



UNIVERSITY OF JOHANNESBURG  
AUCKLAND PARK KINGSWAY CAMPUS  
FACULTY OF LAW  
JANUARY EXAM 2021

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| <b><u>SUBJECT NAME:</u></b>       | <b>LAW OF PROPERTY</b>                            |
| <b><u>SUBJECT CODE:</u></b>       | <b>SAK0000 / LPY41YO</b>                          |
| <b><u>DURATION:</u></b>           | <b>180 MINUTES (PLUS 15 MINUTES READING TIME)</b> |
| <b><u>MARKS:</u></b>              | <b>70</b>   |
| <b><u>EXAMINER:</u></b>           | <b>Mr OA OLOWOLAFE (UJ)</b>                       |
| <b><u>INTERNAL MODERATOR:</u></b> | <b>Dr EJ MARAIS (UJ)</b>                          |
| <b><u>EXTERNAL MODERATOR:</u></b> | <b>Mrs C JOSHUA (UP)</b>                          |

**INSTRUCTIONS:**

- 1 You have 15 minutes reading time in addition to the 180 minutes writing time.
- 2 Read each question carefully.
- 3 Refer to, and apply, case law where relevant. Do not discuss the facts of prescribed cases when answering questions, as you will not receive any marks for them.
- 4 This exam paper consists of two sections, namely section A and section B. You must answer all the questions in section A. Only answer one of the two questions in section B.
- 6 Each question has its own specific instructions regarding the estimated time you should spend on answering it and on the word limit.
- 7 This is an open book examination. You may therefore use your notes and the prescribed sources when answering the questions.
- 8 Good luck!

**SECTION A (YOU MUST ANSWER ALL THE QUESTIONS IN THIS SECTION)**

**QUESTION 1**

**Instructions**

**1. The question counts 20 marks.**

**2. You should not spend more than 45 minutes on this question.**

1.1 List, and briefly explain, the three requirements for the creation of a valid praedial servitude.

(6 marks)

1.2 Name four ways in which a mortgage can be extinguished.

(4 marks)

1.3 Differentiate between the real function of control and the legal political function of control.

(6 marks)

1.4 Distinguish between personal security and real security.

(4 marks)

**(20 marks)**

## **QUESTION 2**

- 1. The question counts 20 marks.**
- 2. Your answer may not exceed 900 words.**
- 3. You should not spend more than 45 minutes on this question.**

Mr Samuel is a professional fisherman who operates off the coast of Durban, KwaZulu-Natal, South Africa. Durban's coastline is often busy because it borders the Indian ocean, a busy route for ships transporting goods from the far east. Earlier in 2018, a cargo ship by the name *SV Mærsk* sank off the coast of Durban. The owners and the insurers cut their losses and abandoned the ship in the ocean. In late 2019, while fishing in the ocean, Mr Samuels found the wreckage of *SV Mærsk*. He became interested in the condensers of the ship and wanted to salvage them. Condensers are quite large apparatuses that can weigh up to 63 tonnes (57 152kg). They are very valuable if sold as spare parts because they are made of copper and other equally valuable materials.

Mr Samuel succeed in salvaging and extracting one of the condensers from the shipwreck. However, due to bad weather, he was unable to remove the other condenser. He therefore took a decision to postpone the salvaging effort until next time when the weather permits. To make things easier for himself, he attached a rope to one of the condensers and attached a buoy to it. The buoy was visible enough for people to see it.

Mr Gertrude, another fisherman who operates in the same territory as Mr Samuel, came across the buoy a day after Mr Samuel suspended his salvaging attempt. He became equally interested in the condenser attached to the buoy and began efforts to salvage the condenser from the shipwreck. Mr Samuels became aware of Mr Gertrude's plans.

Mr Samuel argues that the condenser he attached a buoy to belongs to him. Mr Gertrude rejects this argument. Mr Gertrude now approaches you, an attorney, for legal advice. He wants to know what his rights regarding the condenser are.

Advise Mr Gertrude fully, with reference to case law, on his prospect of success in this matter.

