

**PVL3701** ( 482504)

May/June 2011

**PVL303Y** ( 495266)**LAW OF PROPERTY (PRIVATE LAW)**

Duration 2 Hours

100 Marks

**EXAMINERS :**

FIRST

PROF SUSAN SCOTT

MS M WIESE

SECOND

MRS IM KNOBEL  
PROF JM KRUGER

This paper consists of 6 pages plus instructions for the completion of a mark-reading sheet

**ANSWER ALL THE QUESTIONS IN BOTH SECTION 1 AND SECTION 2****SECTION 1**

ANSWER THESE QUESTIONS ON THE MARK READING SHEET  
CHOOSE ONLY ONE ANSWER FOR EACH QUESTION  
EACH QUESTION COUNTS 2 MARKS

**QUESTION 1**Indicate the **correct** option

In *Ex Parte Geldenhuys* (1926 OPD 155) the court formulated a test to determine the distinction between

- (1) ownership and personal rights
- (2) personal rights and real rights
- (3) real rights and limited real rights
- (4) personal servitudes and personal rights

(2)

**[TURN OVER]**

**QUESTION 2**

Indicate the **correct** option

In *Papalardo v Hau* (2010 (2) SA 451 (SCA)) the court held that the owner of the

- (1) lower erf must allow all water flowing from the higher erf on to his erf
- (2) lower erf must divert the water from the higher erf to the street
- (3) lower erf must allow the natural flow of water from the higher erf on to his erf
- (4) higher erf has an *ex lege* servitude over the lower erf in terms of which the owner of the lower erf must allow all water to flow on to his/her erf

(2)

**QUESTION 3**

Indicate the **incorrect** option

In *MacDonald Ltd v Radin & The Potchefstroom Daines & Industries Co, Ltd* (1915 AD 454) it was decided with reference to the different criteria which are relevant when a court has to determine whether a movable became permanently attached to land that

- (1) the intention of the owner of the movable thing that is attached to the land is an important consideration,
- (2) if substantial injury will be caused to either the land or the attached thing if the attached thing were to be removed no uncertainty would exist as to the question whether it was the intention that permanent annexation should take place,
- (3) the consideration of intention was even more important than the consideration of the nature of the movable thing and the degree and manner of its annexation, or
- (4) the consideration of the intention with which the movable thing was attached to land was irrelevant in English law

(2)

**QUESTION 4**

Which **one** of the following statements based on the decision of *Vasco Dry Cleaners v Twycross* (1979 (1) SA 603 (A)) is **incorrect**?

- (1) In the case of *constitutum possessorium* a transferor retains physical control of the thing to be transferred
- (2) *Constitutum possessorium* does constitute delivery for purposes of creating a valid pledge
- (3) *Constitutum possessorium* creates the possibility of fraud
- (4) The real object underlying the transaction between Air Capricorn and Twycross was not a sale agreement but a pledge agreement

(2)

[TURN OVER]

**QUESTION 5**

In which **court decision** was the law relating to attornment altered and a method of transfer analogous to attornment recognised?

- (1) *Regal v African Superslate* (1963 (1) SA 102 (A))
- (2) *Air-Kel (Edms) Bpk h/a Merkel Motors v Bodenstein* (1980 (3) SA 917 (A))
- (3) *Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (Wp) Bpk* (1996 (3) SA 273 (A))
- (4) *Caledon en Suid-Westelike Distrikte Eksekuteurskamer Bpk v Wentzel* (1972 (1) SA 270 (A))

(2)

**QUESTION 6**

Indicate the **correct option**

In *Telkom Ltd v Xsinet (Pty) Ltd* (2003 (5) SA 309 (SCA))

- (1) The appeal against the decision of the court *a quo* was dismissed with costs
- (2) It was held that there existed no authority regarding the quasi-possession of incorporeals such as servitudes
- (3) Jones AJA stated that the court *a quo* correctly held that the use of the bandwidth and the telephone services constituted an incident of Xsinet's possession of its premises
- (4) Xsinet applied for a spoliation order because it regarded the disconnection of the telephone services as an unlawful deprivation of its use and possession of the systems

(2)

**QUESTION 7**

Indicate the **correct option**

Who of the following persons is a lawful holder?

- (1) an owner who controls his thing
- (2) a controller who *bona fide* bought the thing from a person who was not the owner of the thing
- (3) a pledgee
- (4) a lessee who refuses to vacate the leased premises after the lease has expired, because he *bona fide* (but incorrectly) believes that the lease period was extended

(2)

**[TURN OVER]**

**QUESTION 8**

Which **one** of the following statements regarding co-ownership is **incorrect**?

