

## PVL370-1 (Exam questions 2011 – 2014)

1. In *Ex Parte Geldenhuys*, 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. Indicate the wrong option

After considering a claim, the Land claims Court can make different restitution orders. These orders include

- (1) Restoration of land, a portion of land or any right in land
- (2) A grant by the state of an appropriate right to alternative state-owned land
- (3) Payment of compensation by the state
- (4) Eviction of the owner of the land

3. Which statement of **correct**?

- (1) Personal servitudes may be established only over immovable (land)
- (2) Personal servitudes are inseparably attached to the servitude holder and his successors in title
- (3) A personal servitude is a limited real right
- (4) A personal servitude is a personal right

4. Which option is **not a feature or characteristic** of real rights?

- (1) The rule *prior in tempore in iure* applies to real rights
- (2) Real rights grant preference in the case of insolvency
- (3) Real rights are unenforceable against *bona fide* third parties
- (4) The object of a real right is a thing

5. Which option is the odd one out?

- (1) A carp swimming around in the Roodeplaat dam
- (2) A kudu which is grazing on Q&R's game farm which is fenced by means of a 3-m high game proof fence and with the mark QR on it
- (3) A wounded impala which has been shot on X's unfenced farm and which is being pursued by hunter Z
- (4) A Congolese wood patriot which lived in an open cage in the lounge of Z's Waterkloof home for 2yrs, but flew away and now lives in the trees at Magnolia Dell

6. Which form original method of acquiring ownership is it when X makes wine from Y's grapes?
- (1) Accession
  - (2) Appropriation
  - (3) Mixing of solids
  - (4) manufacture
7. Which one of the following definitions is a correct definition of a real right?
- (1) It is a lawful real relationship between a legal subject and an object which confers direct control over the object on the legal subject, as well as the relationship between the legal subject and other legal subjects who must respect this relationship
  - (2) It is a 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 the other legal subjects who must respect this relationship
  - (3) It is 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 the other legal subjects who must respect this relationship
  - (4) It is a lawful relationship between a legal subject and an object which confers direct control over the thing on the legal subject, as well as the relationship between the legal subject and the other legal subjects who must respect this relationship
8. Indicate the **correct** option:
- Which one of the following things can be regarded as a *res nullius*?
- (1) A domesticated tiger living in his owners house
  - (2) An impala roaming in the bushes
  - (3) A Persian cat lying on the neighbour's patio
  - (4) A springbuck kept on a private game farm for hunting purposes
9. Indicate the **correct** option
- (1) A thing is a legal object which is an independent part of the corporeal world, is external to humans and subject to human control, as well as useful and valuable to humans
  - (2) A thing is a legal subject which we define 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
  - (3) A thing is a legal object which is incorporeal in nature, but forms 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
  - (4) A thing is an independent part of the corporeal world, is external to humans and subject to human control, as well as useful and valuable to humans

10. Indicate the **wrong** option

The criteria applied by the courts to determine whether a movable thing became attached to an immovable thing by means of accession in such a way that it became part of the immovable thing are

- (1) The intention of the person annexing it
- (2) The manner and degree of attachment
- (3) The intention of the owner of the immovable thing
- (4) The nature and purpose of the attached thing

11. Indicate the **wrong** option

- (1) A principal thing is an independent thing made up of various parts, with an independent existence as a composite thing. It is not a constituent or supplementary part of another thing, eg land
- (2) A principal thing is an independent thing made up of various parts, with an independent existence as a composite thing. It is not a constituent or supplementary part of another thing, eg a house
- (3) An accessory thing can have a separate existence apart from the composite thing, but has forfeited its independent existence in that it has been physically joined to the principal thing, eg a brick built into a wall
- (4) An auxiliary thing can, like an accessory thing, have an independent existence apart from the composite thing, but it is economically dependent on the principal thing, eg a key of the front door of a house

12. Which option is the **odd one out**?

- (1) Symbolic delivery
- (2) Delivery with the short hand
- (3) *Constitutum possessorium*
- (4) appropriation

13. Indicate the **correct** option:

In *Papalardo v Hau* 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 erf

14. Indicate the **incorrect** option

In *MacDonald Ltd v Radin & The Potchefstroom Daines & Industries Co Ltd* 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

