



UNIVERSITY
OF
JOHANNESBURG

<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: LPY41Y0/SAK0000 Law of Property
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: SSA November 2021

DATE : 10 Nov 2021 **SESSION** : 12:30-16:30

ASSESSOR : Dr EJ Marais (UJ)

MODERATOR : Prof S Viljoen
(UWC)

DURATION : 4 HOURS **MARKS** : 80

NUMBER OF PAGES: SIX (6) PAGES

INSTRUCTIONS:

1. The exam must be submitted electronically via Blackboard.
2. You have from 12:30 until 16:30 on 10 November 2021 to complete this exam. The exam will no longer be available from 16:31 onward.
3. You have 4 hours to complete the exam and your answers must be submitted within this allocated timeframe. No late submissions will be accepted.
4. The exam counts 80 marks. There are four essay-type questions.

5. You may submit as many attempts of this exam as you wish. I will mark your last submitted exam attempt.
 6. This is an open-book exam. You may therefore use your notes and the prescribed sources when answering the questions.
 7. To ensure that you do not lose answers due to connectivity issues, please type out your answers for the essay-type questions in a programme other than your internet browser, such as Word, for example. You are able to copy and paste text into the answer boxes on Blackboard with the copy/paste function. For those using a keyboard, use the Ctrl + C and Ctrl + V functions.
 8. Each essay-type question has word limits which will be strictly enforced. Do not exceed the word limit when answering the questions.
 9. You may not seek assistance of a fellow student or the tutor. You may not use any part of another student's answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty apply to this exam. In regard to the assessment, the normal academic integrity rules apply. For example, this means that you cannot cut-and-paste material other than your own work as answers for this assessment.
 10. By undertaking this online assessment, you will be deemed to have made the following declaration:
 11. "I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorised assistance in this assessment item".
 12. Good luck!
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QUESTION 1

Ms Zikalala, who owns a piece of land in Sandton, Johannesburg, sold her land to Mr Mnguni. The contract of sale contains the following two conditions:

- 1) Mr Mnguni, and all subsequent owners of the land, may only use the land for a township development;
- 2) Should Mr Mnguni, and all subsequent owners of the land, establish a township on the land and sell parcels to third parties, 20% of the nett profits made from such sales must be paid over to Ms Zikalala.

The sales contract is concluded and the land is subsequently registered in Mr Mnguni's name at the Deeds Registry. The mentioned two conditions are also registered against the title deed of the land.

A few years later, Mr Mnguni sells the land to Ms Cajee, in whose name it is subsequently registered. Both conditions are still registered against the title deed of the land. Upon acquiring the land, Ms Cajee immediately starts to build a shopping mall on a part of the land, hoping to develop a township on another part of it.

Ms Zikalala comes to hear of this and informs Ms Cajee that she may only use the land for a township development. Ms Cajee refuses to comply, stating that the condition does not bind her. She also states that if she decides to undertake a township development on the land, she will not pay over any money to Ms Zikalala, as she also regards the second condition as not binding her.

A distressed Ms Zikalala now approaches you, her attorney. She wants to know what her rights are and whether conditions 1 and 2 are enforceable against Ms Cajee.

Advise Ms Zikalala fully, with reference to relevant case law, legislation, and academic debates, on her legal position and on her prospects of success.

[25 marks]

(You should answer this question in 45-60 minutes.)

(The word limit for this question is 1400 words.

Your answer may not exceed the word limit.

Words in excess of the word limit will be ignored.)

QUESTION 2

Mr Gezi bought a Mercedes Benz with a loan from ABSA Bank (Pty) Ltd (“the Bank”). The Bank reserves ownership of the Mercedes until Mr Gezi repays the entire loan amount. Mr Gezi is still repaying the loan to the Bank for the Mercedes.

