



<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(S)</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: NINE (9) 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**

- 1.1) Ms Scott and Mr Manaba are neighbouring landowners. Mr Manaba's land lies to east of Ms Scott's land, which means the eastern boundary of Ms Scott's land borders the western side of Mr Manaba's land. Mr Manaba has a large reservoir on his land. Ms Scott would like to obtain a right to draw water from the reservoir on Mr Manaba's land to operate the farm on her land. Ms Scott furthermore wants Mr Manaba to construct the pipeline that will lead water from his reservoir to Ms Scott's land. She would also like Mr Manaba to maintain the pipeline. Ms Scott wants to ensure that she and all her successors in title benefit from these terms. At the same time, she wants Mr Manaba and all his successors in title to be bound by these terms. Mr Manaba is willing to agree to these terms.

Ms Scott now approaches you, her attorney. She wants to know what her rights are and what formalities she has to observe to create the right to draw water, along with the terms mentioned.

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

(15)

- 1.2) Assume that Ms Scott and Mr Manaba agree to create a right to draw water in favour of Ms Scott's land and to have it registered against the title deed of Mr Manaba's land. After conclusion of the agreement but before it is registered against the title deed of Mr Manaba's land, Mr Manaba sells his land to Mr Jerling, in whose name the land is subsequently registered. Mr Jerling already had knowledge of the agreement between Ms Scott and Mr Manaba before the land was registered in his name. However, he refuses to allow Ms Scott to draw water from the reservoir, stating that this right is only enforceable as against Mr Manaba.

Ms Scott now approaches you, her attorney. She wants to know what her rights are and if there is any way she may force Mr Jerling to honour the agreement she concluded with Mr Manaba.

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

(5)

- 1.3) See the facts in question 1.2 above. The only variation is that after Mr Manaba and Mr Jerling concluded the sales agreement, the land is still registered in Mr Manaba's name and is yet to be registered in Mr Jerling's name. What difference, if any, would this have for the outcome in question 1.2?

Motivate your answer.

(5)

[25]

(45 to 60 minutes)

QUESTION 2

- 2.1) Mr Jones is leasing an empty apartment from Ms Myburgh. Mr Jones approaches his friend, Ms Richards, to borrow furniture, as he does not have enough funds to purchase all the furniture he needs to live in the apartment. Ms Richards agrees to lend her expensive leather couch set and her new flat screen television to Mr Jones free of charge, which items are duly delivered to the apartment Mr Jones is leasing. Ms Richards allows Mr Jones to use and enjoy these items for an unspecified period.

Mr Jones soon runs into financial difficulties and finds it difficult to keep paying rent to Ms Myburgh. To escape his problems, he vacates the apartment one night under cover of darkness, while still owing several months' worth of rent to Ms Myburgh. Mr Jones moves all his belongings, including the items of Ms Richards, to a new apartment that is cheaper to rent. Mr Jones does this without informing either Ms Myburgh or Ms Richards.

One year later Mr Jones finds it impossible to keep paying rent to his new landlord, Mr Minne. Mr Minne obtains a court judgment for the outstanding rent and with the assistance of the sheriff attaches all the movable objects in the apartment, including the items of Ms Richards. Mr Minne plans to sell all these movables in execution to satisfy the outstanding rent Mr Jones owes him.

Upon this attachment Mr Jones contacts Ms Richards, with whom he had had no contact since leaving Ms Myburgh's flat. He informs her that Mr Minne is planning to sell all the movables, including her items, to satisfy the debt he owes Mr Minne in rent.

Ms Richards approaches Mr Minne and requests him to release her belongings. Mr Minne says he is under the impression that all the movables in the apartment belong to Mr Jones and that he will sell them accordingly. He therefore refuses to hand her items over to her.

A distressed Ms Richards now approaches you, her attorney. She wants to know if there is any way she can force Mr Minne to hand over her belongings to her.

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

(10)

- 2.2) Assume that instead of lending the leather couch set and the flat-screen television to Mr Jones free of charge, Ms Richards sold these items to him in terms of an instalment agreement in which she retains ownership until payment of the full purchase price. Mr Jones is yet to repay the full purchase price to Ms Richards. What difference, if any, would this have for the outcome in question 2.2?

Motivate your answer.

