

## PVL303-Y

October/November 2007

## PROPERTY LAW

Duration : 2 Hours

100 Marks

**EXAMINERS :**

FIRST :

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SECOND :

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This paper consists of 4 pages.

ANSWER ALL THE QUESTIONS

## QUESTION 1

Define:

- (a) thing (5)
- (b) real remedy (7)
- (c) personal servitude (8)
- [20]

## QUESTION 2

Name the:

- (a) requirements for an interdict (3)
- (b) factors that are taken into consideration in determining just and equitable compensation in terms of section 25(3) of the 1996 Constitution (5)
- (c) requirements for a successful reliance on acquisition of ownership by means of appropriation (5)
- (d) two basic forms of security (2)
- (e) two remedies available in the case of non-compliance with conditions of title (2)
- (f) two limitations imposed on ownership in terms of the law and give one example of each class of limitation (3)

[20]

[TURN OVER]

**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:
- (i) what can be claimed
  - (ii) who can claim
  - (iii) against whom action can be instituted (10)
- (c) the three different factual situations encountered in constructive or fictitious delivery and give an example of each (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 stay 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 debars 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 of the machinery 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. Wm Spilhaus claimed the pumps and the connections in the pumphouse from Konstanz Properties. 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]

### 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 is unhappy about the heavy traffic on the road. 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 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 the land as a township. 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 could interpret whether the condition of title 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? Fully 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 after the nursery opens, 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]**