succeed?)
- Refer to case law. (8)

[20]

PVL201-T

May/June 2004

PROPERTY LAW

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

PROF SJ SCOTT
MRS IM KNOBELMR PD BRINK
DR P BAKKER

SECOND :

PROF JEANNIE VAN WYK

This paper consists of 3 pages

ANSWER ALL QUESTIONS

QUESTION 1

Define:

- (a) manufacture (*specificatio*)
- (b) attornment
- (c) ownership
- (d) servitude

(4) 1
(5)
(5)
(6)
[20]

QUESTION 2

Name:

- (a) the requirements for estoppel (4)
- (b) the three criteria applied by the courts to determine whether a movable thing is attached to an immovable thing by means of accession in such a fashion that it becomes part of the immovable thing (3)z
- (c) six ways in which ownership is terminated by operation of law (6)z
- (d) the guidelines for a successful application for the granting of a way of necessity as set out in *Van Rensburg v Coetzee* (1979 (4) SA 655 (A)) (6)
- (e) one statute which promotes the redistribution of land (1)
(1)z
[20] 5

TURN OVER