

WITS LAW SCHOOL

LAW OF PROPERTY (LAWS 3024)

OPEN BOOK EXAMINATION – MAY 2012

INFORMATION AND INSTRUCTIONS FOR CANDIDATES

1. This paper may be collected from LB41 in the Law School, or downloaded from the teaching website, at any time after 9am on Friday 18 May 2012. Your scripts must be returned to LB41 by no later than 12 noon on Friday 25 May 2012.
2. **No late scripts will be accepted.**
3. Bring a copy of your script for endorsement by the member of staff to whom you hand it in. Retain that copy as proof of submission.
4. You may type or handwrite your answers. If you handwrite your answers, then do so in the Law School Take Home Test Answer Sheet, which will be provided with this exam paper. The Answer Sheet may also be downloaded from the teaching website.
5. **Write the name of your lecturer at the top of the first page of your script before handing it in.**
6. You may consult any resource you wish in answering the questions. Make sure that you properly attribute any quotations or paraphrasing of any resource or authority you use in your answer. **Remember that the handouts provided in lectures are not themselves citable sources.** They are provided solely to assist you in navigating the prescribed readings.
7. Your attention is drawn to the University policy on plagiarism. Plagiarised answers will not be marked. The examiners are required to report any reasonable suspicion of plagiarism to the University authorities for further investigation and possible disciplinary action.
8. Bear in mind that these questions are intended to stimulate thought and reflection. They are deeper and richer than questions you would expect to find on a closed-book exam.
9. Read the questions carefully and then plan and structure your answer.
10. The paper has been designed to be completed within 3 to 4 hours. However, there is no time limit beyond that prescribed in paragraph 1 above.
11. Answer one question from Section A **and** one question from Section B.

PLEASE TURN OVER FOR SECTION A

SECTION A

Question 1

Consider that view that the decision of the Constitutional Court in *City of Johannesburg v Blue Moonlight Properties* 2012 (2) SA 104 (CC) successfully balances the rights of property owners and the landless. In your answer, evaluate the judgment in light of the theories of property distribution attributed to Karl Marx and Robert Nozick.

[20 marks]

Question 2

With reference to applicable cases, explore how South African courts have sought to define real rights in relation to personal rights. Particular attention should be paid to the subtraction from the dominium test, and whether the approach of the South African courts in this regard is convincing.

[20 marks]

Question 3

Is an obligation to pay money a “subtraction from the dominium” and thus capable of giving rise to a real right? Should it be? In your answer, fully discuss the decided cases on this issue.

[20 marks]

Question 4

“Customary land law is an unenforceable relic of a bygone era. The only way to reform customary land title is to abolish it in favour of the common law.” Discuss.

[20 marks]

Question 5

Does the common law of nuisance adequately respond to present day conflicts over the use and occupation of land in South Africa? In your answer, fully discuss the common law principles dealing with nuisance, together with any decided cases on the issue.

[20 marks]

PLEASE TURN OVER FOR SECTION B

SECTION B

Question 1

Earlier this year xenophobic violence broke out in a cosmopolitan suburb of Vibrant Valley. Groups of angry young men would emerge at night, walking through the streets and chanting xenophobic slogans against foreigners living in the area, brandishing batons and threatening violence against the foreigners. Thus far, however, no violence has been recorded.

Nevertheless, as a result of this intimidation, many foreigners sought refuge in the nearby police station. Unable to deal with the large influx of people, however, the station commissioner appealed to the Minister of Foreigner Affairs for a more viable, permanent solution.

The Minister determined that the State owned a piece of land adjoining the wealthy suburb of Little Tuscany. Although far from Vibrant Hills, the land was situated near a taxi rank with good connections to the rest of the city, and being close to existing infrastructure meant that it would not be too difficult for the State to provide rudimentary water and electricity services.

The Minister, however, determined that the State simply had neither time nor money to build any permanent dwellings. Instead, the Minister determined a cost-effective and temporary housing plan that would house the foreigners in abandoned ship containers. Given the space constraints of the land, these were stacked high on top of one another, sometimes going up to the equivalent of 10 floors, providing a view of Vibrant Valley. Appropriately, the new area was nicknamed Vibrant Heights.

As a result, the Little Tuscany Residents Association (LTRA) formed an action group to oppose the housing plan. The residents argued that the property values had already suffered considerably as a result of the sudden encroachment of Vibrant Heights. The residents maintain further that crime has gone up in the area (although there are no statistics to support this), and that the call to prayer which rings out from one of the containers playing host to a religious congregation disturbs the quiet tranquility of the area.

The LTRA accordingly brings an application against the Minister to court on the above grounds. The Minister opposes the application, arguing that the State had no choice and was merely acting in the constitutionally-protected interests of the residents. In any case, the State argues that it owns the land and as such, can do what it wants with the land.

You are the judge designated to hear the matter. Decide whether the application brought by the LTRA should be upheld, and give reasons for your answer referring to relevant case law. In your answer, you should explore the concept of neighbour law in light of the South African Constitution, and whether or how the law can balance the divergent interests of property owners and communities.

[20 marks]

Question 2

Jim and Jack are best friends. Jim buys a clothing manufacturing company from Jon. The company's major assets are fifty automated looms and one hundred sewing machines (used to make the clothes) and ten packing machines (used to box clothes once they are manufactured). The purchase agreement stipulates that the company will be paid for in four instalments of R500000 each. Jim makes the first three payments with ease, but then runs into financial trouble. In order to

make his last payment, Jim asks Jack to buy the packing machines he acquired with the factory. However, because Jim still needs the machines to run his business, it is agreed that Jim can carry on using them notwithstanding their sale to Jack. The deal is that Jim will sell the machines for R500000 to Jack, pay the last instalment he owes to Jon, and then re-purchase the machines in six months' time, by which time he hopes this financial situation will have improved. Jack agrees and purchases the machines. Jim pays the last instalment to Jon.

