

PVL3701 Q&A

Define

Law of things P 33

(6)

The law of things can be defined as a branch of private law which consists of a number of legal rules that determine the nature, content, vesting, protection, transfer and termination of various real relationships between a legal subject and a thing, as well as the rights and duties ensuing from these relationships.

Thing

Generally, a thing is a legal object characterised by its material (corporeal) nature. For a complete picture of a thing in legal sense, we define a thing as an independent part of the corporeal world, which is external to humans and subject to human control, as well as useful and valuable to humans.

Legal Object

A legal object can be defined as every object with which a legal subject has a legally recognised relationship. These legal objects may be divided into things, performances, immaterial property and personality property.

Real right

A real right can be defined as a lawful real relationship between a legal subject and a thing which confers direct control over the thing on the legal subject, as well as the relationship between the legal subject and all other legal subjects who must respect this relationship.

Ownership P67

(7)

Ownership is the most comprehensive real right a person can have with regard to his thing. In principle, a person can act upon and with his thing as he pleases. This apparent freedom is restricted however, by the law and the rights of others.

Bona fide unlawful holder P195

(4)

The bona fide unlawful holder can be defined as a person who physically controls the thing unlawfully, but is unaware of the fact, since he is under the incorrect impression that he has the necessary permission or legal ground to control it. E.g. a "lessee: who has un-knowingly concluded an invalid lease contract.

PVL3701 Q&A

***Mala fide* unlawful holder**

The *mala fide* unlawful holder can be defined as a person who knows that he does not have the owner's consent to controls the thing, but still exercises physical control over it for the sake of the benefit he can derive from it not with the intention of the owner. E.g. a "lessee" who remains on the leased property after the lease has expired.

Labour tenant in terms of Land Reform Act 3 of 1996 P324 (3)

It to the Land Reform Act 3 of 1996, a labour tenant is a person who has the right to reside on a farm and also has the right to use the land for cropping or grazing in return for his/her labour. The substantive part of a labour tenant's remuneration consists of the right to occupy and use the land.

The Act provides for the security of tenure of labour tenants and those persons who occupy or use land as a result of their relationship with labour tenants. In addition, a labour tenant can only be evicted in terms of a court order. A court will make such an eviction order if it is just and equitable to do so after the labour tenant has refused or failed to provide labour to the owner despite one calendar month's written notice to resume work, or if the labour tenant has committed such a material breach of the relationship between him/herself and the owner that it is not practically possible to remedy it.

Building (*inaedificatio*) P103 (5)

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

***Bona fide* possessor P197 (4)**

A *bona fide* possessor controls the thing based on the incorrect assumption that he is the owner. E.g. possessor who acquires from a non-owner

Restrictive conditions (6)

Right of Retention (*lien*) (5)

PVL3701 Q&A

Mala fide possessor P197

(3)

A **mala fide possessor** controls the thing while he is not legally recognised as the owner of the thing.
E.g. a thief

Pledge P260

(5)

A pledge can be defined as a limited real right over the pledgor's thing, delivered to the pledgee as security for repayment of the principal debt which the pledger or a third person owes to the pledgee.

Expropriation as a form of acquisition of ownership P118

(5)

Expropriation can be defined as an original method of acquiring ownership in terms of which the State acquires ownership of a movable or immovable thing – without the consent of the owner against payment of compensation. Section 25 of the Constitution empowers the state to expropriate “property” for public purposes and against payment of compensation.

Servitude P227

(7)

Servitude can be defined as a limited real right to another person's thing. It confers specific entitlements of use and enjoyment on the holder who enjoys these entitlements as owner of a particular piece of land (in the case of a land (praedial/real) servitude) or in his personal capacity (in the case of a personal servitude).

Mortgage P268

(5)

A mortgage can be defined as a limited real right over a thing belonging to the mortgagor in order to secure repayment of a debt owed by the mortgagor or a third person to the mortgagee.

Legal object

(2)

The rights and duties established by legal subjects in legal relationships pertain to one or more of the various kinds of legal object. A legal object can be defined as every object with which a legal subject has a legally recognised relationship. These legal objects may be divided into things, performances, immaterial property and personality property.

Legal subject

(2)

A legal subject can be defined as any person (whether a natural or a legal person) capable of acting as a subject in legal relationships and of acquiring rights and incurring duties in the process. Human beings (natural persons) are the most common and best-known legal subjects, but legal persons such

PVL3701 Q&A

as the State, universities, companies, close corporations, and so on, are also legal subjects, since they can act as legal subjects in legal relationships and can therefore acquire rights and duties.

Appropriation P91

(5)

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.

Prescription P118

(5)

Prescription can be defined as an **original method** of acquiring ownership in terms of which a person who **controls** (possesses) a thing **openly** and **as if s/he were the owner** for an **uninterrupted period of thirty years** becomes its owner. This is termed acquisitive prescription, which is the means whereby real rights, in the form of ownership and servitudes, may be acquired through the passage of time.

Personal servitude P241

(5)

A personal servitude can be defined as a limited real right granting the servitude holder specific entitlements of use and enjoyment with regard to the movable or immovable thing of another in his/ her personal capacity for a specific period of time, or for his/ her lifetime or, in the case of a legal person, for the a maximum of 100 years.