- (1) The *actio communi dividundo* can only be instituted for division of the thing held in co-ownership. Damages for the unreasonable use of the thing held in co-ownership must be claimed by way of the *actio legis Aquiliae*
- (2) A husband and wife, married in community of property, who own a farm together, are bound co-owners
- (3) A co-owner can claim damages from another co-owner if the latter uses the thing unreasonably in relation to his/her share
- (4) In *Pretorius v Nefdt and Glas* (1908 TS 854) it was held that a co-owner can use an interdict to prohibit another co-owner from making unreasonable use of the property

(2)

**QUESTION 9**

Which **one** of the following is **not** a factor in considering the amount of compensation for expropriation in terms of section 25(3) of the 1996 Constitution?

- (1) a just balance between the public interest and the interests of those affected
- (2) present use of the property
- (3) aim of the expropriation
- (4) market value of the property

(2)

**QUESTION 10**

A 'section' in terms of the *Sectional Titles Act* 95 of 1996 can be described as.

- (1) The object of the sectional title ownership (real right)
- (2) A defined part of a building such as a flat, a garage, an office or shop in a building or office block
- (3) The land and all permanent structures on the land that do not form part of a section
- (4) A unit which consists of a section together with an undivided share in the common property

(2)

**TOTAL SECTION 1:****[20]****[TURN OVER]**

**SECTION 2**

ANSWER THESE QUESTIONS IN THE ANSWER BOOK

**QUESTION 1**

Define

- |     |               |             |
|-----|---------------|-------------|
| (a) | ownership     | (7)         |
| (b) | appropriation | (5)         |
| (c) | legal object  | (2)         |
| (d) | pledge        | (6)         |
|     |               | <b>[20]</b> |

**QUESTION 2**

Name

- |     |   |             |
|-----|---|-------------|
| (a) | the entitlements of ownership   | (7)         |
| (b) | six reasons why it is important to distinguish between movable and immovable things | (6)         |
| (c) | the requirements for a successful reliance on the <i>rei vindicatio</i>             | (3)         |
| (d) | four ways in which a mortgage can be extinguished                                   | (4)         |
|     |   | <b>[20]</b> |

**QUESTION 3**

- (a) S transferred an exclusive right to trade on a certain piece of land to Z. Z transferred this right to his son, Zz. The right was not registered in favour of Z. S sold his farm to X. X argues that Zz is not entitled to trade on that piece of land, but Zz insists that he acquired that right from his father, Z.

**Answer the following questions:**

- |      |  |             |
|------|--|-------------|
| (i)  | Which is the appropriate remedy to use here? Explain and refer to case law   | (3)         |
| (ii) | Discuss the legal position of the parties with reference to case law   | (10)        |
| (b)  | Describe the difference between delivery with the short hand and delivery with the long hand. Refer to examples in your answer | (7)         |
|      |  | <b>[20]</b> |

**[TURN OVER]**

**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.

**Answer the following questions:**

- (i) Will Z's application succeed? In your answer refer to the requirements for a successful reliance on the spoliation remedy as well as relevant case law (7)
- (ii) Name four valid defences that may be raised against the spoliation remedy (4)
- (b) Distinguish between suspension and interruption in prescription as an original method of acquisition of ownership (4)
- (c) S decides to develop a part of his farm Highlands as a residential township, but his attorney informs him that it is not possible. A regional development plan in terms of a physical planning scheme provides that the area is to be utilised for agricultural purposes only. Is such a provision permissible in terms of section 25 of the 1996 Constitution? Substantiate your answer (5)

**TOTAL SECTION 2:**  
**TOTAL MARKS:**

**[80]**  
**[100]**

**PART 1 (GENERAL/ALGEMEEN) DEEL 1**

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 STUDIE EENHEID bv. PSY100 X

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INITIALS AND SURNAME  
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DATE OF EXAMINATION  
 DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)  
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For use by examination invigilator  
 Vir gebruik deur eksamenopsiener

**IMPORTANT**

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- MARK LIKE THIS
- CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
- CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
- CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- DO NOT FOLD

**BELANGRIK**

- GEBUIK SLEGS 'N HB POTLOOD OM HIERDIE BLAD TE VOLFOOI
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- KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
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**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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**Specimen only**