

QUESTIONS STUDY UNIT 3 / VRAE STUDIE-EENHEID 3

Definition of OWNERSHIP

Definisie van EIENDOMSREG

1. Distinguish between **ownership** and its **entitlements**. (3)

ANSWER:

Ownership is the most comprehensive real right (1) a person can have with regard to a thing. The capacities (1) conferred on the legal subject by virtue of ownership are called entitlements. Entitlements are the contents of the right. It entitles a legal subject to perform certain acts (1) in regard to the thing.

1. *Onderskei tussen **eiendomsreg** en die **inhoudsbevoegdhed** van eiendomsreg.* (3)

ANTWOORD:

Eiendomsreg is die mees omvattende saaklike reg (1) wat 'n mens met betrekking tot 'n saak kan hê. Die bevoegdhed (1) wat uit hoofde van eiendomsreg aan 'n regs subjek verleen word, staan bekend as inhoudsbevoegdhed. Inhoudsbevoegdhed is dus die inhoud van die reg op grond waarvan 'n regs subjek sekere handeling (1) met betrekking tot die besondere saak verrig.

2. Name and briefly describe with reference to **examples** the **entitlements** of ownership. (14)

ANSWER:

- Use (1)

An owner's entitlement to use and enjoy the thing is generally the most important entitlement of ownership. A person can for example use his car by driving it (1) to work every day.

- Fruits (1)

An owner is also entitled to the fruits, natural or civil, of the thing. Natural fruits are for example the apples (½) from your apple tree and civil fruits are for example the rent (½) that you get from your house.

- Control (1)

An owner has the entitlement to physically control the thing. If I carry my handbag over my shoulder I have (direct) physical control over my handbag (1).

- Consume ($\frac{1}{2}$) or destroy ($\frac{1}{2}$)

An owner is entitled to consume or destroy the thing. I can consume my perfume by spraying it ($\frac{1}{2}$) on my body and in the end there will be no perfume left. I can destroy my painting by burning ($\frac{1}{2}$) it.

- Alienate (1)

An owner is entitled to alienate the thing by means of a sale ($\frac{1}{2}$) or donation ($\frac{1}{2}$).

NB Please note that students often confuse “alienate” and “burden”. Make sure that you understand the difference.

- Burden (1)

An owner is entitled to burden the thing by granting other people limited real rights to the thing, for example with pledge, mortgage or servitude (1).

- Vindicate (1)

Because of the inviolability of ownership, an owner is entitled to claim his/her thing from anyone who is in control of the thing, simply by proving ownership. If X took my diamond ring I can vindicate (claim back) (1) the ring from X by proving that I am the owner of the ring.

2. Noem en bespreek kortliks die **inhoudsbevoegdhe**de van eiendomsreg met verwysing na **voorbeelde**. (14)

ANTWOORD:

- *Gebruik (1)*

'n Eienaar se inhoudsbevoegdheid ten aansien van gebruik en genot van die saak is normaalweg die belangrikste inhoudsbevoegdheid wat eiendomsreg verleen. Ek kan my kar gebruik deur dit elke dag werk toe te bestuur (1).

- *Vrugte (1)*

'n Eienaar het ook die inhoudsbevoegdheid om die vrugte, natuurlik of burgerlik, van die saak te gebruik. Natuurlike vrugte is byvoorbeeld die appel ($\frac{1}{2}$) van 'n appelboom en burgerlike vrugte is byvoorbeeld huurgeld ($\frac{1}{2}$) vir my huis.

- *Beheer (1)*

'n Eienaar het die inhoudsbevoegdheid om die saak fisies te beheer. As ek my handsak oor my skouer dra oefen ek (direkte) fisiese beheer oor my handsak (1) uit.

- *Verbruik (½) of vernietig (½)*

'n Eienaar het die bevoegdheid om die saak te verbruik of te vernietig. As ek my parfuum aanspuit (½) verbruik ek dit en sal daar later niks parfuum oor wees nie, maw ek sal dit op gebruik. Ek kan my skildery vernietig deur dit te verbrand (½).

