STUDY UNIT / *STUDIE-EENHEID* 4

QUESTION / *VRAAG* 1

1. Define / *Definieer*:

(a) appropriation / *toe-eiening* (5)

ANSWER / *ANTWOORD*

Appropriation or occupation (*occupatio*) is defined as the unilateral (1) taking of physical (½) control (½) of a thing which does not belong to anyone (1) (*res nullius*), but which is within the sphere of law (1) (*res in commercio)* with the intention (½) of becoming its owner (½).

*Toe-eiening (*occupatio*) word gedefinieer as die eensydige* (1) *uitoefening van fisiese* (½) *beheer* (½) *oor 'n saak wat aan niemand behoort (1) nie (*res nullius*), maar wat binne die regsverkeer (1) val (*res in commercio*), met die bedoeling* (½) *om eienaar* (½) *daarvan te word.*

(b) planting and sowing / *plant en saai* (5)

ANSWER / *ANTWOORD*

Sowing and planting can be defined as an original method (1) of acquiring ownership in terms of which growing things (1) accede (½) to land (½) and become the property of the owner of the land (1). Accession takes place as soon as the plants take root (1) in the soil.

Saai en plant kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging waarvolgens groeiende sake (1) met die grond (½) *verbind* (½) *en die eiendom van die grondeienaar (1) word. Samevoeging vind plaas sodra die plante wortel skiet (1).*

(c) building / *bebouing* (5)

ANSWER / *ANTWOORD*

Building can be defined as an original method (1) of acquiring ownership in terms of which a movable accessory thing (1) becomes attached (1) to land (1) (principal thing) in such a manner that it loses its independence (1) and forms an entity (1) with the land, thereby becoming part of the landowner's land (1).
(Maximum 5 marks)

Bebouing kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging ingevolge waarvan 'n roerende bysaak (1)*) aan grond (1) (hoofsaak) geheg (1) word op so 'n wyse dat dit sy selfstandigheid verloor (1) en 'n eenheid vorm (1) met die grond (1), en sodoende deel van die grondeienaar se grond (1) word.*

(Maksimum 5 punte)

(d)	mixing or commixture / *vermenging of vereniging*	(5)

ANSWER / *ANTWOORD*

Mixing can be defined as an original method (1) of acquiring ownership in terms of which movable things (½) belonging to different persons (½) are mixed together without the consent (1) of the owners and in such a way that the movables cannot be separated (1). The mixture becomes the joint property (½) of the former owners in proportion to the value (½) of the things included in the mixture.
The mixing together of solid materials (½) (for example, grain or feathers) is known as *commixtio* (½); the mixing together of liquid materials (½) (for example, oil or wine) is known as *confusio* (½).
(Maximum 5 marks)

Vermenging kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging waarvolgens roerende sake (½) wat aan verskillende persone (½) behoort sonder die toestemming (1) van die eienaars vermeng word, en wel op so 'n wyse dat die roerende sake nie geskei (1) kan word nie. Die mengsel word die gesamentlike eiendom (½) van die eienaars proporsioneel tot die waarde (½) van die sake waaruit die mengsel saamgestel is.
Die vermenging van vaste stowwe (½) (byvoorbeeld graan of vere) staan bekend as commixtio *(½); die vermenging van vloeistowwe (½) (byvoorbeeld olie of wyn) staan bekend as* confusio *(½).*
(Maksimum 5 punte)

(e)	manufacture / *saakvorming*	(5)

ANSWER / *ANTWOORD*

Manufacture can be defined as an original method (1) of acquiring ownership in terms of which ownership is acquired by the unauthorised (1) production (1) of a completely new (1) thing, using a thing belonging to another. (1)

Saakvorming kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging waarvolgens eiendomsreg verkry word deur middel van die ongemagtigde (1) vervaardiging (1) van 'n heeltemal nuwe (1) saak,deur gebruik te maak van 'n saak wat aan iemand anders behoort (1).

(f)	accession / *natrekking*	(5)

ANSWER / *ANTWOORD*

Accession can be defined as an original method (1) of acquiring ownership which takes place when an accessory thing (½) becomes merged (1) with a principal thing (½), with the result that the two things form one entity (1). The accessory thing loses its independence (½) and becomes part of the principal thing (½). The owner of the

principal thing is the owner of the composite thing (1).
(Maximum 5 marks)

Natrekking kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging, wat voorkom wanneer 'n bysaak (½) saamsmelt (1) met 'n hoofsaak (½) sodat die twee sake een entiteit vorm (1). Die bysaak verloor sy selfstandigheid (½) en word deel van die hoofsaak (½). Die eienaar van die hoofsaak is dan die eienaar van die saamgestelde saak (1).
(Maksimum 5 punte)

(g) acquisition of fruits / *vrugtetrekking* (5)

ANSWER / *ANTWOORD*

Acquisition of fruits is an original method (1) of acquiring ownership, which takes place when a person who is entitled to separate (½) or gather (½) the fruits, does so. Before separation, fruits are accessories (½) of the principal thing (½) and therefore the property of the owner of the principal thing (½). Upon separation, fruits become independent things (½) which, as such, can form the objects of ownership (½) and become susceptible to acquisition of ownership (½).

Vrugtetrekking is 'n oorspronklike wyse (1) van eiendomsverkryging wat plaasvind wanneer 'n persoon wat daarop geregtig is om die vrugte af te skei (½) of in te samel (½), dit doen. Voor afskeiding is vrugte bysake (½) by 'n hoofsaak (½) en dus die eienaar van die hoofsaak se eiendom (½). By afskeiding word vrugte selfstandige sake (½) wat as sodanig die objekte van eiendomsreg (½) kan uitmaak en vatbaar word vir verkryging van eiendomsreg (½).

(h) treasure trove / *skatvinding* (5)
(NOT FOR EXAMINATION PUPOSES/NIE VIR EKSAMENDOELEINDES NIE)

ANSWER / *ANTWOORD*

Treasure trove can be defined as an original method (1) of acquiring ownership in terms of which hidden treasure, that is, valuable (½) movable (½) corporeal (½) things (½) hidden (½) for so long that it is impossible (½) to determine ownership, is acquired either by the landowner or by him/her and the accidental (½) finder together. It takes place upon the taking of control (½) by the finder.

Skatvinding kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging waarvolgens verborge skatte, dit wil sê waardevolle (½), roerende (½), stoflike (½) sake (½) wat so lank verborge (½) was dat dit onmoontlik (½) is om eiendomsreg te bepaal, verkry word, hetsy deur die grondeienaar of deur hom/haar en die toevallige (½) vinder tesame. Dit vind plaas sodra die vinder beheer (½) daaroor neem.

