

**PVL201-T**

October/November 2004

**PROPERTY LAW**

Duration : 2 Hours

100 Marks

**EXAMINERS :**

FIRST :

PROF SJ SCOTT  
MRS IM KNOBEL  
PROF JEANNIE VAN WYK

MR PD BRINK  
DR P BAKKER

SECOND :

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This paper consists of 3 pages.

**ANSWER ALL QUESTIONS**

**QUESTION 1**

Define:

- (a) real right (5)
  - (b) land (praedial) servitude (5)
  - (c) pledge (6)
  - (d) expropriation as contemplated in section 25 of the *Constitution of the Republic of South Africa* 108 of 1996 (4)
- [20]

**QUESTION 2**

Name the:

- (a) requirements for an interdict and one decision in which they were set out (5)
- (b) valid defences that may be raised against the spoliation remedy (5)
- (c) two elements of possession (2)
- (d) conditions under which movables belonging to third persons are subject to the landlord's (lessor's) tacit hypothec as stated in *Bloemfontein Municipality v Jackson's Ltd* (1929 AD 266) (6)
- (e) two requirements for the applicability of an enrichment lien (right of retention) as emphasised in *Buzzard Electrical (Pty) Ltd v 158 Jan Smuts Avenue Investments (Pty) Ltd* (1996 (4) SA 19 (A)) (2)

[20]

**QUESTION 3**

Distinguish between:

- (a) original and derivative methods of acquisition of ownership (5)
- (b) delivery with the long hand (*traditio longa manu*) and delivery with the short hand (*traditio brevi manu*) (8)
- (c) the *Sectional Titles Act* 95 of 1986 and the *Share Blocks Control Act* 59 of 1980 in terms of the object and nature of the rights acquired (7)

[20]

**QUESTION 4**

- (a) How was the subtraction from the *dominium*-test formulated in *Ex parte Geldenhuis* (1926 OPD 155)? (5)
- (b) Can a co-owner burden the thing without the consent of the other co-owners? Substantiate your answer. (5)
- (c) Briefly discuss the principles laid down by the court in *Malherbe v Ceres Municipality* (1951 (4) SA 510 (A)) to determine whether falling leaves and protruding branches of trees constitute a nuisance. (7)
- (d) Indicate whether the control of a *bona fide* possessor is lawful, or not. Substantiate your answer. (3)

[20]

[TURN OVER]

**QUESTION 5**

- (a) S, the lessee of a section of "Waterval", decides to build a dairy and stables on this farm which belongs to X and Y. S buys all the equipment to build the dairy from the cooperative, K. The cooperative reserves ownership of the equipment until the final instalment had been paid. A team of experts who work for K install the dairy and stables under the supervision of S. They build the stable with bricks on a concrete floor. They also install all the pipes and tanks for the proper functioning of the dairy. Two years after S has started the dairy and before the cooperative has been paid in full, S becomes insolvent and the trustee of his insolvent estate argues that all the structures and equipment are movable assets which form part of the insolvent estate. X and Y claim that they became co-owners by means of accession, and the cooperative claims that it is the owner of the attachments.

Advise with reference to authority:

- (i) X and Y (5)  
 (ii) the trustee (2)  
 (iii) the cooperative (3)
- (b) S and his friends go for a hunting weekend. S mortally wounds a kudu. The kudu manages to escape into thick bushes. S gives up the search when it becomes dark. On his way home from a party, Z, one of the farm labourers stumbles upon the carcass of the dead kudu. He fetches his friends and they slaughter the animal and take the meat to their respective homes. Z is accused of theft of the kudu. The state alleges that S was the owner of the kudu and that Z stole the kudu. To succeed the state will have to prove that S was the owner.

Will the state succeed in proving that S was the owner? Substantiate your answer with reference to case law. (6)

- (c) Q and R have an agreement with S in terms of which he can use a road over their farm free of charge for as long as he lives. This agreement is registered against the title deed of *Pulang*. Q and R's farm. S dies and his wife wishes to use the road.

Briefly advise S's wife. (2)

- (d) Q and R have an agreement with S, the owner of Highlands, in terms of which they undertake to register a servitude over their farm in favour of Highlands. After the servitude has been registered, S dies and his wife now wishes to use the road.