## 15. Indicate the correct option

- (1) In *MacDonald Ltd v Radin* No the owner of land bought building materials with reservation of ownership and built with these on his land with the intention for the building to be permanently attached to the land
- (2) In *MacDonald Ltd v Radin* No the lessee of land bought building materials with reservation of ownership and built with these on the leased premises with the intention for the building to be permanent
- (3) In *MacDonald Ltd v Radin* No the lessee of land bought building materials with reservation of ownership and had the materials built onto the land. The attachment was made under the supervision of the owner of the materials
- (4) In *MacDonald Ltd v Radin* No the lessee of land used his own building materials to erect buildings on the land with the intention to remove the materials on expiry of the lease

16. Which statement is **wrong**?

- (1) The owner of a car, who controls and uses the car, has both *ius possidendi* and a *ius possessionis* in respect of the car
- (2) If the owner rents the car to a lessee for a month, the lessee acquires a *ius possidendi* in respect of it on conclusion of the lease agreement
- (3) When the lease agreement in respect of the car has expired and the lessee fails to return the car to the owner, the owner's *ius possessionis* automatically revives and the owner can reclaim the control thereof from the lessee on the basis of such entitlement
- (4) If it turns out that the lease agreement in respect of the car was void, and the "lessee" is already in control of the car, the "lessee" nevertheless has a *ius possessionis* in respect of the car

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17. In which case did the court lay down the following criteria to establish whether a movable has become permanently attached to an immovable by way of accession: the nature and the purpose of the attached thing, the manner and degree of attachment, and the intention of the person annexing it/owner of the movable thing?

- (1) *Standard-Vacuuming Refining co v Durban City council*
- (2) *Konstanz Properties v WM Spilhaus & Kie*
- (3) *Macdonald Ltd v Radin and the Potchefstroom Dairies*
- (4) *Theatre investments v Butcher Brothers*

18. What option is not a requirement for or a characteristic of the *actio ad exhibendum*?

- (1) The plaintiff must be the owner of the thing
- (2) The defendant must be the thief of the thing or an heir of the thief
- (3) The loss of control by the defendant must have been *mala fide*
- (4) The plaintiff can claim the market value of the thing

19. Indicate the correct option

The case of *Quenty's Motors v Standard Credit Corporation* is authority for the statement that

- (1) The *condictio furtive* is an action arising from theft
- (2) Estoppel is a defence against an owner's *rei vindicatio*
- (3) An interdict is a remedy to force a person to do something
- (4) There is a delictual claim for damages for loss caused unlawfully through the negligence or intention of another

20. Indicate the **incorrect** option

In *MacDonald Ltd v Radin & The Potchefstroom Dairies & Industries Co Ltd*

- (1) The court stated that the acquisition of ownership by way of accession was an exception to the principle that nobody could confer a better title than he had
- (2) Innes CJ referred to *Olivier v Haarhof* in which court decision it was decided that when it had to be determined whether a movable thing became permanently attached to land each case had to be decided on its own facts
- (3) The court decided that the plaintiff could not remove the machinery because such removal would cause substantial injury to the building
- (4) Solomon JA referred to the principle in Justinian's *Institutes* which entailed that is someone used material which belonged to someone else to build on his own land, he became the owner of the building that was built on that land

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21. Which **one** of the following statement based on the decision of *Vasco Dry Cleaners v Twycross* is **incorrect**?

- (1) In the case of *constitutum possessionum* a transferor retains physical control of the thing to be transferred
- (2) *Constitutum possessionum* does constitute delivery for purposes of creating a valid pledge
- (3) *Constitutum possessionum* 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

22. Indicate the **wrong** option

To constitute a valid pledge the following requirements must be met

- (1) A principal debt
- (2) A security agreement
- (3) Registration
- (4) Delivery

23. Indicate the **wrong** option

To constitute a valid special mortgage over an immovable thing (land), the following requirements must be met

- (5) A principal debt
- (6) A security agreement
- (7) Registration
- (8) delivery

24. Indicate the **correct** option

In *Mapenduka v Ashington* the court held that the clause in the pledge agreement stipulating that the

- (1) Pledgee may keep the calve of the cow as interest on the amount owing by the pledger is invalid
- (2) Pledgee may sell the 6 oxen, 1 cow and 1 horse(the pledged animals) without a court order is invalid
- (3) Pledgee may keep the 6 oxen, 1 cow and 1 horse if the pledger fails to pay his debt is invalid
- (4) Pledger may not pay his debt is invalid