(i) expropriation / *onteiening* (5)

ANSWER / *ANTWOORD*

Expropriation can be defined as an original method (1) of acquiring ownership in terms of which the State (1) acquires ownership (1) of a movable (½) or immovable (½) thing without the consent (1) of the owner against payment of compensation. (1) (Maximum 5 marks)

Onteiening kan gedefinieer word as 'n oorspronklike (1) wyse van eiendomsverkryging waarvolgens die staat (1) sonder toestemming (1) van die eienaar eiendomsreg verkry (1) oor 'n roerende (½) of onroerende saak (½) teen betaling van vergoeding. (1)
(Maksimum 5 punte)

(j) prescription / *verjaring* (5)

ANSWER / *ANTWOORD*

Prescription can be defined as an original method (1) of acquiring ownership in terms of which a person who controls (1) (possesses) a thing openly (1) and as if he/she were the owner (1) for an uninterrupted (½) period of thirty years (½) becomes its owner.

Verjaring kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging waarvolgens 'n persoon wat vir 'n ononderbroke (½) tydperk van dertig jaar (½) 'n saak op 'n openlike (1) wyse en asof hy/sy die eienaar (1) daarvan is beheer (1) (besit), die eienaar daarvan word.

NB You should know the original forms of acquisition of ownership, be able to distinguish between them and be able to identify them in a problem question.
LW U moet die oorspronklike wyses van eiendomsverkryging ken, van mekaar kan onderskei en kan identifiseer in ‘n probleemvraag.

QUESTION / VRAAG 2

2 Distinguish between / *Onderskei tussen*:

(a) original and derivative methods of acquisition of ownership / *oorspronklike en afgeleide wyses van eiendomsverkryging* *(5)*

ANSWER / *ANTWOORD*

Original methods of acquiring ownership are used when there is no co-operation (1) from a predecessor in title (this refers to the person who was owner of the thing before the new owner); in other words, where there is no transfer (1) of ownership.This form of acquisition is also not limited (½) to things belonging to no-one (*res nullius*): in cases of accession, prescription and expropriation the thing is

actually owned by another, but no transfer of ownership takes place.

Derivative methods of acquiring ownership occur with the co-operation (1) of a predecessor in title. The right which the transferee obtains is derived from the former owner. (½) This implies that the predecessor in title should himself/herself have been the owner and entitled to transfer ownership. (1) This principle is expressed in the maxim: no-one can transfer more rights to another person than he has himself (*nemo plus iuris in alium transferre potest quam ipse haberet*). (½) Furthermore, the right is transferred to the new owner with the advantages and the disadvantages attached to that right. (½)

Oorspronklike wyses *verwys na die situasie waar daar geen samewerking (1) is van 'n regsvoorganger nie; met ander woorde, daar is geen oordrag (1) van eiendomsreg nie. Hierdie vorm van verkryging is ook nie beperk tot niemandsgoed (*res nullius*) nie* (½) *: in gevalle van natrekking, verjaring en onteiening is die saak in werklikheid die eiendom van 'n ander persoon, maar daar vind nie eiendomsoordrag plaas nie. (½)*
Maximum 5 marks)

Afgeleide wyses *van eiendomsverkryging behels die samewerking (1) van 'n regsvoorganger. Die oordraggewer dra eiendomsreg oor aan die oordragnemer.* (½) *Dit impliseer dat die regsvoorganger self die eienaar moes gewees het of daarop geregtig was om eiendomsreg oor te dra. (1) Hierdie beginsel word uitgedruk deur die stelreël: niemand kan meer regte aan 'n ander oordra as wat hyself het nie (*nemo plus iuris in alium transferre potest quam ipse haberet*). (½) Voorts word die reg aan die nuwe eienaar oorgedra tesame met al die voor- en nadele verbonde aan daardie reg. (½)*
(Maksimum 5 punte)

(b)	mixing of solids and mingling of fluids / *vermenging van vaste stowwe en vermenging van vloeistowwe* *(5)*

ANSWER / *ANTWOORD*

The mixing together of solid materials (for example, grain or feathers) is known as *commixtio* (½); the mixing together of liquid materials (for example, oil or wine) is known as *confusio* (½).

Mixing or mingling takes place only where separation of the mixture is impossible (½) or where it can only be separated with great difficulty (½). Where separation is possible each owner retains his/her ownership and can claim that portion of the mixture back with the *rei vindicatio*, which, in the discretion of the court, is in proportion to the value of that owner's contribution.

The mixture of liquids becomes the common property (½) of the original owners, in proportion to their respective contributions, irrespective of whether or not their consent was obtained (½).
In the case of mixture of solids (e.g. grain) without the consent of the owners, no

change of ownership takes place (½), but each owner may vindicate a portion of the mixture which is in proportion to his/ her contribution (½). If there was consent (½) then the mixture would belong to parties jointly (½).

Die vermenging van vaste stowwe (byvoorbeeld graan of vere) staan bekend as commixtio (½)*; die vermenging van vloeistowwe (byvoorbeeld olie of wyn) staan bekend as* confusio (½)*.*

Vermenging vind alleenlik plaas indien dit onmoontlik is om die mengsel wat gevorm het, te skei (½) *of indien dit baie moeilik* (½) *is om die mengsel te skei. Waar sake vermeng is, maar elke saak sy eie karakter behou (byvoorbeeld, waar skape of beeste saamgejaag word), vind vermenging nie plaas nie en elke eienaar kan sy/haar skape of beeste met die* rei vindicatio *vorder.*

Die mengsel van vloeistowwe word die gesamentlike eiendom (½) van die oorspronklike eienaars in verhouding met elke eienaar se bydrae, ongeag of daar toestemming vir die vermenging was of nie (½).

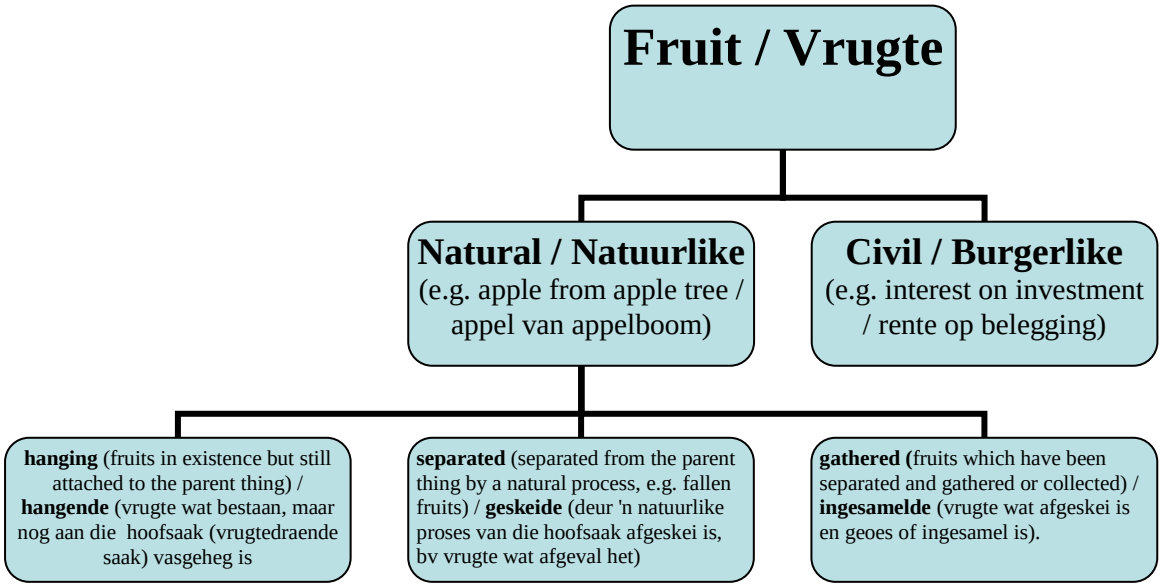
In die geval van verminging van vastestowwe (bv graan) sonder die toestemming van die eienaars, vind geen oordrag van eiendomsreg plaas nie (½), maar elke eienaar kan ‘n gedeelte van die graan, in verhouding tot sy bydrae, vindiseer (½). Indien daar toestemming was (½) sal die mengsel aan die partye gesamentlik (½) behoort.