- *Vervreem (1)*

'n Eienaar het die bevoegdheid om 'n saak te vervreem deur middel van verkoop (½) of skenking (½).

LW Baie student raak deurmekaar met “vervreem” en “beswaar”. Maak seker dat u die onderskeid verstaan.

- *Beswaar (1)*

'n Eienaar het die bevoegdheid om die saak te beswaar deur beperkte saaklike regte ten aansien van die saak aan andere te verleen byvoorbeeld met 'n pandreg, 'n verbandreg of 'n serwituut (1).

- *Vindiseer (1)*

Weens die onskendbaarheid van eiendomsreg het 'n eienaar die bevoegdheid om sy/haar saak van enigiemand wat in beheer van die saak is, te eis bloot deur eiendomsreg te bewys. As X my diamantring geneem het kan ek die ring vindiseer (terugeis) (1) deur bloot my eiendomsreg te bewys.

Limitations on OWNERSHIP

Beperkings op EIENDOMSREG

3. Name any two **statutory** limitations on ownership. (2)

ANSWER:

- limitations on the use of movable things:
 - fire-arms (*Firearms Control Act 60 of 2000*)
 - motor vehicles (the *National Road Traffic Act 93 of 1996*)
 - drugs (the *Drugs and Drugs Trafficking Act 140 of 1992*)
- limitations on immovable things:
 - land (the *Expropriation Act 63 of 1975*; the *Subdivision of Agricultural Land Act 70 of 1970* and the *Advertising on Roads and Ribbon Development Act 21 of 1940*)

(Maximum 2 marks)

For examination purposes you do not have to remember the number and year of these Acts.

3. Noem enige twee **statutêre** beperkings op eiendomsreg. (2)

ANTWOORD:

- *beperkings op die gebruik van roerende sake:*
 - *vuurwapens (die Wet op Beheer van Vuurwapens 60 van 2000)*
 - *motorvoertuie (die Nasionale Padverkeerswet 93 van 1996)*
 - *dwelmmiddels (die Wet op Dwelmmiddels en Dwelmsmokkelary 140 van 1992)*
- *beperkings op onroerende sake:*
 - *grond (die Onteieningswet 63 van 1975; die Wet op die Onderverdeling van Landbougrond 70 van 1970 en die Wet op die Adverteer langs en Toebou van Paaie 21 van 1940)*

(Maksimum 2 punte)

Vir eksamnedoeleindes hoef u nie die nommer en jaar van die betrokke Wette te onthou nie.

4. Name the two **categories** of limitations imposed on **ownership**. (2)

ANSWER:

- Limitations imposed by **the law** (1)
- Limitations imposed by the **(subjective) rights of other legal subjects** (1)

4. Noem die twee kategorieë beperkings wat op **eiendomsreg** opgelê word. (2)

ANTWOORD:

- *Beperkings wat deur die **objektiewe reg** (1) opgelê word.*
- *Beperkings opgelê deur die **subjektiewe regte van ander regssubjekte** (1)*

5. Name the two **classes** of limitations imposed in terms of **the law**. (2)

ANSWER:

↻ **statutory** (1) limitations

↻ limitations imposed in terms of **neighbour law** (1)