Bound co-owner P176

(3)

Bound co-ownership exists where there is an underlying legal relationship between the co-owners which determines the basis of their co-ownership, for example, a marriage in community of property, a partnership or a voluntary association. In all these cases the underlying relationship will determine, for example, whether the co-owners

Appropriation P92

Expropriation P118

PVL3701 Q&A

Name

The entitlements of ownership P69 (7)

The **entitlements of ownership** include the entitlement to

Use the thing (e.g. to drive your car), the fruits (e.g. to charge rent for the use of your car)

Control (possess) the thing (e.g. to hold your handbag)

Consume or destroy the thing (e.g. to burn your book)

Alienate the thing (e.g. to sell or donate your mobile phone to someone)

Burden the thing (e.g. to grant a mortgage over your land)

Vindicate the thing (e.g. to claim your car from a third person with the *rei vindicatio*)

6 reasons why it is important to distinguish between moveable and immovable things P48 (6)

The distinction between movable and immovable things has significance in several fields of law:

1. It affects the **formalities and requirements for the transfer of ownership**.
2. **Several statutes distinguish** between movable and immovable things, e.g. the Deeds Registries Act
3. **Private international law**
4. **Estate of a minor**: Permission of the High Court is required for the alienation or encumbrance of a minor's immovable assets worth more than R100 000.
5. In **execution** of a judgment debt and in the case of insolvency, the debtor's movable assets are sold before the immovables, to secure payment of the judgment debt.
6. In **criminal law** theft can be committed only in respect of movables, while arson can only be committed in relation to immovable.

Real security is effected by means of a pledge in the case of movables and by means of a mortgage in the case of immovable things.

PVL3701 Q&A

The requirements for a successful reliance in the *rei vindicatio*

(3)

For a successful reliance on the *rei vindication* the plaintiff must **prove, on a balance of probabilities**, that:

- i. he is the **owner**
- ii. the thing **exists and is identifiable**
- iii. the **defendant is in control**

Four ways in which a mortgage can be extinguished P278

(4)

Mortgage is extinguished by:

1. Extinction of the principle debt, e.g. by payment, set-off, etc.
2. Destruction of the mortgaged thing
3. Extinction of the mortgagor's title in respect of the mortgaged thing, e.g. where the mortgagor who is merely the usufructuary of the mortgaged thing, dies.
4. Express or tacit renunciation of the mortgage by the mortgagee
5. Merger (*confusio*), where the mortgagee becomes the owner of the mortgaged thing.
6. Court order
7. Delivery of the mortgaged thing to the purchaser in consequence of its sale in execution
8. Prescription
9. Loss of control of the thing over which there was a lien
10. Removal of the *invecta et illata* from the rented premises and transport to a new destination, by which the landlord's tacit hypothec is extinguished

The requirements for successful reliance on an interdict P 161

(3)

The requirements for a successful application for an interdict were set out in *Setlogelo v Setlogelo*

The requirements for an interdict are therefore as follows:

A clear right

an actual or reasonably apprehended violation of a right, and

no similar protection by any other ordinary remedy.

PVL3701 Q&A

The circumstances that have to be considered in terms of S25(3) of the 1996 Constitution when an amount of compensation for expropriation must be determined P315-316 (5)

The property clause, S25(3)(a-e) of the 1996 Constitution states:

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

- a) the current use of the property;
- b) the history of the acquisition and use of the property;
- c) the market value of the property;
- d) the extent of direct State investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- e) the purpose of the expropriation

Two types of limitations on ownership imposed in terms of the law P72 (2)

Ownership is limited as follows:

- a) Limitations imposed by law
 - i. Statutory limitations
 - ii. Limitations in terms of neighbour law principles
- b) Limitations imposed by rights of other legal subjects
 - i. Limited real rights
 - ii. Personal rights

Six ways in which servitudes are terminated P246 (6)

A servitude may be terminated:

- i. Upon the expiry of the period for which it was established, or the fulfilment of a resolutive condition and, specifically in the case of a personal servitude, by the death of the holder or, where the holder is a legal person, after 100 years, if no time period was fixed by
- ii. Agreement
- iii. Prescription
- iv. Expropriation
- v. Renunciation (abandonment)
- vi. Merger

PVL3701 Q&A

- vii. The impossibility of exercising the right as a consequence of a permanent change in the condition of the dominant or servient tenement (e.g. in the case of a servitude to draw water but the well has dried up) *Kidson v Jimspeed Enterprises CC*

The requirements that must be complied with for attornment to take place P145 (2)

Attornment is a derivative method of transferring ownership where the transferor, the transferee and a third party (who **is in control** of the thing and will continue to control it) **agree** that the third party will **control the thing on behalf of the transferee as owner**. There are 2 requirements for attornment to take place:

- i. A **tripartite agreement** between the transferor, the transferee and the third party holder in terms of which the holder will continue to hold for the transferee and no longer for the transferor. All 3 parties therefore consent to the transfer of ownership.
- ii. The **holder should exercise physical** control at the moment of transfer from the transferor to the transferee (*Air-Kel (Edms) Bpk h/a Merkel Motors v Bodenstein; Southern Tankers (Pty) Ltd t/s Unilog v Pescara D'Oro Ltd 2003*)