25. Indicate the **incorrect** option

In *Willoughby's Consolidated Co Ltd v Copthall Stores Ltd* Judge Innes held that

- (1) A right to trade upon the property of another seems to be capable of being granted and registered as a personal servitude
- (2) The agreement in terms of which the trading rights was granted was worded clearly
- (3) *Usufructus, usus*, and *habitation* are personal servitudes
- (4) The rights that are conferred to a personal servitude is inseparably attached to the beneficiary

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

- (1) *Regal v African Superstore*
- (2) *Air-Kel h/a Merkel Motors v Bodenstein*
- (3) *Konstanz Properties v WM Spilhaus & Kie*
- (4) *Caledon en Suid-Westerlike Distrikte Eksekuteurskamer v Wentzel*

27. Which option is **not** a requirement or characteristic of manufacture (*specificatio*) as an original method of acquisition of ownership?

- (1) A new thing must be created
- (2) The new thing should be produced using material which belongs to someone else
- (3) The owner of the material does not lose his ownership
- (4) The production of the new thing must not be authorised by the owner of the material
- (5) The independent thing used as material for the manufacturing of a new thing lose their identity and the owner of the thing/material which was most valuable acquires ownership of the new thing
- (6) The new thing must not be convertible to the original material or thing

28. Indicate the incorrect option in respect of the requirements of attornment

- (1) A tripartite agreement must exist between all three parties concerned
- (2) The third party (holder) must be in control of the thing when the tripartite agreement is concluded
- (3) The third party (holder) can consent in advance to a future transfer of ownership
- (4) In *Caledon en SWD Eksekuteurskamer v Wentzel* the court held that all the requirements of attornment were complied with

29. Indicate the **correct** option

In *Telkom v Xsinet*

- (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

30. Indicate the **incorrect** option

In *Telkom v Xsinet*

- (1) The Supreme Court of Appeal held that specific performance of a contractual right has never been allowed under the spoliation remedy
- (2) Jones AJA stated that Xsinet's use of the telephones, lines, modems or electrical impulses, clearly gave it "possession" of the connection of its corporeal thing
- (3) It was indicated that the spoliation remedy originally only protected the physical possession of movable or immovable property, but later on a need arose to also protect certain rights
- (4) Jones AJA indicated that an objection against the idea of "quasi-possession" of a right was that it caused confusion between remedies and remedies which were designed to protect real rights

31. 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 who controls the pledged thing
- (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



32. 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 unreasonable in relation to his share
- (4) In *Pretorius v Nefdt and Glas* it was held that a co-owner can use an interdict to prohibit another co-owner from making unreasonable use of the property

33. Which statement with regard to the legal consequence and entitlements of free co-ownership is false?

- (1) a share in the co-ownership can be freely transferred by a co-owner
- (2) Apart from the co-ownership relationship there must be another underlying legal relationship between the co-owners
- (3) The share of a co-owner can be burdened with a mortgage bond without the permission of the other co-owners
- (4) The *actio communi dividundo* is at the disposal of each co-owner

34. Indicate the **correct** option

Where co-owners disagree about the physical division of the thing they co-own, any co-owner can claim division with

- (1) A declaratory order
- (2) The *condictio furtive*
- (3) The Aquilian action
- (4) The *actio communi dividundo*

35. Indicate the wrong option pertaining to the Aquilian action

- (1) To succeed with the action the plaintiff must prove a causal connection between the damage and the act of the defendant
- (2) The action can be instituted against any person who intentionally or negligently caused damage to a thing in an unlawful manner
- (3) Damages can be claimed with this action
- (4) This action is available only to the owner of a damaged thing

36. 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

37. A “section” in terms of the *Sectional Titles Act* 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

38. Indicate the **correct** option

A real right is

- (1) That body of rules and norms which regulates and harmonises the community by demarcating the rights and duties of legal subjects
- (2) The particular legal relationship between one or more legal subjects and legal objects
- (3) A lawful 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 other legal subjects who must respect this relationship
- (4) 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

39. Indicate the **correct** option

Which one of the following things is a composite thing?