(c)	different types of fruits / *verskillende tipes vrugte*	*(3)*

ANSWER / *ANTWOORD*

Natural fruits (½)**,** that is, the natural products of a thing (½), for example, milk, wool, the increase of stock (½).
Civil fruits (½), such as rent on immovables, interest on capital**,** profits from business or other ventures, dividends on shares (½), are also included under fruits and the same principles apply here (½).

Natuurlike vrugte (½)**,** oftewel die natuurlike produkte van 'n saak (½), byvoorbeeld melk, wol, die aanwas van vee, ensovoorts (½).
Burgerlike vrugte (½), soos huurgeld vir onroerende sake (½), rente op kapitaal, wins uit 'n besigheid of ander onderneming, en dividende op aandele, ressorteer ook onder vrugte en dieselfde beginsels geld ten opsigte daarvan (½).



(d) suspension and interruption / *stuiting en skorsing (4)*

ANSWER / *ANTWOORD*

In the case of **interruption**, the period of prescription which has already run is terminated (1) and the period of prescription must begin to run anew (1) (*de novo*). **Suspension** is the temporary (½) suspension of a period of prescription. Here the period which has already run does not lapse (1), but the running of prescrition is suspended and can recommence (½) at a later date.

*In die geval van **stuiting** word die verjaringstermyn wat reeds afgeloop is, beëindig (1), en moet die verjaringstermyn van nuuts af (1)* (de novo) *begin loop. **Skorsing** is die tydelike (½) onderbreking van 'n verjaringstydperk. By skorsing verval die tydperk wat reeds verloop het nie (1), maar die verloop van verjaring word opgeskort en kan op 'n later datum weer verder loop (½).*

QUESTION / VRAAG 3

3 Name and discuss the requirements of appropriation (occupatio). (10)
3 Noem en bespreek die vereistes vir toe-eiening (occupatio). (10)

ANSWER / *ANTWOORD*

Appropriation or occupation (*occupatio*) is defined as the unilateral taking of physical control of a thing which does not belong to anyone (*res nullius*), but which is within the sphere of law (*res in commercio)* with the intention of becoming its owner.

The requirements for acquiring ownership through appropriation, is therefore: (i) unilateral taking (1) of (ii) physical control of (1) (iii) a thing that does not belong to anyone (1) and (iv) but which is within the legal sphere (1) and (v) the person in control should have the intention of becoming owner (1).

The following elements need some further enlightenment:

(i) Control

Physical (1) control is essential for the acquisition of ownership by means of appropriation (*occupatio*). The acquirer must obtain physical control with the necessary intention (that is, the intention of becoming the owner).

One should note that the control need not be lawful (1). If, for example, a person has no right to hunt, either because he has no license to shoot certain animals or where certain wild animals are protected by legislation, he commits a crime if he shoots such animals, but he nevertheless becomes the owner of the dead animals by means of appropriation (*S v Frost*; *S v Noah* 1974 (3) SA 466 (C)).

Where wild animals are wounded, but actual physical control is not taken (1), appropriation (*occupatio*) does not take place. Therefore, if one person wounds a wild animal, but another person catches it or discovers the carcass, the latter obtains ownership (*R v Mafohla* 1958 (2) SA 373 (SR) 374C).

(ii) Thing which does not belong to anyone

Res nullius are things that belong to no-one. All creatures that are wild by nature (animals, birds, fish and insects) either in their natural state (before someone has taken control of them) or when they have reverted to their former wild state (after having been controlled by a person) are regarded as *res nullius*. (½) An exception occurs in the case of wild animals which have been tamed (domesticated). These remain the property of the owner until they lose the habit of returning, when, once again, they become *res nullius*, and capable of being acquired by appropriation. (½) Domesticated animals must be distinguished form domestic animals (such as cats and dogs). Domestice animals are not *res nullius.*(½)

Domesticated animals or wild animals regulated by the *Game Theft Act* 105 of 1991 (1) are not *res nullius* and therefore cannot be acquired in ownership by means of appropriation. Products of the sea (1) (for example, seaweed, shells, stones, sand, fish and shellfish) are, in principle, open to acquisition by appropriation. Abandoned things (1) (*res derelictae*) are things which a former owner has abandoned with the intention of ceasing to be their owner. Such things are then *res nullius* and may become the property of any person taking control of them (*Reck v Mills* 1990 (1) SA 751 (A)). A lost thing (1) (*res deperditae*) is not a *res nullius*, but remains the property of the owner as long as it is his/her intention to retain ownership.

(iii) Intention of becoming owner

In *Underwater Construction and Salvage Co (Pty) Ltd v Bell* (1968 (4) SA 190 (C) 193E) Banks J stated that "... ownership is acquired as soon as there is a seizure with the intention of becoming owner". Although theoretically there should be an intention to acquire ownership, other elements, particularly, the physical control element, can be indications (1) of such an intention.
(Maksimum 10 punte)

Toe-eiening (occupatio) *word gedefinieer as die eensydige uitoefening van fisiese beheer oor 'n saak wat aan niemand behoort nie* (res nullius)*, maar wat binne die regsverkeer val* (res in commercio), *met die bedoeling om eienaar daarvan te word.*

Die vereistes vir eiendomsverkryging deur toe-eiening is dus (i) eensydige uitoefening (1), (ii) van fisisie beheer (1), (iii) oor 'n saak wat aan niemand behoort nie (1), maar binne die regsverkeer val (1) en (iv) die person in beheer van die saak moet die bedoeling hê om eienaar van die saak te word (1)
Die volgende elemente kan verder toegelig word:

(i) Beheer

*Daar moet fisiese (1) beheer oor 'n saak wees voordat eiendomsreg deur middel van toe-eiening (*occupatio*) kan plaasvind. Die verkryger moet fisiese beheer verkry met die nodige bedoeling (dws die bedoeling om die eienaar te word).*

*Let daarop dat beheer nie regmatig hoef te wees nie (1). Waar 'n persoon byvoorbeeld nie mag jag nie, hetsy omdat hy nie 'n lisensie het om sekere diere te skiet nie, of waar sekere wild deur wetgewing beskerm word, begaan daardie persoon 'n misdaad indien hy sodanige diere skiet, maar hy word nietemin die eienaar van die dooie diere deur toe-eiening (*S v Frost*;* S v Noah *1974 (3) SA 466 (C)).*