Under what circumstances will S's wife be entitled to use the road? (2)

[20]

**TOTAL: [100]**



**PVL201-1**

Oktober/November 2004

**SAKEREG**

Tydsduur : 2 uur

100 Punte

**EKSAMINATORE :**

EERSTE :

) TWEDE :

PROF SJ SCOTT

MEV IM KNOBEL

PROF JEANNIE VAN WYK

MNR PD BRINK

DR P BAKKER

**Hierdie vraestel bestaan uit 3 bladsye.****ANTWOORD ALLE VRAE****VRAAG 1**

Definieer:

- (a) saaklike reg (5)
- (b) grondserwitnoot (5)
- (c) pand (6)
- (d) ontiening soos beoog in artikel 25 van die *Grondwet van die Republiek van Suid-Afrika* 108 van 1996 (4)
- [20]

**VRAAG 2**

Noem die:

- (a) vereistes vir 'n interdik en een saak waarin dit uiteengesit is (5)
- (b) geldige verwerre wat teen die mandament van spolie geopper kan word (5)
- (c) twee elemente van besit (2)
- (d) voorwaardes waaronder goedere wat aan derdes behoort aan die silswyende hipoteek van die verhuurder onderworpe sal wees soos uiteengesit in *Bloemfontein Municipality v Jackson's Ltd* (1929 AD 266) (6)

- (e) twee vereistes wat in *Buzzard Electrical (Pty) Ltd v 158 Jan Smuts Avenue Investments (Pty) Ltd* (1996 (4) SA 19 (A)) beklemtoon is vir die toepassing van 'n verrykingsretensiereg (2)  
[20]

**VRAAG 3**

Oonderskei tussen:

- (a) oorspronklike en afgeleide wyses van eiendomsverkryging (5)
- (b) lewering met die lang hand (*traditio longa manu*) en lewering met die kort hand (*traditio brevi manu*) (8)
- (c) die *Wet op Deeltitels* 95 van 1986 en die *Wet op die Beheer van Aandeleblokke* 59 van 1980 met verwysing na die objek en aard van die verkreeë regte (7)  
[20]

**VRAAG 4**

- (a) Hoe is die *subtraction from the dominium*-toets in *Ex parte Geldenhuis* (1926 OPD 155) geformuleer? (5)
- (b) Kan 'n mede-eienaar die saak beswaar sonder die toestemming van die ander mede-eienaars? Motiveer u antwoord. (5)
- (c) Bespreek kortliks die beginsels wat deur die hof in *Matherbe v Ceres Municipality* (1951 (4) SA 510 (A)) neergeleë is om te bepaal of vallende blare en oorhangende takke op oorlas neerkom. (7)
- (d) Toon aan of die beheer van 'n *bona fide* besitter regmatig is, al dan nie. Motiveer u antwoord. (3)  
[20]

[BLAAI OM]

## VRAAG 5

- (a) S, wat 'n deel van Waterval huur, besluit om 'n melkery en stalle op die plaas, wat aan X en Y behoort, aan te lê. S koop al die toerusting om die melkery aan te lê by die koöperasie, K. Die koöperasie behou eiendomsreg op die toerusting voor totdat die laaste paaiement betaal is. 'n Span deskundiges wat vir K werk, bou die melkery en stalle onder S se toesig. Hulle bou die stal van bakstene, op 'n betonblad. Hulle installeer ook al die pype en tenks vir die behoorlike funksionering van die melkery. Twee jaar nadat S met die melkery begin het, en voordat die koöperasie ten volle terugbetaal is, raak S insolvent, en die trustee van die insolvente boedel beweer dat al die strukture en toerusting roerende bates is, wat deel uitmaak van die insolvente boedel. X en Y beweer dat hulle deur natrekking mede-eienaars geword het, en die koöperasie beweer dat hy die eienaar van die aanhegtings is.

Adviseer met verwysing na gesag:

- (i) X en Y (5)  
 (ii) die trustee (2)  
 (iii) die koöperasie (3)
- (b) S en sy vriende gaan jag vir die naweek. S word 'n koedoe dodelik. Die koedoe ontsnap egter in digte bosse. S staak die soektog toe dit donker word. Op pad huis toe na 'n partytjie kom Z, 'n plaaswerker, op die dooie koedoe se karkas af. Hy gaan haal sy vriende en hulle slag die dier af en neem die vleis na hulle onderskeie huise toe. Z word aangekla van diefstal van die koedoe. Die staat beweer dat S die eienaar van die koedoe was en dat Z die koedoe gesteel het. Om te slaag sal die staat moet bewys dat S die eienaar was.

Sal die staat kan bewys dat S die eienaar was? Staaf u antwoord met verwysing na regspraak.

(6)

- (c) Q en R het 'n ooreenkoms met S ingevolge waarvan hy 'n pad oor hulle plaas gratis kan gebruik vir solank as wat hy leef. Hierdie ooreenkoms is teen die titelakte van *Pulang*. Q en R se plaas, geregistreer. S gaan dood en sy vrou wil die pad gebruik.

Adviseer S se vrou kortliks.

(2)

- (d) Q en R het 'n ooreenkoms met S, die eienaar van *Highlands*, ingevolge waarvan hulle onderneem om 'n serwitut oor hulle plaas ten gunste van *Highlands* te registreer. Nadat die serwitut geregistreer is, gaan S dood en sy vrou wil nou die pad gebruik.

Onder watter omstandighede sal S se vrou geregtig wees om die pad te gebruik?

(2)

[20]

**TOTAAL: [100]**