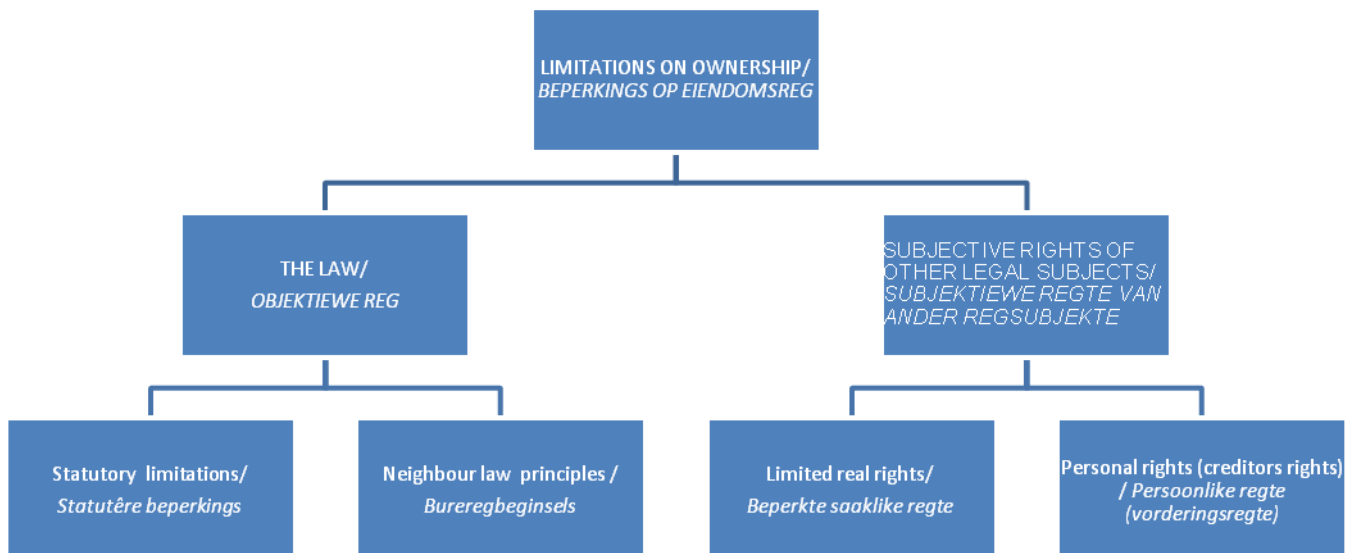
5. Noem die twee **klasse** beperkings wat kragtens die **objektiewe reg** opgelê word. (2)

ANTWOORD:

↻ **statutêre** (1) beperkings

↻ beperkings ingevolge die **burereg** (1)

TO SUMMARISE / OM OP TE SOM



6. Indicate the **effect on third parties** of the distinction between limitations imposed in terms of **personal rights** (creditors' rights) and **limited real rights**. Give **examples** to illustrate the different limitations. (10)

ANSWER:**Limited real rights**

M has a personal servitude of habitation over a homestead on X and Y's farm. M's right of habitation (personal servitude = limited real right) limits X and Y's ownership (1) until her death or until she abandons her right. Before that time they cannot evict her from the homestead. (1)

S obtained a loan from the bank for improvements that he wishes to make on his farm, Highlands. As security for repayment of the loan he registers a mortgage bond in favour of the bank over the farm. S's ownership is limited by the bank's limited real right of security (mortgage). (1)

Personal rights (creditor's rights/claims)

S has a contract with X and Y in terms of which he may graze 100 head of cattle on their farm Waterford. (1)

Effect

S's personal right (creditor's right) is not as limiting as the operation of the limited real right (right of habitation) of M over X and Y's ownership or the bank's limited real right (the mortgage) over S's property (1). X and Y can, for example, at any time prohibit S from grazing his cattle on the farm. (1) S cannot force them to allow him to graze his cattle on the farm. His remedy would be based on breach of contract (1) in terms of which he could claim damages. If X and Y sold the farm to Z after a few months, S cannot force Z to allow him to graze his cattle on the farm (1). M however will be able to enforce her right of habitation against Z. (1) Personal rights (creditor's rights) do not operate against third parties, in principle (1).

6. *Wat is die uitwerking op derde partye van die onderskeid tussen beperkings opgelê ingevolge **persoonlike regte** (vorderingsregte) en dié opgelê ingevolge **beperkte saaklike regte**? Gee voorbeelde om die verskillende beperkings te illustreer. (10)*

ANTWOORD:**Beperkte regte**

M het 'n persoonlike serwituut van bewoning ten aansien van 'n opstal op X en Y se plaas. M se reg op bewoning ('n persoonlike serwituut = beperkte saaklike reg) beperk dus X en Y se eiendomsreg (1) tot M se dood of totdat sy van hierdie reg afstand doen. Voor daardie tyd kan hulle haar nie uit die opstal sit nie. (1)

S het 'n lening gekry by die bank vir verbeterings wat hy op sy plaas Highlands wil aanbring. As sekerheid vir terugbetaling van die lening registreer hy 'n verband ten gunste van die bank op sy plaas. S se eiendomsreg word beperk deur die bank se beperkte saaklike sekerheidsreg (verband). (1)