- (1) A painting
- (2) A wild animal
- (3) A bicycle
- (4) A roll of denim material
- (5) A dog
- (6) A motor
- (7) A glass
- (8) A brick

40. Indicate the **incorrect** option

In *Cape Explosive Works v Denel* the court

- (1) Applied only the subtraction from the *dominium* test to determine whether the conditions in the sale created real rights which could be registered
- (2) Used two criteria to determine whether the conditions in the sale created real rights which could be registered: the intention of the transferor and the subtraction from the *dominium* test
- (3) Made an order declaring that the two conditions in the sale created real rights which could be registered
- (4) Made an order interdicting Denel from acting contrary to the two conditions

41. Indicate the **correct** option

Which of the following topics do not fall under the law of neighbours?

- (1) Interference with natural flow of water
- (2) Encroachments
- (3) Limited real rights of third parties
- (4) Lateral support
- (5) Nuisance
- (6) Planting of trees

42. Indicate the **correct** option

In *Nino Bonino v De Lange* the court considered the validity of a clause contained in a lease agreement in terms of which the lessor was entitled under certain circumstances to effectively debar the lessee from access to the premises

- (1) The court held that parties in certain circumstances should be allowed to be the judge whether a breach of the contract had taken place
- (2) Innes CJ stated that only a court of law, and not the parties to the agreement, could decide whether a breach of contract had been committed
- (3) The court decided that a clause in a lease agreement that allowed the parties to the agreement to take the law into their own hands was valid
- (4) Innes CJ stated that the lessee's application for the spoliation remedy should fail, because the lessor's actions were authorised by the lease agreement

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43. A purchaser who has purchased a car on credit but who has not yet paid all the instalments can be defined as a

- (1) *Mala fide* possessor
- (2) *Mala fide* unlawful holder
- (3) *Bona fide* unlawful holder
- (4) Lawful holder

44. Which one of the following real relationships is always lawful?

- (1) *Bona fide* possession
- (2) Ownership
- (3) Holdership
- (4) *Mala fide* possession

45. Indicate the correct option

A person who is not the owner of a thing, but holds it with the intention of an owner under the mistaken impression that he is the owner, is a

- (1) Bona fide possessor
- (2) Mala fide unlawful holder
- (3) Mala fide possessor
- (4) Bona fide unlawful holder

46. Give an **example of vindication** as an entitlement of ownership

- (1) X can register a bond over his property
- (2) X can burn his book
- (3) X can claim his motor from Y
- (4) X can donate his bike to Y

47. In which court decision did the court formulate the following test

“If the obligation is a burden upon the land, a subtraction from the dominium, the corresponding right is real and registrable.”

- (1) *Lorentz v Melle*
- (2) *Macdonald Ltd v Radin & Potchefstroom Dairies*
- (3) *Theatre Investment v Butcher Brothers*
- (4) *Ex Parte Geldenhuys*

48. Which option is not a requirement for *traditio longa manu* (delivery with the long hand)?

- (1) The parties must have the intention to transfer and receive ownership
- (2) The thing must be pointed out by the owner to the acquirer in the presence of the thing
- (3) The acquirer should be put in a position to exercise actual control over the thing after it has been pointed out
- (4) The acquirer must take actual physical control of the thing as soon as possible after it has been pointed out to him

49. Indicate the **correct** option

X lends R5 000.00 to Y and Y secures payment of the loan by registering a notarial bond over his car. Y also owes Z R8 000.00 in terms of a court order which ordered him to pay damages for the damage he caused to Z's car. Y becomes insolvent before he can pay either X or Z. Who has a preferent claim against Y's estate under these circumstances?

- (1) X, because he has a limited real right to Y's car
- (2) X, because the smallest amount must be paid first
- (3) Z, because he has a claim for damages against Y's insolvent estate
- (4) Z, because the biggest amount must be paid first

50. Which option below completes the paragraph cited from *Grant v Stonestreet*?

"a servitude, once registered, is said to have *pro tanto* "carved out" portion of the *dominium* of the servient tenement. It is with reference to rights in this nature, which upon registration would so affect the *dominium*, that the rule holding bound a purchaser

- (1) Without the knowledge of the existence of an unregistered servitude has its true application"
- (2) With the knowledge of the existence of a registered servitude has its true application"
- (3) Without the knowledge of the existence of a registered servitude has its true application"
- (4) With the knowledge of the existence of an unregistered servitude has its true application"

51. Indicate the **wrong** option

In *FNB v SARS* the court held that

- (1) The purpose of S25 had to be seen both as protecting existing property rights as well as serving the public interest, mainly in the sphere of land reform
- (2) S25 embodied the positive protection of property and expressly guaranteed the right to acquire, hold and dispose of property
- (3) The meaning of S25 should be determined in each specific case (with reference to Van der Walt)
- (4) FNB was entitled to the property rights under S25 of the 1996 Constitution

