



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: LPY41YO/SAK0000 Law of Property
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: SSA January 2020

<u>DATE</u>	: January 2020	<u>SESSION</u>	: 09:00-12:30
<u>ASSESSOR</u>	: Dr EJ Marais (UJ)		
<u>MODERATOR</u>	: Prof J Dugard (Wits)		
<u>DURATION</u>	: 3 HOURS (+ 20 minutes reading time)	<u>MARKS</u>	: 70

NUMBER OF PAGES: TEN (10) PAGES

INSTRUCTIONS:

1. You have 20 minutes reading time in addition to the 180 minutes writing time.
2. Answer on the answer sheet.
3. Please write the code under which you are registered for the Law of Property (ie SAK0000 or LPY41YO) on the front of your answer sheet.

4. Please answer every question on a new page and indicate it clearly. You may answer the questions in any order you prefer.
 5. Please write legibly.
 6. Read each question carefully.
 7. Refer to and apply case law, where relevant.
 8. You must hand in this exam paper with your answer sheet. Please keep it separate from your answer sheet when you are done writing.
 9. A rough estimate is provided at the end of each question to provide you with an idea of how much time you ought to spend on it.
 10. 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.
 11. Good luck!
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SECTION A (ANSWER ALL THE QUESTIONS IN THIS SECTION)**QUESTION 1**

Mr Harries is the owner of 150 Main Road in Uitenhage, the Eastern Cape Province (hereafter referred to as “the land”). There is a car factory on the land. Mr Harries sells the land to Ms Maseko, who wishes to use the land to manufacture cars. The sales agreement between Mr Harries and Ms Maseko contains the following two clauses:

- 1) Ms Maseko, and all subsequent owners of 150 Main Road, Uitenhage, may not use the land for any purpose other than the manufacturing of cars;
- 2) Should Ms Maseko, and all subsequent owners of 150 Main Road, Uitenhage, sell the land, 15% of the nett profits made from such sale must be paid over to Mr Harries.

The sales contract is concluded. The land is then registered in Ms Maseko's name at the Deeds Registry. The mentioned two conditions are also registered against the title deed of the land.

A few years later, Ms Maseko sells the land to Mr Simons and duly pays over 15% of the nett profits made from the sale to Mr Harries, as the second condition requires. The land is then registered in Mr Simons' name. Both conditions are still registered against the title deed of the land. Upon acquiring the land, Mr Simons immediately starts converting the factory to manufacture large farming vehicles (like tractors and harvesters).

Mr Harries comes to hear of this and tells Mr Simons that he must stop this process. Mr Harries bases his argument on the first condition, which prohibits any owner of the land from using it for any purpose other than the manufacturing of cars. Mr Simons refuses to comply, stating that the condition is only binding as between Mr Harries and Ms Maseko and is thus not enforceable against Mr Simons. Mr Simons also states that if he should sell the land one day, he will not pay over any money to Mr Harries, claiming that the second condition is also only binding on Ms Maseko.

Mr Harries now approaches you, his attorney. He wants to know what his rights are and whether conditions 1 and 2 are enforceable against Mr Simons.

Advise Mr Harries fully, with reference to case law, legislation, and academic debates, on his prospects of success.

[25 marks]

(45-60 minutes)

QUESTION 2

2.1) Ms Wadee and Mr Tau are the owners of adjoining pieces of land. Ms Wadee owns Erf 175 while Mr Tau owns Erf 176. Erf 175 is located to the east of Erf 176. The previous owners of the two erven registered a specified right of way in favour of Erf 176 over Erf 175. In terms of this specified right of way, the owner of Erf 176 may use the right of way to drive over Erf 175 to reach a public road that runs along the eastern boundary of Erf 175. Ms Wadee and Mr Tau are both farmers and use the road that runs along the eastern boundary of Erf 175 to conduct their farming operations.

Ms Wadee recently discovered a huge gravel deposit on her farm. The deposit is located directly beneath the route along which the right of way runs. This makes it impossible for her to extract the gravel and to sell it. Ms Wadee really wants to extract the gravel and sell it, as she can make much more money from this operation than from her farming operation. Yet, it will only be possible for her to extract the gravel if the right of way is relocated so that it runs over another part of Erf 175.