Persoonlike regte (vorderingsregte)

S het 'n kontrak met X en Y, ingevolge waarvan hy 100 stuks vee op hulle plaas, Waterval, mag laat wei. (1)

Uitwerking

Die werking van S se persoonlike reg (vorderingsreg) is nie so beperkend (1) soos die werking van M se beperkte saaklike reg oor X en Y se eiendomsreg of die bank se beperkte saaklike reg oor S se eiendom nie. X en Y kan byvoorbeeld te eniger tyd vir S verbied (1) om die plaas vir weiding te gebruik. S kan hulle nie dwing om hom toe te laat om sy vee op hulle plaas te laat wei nie. Sy remedie sal berus op kontrakbreuk (1), ingevolge waarvan hy skadevergoeding kan eis. Indien X en Y hulle plaas binne 'n paar maande aan Z verkoop, kan S nie vir Z dwing om hom toe te laat om sy vee op die plaas te laat wei nie (1). M sal egter haar reg op bewoning teenoor Z kan afdwing (1). Persoonlike regte (vorderingsregte) is in beginsel nie afdwingbaar teenoor derdes nie (1).

7. X and Y decide that M is too old to stay in the homestead. She refuses to go to a retirement village and relies on her right of habitation. X and Y decide to apply for an eviction order against her.

They approach you for legal advice. Advise them fully. (5)

ANSWER:

This question refers to example 5 (pg 56) in your study guide.

M has a personal servitude of habitation over a homestead on X and Y's farm.

M's right of habitation is a personal servitude and that is a limited real right (1). M's right of habitation limits X and Y's ownership (1) until her death (1) or until she abandons (1) her right. Before that time they cannot evict her from the homestead. (1) X and Y will not be successful with their eviction order.

7. X en Y besluit dat M te oud is om in die opstal te bly. Sy weier om na 'n aftreeoord te gaan, en beroep haar op haar reg op bewoning. X en Y besluit om aansoek te doen om 'n uitsettingsbevel teen haar.



Hulle nader u om regsadvies. Adviseer hulle uitvoerig. (5)

ANTWOORD:

Hierdie vraag verwys na voorbeeld 5 (bl 56) in u studiegids.

M het 'n persoonlike serwituut van bewoning ten aansien van 'n opstal op X en Y se plaas.

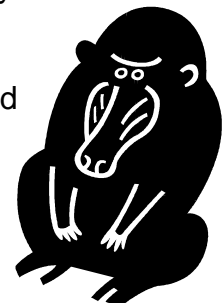
M se reg op bewoning is 'n persoonlike serwituut (1) en dit is 'n beperkte saaklike reg (1). M se reg op bewoning beperk dus X en Y se eiendomsreg (1) tot M se dood (1) of totdat sy van hierdie reg afstand (1) doen. Voor daardie tyd kan hulle haar nie uit die opstal sit nie. (1) X en y sal dus nie slag met hulle uitsettingsbevel nie.

 REMARK	 OPMERKING
QUESTION 8-10	VRAAG 8-10
<ol style="list-style-type: none"> 1. Identify the problem 2. Refer to case law 3. Refer to theory 4. Apply case law and theory to solve the problem 	<ol style="list-style-type: none"> 1. <i>Identifiseer die probleem</i> 2. <i>Verwys na gesag</i> 3. <i>Verwys na teorie</i> 4. <i>Pas gesag en toerie toe om die problem op te los</i>

8. X and Y are seriously affected by the baboons that destroy their mealies. X installs an apparatus to chase away the baboons on the boundary with his neighbour. The apparatus makes loud noises at regular intervals during the day and the night. The neighbour writes to X and Y to complain about the noise during the night, but X ignores the letter and refuses to speak to his neighbour on the telephone. X and his neighbour are not on speaking terms because his neighbour seriously insulted him a few years ago.

The neighbour applies for an interdict ordering X and Y to stop the noise. X and Y rely on their ownership of the farm. They argue that they are entitled to do as they please on their property.

