



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

<b><u>DATE</u></b>	: 18 January 2022	<b><u>SESSION</u></b>	: 11:30-15:30
<b><u>ASSESSOR</u></b>	: Dr EJ Marais (UJ)		
<b><u>MODERATOR</u></b>	: Prof S Viljoen (UWC)		
<b><u>DURATION</u></b>	: 4 HOURS	<b><u>MARKS</u></b>	: 80

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NUMBER OF PAGES: SEVEN (7) PAGES, INCLUDING THIS PAGE

INSTRUCTIONS:

1. The exam must be submitted electronically via Blackboard.
2. You have from 11:30 until 15:30 on 18 January 2022 to complete this exam. The exam will no longer be available from 15:31 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**

Amro (Pty) Ltd ("Amro") owns land on which a supermarket building is located. It concludes a lease agreement of sixteen (16) years with Mr Khubeka, who wants to operate a supermarket in the building. The lease is not registered against the title deed of Amro's land.

Eleven (11) years later, Mr Stevens approaches Amro and offers to purchase the land from it. Mr Stevens is unaware of the lease agreement between Amro and Mr Khubeka. Amro agrees and the land is sold to Mr Stevens, in whose name it is subsequently registered.

Mr Khubeka is still operating the supermarket on the land and would like to continue with the lease until it runs out. However, Mr Stevens would like to start running his own supermarket on the land as soon as possible. He informs Mr Khubeka that he is the new owner of the land and that he refuses to recognise any right that Mr Khubeka may have in the land. Mr Stevens asks Mr Khubeka to vacate the premises immediately.

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

Advise Mr Khubeka fully, with reference to relevant case law and legislation, 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 2**

Ms Mbuku owns an erf in Tzaneen, Limpopo Province, on which erf there is a freestanding house. She does not live on the erf. She recently concluded a contract with a building company, namely Build It (Pty) Ltd ("the company"), to undertake

construction work on the erf. In terms of the contract, the company, which is represented by Mr Goosen, must build a garage on the erf (as there is currently no garage in which cars can be parked) and a grand outdoor swimming pool with very expensive tiles surrounding it. She also wants the company to repair part of the boundary wall on the erf which collapsed due to recent rains. The company agrees and its employees subsequently move onto the erf to start the construction. The garage will cost R200 000, the pool and tiles will be R300 000, while repairs to the boundary wall will be R100 000 (a total of R600 000).

After the company finishes the construction work, it turns out Ms Mbuku does not have enough money to pay Mr Goosen. Mr Goosen tells Ms Mbuku he and his employees are still on the erf and will only vacate the premises after receiving payment for the construction work done. Ms Mbuku says she is unable to pay. She also states that if Mr Goosen and his employees do not vacate the erf within 24 hours, she will institute proceedings against the company to regain control of the erf.

A worried Mr Goosen now contacts you, his attorney. He wants to know what his rights are. He tells you that the improvements to the erf has increased the market value of the erf by R300 000.

Advise Mr Goosen fully, with reference to case law, on his legal positions and on his prospects of success.

**[20 marks]**

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

**(The word limit for this question is 700 words.**

**Your answer may not exceed the word limit.**

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

### **QUESTION 3**

Ms Phelane would like to sell her farm, on which her homestead is located, to Ms Modiri. Ms Phelane, an elderly person, includes a condition in the written contract of sale that allows her to live in the homestead for the remainder of her life. The condition states that it is enforceable against Ms Modiri and her successors in title. Ms Modiri

agrees to this condition and the land is subsequently registered in her name. The mentioned condition is also registered against the title deed of the land.

A year later the relationship between the two parties becomes strained. Ms Phelane leaves the farm because of this. Upon leaving the farm, Ms Modiri demolishes the homestead in a cynical attempt to discourage Ms Phelane from ever returning to the farm. Three years later Ms Modiri sells the farm to Mr Delport.

Two years after Mr Delport acquired ownership of the farm, Ms Phelane returns to the farm. Given her dire financial situation, she now wants to live on the farm in accordance with her right, which is still registered against the title deed of the land.

Mr Delport flatly refuses to allow Ms Phelane to live on the farm and states that she abandoned her right to live on the farm the moment she left. He also states that he has no knowledge of her right and therefore refuses to grant Ms Phelane access to the farm.

A desperate Ms Phelane now approaches you, her attorney. She wants to know if there is any way in which she can force Mr Delport to allow her to live on the farm. She says that she has nowhere else to go and would be left homeless if she is unable to return to the farm. She also wants to know if she can force Mr Delport to rebuild her home that Ms Modiri demolished.

Advise her fully, with reference to legislation, case law, and the view of academic scholars, on her legal position and on her prospects of success.

**Total: [20]**

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

**(The word limit for this question is 1200 words.**

**Your answer may not exceed the word limit.**

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

#### **QUESTION 4**

Workers of Game (Pty) Ltd at Cresta Mall in Johannesburg are unhappy with the salary increase they recently received. As a result, they have started to picket loudly in the parking area outside the mall. The noise that the workers are making, which consists of them singing, ululating, blowing on vuvuzelas, whistling and stamping their feet, is extremely loud. They also intimidate customers who come to the mall to do shopping by blocking the parking bays.

The manager of Game has requested that the picketers lower the noise levels, stop intimidating customers and to picket peacefully. The picketers refuse to comply, as they claim they are exercising their right to demonstrate and picket (section 17 of the Constitution) and their right to freedom of expression (section 16 of the Constitution).

Cresta Mall is now losing clientele, as members of the public fear for their safety and are preferring to do shopping elsewhere. This is a problem for Game and other businesses in the mall who rent floor space there, as the conduct of the picketing workers is now negatively affecting their monthly incomes. The businesses take the matter to the owner of Cresta Mall and demand that she do something to address the conduct of the picketers.

The owner of Cresta Mall now approaches you, an attorney, and provides you with the above facts. She claims that the picketers are infringing the property rights (section 25 of the Constitution) of the mall and businesses, and their right to trade (section 22 of the Constitution). Furthermore, she states that the picketers are causing a nuisance in terms of neighbour law. She also mentions that the Labour Relations Act 66 of 1995 (which gives effect to section 17 of the Constitution) contains rules on how persons may picket. It states that “persons participating in a picket shall do so in a peaceful manner with due respect for the fundamental rights of others”.

Advise the owner of Cresta Mall, with reference to case law and the views of academic scholars, as to (i) which source of law should be used to adjudicate this matter, and (ii) how this source may be used to protect her rights, as the mall owner, as well as the rights of the businesses in the mall.

**[20]**

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

(The word limit for this question is 700 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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