Waar wilde diere gewond word, maar werklike fisiese beheer nie oorgeneem is nie (1), vind toe-eiening (occupatio*) nie plaas nie. Waar een persoon dus 'n wilde dier wond, maar 'n ander persoon die dier vang of die karkas vind, verkry laasgenoemde eiendomsreg (*R v Mafohla *1958 (2) SA 373 (SR) 374C).*

(ii) Saak wat aan niemand behoort nie

Res nullius *is sake wat aan niemand behoort nie. Alles wat wild van geaardheid is (diere, voëls, visse en insekte), óf in hulle natuurlike staat (voordat iemand beheer oor hulle geneem het) óf indien hulle na hulle vorige wilde staat teruggekeer het (nadat hulle deur 'n persoon in beheer geneem was), word as* res nullius *(½) beskou. 'n Uitsondering word gemaak ten aansien van wilde diere wat makgemaak is (1) (makgemaakte diere). Hulle bly die eiendom van die eienaar totdat hulle die gewoonte verloor om na die eienaar terug te keer. Hulle word dan weer* res nullius *en kan weer deur toe-eiening in eiendomsreg deur iemand verkry word. Makgemaakte diere moet van huisdiere (soos honde en katte) onderskei word. Huisdiere is nie* res nullius *nie. (½)*

Makgemaakte diere of wilde diere wat gereguleer word deur die Wet op Wilddiefstal *105 van 1991 (1), is nie* res nullius *nie en kan dus nie deur toe-eiening in eiendomsreg deur iemand verkry word nie. Produkte van die see (1)(byvoorbeeld seewier, skulpe, klippe, sand en skulpvis) is in beginsel alles sake wat deur toe-eiening verkry kan word. Sake waarvan afstand gedoen is (1) (*res derelictae*), is sake waarvan 'n vorige eienaar afstand gedoen het met die bedoeling om eiendomsreg daarop prys te gee (sien* SM Goldstone (Pty) Ltd v Gerber *1979 (4) SA 930 (A) vir faktore aan die hand waarvan hierdie bedoeling bepaal kan word).*

Sodanige sake is dan res nullius*, en hulle kan die eiendom word van enige persoon wat beheer daaroor neem (Reck v Mills 1990 (1) SA 751 (A)). 'n Saak wat verlore geraak het (1) (*res deperditae*), is nie 'n res nullius nie, maar bly die eiendom van die eienaar so lank as wat dit sy/haar bedoeling is om eiendomsreg te behou.*

(iii) Bedoeling om eienaar te word

In Underwater Construction and Salvage Co (Pty) Ltd v Bell *(1968 (4) SA 190 (K) 193E) het Banks R gesê: "... ownership is acquired as soon as there is a seizure with the intention of becoming owner." Alhoewel daar teoreties 'n bedoeling moet wees om eiendomsreg te bekom, kan ander elemente, veral die element van fisiese beheer, aanduidend (1) wees van sodanige bedoeling.*
(Maksimum 10 punte)

QUESTION / VRAAG 4

4 Name the criteria which are applied to determine whether a movable thing has become part of an immovable thing, through building. (3)

4 Noem die kriteria aan die hand waarvan bepaal word of 'n roerende saak deur bebouing deel geword het van 'n onroerende saak. (3)

ANSWER / *ANTWOORD*

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 subsequently becomes part of the immovable thing are:-

(i) nature *(½)* and purpose *(½)* of the attached thing
(ii) manner *(½)* and degree *(½)* of attachment
(iii) intention of the person annexing it or the intention of the owner of the movable (1)

Die drie kriteria wat die howe aanwend om te bepaal of 'n roerende saak deur natrekking aan 'n onroerende saak aangeheg is op so 'n wyse dat dit daarna deel word van die onroerende saak is:

(i) die aard (½) en doel (½) van die aangehegte saak
(ii) die wyse(½) en graad(½) van aanhegting
(iii) die bedoeling van die aanhegter of die bedoeling van die eienaar van die roerende saak (1)

QUESTION / VRAAG 5

5 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 wounded 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 this? Substantiate your answer with reference to case law. (10)

5 S en sy vriende gaan jag vir die naweek. S wond 'n koedoe dodelik. Die koedoe ontsnap egter in digte bosse. S staak die soektog toe dit donker word. Op pad huis toe na 'n partyjie kom Z, 'n plaaswerker, op die gewonde koedoe af. Hy gaan haal sy vriende en hulle slag die dier af en neem die vleis na hulle 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 dit kan bewys? Staaf u antwoord met verwysing na regspraak. (10)

ANSWER / *ANTWOORD*

No, the State will not succeed in proving that S was the owner (1). S could only have become owner by means of appropriation (1). Appropriation or occupation is an original method (1) of acquisition of ownership. It can be defined as the unilateral (1) taking of physical control (1) of a thing which does not belong to anyone (1) *(res nullius)*, but which is within the sphere of law (1) *(res in commercio)* with the intention of becoming (1) its owner. The above set of facts is similar to those in *R v Mafohla* (1). The element of the definition which causes problems for S's reliance on acquisition of ownership by means of appropriation is the control element. Physical control is essential for the acquisition (1) of ownership by means of appropriation. Where wild animals are wounded, but actual physical control is not taken, appropriation does not take place (1). Therefore, if one person wounds a wild animal, but another person catches it or discovers the carcass, the latter obtains ownership. (1)

*Nee, die Staat sal nie kan bewys dat S die eienaar was nie (1). S kon slegs die eienaar geword het deur middel van toe-eiening (1). Toe-eiening (*occupatio*) is 'n oorspronklike wyse van eiendomsverkryging (1). Dit kan gedefinieer word as die eensydige* (1) *uitoefening van fisiese beheer (1) oor 'n saak wat aan niemand behoort (1) nie (*res nullius*), maar wat binne die regsverkeer (1) val* (res in commercio)*, met die bedoeling* (1) *om eienaar daarvan te word. Die feite in die vraag is soortgelyk aan die feite in* R v Mafohla. (1) *Die element van die definisie wat problem veroorsaak vir X se beroep op verkryging van eiendomsreg by wyse van toe-eiening is die beheer element. Fisiese beheer is noodsaaklik ten einde eiendomsreg deur toe-eiening te verkry (1). Wanneer wilde diere gewond is maar fisiese beheer nie geneem is nie, vind toe-eiening nie plaas nie (1). Indien een person dus 'n dier wond maar 'n ander person die dier vang of die karkas ontdek verkry laasgenoemde eiendomsreg (1).*

QUESTION / VRAAG 6

6 Q and R, who are S's grandparents, are lovers of game and they keep two impalas, a few kudus and a giraffe in a camp of approximately 250 to 300 hectares. The camp was enclosed by a fence 1,68 m high. Q and R purchased the animals at an auction from a well-known game farmer who marks all his animals with the initials JR. Late one evening the

game ranger leaves the gate open and the animals escape. S and his friends go hunting on S's farm the following evening. They shoot four of the kudus. S's grandparents, Q and R, claim the value of the animals from S and his friends because they argue that the game was their property. Will Q and R succeed? Substantiate your answer. (10)

6 Q en R, S se ouma en oupa, is wildliefhebbers, en hulle hou twee rooibokke, 'n paar koedoes en 'n kameelperd aan in 'n kamp van 250 tot 300 hektaar. Die kamp is omhein met 'n draadheining van ongeveer 1,68 m hoog. Q en R het die diere op 'n veiling gekoop by 'n bekende wildboer wat al sy diere met die voorletters JR merk. Laat een aand het die veldwagter die hek oopgelos en die diere het uitgekom. S en sy vriende gaan die volgende aand op S se plaas jag. Hulle skiet vier koedoes. S se oupa en ouma, Q en R, eis nou die waarde van die koedoes van S en sy vriende omdat hulle beweer dat die koedoes hulle eiendom is. Sal Q en R slaag? Motiveer u antwoord. (10)

ANSWER / *ANTWOORD*

In order to answer this question we have to determine whether Q and R lost their ownership and S and his friends acquired ownership of the kudu through appropriation or *occupatio*.