(5)

Total: [15]

(30-35 minutes)

QUESTION 3

Mr Mouton runs a car washing business in Vereeniging. He owns all the car washing machines to operate this business. He concludes a contract of sale with Mr Preston to sell the car washing machines to him. The purchase price for the machines is R100 000 (which corresponds with the market value of the machines). Mr Mouton reserves ownership of the car washing machines until he receives the full purchase price from Mr Preston. Mr Preston subsequently takes control of the car washing machines and uses them in his own car washing business.

After having repaid R95 000 back to Mr Mouton, Mr Preston runs into financial difficulties. He is afraid that he might default on one of his payments to Mr Mouton, which would allow Mr Mouton to reclaim the washing machines in terms of his reservation of ownership clause. To avoid this, Mr Preston approaches a friend of his, Mr Grant, and asks him to pay the outstanding R5 000 he (Mr Preston) owes to Mr Mouton.

The two friends conclude a written agreement, which stipulates that ownership of the car washing machines will transfer to Mr Grant when he pays the R5 000 to Mr Mouton. It further provides that Mr Grant will then re-sell the machines to Mr Preston for the lent amount, namely R5 000. In terms of this agreement, Mr Grant reserves ownership of the car washing machines until he receives the full R5 000 he lent to Mr Preston. Mr Preston retains control of the car washing machines throughout these events and at no point in time does he hand over control of them to Mr Grant. Mr Preston continues to use the machines as part of his car washing business.

A few months later Mr Preston sells the car washing machines to Ms Bentham for R120 000. Mr Preston informs her that he is the owner of the machines. Ms Bentham pays the full purchase price to Mr Preston and then takes control of the car washing machines. Mr Preston leaves Vereeniging after concluding this agreement. No one knows where he is.

Mr Grant has not received any payments from Mr Preston. He informs Ms Bentham of his agreement with Mr Preston and tells her that he is the owner of the washing machines. He also informs her that he will claim the washing machines from her if she does not pay him the R5 000 Mr Preston owes him within one week.

Ms Bentham now contacts you, her attorney. She wants to know what her rights are.

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

[15]

(30 to 35 minutes)

SECTION B (ANSWER ONE OF THE QUESTIONS IN THIS SECTION)

QUESTION 4

Mr Mayaba owns a piece of land – on which he built a family home – in a quiet neighbourhood in Pretoria. Ms Cronje recently bought the erf right next to his. She loves gardening and immediately planted three fully grown jacarandas, which one finds throughout Pretoria, on her land. Only one of these jacarandas is located next to the common wall between the two erven. The leaves and branches of this one tree overhang into the airspace directly above Mr Mayaba's swimming pool.

During winter, the jacarandas – being deciduous trees – shed their leaves. The leaves and branches from the one jacaranda at the common wall between the two properties are now falling into Mr Mayaba's swimming pool, clogging up the automatic pool cleaner (also known as a Creepy Crawly). Meanwhile, the leaves from all three jacarandas are being blown unto Mr Mayaba's roof by the wind, thus blocking the gutters on the roof. All these leaves and branches irritate Mr Mayaba, as he now has to manually clean the swimming pool (as the Creepy Crawly cannot function properly due to all the leaves and branches falling into the swimming pool) on a weekly basis and also has to get cleaning services to unblock the gutters on his roof from time to time.

One day he confronts Ms Cronje and tells her that her jacarandas are causing him discomfort and that she should do something about them. Ms Cronje responds by saying that she cannot do anything if the wind naturally blows the leaves unto Mr Mayaba's erf. Mr Mayaba, unsatisfied with this response, threatens Ms Cronje by saying that if she does not make a plan, he will get an order forcing her to remove all three jacarandas from her erf.

Ms Cronje now approaches you, her attorney. She wants to know what her rights are. She tells you it is completely normal to have jacarandas on one's erf in Pretoria, which is fondly known as the Jacaranda City.

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

[15]

(30 to 35 minutes)

OR

QUESTION 5

In *Gien v Gien* 1979 2 SA 1113 (T) Spoelstra AJ made the following finding:

"Ownership is the most complete real right that a person may have in respect of a thing. The premise is that, where an immovable thing is concerned, a person can do what he likes with and on his property. This seemingly unlimited freedom is, however, a half-truth."

Critically discuss this finding with reference to relevant case law and academic commentary.

[15 marks]

(30 to 35 minutes)

GRAND TOTAL: [70]

Finis