52. Indicate the **correct** statement

- (1) A pledge can be defined as a limited real right over the pledgor's movable or immovable thing, delivered to the pledgee as security for repayment of the principal debt which the pledgor or a third person owes to the pledgee
- (2) Cession can be defined as an act of transfer to which a creditor (cedent/transferor) transfers his personal right (creditor's right/claim) against his debtor to the cessionary (transferee) in such a way that the cessionary steps into the shoes of the cedent as creditor. The transfer takes place by means of a transfer agreement.
- (3) A mortgage can be defined as a limited real right over an incorporeal thing (right) belonging to the mortgagor in order to secure repayment of a debt owed by the mortgagor or a third person to the mortgagee
- (4) A *kustingsbrief* can be defined as a special mortgage over an immovable thing to secure a principal debt where the deed of hypothecation is registered simultaneously with the deed of transfer of the particular thing

53. The following 2 questions are based on the set of facts below:

X & Y donate part of their farm which their son S leases from them, to S. they obtain permission to subdivide the farm and S erects a fence on the new boundary. He fetches X & Y and together they drink a toast at the new gate. X says to S "Son, I am glad that this piece of land is now your property!"

- Indicate the **correct** option

What type of right does S have with regard to the land?

- (1) Real right
  - (2) Limited real right
  - (3) Personal right
  - (4) None of the above
- S doubts whether he became the owner of the piece of land. His attorney's advice is set out point by point below. Which one of the statements of the attorney is **incorrect**?
    - (1) Registration of the land in S's name must have taken place
    - (2) Ownership can only be transferred from X & Y to S, if X & Y have the intention to transfer ownership and S have the intention to receive ownership, followed by registration
    - (3) Ownership passed when X & Y pointed the piece of land out with the intention to transfer ownership
    - (4) S did not become owner of the piece of land

**SECTION 2**

## 1. Define

- (a) Ownership (7)
- (b) Appropriation (5)
- (c) Legal object (2)
- (d) Pledge (6)
- (e) *Mala fide* possessor (3)
- (f) Expropriation as a form of acquisition of ownership (5)
- (g) Servitude (7)
- (h) Mortgage (5)
- (i) Prescription (5)
- (j) Bound co-ownership (3)
- (k) Building (*inaedificatio*) (5)
- (l) *Bona fide* possessor (4)
- (m) Restrictive conditions (6)
- (n) Right of retention (lien) (5)
- (o) Law of things (6)
- (p) *Bona fide* unlawful holder (4)
- (q) "labour tenant" ito the Land Reform Act (3)
- (r) Delivery with the long hand with reference to an example (4)
- (s) The spoliation remedy (*mandament van spolie*) (6)
- (t) Real right (6)
- (u) Manufacture (*specificatio*) (4)
- (v) Interdict (6)

## 2. Name

- (a) The entitlements of ownership and examples of each (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 *rei vindicatio* (3)
- (d) Four ways in which a mortgage can be extinguished (6)
- (e) Two types of limitations on ownership imposed in terms of the law and one example of each (4)
- (f) The circumstances that have to be considered ito S25(3) of the 1996 Constitution when an amount of compensation for expropriation must be determined (5)
- (g) An example of delivery with the short hand (2)
- (h) The requirements for a successful application for an interdict (3)
- (i) The requirements that must be proved to succeed with the *actio ad exhibendum* (4)
- (j) The requirements for successful reliance on the spoliation remedy (4)
- (k) Six ways in which servitudes are terminated (6)
- (l) The requirements that must be complied with for attornment to take place (2)
- (m) The requirements for a valid expropriation ito S25(3) of the 1996 Constitution (3)
- (n) Change in the common law position with regards to mineral rights brought about by S3(1) of the Mineral and Petroleum Resources Development Act of 2002 (2)
- (o) Three defences that can be raised against the *rei vindicatio* by a defendant who is in control of an owner's thing (3)