Appropriation or occupation is an original method of acquisition (1) of ownership. It can be defined as the unilateral taking (1) of physical control of a thing which does not belong to anyone,(1) but which is within the sphere of law (1) with the intention of becoming (1) its owner.

S and his friends took physical control of the kudu's, the kudus were within the legal sphere and they (S and his friends) had the intention of becoming owners of the kudus.

The question, however, is whether the four kudus were *res nullius*? (1)

Res nullius are things that belong to no-one. (1) All creatures that are wild by nature (animals, birds, fish and insects) either in their natural state (before someone has taken control of them) or when they have reverted to their former wild state (after having been tamed (controlled) by a person) are regarded as *res nullius*. (1) An exception occurs in the case of wild animals which have been tamed (domesticated). In this set of facts, however, one must bear in mind that the kudus belonged to Q and R who acquired them by means of a derivative form (1) of acquisition of ownership, ie delivery. They derive their ownership from their predecessor in title, (1) the game farmer, who sold and delivered (1) them to Q and R at the auction. They are identifiable and therefore they belong to Q and R (1) who can claim them with the *rei vindicatio*, if they still exist or their value.

(Maximum 10 marks)

Ten einde die vraag te beantwoord moet ons bepaal of Q en R eiendomsreg oor die koedoes verloor het en of S en sy vriende eiendomsreg deur toe-eiening (occuptio) *verkry het.*

*Toe-eiening (*occupatio*) is 'n oorspronklike wyse van eiendomsverkryging (1). Dit kan gedefinieer word as die eensydige* (1) *uitoefening van fisiese beheer (1) oor 'n saak wat aan niemand behoort (1) nie (*res nullius*), maar wat binne die regsverkeer (1) val* (res in commercio)*, met die bedoeling* (1) *om eienaar daarvan te word.*

S en sy vriende het fisiese beheer oor die koedoe's geneem, die koedoe's was in die regsverkeer en S en sy vriende het die bedoeling gehad om eienaar van die koedoes te word.

Die vraag is dus of die vier koedoes res nullius *was? (1)*

Res nullius *is sake wat aan niemand behoort nie (1). Alles wat wild van geaardheid is (diere, voëls, visse en insekte), óf in hulle natuurlike staat (voordat iemand beheer oor hulle geneem het) óf indien hulle na hulle vorige wilde staat teruggekeer het (nadat hulle deur 'n persoon in beheer geneem was), word as* res nullius *beskou (1). 'n Uitsondering word gemaak ten aansien van wilde diere wat makgemaak is (makgemaakte diere).*

In hierdie feitestel moet mens egter in gedagte hou dat die koedoes aan Q en R behoort het. Q en R het die koedoes op 'n afgeleide wyse (1) van eiendomsverkryging, te wete lewering, verkry. Hulle eiendomsreg is afgelei van hulle regsvoorganger (1), die wildsboer, wat die koedoes op 'n veiling aan Q en R verkoop en gelewer (1) het. Die koedoes is identifiseerbaar en behoort dus aan Q en R (1) wat hulle met die rei vindicatio *kan terugeis indien hulle steeds bestaan en van waarde is.*
(Maksimum 10 punte)

QUESTION / VRAAG 7

7 S builds a house made of corrugated iron for the herdsmen. He screws the corrugated iron to a concrete foundation on the farm of his parents, X and Y. Upon expiry of the contract of lease, S wants to remove the house. X warns him that he cannot do that because this would amount to theft. X and Y argue that they have become owners of the corrugated iron house by accession. Will they succeed with this argument in court? Substantiate your answer with reference to case law. (10)

7 S bou 'n sinkhuis vir sy veewagters. Hy skroef die sinkplate vas op 'n sementfondasie op sy ouers, X en Y, se plaas. Na verstryking van die huurkontrak wil S die huis verwyder. X waarsku hom dat hy dit nie kan doen nie, want dit sal diefstal wees. X en Y beweer hulle het deur natrekking eienaars van die huis geword. Sal hulle met hierdie argument in die hof slaag? Staaf u antwoord met verwysing na regspraak. (10)

ANSWER / *ANTWOORD*

To succeed with their argument X and Y will have to prove that they acquired ownership by means of accession in the form of building. Building can be defined as an original method (1) of acquiring ownership in terms of which a movable accessory thing (1) becomes attached to land (1) (principal thing) in such a manner that it loses its independence (1) and forms an entity with the land, thereby becoming part of the

landowner's land. (1) The landowner is therefore the owner of the whole. (1)

In *MacDonald Ltd v Radin and the Potchefstroom Dairies and Industries Co Ltd* (1) *(1915 AD 454)* the court pointed out that each case depends on its own facts. The court, however, stated three criteria that must be applied to determine whether the movable has lost its independence and became part of the principal thing:

- the nature *(½) and purpose (½)* of the particular article,
- the degree *(½)* and manner *(½)* of its annexation, and
- the intention of the person annexing it. (1)

The first two criteria can give an indication of permanency, but if they are inconclusive, one has to look at the intention of the person annexing it, in this case, S. (see *MacDonald Ltd v Radin NO and the Potchefstroom Dairies and Industries Co Ltd Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk).* (1) *Therefore,* the test as set out in McDonald case applies.
You must now provide your own arguments on the facts by taking the following issues into consideration:

- Can the corrugating iron be removed without substantial injury to the land?
- What are the manner and the degree in which the corrugation iron was attached to the land?
- What was S's intention when he builds the house for his herdsmen?
  (1 Mark for application)

X en Y sal moet bewys dat hulle eienaars van die huis geword het deur natrekking in die vorm van bebouing.
Bebouing kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging ingevolge waarvan 'n roerende bysaak (1) aan grond (1) (hoofsaak) geheg word op so 'n wyse dat dit sy selfstandigheid (1) verloor en 'n eenheid vorm met die grond (1), en sodoende deel van die grondeienaar se grond word (1).