Ms Wadee offers Mr Tau an alternative right of way over her land, one which is of the same length and quality as the original. Ms Wadee undertakes to cover all costs of having the right of way relocated, which includes building a new road over Erf 175 and making the necessary changes in the Deeds Registry. Ms Wadee's offer is reasonable, as Mr Tau's farming interests will in no way be prejudiced from having to use the alternative route.

Mr Tau, however, does not like Ms Wadee and refuses to accept the alternative route. He informs her that he is under no obligation to accept the alternative route and prefers to use the original one.

A dejected Ms Wadee now approaches you, her attorney. She wants to know what her rights are and whether there is any possibility for her to relocate the right of way.

Advise Ms Wadee fully, with reference to case law, on her prospects of success.

(10)

- 2.2) Assume that Mr Tau has no problem with having the specified right of way relocated to another part of Erf 175. He sets two conditions for agreeing to the relocation of the right of way, namely that Ms Wadee must construct the new road herself and she, as well as her successors in title, must maintain it.

Mr Tau now approaches you, his attorney. He wants to know whether these two conditions are enforceable and whether they may be registered against the title deed of Erf 175. He tells you that he wants both himself and his successors in title to benefit from these two conditions.

Advise Mr Tau fully, with reference to case law and legislation, as to his legal position and on his prospects of success.

(5)

Total: [15]

(30-35 minutes)

QUESTION 3

- 3.1) Conimex (Pty) Ltd ("Conimex") owns land on which a restaurant is located. It concludes a lease agreement of fifteen (15) years with Mr Kunene, a restaurateur, who wants to operate a restaurant there. The lease is not registered against the title deed of Conimex's land.

Seven (7) years later, Mr Sekele, another restaurateur, approaches Conimex and offers to purchase the land from it. Mr Sekele is unaware of the lease agreement between Conimex and Mr Kunene. Conimex agrees and the land is sold to Mr Sekele, in whose name it is subsequently registered at the Deeds Registry. Mr Sekele only becomes aware of the lease agreement between Conimex and Mr Kunene after the land has already been registered in his name.

Mr Kunene is still operating a restaurant on the land and would like to continue with the lease until it runs out. However, Mr Sekele would like to start operating his own restaurant on the land as soon as possible. He informs Mr Kunene that he is the new owner of the land and that he refuses to recognise any right Mr Kunene has in the land. Mr Sekele asks Mr Kunene to vacate the premises immediately.

Mr Kunene now approaches you, his attorney. He wants to know what his rights are. Mr Kunene specifically wants to know if there is any way that he can remain on the land for the remainder of the lease period.

Advise Mr Kunene fully, with reference to case law, on his prospects of success.
(10)

- 3.2) Assume that Mr Sekele knew about the existence of the lease agreement between Conimex and Mr Kunene before he bought the land. What difference, if any, would this have for the outcome in question 3.1?

Motivate your answer.

(5)

Total: [15]

(30-35 minutes)

SECTION B (ANSWER ONE OF THE QUESTIONS IN THIS SECTION)**QUESTION 4**

- 4.1) Ms Mookwa recently bought an empty piece of land in Lynnwood, Pretoria. This piece of land is located to the east of Ms Langa's land. There is a wall that separates the two erven, which wall Ms Langa erected prior to Ms Mookwa purchasing the land. There is a public road that runs along the northern borders of both erven, namely 4th Avenue.