Three months later, Jim sells the company, including all its assets, to Jabulani. The sale agreement is concluded and a purchase price of R3 million is paid. Jim hands the keys to the company's premises, which contains all fifty looms, one hundred sewing machines and ten packing machines over to Jabulani.

Discuss Jim, Jack and Jabulani's relative legal positions. In particular consider the following questions –

1. Who owns the packing machines sold to Jack at the time that the company is sold to Jabulani? Fully justify your answer with reference to the applicable case law.
2. How many times, and through what manner of delivery, has ownership of the looms and the sewing machines passed? Fully justify your answer with reference to the applicable case law.

[20 marks]

Question 3

Jane and Joy are the best of friends. Both have studied law at Wits University for the past three years, and have decided that the time has come for them to invest in a flat in Braamfontein together. They purchase a well-priced flat in a fairly run-down part of Braamfontein, but given the increasing popularity of the area see the purchase as a good investment decision.

Jane however is quite prudent when it comes to spending money, whereas Joy is a bit more carefree in this regard. This difficulty emerges after a few months of living together when the geyser springs a leak. Joy insists that it must be fixed, whereas Jane correctly points out that the leak can be cured via simply placing a bucket under the leak. Unhappy with this arrangement, however, and taking advantage of the fact that Jane is away for two weeks, Joy calls in a plumber and fixes the leak.

Whilst fixing the leak, the plumber advises Joy that he has a side business installing jacuzzis. Enthralled by the idea of a jacuzzi on the flat's balcony overlooking the skyline, Joy immediately puts down a deposit for the installation of a new jacuzzi. She invites a few friends over for a party a few days later, just in time for Jane's arrival back home, where Jane not only finds a new jacuzzi, a flat in complete disarray, her favourite crystal vase in pieces, but also an invoice from the plumber for the fixing of the geyser as well as the installation of the jacuzzi. She further finds a notice from the Body Corporate threatening legal action if the jacuzzi is not removed, which not only flouts the rules of the Body Corporate, but is also leaking water to her downstairs neighbours.

Joy is unperturbed, however, and maintains that the flat is as much hers as it is Jane's. She insists that Jane pays for the improvements she effected, and in order to help finance her own payments, she rents out a portion of her room to her new friend, Daisy.

This is the last straw for Jane. She approaches you, as her attorney, for advice. Advise accordingly, with reference to applicable case law.

[20 marks]

Question 4

Big Bucks Corporation is building its brand new corporate headquarters on land in the Swankville Office Park, just outside Sandton. It contracts Ice Ice Baby (Pty) Ltd to install an air conditioning system. Ice Ice Baby buys all of the parts for installation of the system from Screw Loose Wholesalers. In the contract between Ice Ice Baby and Screw Loose, Screw Loose reserves ownership of the parts until the full purchase price is paid.

The air-conditioning system is installed. Construction of the corporate headquarters is completed, but both Ice Ice Baby and Big Bucks Corporation are placed under liquidation before Ice Ice Baby pays Screw Loose or Big Bucks takes occupation of its headquarters. The liquidators of Big Bucks sell its corporate headquarters to Classy Corp.

Screw Loose hears of all this, and then claims the return of the air conditioning system on the basis that it still owns the parts from which it is constructed, because they were never fully paid for by Ice Ice Baby. Classy Corp refuses to return the air conditioning system, which is now installed deep into the fabric of the building.

Screw Loose nevertheless institutes action in the High Court for the recovery of the air conditioning system. Classy Corp opposes the action, but judgment is given in Screw Loose's favour.

Classy Corp wishes to apply for leave to appeal the High Court decision to the Supreme Court of Appeal, and approaches you for advice.

With reference to the common law, and all applicable case law, explain fully why the High Court reached the conclusion it did, and advise Classy Corp on what arguments it should raise on appeal, together with their prospects of success.

[20 marks]

Question 5

The Department of Land Affairs establishes what it calls a tribal land trust on a plot of vacant land just outside Tumblebottom Township. It appoints Chief Mkhize and two Indunas - Mnikelo and Sbu – as trustees over the land. Chief Mkhize soon welcomes many people onto the land who need a place to settle. In each case, he allocates land through his Indunas, as is the tradition in that part of South Africa. There is soon a thriving community, which lives in houses made of mudbrick and which works together to administer the land and its use.

A few years later, the Bricks R Us housing company approaches Chief Mkhize and offers to build houses on the land, which it will sell to individual members of the community. Chief Mkhize agrees, decides to subdivide the land and permits Bricks R Us to build a house on each subdivision. Chief Mkhize does not, however, seek the community's approval for his decision. He purports to exercise his powers as trustee of the tribal land trust to authorise Bricks R Us to construct the houses. As the houses are sold off, individual title over the subdivisions of land on which each house stands is transferred to each member of the community who purchases a house.

Some community members resist, however. They cannot afford to buy the new houses and in any event object to the parcelling-off of land title in the way permitted by Chief Mkhize. In the end, this small group of people are left in mudbrick structures, living on land upon which the local Municipality wishes to construct a school to serve the new formal township.

The Municipality applies to evict all of the people living in the mudbrick houses, saying that they are “unlawful occupiers” and that it is in the public interest that the school be built.

You are approached by Bandile, who lives in one of the mudbrick houses and wishes to resist the eviction application. She insists that she is not an unlawful occupier and will not authorise you to defend her on the basis that she is. Advise her fully on any defences open to her and the other occupiers of the mudbrick houses, on the assumption that they are all in lawful occupation of the land.

[20 marks]

TOTAL FOR PAPER: 40 MARKS