Will this argument succeed? Substantiate your answer and refer to case law. (10)



ANSWER:

This is a **neighbour law** matter regarding **nuisance**.

The facts in this question is similar to the facts in *Gien v Gien* (1) (1979 (2) SA 1113 (T) – **read this case**).

Judge Spoelstra held that ownership is the most comprehensive real right (1) a person can have with regard to a thing. In principle, a person can act upon and with his thing as he/she pleases (1), but this apparent freedom is restricted (1), by the law (1) and the rights of others (1).

We are here dealing with nuisance in the narrow sense (1) (infringement of a personality right – caused by the noise) and the remedy used here is the interdict. The rights of the two owners should be weighed against each other (1). Both neighbours should act reasonably.(1) This is an objective test (1). The one person must exercise his ownership rights in a reasonable manner and the other should endure this exercise in a reasonable manner (1). The applicant must prove all the requirements for an interdict. (1) (**See the discussion below SU 6 par 2.2 and read *Setlogelo v Setlogelo* (1914 AD 221 227).**)

The court found that the applicant was severely prejudiced without real gain for the respondent due to the disturbing conduct. (1)

The applicant consequently succeeded with his interdict against the respondent. (1)

(Maximum 10 marks)

8. *X en Y ly baie skade omdat die bobbejane hulle mielies opvreet. X installeer op die grens van sy en sy buurman se plase 'n apparaat wat die bobbejane wegjaag. Die apparaat maak dag en nag met gereelde tussenposes 'n geweldige lawaai. Die buurman skryf vir X en Y 'n brief waarin hy kla oor die geraas in die nag, maar X ignoreer die brief, en weier ook om oor die telefoon met die buurman te praat. X en sy buurman is in elk geval nie juis vriende nie, omdat die buurman X 'n paar jaar gelede erg beledig het. Die buurman doen aansoek om 'n interdik teen X om 'n einde aan die lawaai te maak. X en Y beroep hulle op hulle eiendomsreg op die plaas, en beweer dat hulle op hulle eiendom kan doen wat hulle wil.*

Sal hulle argument slaag? Motiveer u antwoord en verwys na regspraak. (10)

ANTWOORD:

Hierdie vraag handel oor burereg en in besonder oorlas.

Die feite in die vraag is soortgelyk aan Gien v Gien (1) (1979 (2) SA 1113 (T)).

Regter Spoelstra het bevind dat eiendomsreg die mees omvattende saaklike reg (1) is wat 'n mens met betrekking tot 'n saak kan hê. In beginsel kan 'n persoon met sy/haar saak doen wat hy/sy wil. (1) Hierdie oënskynlike vryheid word egter beperk, (1) deur die reg (1) en deur ander mense se regte. (1)

Ons het hier te doen met oorlas in 'n eng sin (1) (krenking van 'n persoonlikheidsreg – veroorsaak deur die lawaai) en die remedie is hier 'n interdik. Die regte van die twee eienaars moet teen mekaar opgeweeg word (1). Beide bure moet redelik optree.(1) Hierdie toets is 'n objektiewe toets (1). Die een persoon moet sy eiendomsreg redelik uitoefen en die ander persoon moet sodanige uitoefening op 'n redelike wyse verduur (1). Die applikant moet al die vereistes vir 'n interdik bewys (1). **(Sien die bespreking hieronder in SU 6 par 2.2 en lees *Setlogelo v Setlogelo* (1914 AD 221 227))**

Die hof het bevind dat die applikant wesenlik benadeel is sonder dat die respondent wesenlike voordeel uit die steurende gedrag getrek het. (1)

Die applikant het gevolglik met sy aansoek om 'n interdik geslaag. (1)

(Maksimum 10 punte)

- 9 X and Y have a lucerne field on the only piece of fertile land with lots of water. This lucerne field borders their neighbour's farm. The new neighbour has planted a row of pine trees along the boundary between the two farms. The trees have grown big and the branches hang over the lucerne field. The pine trees make a lot of shade and the pine needles fall onto the lucerne so that large areas of lucerne die.