**(20 marks)**

### **QUESTION 3**

- 1. The question counts 10 marks.**
- 2. Your answer may not exceed 600 words.**
- 3. You should not spend more than 45 minutes on this question.**

Mr Masuku and Mr Mbali have been close friends for years. Around 2005, Mr Masuku experienced some financial difficulties and could not afford to keep his farm, which is located just outside Polokwane in Limpopo. To salvage the situation, Mr Masuku suggested that Mr Mbali buy the farm and grant him (Mr Masuku) an occupation right to the homestead on the farm. Mr Mbali agreed to this suggestion, and eventually bought the farm. In addition, and as agreed, he granted Mr Masuku an occupation right in the homestead. The land was subsequently registered in Mr Mbali's name and the occupation right was also registered against the title deed of the farm.

In 2010, Mr Masuku moved to a different province, and has been residing in that province ever since. In 2019, Mr Mbali sold the farm to Forte (Pty) Ltd, a real estate development company, who promptly demolished the homestead and started the construction of luxurious residential apartments on the farm. Mr Masuku has since returned to Polokwane and would like to enforce his occupation right against Forte (Pty) Ltd. However, on getting to the property, he discovered that the homestead has been destroyed.

Mr Masuku wants Forte (Pty) Ltd to allow him to live on the land, as per his occupation right. Forte (Pty) Ltd refuses to allow this, arguing it was not aware of the occupation right. Secondly, it argues that Mr Masuku's right became extinguished when the farmstead and outbuilding was destroyed. They also contend that the right became extinguished due to abandonment.

Mr Masuku now approaches you, his attorney. He wants to know what his rights are in this situation, specifically whether he still has an occupation right.

Advise him, with reference to case law and academic opinion, as to his prospects of success.

**(10 marks)**

**SECTION B (ONLY ANSWER ONE OF THE TWO QUESTIONS IN THIS SECTION)**

**QUESTION 4**

**Instructions**

- 1. The question counts 20 marks.**
- 2. Your answer may not exceed 900 (450 words each)**
- 3. You should not spend more than 45 minutes on this question.**

4.1 Discuss *First National Bank of SA Ltd t/a Wesbank v Commissioner for SARS 2002* (CC) in relation to the following questions:

(i) What was the court's view on the meaning of "property" in section 25 of the Constitution?

(5 marks)

(ii) When is state action "arbitrary", as meant in section 25(1) of the Constitution?

(5 marks)

4.2 Critically discuss "expropriation-without-compensation", with specific reference to section 25(3) of the Constitution and the Expropriation Bill B-2019.

(10 marks)

**Total: (20 marks)**

**OR**

**QUESTION 5**

**Instructions**

- 1. The question counts 20 marks.**
- 2. Your answer may not exceed 1000 words.**
- 3. You should not spend more than 45 minutes on this question.**

Mr Forbes recently bought the chassis (body) of an Audi A6 from a second-hand motor vehicle spare part dealer. The chassis does not have any other components, like an engine, wheels, gearbox, radio, and seats attached to it.

Since Mr Forbes enjoys building up cars, decided to purchase the other necessary components the chassis needs in order to turn it into a full working automobile. Using only things which belong to him, he builds a new engine into the chassis of the car, added wheels, inserted a gearbox, radio, and seats. Soon enough, the Audi A6 became functional to the point that Mr Forbes now regularly takes it around Johannesburg for a drive.

Yesterday, Ms Naidoo went to see Mr Forbes at his home. She informs him that the body of the Audi A6 that he bought from the second-hand motor spare part dealer belongs to her. According to Ms Naidoo, it was stolen from her almost a year ago. She managed to track it down with the help of the police. She demands that Mr Forbes hand over the built-up Audi to her, failing which she will institute legal proceedings against him for the return of the vehicle.

Mr Forbes now approaches you, his attorney. He wants to know what his rights regarding the Audi are. He tells you that his engine, which he built into the chassis of the Audi, is worth much more than the chassis itself.

Advise Mr Forbes fully, with reference to case law, on his prospects of success.

**[Total: 20 marks]**

**Grand total: [70 marks]**