Recently, Mr Gezi was involved in an accident with another vehicle. He takes the damaged Mercedes to Car Service City (Pty) Ltd (“the panel beater”) to have it repaired. Extensive repairs are required, which involve replacing the engine, the gearbox and the two front wheels. Mr Gezi and the panel beater conclude a contract to have the repairs done. They also agree that the panel beater will repaint the Mercedes. The repairs amount to R200 000 (R140 000 for the engine, R20 000 for the gearbox, R10 000 for the two front wheels and R30 000 for the paint job). The repairs will increase the market value of the Mercedes by R100 000.

Once the repairs are done, Mr Gezi realises that it is impossible for him to pay the R200 000 he owes to the panel beater. He is also no longer able to pay the instalments he owes to the Bank. He quietly disappears one night and no one now knows where he is.

The Bank tracks down the Mercedes, which is still held by the panel beater. The Bank demands the panel beater hand the vehicle over to it. The panel beater refuses, stating that it will only hand over the repaired Mercedes if the Bank pays for the repairs. The Bank refuses to comply, while the panel beater refuses to hand over the Mercedes until it has received payment for the repairs. The Bank threatens the panel beater with legal action.

The Managing Director of the panel beater now approaches you, the company’s attorney. She wants to know what the company’s legal position is.

Advise the panel beater fully, with reference to relevant case law, on its legal position and on its prospects of success.

[20 marks]

(You should answer this question in 40-50 minutes.)

(The word limit for this question is 1400 words.

Your answer may not exceed the word limit.

Words in excess of the word limit will be ignored.)

QUESTION 3

Renitec (Pty) Ltd (“Renitec”) owns land on which a bar is located. It concludes a lease agreement of twelve (12) years with Mr Moloji, who wants to operate the bar. The lease is not registered against the title deed of Renitec’s land.

Seven (7) years later, Mr Nduku approaches Renitec and offers to purchase the land from it. Mr Nduku is unaware of the lease agreement between Renitec and Mr Moloji. Renitec agrees and the land is sold to Mr Nduku, in whose name it is subsequently registered. Mr Nduku only becomes aware of the lease agreement between Renitec and Mr Moloji after the land has been registered in his name.

Mr Moloji is still operating the bar on the land and would like to continue with the lease until it runs out. However, Mr Nduku would like to overtake the operation of the bar on the land as soon as possible. He informs Mr Moloji that he is the new owner of the land and that he refuses to recognise any right that Mr Moloji may have in the land. Mr Nduku asks Mr Moloji to vacate the premises immediately.

A concerned Mr Moloji now approaches you, his attorney. He wants to know if he may continue to operate the bar on the land for the remainder of the lease period.

Advise Mr Moloji fully, with reference to relevant case law, on his legal position and on his prospects of success.

[20 marks]

(You should answer this question in 35-45 minutes.)

(The word limit for this question is 800 words.

Your answer may not exceed the word limit.

Words in excess of the word limit will be ignored.)

QUESTION 4

Ms Leyka, a keen mountain biker, recently bought an expensive mountain bicycle frame from a second-hand bicycle dealer. She already owns wheels, the chain mechanism, and brakes and merely needs a new bicycle frame to which she may affix these things. Upon returning home, she attaches these components to the bicycle frame and happily starts biking around in the Magaliesberg mountains in Gauteng over weekends.

Recently she returned home from one of her cycling outings to find Mr Samuels and the police waiting for her in her driveway. Mr Samuels informs her that the bicycle frame belongs to him, as it was stolen from him two months ago. He requests her to hand the bicycle over to him. Ms Leyka refuses to comply. An angry Mr Samuels tells Ms Leyka that he will institute legal action against her if she does not willingly hand over the bicycle within 24 hours.

A worried Ms Leyka now approaches you, her attorney. She wants to know what her legal position is. She informs you that the wheels that are attached to the frame are worth much more than the bicycle frame itself.

Advise her fully, with reference to relevant case law, on her legal position and on her prospects of success.

[15]

(You should answer this question in 35-45 minutes.)

(The word limit for this question is 1000 words.

Your answer may not exceed the word limit.

Words in excess of the word limit will be ignored.)

GRAND TOTAL: [80]

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