Do X and Y have any remedies? Fully discuss the legal position with reference to case law. (10)

ANSWER:

Malherbe v Ceres Municipality (1) (1951 (4) SA 510 (A)) deals with nuisance of trees and leaves.

Facts

The appellant, Malherbe approached the court for an interdict ordering the respondent, Ceres Municipality, to prevent acorns and leaves of oak trees growing alongside the streets of Ceres, from falling onto his property. The appellant averred that the oak trees constituted a nuisance on his property in that the falling oak leaves blocked the gutters of his building, thereby causing rainwater to damage the walls of the building. (1)

Legal question

To determine whether falling leaves and acorns and protruding branches of trees growing alongside streets constitute a nuisance. (1)

Ratio decidendi

General

The law expects a degree of tolerance (1) between neighbours in the exercise of their entitlements of ownership.

Regarding leaves from tree in the street

The planting of oak trees alongside the streets of towns and cities is considered to be compatible with the natural and normal use (1) in the Western Province. Oak trees are benign, as well as being ornamental and shade giving. If their leaves are blown onto neighbouring premises by the wind then the owners of those premises must endure (1) them as a natural result of the normal use of the street by the respondent.

Regarding leaves from overhanging branches

The appellant cannot complain about falling leaves and acorns from overhanging branches, if he allows such branches to protrude onto his property. If he chooses to allow the branches of trees to protrude onto his property, he cannot expect his neighbour to clear the leaves from his property. (1) If the appellant wishes to prevent leaves and acorns from overhanging branches from falling onto his property, he should request (1) the respondent to remove the branches. If the respondent refuses (1) to remove the branches, the appellant may either remove them himself or he may apply for an interdict either ordering the respondent to remove the overhanging branches or forbidding him to let the branches protrude onto the appellant's land.

Application of finding on relevant facts

The application for an interdict failed. (1) The falling leaves did not cause any obvious damage to the appellant's building. The damage complained about could have been avoided by annually spending a small amount of money on the cleaning of the gutters. (1) It is reasonable to expect the appellant to exercise a degree of tolerance in this regard.

With regard to the overhanging branches the appellant failed because he did not prove that he had requested the respondent to remove the branches, or that the respondent had refused to remove the branches or had claimed that he had a right to let the branches protrude onto the appellant's land. (1)

Application of finding on facts in this question

Due to the nature of pine needles shed by the pine trees it would not be possible to avoid the damage by annually spending a small amount of money on the cleaning of the lucerne field. (1) The shadow can also not be prevented in any other way than to remove the trees. It must furthermore be borne in mind that the lucerne field was

there before the neighbour planted the pine trees. Therefore, the neighbour acted unreasonably.

The court will balance the interest of the parties – the value and purpose of the lucerne field for X and Y and the value and purpose of the acorn trees for the neighbour, as well as the fact that the lucerne fields were there before the pine trees were planted. (1)

9. *X en Y het 'n lusernland op die enigste stuk vrugbare grond met baie water. Die lusernland grens aan hulle buurman se plaas. Die nuwe buurman het 'n ry dennebome op die grens tussen die twee plase geplant. Die bome het vinnig gegroei, en die takke hang nou oor die lusernland. Die bome maak ook baie skaduwee en dennenaalde val op die lusern, met die gevolg dat groot stukke lusern doodgaan.*

Het X en Y enige remedies? Bespreek die regsposisie volledig, met verwysing na regspraak. (10)

ANTWOORD:

Die saak van Malherbe v Ceres Municipality (1) (1951 (4) SA 510 (A)) handel oor oorskryding van take en blare.

Feite

Die appellant, Malherbe, het die hof genader om 'n interdik teen die respondent, Ceres Munisipaliteit, om te verhoed dat akkers en blare van akkerbome wat in Ceres se strate groei, in sy erf val. Die appellant het beweer dat die akkerbome 'n oorlas op sy eiendom veroorsaak het omdat die blare die geute van sy geboue verstop het, en die reënwater gevolglik die mure beskadig het. (1)

Regsvraag

Om te bepaal of blare en akkers wat afval en takke wat uitsteek van bome wat langs strate groei, 'n oorlas uitmaak.(1)

Ratio decidendi

Algemeen

Die reg verwag 'n mate van verdraagsaamheid (1) tussen bure in die uitoefening van hulle inhoudsbevoegdhede ten aansien van hulle eiendomsreg.