## 3. Distinguish between

- (a) The law of property and the law of things (2)
- (b) Possession and holdership (4)
- (c) Real and personal security (4)
- (d) Property and things (5)
- (e) Ownership and the entitlement to ownership (3)
- (f) Original and derivative methods of acquiring ownership and give an example of each method (6)
- (g) Ownership, possession and holdership (10)
- (h) Conventional or express mortgages and tacit mortgages and give examples of each (4)
- (i) Between a real right and personal rights under the following headings:
  - (i) object
  - (ii) origin
  - (iii) preference
  - (iv) publicity (8)
- (j) Free co-ownership and bound co-ownership with reference to an example of each (4)
- (k) Personal servitudes and land servitudes with reference to four significant differences between them (8)
- (l) Ownership and limited real rights (6)

4. Standard-Vacuum Refining Company operated an oil refinery on its land situated within the municipal area of Durban City council. The latter, when assessing the appellant's land for rating purposes, took into account the value of certain steel tanks which were part of the refinery. These tanks were used for storing unfinished and finished products. The valuers regarded the steel tanks as buildings on the land and therefore part of the immovable property. Standard-Vacuum Refining company objected to the valuation and argued that the tanks were not buildings and therefore not part of the land. They regarded the tanks as movable things.

Will Standard-Vacuum succeed in their objection to the valuation? Substantiate your answer with reference to relevant case law. (8)

5. Q is the owner of a car. T, a thief, steals the car. T changes the engine and registration numbers and sells it to Z. the car is written off in an accident involving Z. The wreck is in control of X, a scrap metal dealer.

- (i) Discuss the applicability of the *rei vindicatio* in this case. (5)
- (ii) What is the nature of T's legal relationship with the car before the accident? Substantiate your answer. (3)

6. X & Y purchased their farm implements in terms of a credit transaction from K, the cooperative. K requires security that the debt will be paid.

- (i) Name 2 possible types of security
- (ii) Name the form of security you would recommend here. Substantiate your answer. (2)



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7. (a) Q & R have an agreement with S to which he is allowed to use the road over their farm for 5yrs against payment of R2 000.00 per year. The money is payable in advance. After 2yrs S argues with his grandfather, Q, and Q forbids him to use the road further.

Can S force Q & R to allow him to use the road? Fully substantiate your answer. (5)

(b) How can conditions of title be removed or amended? (2)

- (c) B, one of S's farm workers, wants to borrow R2 000.00 from S. He offers an antique pocket watch which he inherited from his grandfather as security. S accepts the watch. S & B sign a documents in which B agrees that S may keep the watch if B does not repay the full amount within 6 months.

Discuss the validity of the agreement that S may keep the watch. Refer to case law. (3)

(d) What does the terms "lease overrides sale" (*huur gaat voor koop*) mean? (2)

- (e) Write brief notes on the guidelines formulated by the Court in FNB v SARS for the interpretation of the property clause (s25 of the 1996 Constitution) (8)

8. (a) 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 for the kudu 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)

9. S opens his mail and finds pornographic material in it. He decides to take it to the police the next day on his way to work. In the meantime he hides it high up in a cupboard in his bedroom so that his wife and children will not see it. That night the police raid his house and discover the pornographic material. S is charged with "possession" of pornographic material of the *Indecent or Obscene Photographic Matter Act* which prohibits such "possession".

S argues that he did not possess the material, since he had no intention of keeping it for himself.

Will the court accept this argument? Substantiate your answer with reference to case law (7)

10. Discuss *constitutum possessorium* with reference to an example (5)

11. Q & R have an agreement with S, the owner of Highlands, in terms of which they undertake to register a servitude over their farm in favour of Highlands. Before the servitude can be registered, S dies and his wife now wishes to use the road. Briefly advise her. (3)

12. (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:**

- (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)
13. Distinguish between delivery with the short hand and *constitutum possessorium* and illustrate the difference between the two with reference to examples (6)
14. (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 removed the locks from the building and first new locks. He locks all entrances to the premises and effectively debar Z from using or entering the premises. Z applies for a spoliation order.

