



UNIVERSITY OF JOHANNESBURG
AUCKLAND PARK KINGSWAY CAMPUS
FACULTY OF LAW
NOVEMBER EXAM 2020

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

INSTRUCTIONS:

- 1 You have 15 minutes reading time in addition to the 240 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 Distinguish between a lawful holder, a *bona fide* unlawful holder, and an unlawful possessor. Provide an example of each one.

(6 marks)

1.2 Mention four methods through which possession and holdership are terminated.

(4 marks)

1.3 Mention four types of intention (*animus*) with which property may be controlled.

(4 marks)

1.4 Briefly explain

(i) the registration requirement for a mortgage bond; and

(3 marks)

(ii) the functions of a mortgage bond.

(3 marks)

Total: [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.**

During the COVID-19 pandemic, the Cape Town Municipality requested several departments within the Western Cape Province, including the South African Police Service (SAPS), to evict unlawful occupiers from municipal land. The eviction did not take place in terms of either the Prevention of

Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act) or the Disaster Management Act, which governs the COVID-19 lockdown regulations.

During the eviction, the occupiers' homes, which consisted of pieces of plastic, wood and corrugated iron sheets the occupiers had salvaged from surrounding building sites to construct their informal homes, were burned in a cynical attempt to discourage them from returning to the land.

Two of the occupiers, Mr Japheth and Ms Ntombi, approach you, their attorney. They want to immediately return to land and want the municipality to restore to them the materials of which their informal homes consisted. They also want the municipality to reconstruct their informal homes with these new materials.

Advise Mr Japheth and Ms Ntombi, with reference to case law and academic opinion, on whether they can force the municipality to provide them with new materials and to rebuild their homes.

[20 marks]

QUESTION 3

Instructions

- 1. The question counts 10 marks**
- 2. Your answer may not exceed 600 words.**
- 3. You should not spend more than 30 minutes on this question.**

In 2010, Mr Motaung bought a farm in Mpumalanga. The farm is bordered on the north by Ms Khumalo's farm. Mr Motaung needs access to the public road in the north over the land of Ms Khumalo.

During the period of negotiation, he persuaded Ms Khumalo to grant him access over her farm to reach the public road on the north. Upon a successful negotiation, Ms Khumalo granted Mr Motaung access over her farm. Although the agreement between them was reduced to writing, it was never registered against the title deed of Ms Khumalo's farm in the deed's registry office.

Ms Khumalo recently sold her farm to Mr Myeni. Soon after the land was registered in Mr Myeni's name, he decided he was not going to allow Mr Motaung to use the road over the farm any longer. This is despite Mr Myeni being aware of the agreement between Ms Khumalo and Mr Motaung before the land was registered in Mr Myeni's name.

A distressed Mr Motaung now contacts you, his attorney. He would like to know whether he may enforce his access right against Mr Myeni.

Advise Mr Motaung, with reference to case law and applicable legislation, on 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 Identify and briefly discuss the three pillars of land reform with reference to the main legislation connected to each of these “pillars”.

(10 marks)

4.2 Discuss the formal requirements of expropriation, as set out in section 25(2)-(3) of the Constitution, with specific reference to the *Msize* case.

(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 Ndlozi, an entrepreneur, decided to go into logistics business considering the opportunities presented by ecommerce in South Africa. In pursuance of this, Mr Ndlozi decided to acquire three new trucks to start his business. He contacted Premium Cars & Trucks (Pty) Ltd (“Premium Cars”), a car dealership which specialises in the acquisition and sale of Quantum buses and trucks. Mr Ndlozi asks Premium Cars whether he can purchase these trucks on credit, as he does not have sufficient cash to pay the full purchase price at this time. Premium Cars, having been in the motor and truck-selling industry for a long time, says it will only sell the trucks on a cash-on-delivery (COD) basis. The company

says it will, however, allow Mr Ndlozi take the three trucks in the meantime so that he can start using them in his logistics business, but that Premium Cars will keep the spare keys as well as the service books of the three trucks. It will only hand them over once the full purchase price has been paid by Mr Ndlozi. Mr Ndlozi readily agrees to this arrangement and the trucks are, subsequently, handed over to him.

Unfortunately, business did not go smoothly for Mr Ndlozi and within a year, he ran into financial difficulties. During this time Mr Ndlozi is approached by another logistics company, namely Delivery SA (Pty) Ltd (“Delivery SA”), which asks Mr Ndlozi whether it can purchase Mr Ndlozi’s company as well as the three trucks from him. Delivery SA offers to pay a very high price. Mr Ndlozi, who desperately wants to address his deteriorating financial position, decides to accept this offer. Delivery SA subsequently pays the money to Mr Ndlozi, who promptly hands over everything pertaining to his company, including the three trucks, to Delivery SA. After the formalities, Delivery SA notices that the spare keys together with the service books of the trucks are missing. When Delivery SA inquires about this situation, Mr Ndlozi simply responds by saying that he unfortunately forgot to hand them over and will give them to Delivery SA as soon as possible. With this reassurance, Delivery SA starts to use the trucks in its logistics business.

In the meantime, Mr Ndlozi had failed to pay Premium Cars the monthly instalments for the three trucks. Premium Cars is now in a desperate bid to repossess the trucks and resell them. However, Mr Ndlozi is now nowhere to be found, neither could the trucks be traced. Eventually, Premium Cars managed to trace the trucks to Delivery SA and asked it to hand the trucks over, as it (Premium Cars) claims that it is still the lawful owner of the trucks. Delivery SA rejects this request, saying it paid the full amount owed to Mr Ndlozi – who acquired the trucks from Premium Cars – and that it also took delivery of these trucks.

Premium Cars now approaches you, its attorney, and asks whether there is any way it can retrieve the trucks from Delivery SA.

Advise Premium Cars and Trucks fully, with reference to case law, on its prospects of success.

[Total: 20 marks]

Grand total: [70 marks]