Wat betref blare van bome in die straat

Die aanplant van akkerbome langs strate in dorpe en stede word beskou as versoenbaar met natuurlike en normale gebruik (1) van die strate in die Westelike Provinsie. Akkerbome is skadeloos, ornamenteel en skaduryk. As hulle blare deur die wind na naburige grondstukke gewaai word, moet die eienaars van daardie grondstukke hulle verdra (1) as natuurlike gevolg van normale gebruik van die straat deur die respondent.

Wat betref blare van oorhangende takke

Die appellant kan nie kla oor akkers en blare wat van die oorhangende takke in sy erf val as hy toelaat dat daardie takke op sy erf oorhang nie. As hy besluit om toe te laat dat die takke oor sy erf hang, kan hy nie verwag dat sy bure die blare van sy erf moet verwyder nie. (1) Indien die appellant wil voorkom dat blare en akkers van oorhangende takke in sy erf val, moet hy die respondent versoek (1) om die takke te verwyder. Indien die respondent weier (1) om die takke te verwyder, mag die appellant dit self doen, of aansoek doen om 'n interdik wat die respondent óf beveel om die oorhangende takke te verwyder, óf verbied om die takke in die appellant se erf te laat oorhang.

Toepassing van beslissing op relevante feite

Die aansoek om 'n interdik het nie geslaag nie. (1) Die blare het nie enige klaarblykbare skade aan die appellant se geboue veroorsaak nie. Die skade waarvoor gekla is, kon verhoed gewees het deur jaarliks 'n klein bedrag te bestee aan die skoonmaak van die geute. (1) Dit is redelik om van die appellant te verwag om in hierdie verband 'n mate van verdraagsaamheid aan die dag te lê.

Wat die oorhangende takke betref het die appellant ook nie geslaag nie omdat hy nie bewys het dat hy die respondent versoek het om die takke te verwyder nie, of dat die respondent geweier het om die takke te verwyder nie, of dat hy daarop aanspraak gemaak het dat hy 'n reg het om die takke oor die appellant se erf te laat oorhang nie. (1)

Toepassing van beslissing op feite in die vraag

Weens die aard van die dennenaalde wat dennebome afgooi, kan die skade waarvoor gekla word nie verhoed word deur byvoorbeeld jaarliks 'n klein bedrag te bestee aan die skoonmaak van die lusernlande nie. (1) Die skaduwee wat die bome maak kan slegs ongedaan gemaak word deur die bome te verwyder. U moet voorts in gedagte hou dat die lusernland aangê is voordat die buurman die dennebome geplant het. Gevolglik het die buurman onredelik opgetree.

Die hof sal die partye se belange moet opweeg: die waarde en die doel van die lusernland vir X en Y en die waarde en doel van die dennebome vir die buurman, asook die feit dat die lusernlande daar was voordat die dennebome geplant is. (1)

10. X and Y are the owners of Waterford. Q and R are the owners of the neighbouring farm, Pulang. A river runs through both farms. X and Y applied for an interdict prohibiting Q and R from continuing or renewing the nuisance caused by slate which is washed down by the river from Pulang onto Waterford during heavy rainfalls. At that time Z was the owner of Pulang. Z dumped the slate waste on the farm near the river. X and Y apply for an interdict ordering Q and R to build a wall on their farm to prevent the slate from washing onto X and Y's land. In the alternative they claim damages from Q and R for the loss they have suffered as a result of the slate washing onto their farm.

Explain with reference to authority to X and Y what their chances of success are. (10)

ANSWER:

The question is based on *Regal v African Superslate* (1) (1963 (1) SA 102 (A)).

Legal question

The court had to decide whether an interdict (1) can be granted to prevent future damage (1) to the neighbouring property where the source of the nuisance was created by a previous owner (1) of the property or in the alternative whether X and Y can claim damages from Q and R.