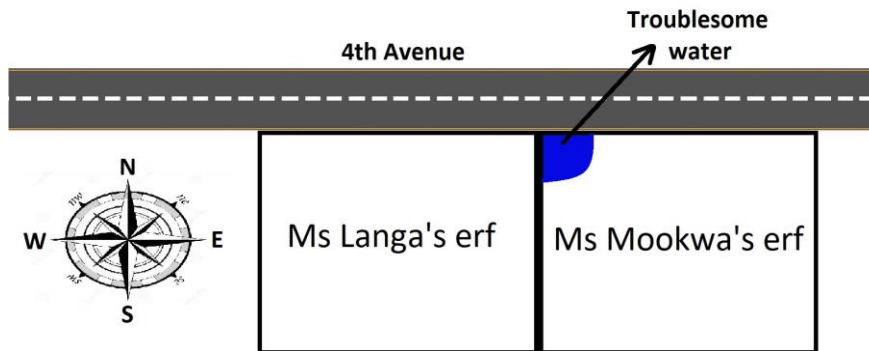
The natural topography of Lynnwood is as follows: the southern part of the suburb is slightly higher than the northern part, while there is a natural downward slope from east to west. Thus, the eastern part of the suburb is slightly higher than the western part.

Ms Mookwa immediately builds a double storey home on the land and paves most of the western part of her erf. In the process, she completely alters the natural topography of her land.

After heavy rains, Ms Mookwa finds that water is damming up in the north-western corner of her erf. It dams up against Ms Langa's wall on the western side of Ms Mookwa's erf and against Ms Mookwa's wall on the northern side of her erf. Ms Mookwa wants to get rid of the water, as it is causing cracks in her paving.

Ms Mookwa contacts Ms Langa and requests whether she may insert a pipe into Ms Langa's wall so that the water may drain down naturally onto her erf. Ms Langa refuses to comply and threatens Ms Mookwa with legal action if she tries to insert such a pipe.

Ms Mookwa now contacts you, her attorney. She wants to know what her rights are. She provides you with the following sketch:



Advise her fully, with reference to case law, on her prospects of success.

(10)

- 4.2) Assume that when Ms Mookwa purchased the land, she developed it in such a way that no alteration of the natural topography of her land occurred in any way. What difference, if any, would this have for the outcome in question 4.1?

Motivate your answer.

(5)

Total: [15]

(30-35 minutes)

OR

QUESTION 5

The ancestors of the Matukane community settled on land in Limpopo during the 1840s, which land later became the Brakfontein farm. They lived on the land, built homes, brought up their children, tended their elderly, grew crops where they chose, had as many livestock as they preferred, paid tribute to their ancestors, and buried members of their community there.

In 1888, the government of the then South African Republic (Transvaal) granted the land to Mr Gebhardt and it was duly registered in his name. Mr Gebhardt told the Matukane community that they may only remain on the farm with his permission. He allowed all the members of the community to remain there in exchange for providing labour to him for purposes of running his farming operations. In terms of this agreement, which existed with regard to each individual family and not the Matukane community as a whole, each family could only live on a specific portion of the farm,

each family could have no more than 10 heads of livestock, each family could grow crops – and build homes – only on the portion of land allocated to them, and the Matukane community as a whole had to provide Mr Gebhardt with eight labourers each week. The community was still allowed to bury deceased members on the farm, although this was now also limited to a small portion of the farm.

In 1965 the successor in title of Mr Gebhardt, Mr Watermeyer, decided to terminate the agreements that were in place with the families of the Matukane community. This decision was inspired by regulations issued by the state in terms of which farmers who kept labour tenants on their farms after 1967 would have to pay increased taxes to the state. This was part of the state's drive to encourage farmers to abolish labour tenancies on all farms in the former Transvaal.

Mr Watermeyer, to save costs, terminated the labour tenancies but allowed members of the community to remain on the farm if they wished to be farm labourers and to work for a monthly salary. He told those families who remained they no longer had the right to grow any crops, have livestock, or to bury members of their community on the farm. They only had a right to live on a certain part of the farm and had to provide labour for a monthly salary.

Many of the families of the Matukane community left the farm after the termination of their labour tenancies and settled in the former Bophuthatswana. Those families that remained still live on the farm to the present day.

The representatives of the Matukane community, who are descendants of those members of the community who both remained on the farm and who left the farm, now approach you, their attorney. They want to know if there is any way for them to reclaim the rights they held in Brakfontein.

Advise them fully, with reference to case law, legislation, and the Constitution, on their prospects of success. You may assume that it is still possible for them to submit their claim.

[15]

(30-35 minutes)

Grand total: [70]

Finis