**Answer the following:**

- (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 informed 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)
15. Discuss the criteria which are applied in case law to determine whether a movable thing has lost its independence and became part of an immovable thing by means of industrial accession. Discuss the approach followed with regard to these criteria in *Theatere Investments v Butcher Brothers* (6)
16. What criteria did the court apply in the *Macdonald Ltd v Radin NO and the Potchefstroom Dairies* to determine whether a movable thing is attached to an immovable thing by means of accession?(5)

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17. Write brief notes on the nature of a sectional title owner's right with reference to the object of sectional title ownership and the composition thereof (5)
18. Briefly explain what a notarial bond is with reference to the different types of notarial bonds (5)
19. Q is the owner of a car. T, a thief, steals the car and gives it to his son Tt. Can Q institute the *condictio furtive* against Tt? Substantiate your answer and briefly mention the requirements for this remedy. (4)
20. V & W, farm workers in the employ of S, occupy and cultivate a portion of Highlands. S has an argument with the farm workers and they refuse to work. S removes their furniture from their houses and burns it. He throws their clothing away. He also breaks down their houses and dumps the building material on a rubbish dump. V & W want immediate restoration of control of all their property. S avers that V & W were never in control of the houses because they were living elsewhere on the farm where they were housing their crops.
- Will S succeed in this defence? Substantiate your answer (3)
21. In terms of a perfecting clause in a notarial bond Z, the bondholder, applies to the court for an order entitling him to perfect his security by taking possession of the debtor's movables and to dispose of the movables by public auction, public tender, private treaty, or otherwise.
- Explain the role and value of this perfection clause (6)
22. S plans to start as nursery on his farm highlands. He asks his brother, Z, to manafe the nursery and agrees with X that he may live on the farm. S decides that the fence of the nursery should be painted, but S and Z disagree about the colour. S does not want Z to live on his farm anymore.
- Is Z an "occupier" ito the *Extension of Security of Tenure Act*? Substantiate your answer (3)
23. M, X's mother, has a right of habitation over the old homestead on the farm where she lives at present. This right is registered against the title deed of the land.
- (1) Describe the nature & content of her right (5)  
 (2) Is this right transferable? Motivate your answer (1)
24. A group of squatters occupy part of S's farm, Highlands, without his permission. S is very unhappy and want to evict the group of squatters. Explain which legislation is applicable to the eviction of such squatters and why this is so? (4)
25. X & Y are co-owners of the farm Waterford. They purchase certain farm implements from C, the cooperative in terms of a credit agreement. C reserves ownership of the farm implements. The farm implements consist of a plough, a tractor, a harvester, spades, hoes and picks. T steals the

plough. The harvester is left with the farm workers on the north-eastern corner of the farm where it is required in autumn when the wheat is harvested. Z, a neighbour, borrows the tractor for a month to plough her own fields. When Z has finished her ploughing, she lends her rented plough to X & Y in return for the loan of the tractor.

Describe the real relationship between the following persons and things

- |       |                                     |     |
|-------|-------------------------------------|-----|
| (i)   | C, in regard to the farm implements | (2) |
| (ii)  | Z, in regard to the tractor         | (2) |
| (iii) | T, in regard to the plough          | (1) |

26. Briefly mention the guidelines for an application for a way of necessity and name the case in which these guidelines were laid down (7)
27. X & Y are seriously affected by baboons that destroy their maize plants. X installs an apparatus to chase away the baboons on the boundary with his neighbour. The apparatus makes loud noises at regular intervals during the day and the night. The neighbour writes to X & Y to complain about the noise during the night, but X ignores the letter and refuses to speak to his neighbour on the telephone. X and his neighbour are not on speaking terms because his neighbour seriously insulted him a few years ago. The neighbour applies for an interdict ordering X & Y to stop the noise. X & Y rely on their ownership of the farm. They argue that they are entitled to do as they please on their property. Will this argument succeed? Substantiate your answer and refer to case law. (10)
28. Q & R are owners of the farm Pulang and S is the owners of the adjacent farm Highlands. S has the right to drive undisturbed over Q & R's farm. Briefly mention the nature and extent of this limitation on Q & R's ownership. (2)
29. Discuss *FNB v SARS* in relation to the following questions
- |      |                                                              |     |
|------|--------------------------------------------------------------|-----|
| (i)  | What was the court's view on the meaning of property in S25? | (3) |
| (ii) | When is state action "arbitrary"?                            | (3) |
30. Name two orders that the Land Claims Court may make under the Restitution of Land Rights Act (2)
31. S registers a special notarial bond over certain of his movable property in favour of L, the Land Bank. The movable property was listed in a schedule attached to the bond, but not described and specified in the bond itself. A year later S was declared insolvent and Z, a creditor of S, then contested the validity of the bond on the grounds that it was impossible to identify the specific movable assets from the bond itself and that external evidence had to be used to identify the specific movable assets.
- Will Z's argument succeed? Discuss with reference to relevant legislation and case law. (8)