Ratio decidendi

Regal v African Superslate dealt with nuisance in the broad sense, (1) ie damage to property. It has been held by the court that the current owner of the farm cannot be held responsible for the damage caused by the use of the property by a previous owner. (1) The court further held that neighbour law is based on the principle of reasonableness. (1) If it was reasonably possible for the current owner to prevent the damage from happening again in future, the failure to do so would amount to an unlawful act. (1)

In the case of such an unlawful act the neighbour would be entitled to one/or both of the following remedies against the current:

- an **interdict** (1) against the current owner, and/or
- a **delictual claim for damages** (1) against the owner.

The court held that the current owner acted reasonably and the application for an interdict did not succeed.



Application of finding on relevant facts

X and Y cannot hold Q and R liable for damage caused by Z's use of the property. If it was reasonably possible for Q and R to prevent the damage from happening again in future, the failure to do so would amount to an unlawful act. (1) This would then entitle X and Y to an interdict and/or a delictual claim for damages against Q and R. In *Regal v African Superslate* (question based the facts in this judgement) the court held that the current owner, in our question Q and R, acted reasonably.

10 *X en Y is die eienaars van die plaas Waterval. Q en R is die eienaars van die aangrensende plaas Pulang. 'n Rivier vloei deur albei plase. X en Y het aansoek gedoen om 'n interdik waarvolgens Q en R moet toesien dat die oorlas wat veroorsaak word deur die leiklipafval wat tydens swaar reën van Pulang af rivierlangs na Waterval vloei, gestaak moet word en nie weer moet voorkom nie. Z was op daardie tydstip eienaar van Pulang en het leiklipafval naby die rivier gestort. X en Y doen aansoek om 'n interdik teen Q en R om 'n muur op hulle plaas te bou wat verhoed dat die leiklipafval na X en Y se grond oorspoel. In die alternatief eis hulle skadevergoeding van Q en R vir skade gelyk as gevolg van die leiklipafval wat op hulle grond oorgespoel het.*

Verduidelik met verwysing na gesag aan X en Y wat hulle kans op sukses is. (10)

ANTWOORD:

Die vraag is gebaseer op *Regal v African Superslate* (1) (1963 (1) SA 102 (A)).

Regsvraag

Die hof moes besluit of 'n interdik (1) toegestaan kan word om toekomstige skade (1) aan 'n buurman se eiendom te voorkom waar die bron van die oorlas deur die vorige eienaar (1) veroorsaak is of in die alternatief of X en Y skadevergoeding van Q en R kan eis.

Ratio decidendi

Regal v African Superslate handel met oorlas in die breë sin, (1) bv skade aan eiendom. Die hof het beslis dat die huidige eienaar nie verantwoordelik gehou kan word vir skade wat deur die gebruik van die eiendom deur die vorige eienaar veroorsaak is nie. (1) Die hof het verder beslis dat die burereg gebaseer is op die beginsel van redelikheid. (1) Indien dit redelik moontlik was vir die huidige eienaar om die skade in die toekoms te voorkom en hy dit nie doen nie, sal sy versuim om dit te doen neerkom op 'n onregmatige handeling. (1)

In die geval van sodanige onregmatige handeling sal die buurman op die volgende

remedie/s teenoor die huidige eienaar geregtig wees:

- 'n **interdik** (1) teen die huidige eienaar, en/of
- 'n **deliktuele eis vir skadevergoeding** (1) teen die eienaar.

Die hof het bevind dat die huidige eienaar redelik opgetree het. Gevolglik het die aansoek vir 'n interdik nie geslaag nie.

Toepassing van die beslissing op die feite

X en Y kan Q en R nie aanspreeklik hou vir die skade wat deur Z se gebruik van die eiendom veroorsaak is nie. Indien dit redelik moontlik was vir Q and R om verdere skade in die toekoms te voorkom sou die versuim om dit te doen neerkom op 'n onregmatige handeling. X en Y sou dan geregtig wees op 'n interdik en/of 'n deliktuele eis vir skadevergoeding teen Q en R (1). In *Regal v African Superslate* (vraag gebaseer op die feite van hierdie saak) het die hof beslis dat Q en R redelik gehandel het.