In MacDonald Ltd v Radin and the Potchefstroom Dairies and Industries Co Ltd *(1) (1915 AD 454) het die hof daarop gewys dat elke saak afhang van die feite van die geval. Die hof het hier drie toetse neergelê om te bepaal of die roerende saak sy selfstandigheid verloor het en deel gevorm het van die hoofsaak:*

- *die aard (½) en doel (½) van die aangehegte saak*
- *die wyse (½) en graad (½) van aanhegting*
- *die bedoeling van die aanhegter of die bedoeling van die eienaar van die roerende saak (1)*

Die eerste twee kriteria is aanduidend van die permanentheid van die aanhegting, maar is nie deurslaggewend nie. Die derde kriterium, nl, die bedoeling van die aanhegter,in die geval S, is egter deurslaggewend (*sien* MacDonald Ltd v Radin NO and the Potchefstroom Dairies and Industries Co Ltd Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk.) (1)

Die toets soos neergelê in die MacDonald – saak *is dus van oepassing.*
Pas nou die regsbeginsel toe op die feite;

- *Kan die sink verwyder word sondr om die grond te beskadig?*
- *Wat is die graad van die aanhegting?*
- *Wat was S se bedoeling toe hy die huis opgerig het?*
  (1 Punt vir toepassing)

QUESTION / VRAAG 8

8 S leases a portion of X and Y's farm for 30 years with an option to renew it for a further 30 years. He builds houses for his farm manager and workers on the farm. When S leased the farm a dairy had already been erected on it. Next to the dairy he erected a house, a windmill and a stand. From the windmill a pipe ran to the tank which stood upon a masonry structure from which pipes led to the house and the tank. S also erected a cowshed and fences. This was done to facilitate the smooth operation of the dairy business. After 10 years of successful operation of the dairy business, S was declared insolvent and a trustee was appointed. Will the trustee succeed in claiming the materials with which the house, the dairy, the windmill, the tank, the cowshed and the fences were built? Substantiate your answer with reference to case law. (10)

8 S huur 'n deel van X en Y se plaas vir 30 jaar met 'n opsie om die huurkontrak vir nog 30 jaar te hernu. Hy bou op die grond huise vir sy plaasbestuurder en werkers. Daar was reeds 'n melkery op die grond toe S dit huur. Langs die melkery rig S 'n huis, windpomp en 'n staander op. Van die windpomp af loop 'n pyp na 'n tenk op 'n sementkonstruksie, en van daar loop daar pype na die huis en die tenk. S bou ook 'n koeistal en span drade - alles om die melkery glad te laat verloop. Na 10 jaar van suksesvolle bedryf van die melkery, word S insolvent verklaar, en word 'n trustee aangestel. Sal die trustee slaag met 'n eis ten opsigte van die materiaal waarmee die huis, melkery, windpomp, tenk, koeistal en drade opgerig is? Staaf u antwoord met verwysing na regspraak. (10)

ANSWER / *ANTWOORD*

The facts in the question are based on *Van Wezel v Van Wezel's Trustees* (1) (1924 AD 409).

To succeed with their claim the trustees will have to prove that the materials with which the house, the dairy, the windmill, the tank, the cowshed and the fences were built became a part of the ground through accession.

The criteria, as explained in *MacDonald Ltd v Radin and the Potchefstroom Dairies and Industries Co Ltd* (1) (1915 AD 454), were applied In the *Van Wezel* case. The court considered the following criteria to determine whether the movable has lost its independence and became part of the principal thing:

- the nature *(½)* and purpose *(½)* of the particular article,
- the degree *(½)* and manner *(½)* of its annexation, and
- the intention of the person annexing it or the intention of the owner of the movable (1)

In *Van Wezel v Van Wezel's Trustee* the owner of the movables was the annexor and not the owner of the land (1). One has to look at the intention of the annexor and not merely the intention of the owner of the movables (1). The court refered to the lease period (30 years with an option to renew it for a further 30 years) and held that the structures claimed were erected with the intention that they should remain permanently (1) and should be regarded as immovable (1) property.

The court held that the lessee has the right to remove (1) improvements, other than necessary improvements (1), which can be dismantled without damage (1) to the property before (1) the termination of the lease.

The trustees will succeed with their claim of the materials with which the house, the dairy, the windmill, the tank, the cowshed and the fences were built.

Die feite in hierdie vraag is gebaseer op Van Wezel v Van Wezel's Trustees *(1) (1924 AD 409).*

Ten einde te slaag met hul eis moet die trustees bewys dat die materiaal waarmee die huis, melkery, windpomp, tenk, koeistal en drade opgerig is deur aanhegting deel van die grond vorm.

Die kriteria soos in MacDonald Ltd v Radin and the Potchefstroom Dairies and Industries Co Ltd *(1) (1915 AD 454) uiteengesit is toegepas in die* Van Wezel *-saak. Die hof het die volgende kriteria oorweeg ten einde te bepaal of die roerende saak sy selfstandigheid verloor het en deel gevorm het van die hoofsaak*

- *die aard (½) en doel (½) van die aangehegte saak*
- *die wyse (½) en graad (½) van aanhegting*
- *die bedoeling van die aanhegter of die bedoeling van die eienaar van die roerende saak (1)*

In Van Wezel v Van Wezel's Trustee *was die aanhegter die eienaar van die roerende goed, maar nie die eienaar van die grond nie (1). Daar moet dus na die bedoeling van die aanhegter en nie bloot die bedoeling van die eienaar van die roerende goed gekyk word. (1) Die hof verwys na die huurtermyn (30 jaar met 'n opsie om die huurkontrak vir nog 30 jaar te hernu) en beslis dat die strukture wat geëis word, vasgeheg was met die bedoeling dat dit permanent (1) sal wees en word dus as onroerende (1) sake beskou.*

Die hof beslis verder dat 'n huurder die reg het om verbeterings, wat nie noodsaaklike verbeterings is nie (1), wat sonder skade (1) aan die eiendom afgebreek kan word (1), voor (1) die beëindiging van die huurkontrak te verwyder (1).

Die trustees sal dus slaag met 'n eis ten opsigte van die materiaal waarmee die huis, melkery, windpomp, tenk, koeistal en drade opgerig is.

QUESTION / VRAAG 9

9 Name the criteria which are applied in case law to determine whether a movable thing has lost its independence and become part of an immovable thing by industrial accession. Distinguish the different approaches followed with regard to these criteria in the following cases:

(a) *MacDonald Ltd v Radin NO and the Potchefstroom Dairies and Industries Co Ltd* (1915 AD 454) (5)
(b) *Van Wezel v Van Wezel's Trustees* (1924 AD 409) (5)
(c) *Standard-Vacuum Refining Co of SA (Pty) Ltd v Durban City Council* (1961 (2) SA 669 (A)) (5)

(d) *Theatre Investments (Pty) Ltd v Butcher Brothers Ltd* (1978 (3) SA 682 (A)) (5)
(e) *Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk* (1996 (3) SA 273 (A)) (5)

9 Noem die kriteria wat in regspraak aangewend word om te bepaal of 'n roerende saak sy selfstandigheid verloor het en deel geword het van 'n onroerende saak deur industriële natrekking. Onderskei die verskillende benaderings wat in die volgende sake met betrekking tot hierdie kriteria gevolg is:

(a) MacDonald Ltd v Radin NO and the Potchefstroom Dairies and Industries Co Ltd *(1915 AD 454)* *(5)*
(b) Van Wezel v Van Wezel's Trustees *(1924 AD 409)* *(5)*
(c) Standard-Vacuum Refining Co of SA (Pty) Ltd v Durban City Council *(1961 (2) SA 669 (A))* *(5)*
(d) Theatre Investments (Pty) Ltd v Butcher Brothers Ltd *(1978 (3) SA 682 (A))* *(5)*
(e) Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk *(1996 (3) SA 273 (A))* *(5)*

ANSWER / *ANTWOORD*

(a) In *MacDonald Ltd v Radin and the Potchefstroom Dairies and Industries Co Ltd* (1915 AD 454) the court pointed out that each case depends on its own facts. The court, however, stated three criteria that must be applied to determine whether the movable has lost its independence and became part of the principal thing:

- the nature *(½)* and purpose *(½)* of the particular article,
- the degree *(½)* and manner *(½)* of its annexation, and
- the intention of the person annexing it or the intention of the owner of the movable (1)

The first two criteria can give an indication of permanency, but if they are inconclusive (1), one has to look at the intention of the person annexing it (1).

(b) In *Van Wezel v Van Wezel's Trustee* (1924 AD 409) the owner of the movables was the annexor and not the owner of the land (1). One has to look at the intention of the annexor and not merely the intention of the owner of the movables. Before (1) the termination of the lease the lessee has the right to remove (1) improvements, other than necessary improvements (1), which can be dismantled without damage (1) to the property. The criteria as explained in MacDonald's case were applied.

(c) In *Standard-Vacuum Refining Co v Durban City Council* 1961 (2) SA 669 (A) 678 the annexor was the owner of the land and of the attached movables. It was said that the manner and degree of attachment relate to the mode (1) in which the movable thing is attached to the immovable thing. As long as a sufficient linking exists, it does not matter whether this has been brought about by the weight of the thing or by a physical attachment. The attachment may be actually incorporated into the immovable thing or it may be so secure that separation will cause substantial injury to either the immovable or the movable thing. The key words here are "substantial injury" (1). If separation causes substantial injury, either to the movable or to the land

or immovable to which it is attached, then the movable was attached with the intention of permanency and have become part of the immovable thing (1). If, it is not possible to determine whether there was an intention of permanancy, the intention of the annexor may be decisive. (1)
In this case Van Winsen AJA distinguished between an objective (1) intention and a subjective (1) intention of the annexor.

(d) *Theatre Investments (Pty) Ltd v Butcher Brothers Ltd* (1978 (3) SA 682 (A)) followed a somewhat different approach. In this case the annexor was the owner of the attached movables, but its lease with the owner of the land made provision for acquisition of ownership of all attachments by the lessor on termination of the lease. (1)

In *the Theatre Investments* case Van Winsen AJA remarked (at 688) that all the direct and inferential evidence (1) as to the intention (1) would have to be considered together and that in the light of that evidence (1) it would have to be decided on a balance of probabilities (1) whether the annexor intended a permanent attachment.

(e) In *Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk* (1996 (3) SA 273 (A)) the court applied the three requirements as set out in the *MacDonald* case. (1) Nienaber JA held that the third requirement was decisive. (1) Although he expressed uneasiness about the correctness (1) of the approach, he applied the intention requirement as referring to the intention of the owner of the movable things (1) that were attached to the land. He held that in the specific circumstances of the case the subjective intention (1) of the owner of the movables attached was decisive.

(a) In MacDonald Ltd v Radin and the Potchefstroom Dairies and Industries Co Ltd *(1915 AD 454) het die hof daarop gewys dat elke saak afhang van die feite van die geval. Die hof het hier drie toetse neergelê om te bepaal of die roerende saak sy selfstandigheid verloor het en deel gevorm het van die hoofsaak:*

- *die aard (½) en doel (½) van die aangehegte saak*
- *die wyse (½) en graad (½) van aanhegting*
- *die bedoeling van die aanhegter of die bedoeling van die eienaar van die roerende saak (1)*

Die eerste twee kriteria is aanduidend van die permanentheid van die aanhegting, maar is nie deurslaggewend nie (1). Die derde kriterium, nl, die bedoeling van die aanhegter, is egter deurslaggewend (1).

(b) In Van Wezel v Van Wezel's Trustee *(1924 AD 409) was die aanhegter die eienaar van die roerende goed, maar nie die eienaar van die grond nie (1). Daar moet dus na die bedoeling van die aanhegter en nie bloot die bedoeling van die eienaar van die roerende goed gekyk word. Voor (1) beëindiging van die huurkontrak het die huurder die reg om verbeterings, wat nie noodsaaklike verbeterings is nie (1), wat sonder skade (1) aan die eiendom afgebreek kan word (1), te verwyder (1).Die criteria soos in* MacDonald uiteengesit is toegepas.

(c) In Standard-Vacuum Refining Co v Durban City Council *1961 (2) SA 669 (A) 678*

was die aanhegter die eienaar van die grond en van die aangehegte roerende sake. (1) Die wyse en graad van aanhegting hou verband met die manier (1) waarop die roerende saak aan die onroerende saak geheg word. Solank as wat daar genoegsame koppeling is, maak dit nie saak of dit tot stand gebring is deur die gewig van die saak of deur middel van 'n fisiese aanhegtingsmetode nie. Die aanhegting kan in werklikheid by die onroerende saak geïnkorporeer wees, of dit kan so stewig wees dat skeiding wesenlike beskadiging kan veroorsaak, hetsy aan die onroerende of aan die roerende saak. Die sleutelwoorde hier is "wesenlike beskadiging"(1). Indien die verwydering van die roerende saak wesenlike skade tot gevolg sal hê, is dit aanduidend dat die roerende saak met die bedoeling van 'n permanente aanhegting aangeheg is en dat die aangehegte saak deel geword het van die onroerende saak. (1) Indien dit egter nie met sekerheid vasgestel kan word of die aanhegting met die bedoeling dat dit permanent moes wees aangeheg is nie, sal die bedoeling van die aanhegter deurslaggewend wees. (1)

In hierdie saak het Van Winsen W AR onderskei tussen 'n objektiewe (1) en 'n subjektiewe (1) bedoeling van die aanhegter.

(d) Die benadering in Theatre Investments (Pty) Ltd v Butcher Brothers Ltd *(1978 (3) SA 682 (A)) was effens anders. In hierdie saak was die aanhegter die eienaar van die aangehegte roerende sake, maar die huurkontrak met die eienaar van die grond het voorsiening gemaak vir eiendomsverkryging deur die verhuurder ten aansien van alle aanhegtings by beëindiging van die huurkontrak. (1)*

In die saak het Van Winsen W AR opgemerk dat al die direkte (1) en afgeleide (1) getuienis met betrekking tot die bedoeling saam in oorweging geneem moet word, en dat daar in die lig van daardie getuienis (1) op 'n oorwig van waarskynlikhede (1) besluit sal moet word of die aanhegter 'n permanente aanhegting bedoel het.

(e) In Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk *(1996 (3) SA 273 (A)) het die hof die drie vereistes soos in* MacDonald *uiteengesit, toegepas (1). Nienaber AR het beslis dat die derde vereiste deurslaggewend (1) was. Alhoewel hy gesê het dat hy onseker voel oor hoe korrek hierdie benadering is (1), het hy die bedoelingsvereiste toegepas as verwysend na die bedoeling van die eienaar van die roerende sake (1) wat by die grond aangeheg was. Hy beslis dat in die spesifieke omstandighede van die saak die subjektiewe bedoeling (1) van die eienaar van die roerende sake wat aangeheg is, deurslaggewend was.*

QUESTION / VRAAG 10
(NOT FOR EXAMINATION PUPOSES/NIE VIR EKSAMENDOELEINDES NIE)

10 While S is busy levelling the ground with his grader to put plant crops on the land which he leases from Z, he digs up an old chest containing gold coins and diamond jewellery. The coins are very old and no-one knows where they came from. S claims that he has become the owner of the coins by finding a treasure. Z also claims that the coins are his because the coins were found on his land. Will Z be successful? Substantiate your answer fully. (5)

10 Terwyl S besig is om die grond wat hy by Z huur, met 'n stootskraper gelyk te maak om gesaaides te plant, kom hy op 'n ou kis af met goue munte en diamantjuwele. Die munte is baie oud en niemand weet waar hulle vandaan kom nie. S beweer dat hy die eienaar van die munte geword het deur skatvinding. Z beweer dat die munte aan hom behoort omdat dit op sy grond gevind is. Sal Z suksesvol wees? Gee volledige stawing vir u antwoord. (5)

ANSWER / *ANTWOORD*

Treasure trove can be defined as an original method (1) of acquiring ownership in terms of which hidden (1) treasure, that is, valuable movable corporeal (1) things hidden for so long that it is impossible to determine ownership (1), is acquired either by the landowner or by him/her and the accidental finder together. It takes place upon the taking of control (1) by the finder.

Every owner may search for treasure on his/her own land and if he/she finds any, that person acquires ownership of it. But one may not search for treasure on another person's land without that person's permission. If, however, S chances to find treasure on Z's land without having searched for it S, as finder, becomes the owner of half of the treasure while Z, as owner of the land, become the owner of the other half of the treasure. (1)

S as the finder has become owner of half of the treasur and Z as the owner of the farm has become owner of half of the treasure.

Skatvinding kan gedefinieer word as 'n oorspronklike wyse (1) van eiendomsverkryging waarvolgens verborge (1) skatte, dit wil sê waardevolle, roerende, stoflike (1) sake wat so lank verborge was dat dit onmoontlik is om eiendomsreg te bepaal (1), verkry word, hetsy deur die grondeienaar of deur hom/haar en die toevallige vinder tesame. Dit vind plaas sodra die vinder beheer (1) daaroor neem.

Enige eienaar mag na 'n skat op sy/haar eie grond soek, en indien hy/sy dit vind, verkry hy/sy eiendomsreg ten aansien daarvan. Mens mag egter nie na 'n skat op iemand anders se grond soek sonder daardie persoon se toestemming nie. Indien S egter toevallig 'n skat op X en Y se grond vind sonder dat hy daarna gesoek het word S as die vinder die eienaar van die helfte van die skat, terwyl Z, as die eienaar van die grond, die eienaar van die ander helfte van die skat word. (1)

S as vinder is dus eienaar van die helfte van die saak en Z as eienaar van die plaas is eienaar van helfte van die saak.

QUESTION / VRAAG 11
(NOT FOR EXAMINATION PUPOSES/NIE VIR EKSAMENDOELEINDES NIE)

11 X is the owner of land. Y has possessed the land since 1950 as though he were the

owner thereof, and complies with all the legal requirements for prescription. In 1975, X issued summons asserting that he was the owner of the land and claiming its return. What is Y's position with regard to acquisitive prescription in the following cases?

(a) X successfully carries through his action. (2)

(b) X fails to carry through his action. (2)

11 X is die eienaar van grond. Y het sedert 1950 die grond besit asof hy die eienaar daarvan was, en hy voldoen aan al die regsvereistes ten aansien van verjaring. In 1975 het X 'n dagvaarding laat uitreik waarin hy beweer dat hy die eienaar van die grond is, en eis dat dit aan hom teruggegee word. Wat is Y se posisie met betrekking tot verkrygende verjaring in die volgende gevalle:

(a) as X sy aksie suksesvol deurvoer? (2)

(b) as X nie daarin slaag om sy aksie deur te voer nie? (2)

ANSWER / *ANTWOORD*

General
Acquisitive prescription is the acquisition of ownership by the possession of another person's movable or immovable property ... continuously for thirty years, *nec vi*, *nec clam*, *nec precario*.

In this case Y was in possession for 25 years.

Section 4(1) of the 1969 Prescription Act:

The running of prescription shall ... be interrupted by the service on the possessor ... of any process whereby any person claims ownership in that thing.

(a) The mere service of process does not permanently interrupt the course of prescription. Interruption occurs only if the person who lays claim to ownership succeeds in carrying his/her claim to the final judgment. If the claimant carries his/her action through successfully to final judgment, prescription is interrupted and has to start running anew (*de novo*). (1)

Y's prescription will be interrupted. (1)

(b) The serving of process has the effect of temporarily interrupting the course of prescription, but if the claimant abandons his/her claim, or if judgment (or even absolution from the instance) is given against him/her, the temporary interruption lapses with retrospective effect. (1)

Y's prescription will only be interupted temporarily and will lap with retrospective effect when X's action fails. (1)

Algemeen
Verkrygende verjaring is die verkryging van eiendomsreg deur die besit van 'n ander se roerende of onroerende goed ... voortdurend vir dertig jaar, nec vi, nec clam, nec precario.

In hierdie geval was Y vir 25 jaar in beheer.

Artikel 4(1) van die Verjaringswet 68 van 1969:
Die loop van verjaring word, behoudens die bepalings van subartikel (2), gestuit deur die betekening aan die besitter van die betrokke saak van 'n prosesstuk waarin iemand aanspraak maak op die eiendom van daardie saak.

*(a) Die blote betekening van 'n prosesstuk stuit die loop van verjaring nie permanent nie. Stuiting vind slegs plaas indien die persoon wat aanspraak maak op eiendomsreg daarin slaag om sy/haar aanspraak tot finale vonnis deur te voer. Indien die eiser sy/haar aksie met welslae tot finale vonnis deurvoer, word verjaring gestuit, en moet dit van voor af (*de novo*) begin loop.(1)*

Y se verjaring sal dus gestuit word. (1)

(b) Die betekening van 'n prosesstuk het die uitwerking dat dit die loop van die verjaring tydelik stuit, maar indien die eiser afstand doen van sy/haar aanspraak, of indien vonnis (of selfs absolusie van die instansie) teen hom/haar gegee word, verval die tydelike stuiting met terugwerkende werking. (1)

Y se verjaring sal dus slegs tydelik gestuit word, maar terugwerkend verval wanneer X se aksie misluk. (1)