



<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 November 2019

<u>DATE</u>	: 19 Nov 2019	<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: EIGHT (8) 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!
-

SECTION A (ANSWER ALL THE QUESTIONS IN THIS SECTION)**QUESTION 1**

Ms Khosa operates a petrol station in Bryanston, Johannesburg. She also owns several other nearby pieces of land, each with an apartment block on it. She sells one of these pieces of land, located at 195 Grosvenor Road, Bryanston ("the land"), to Mr Ben. The contract of sale contains the following two conditions:

- 1) Mr Ben, and all subsequent owners of 195 Grosvenor Road, Bryanston, may not operate a petrol station on the land;
- 2) Should Mr Ben, and all subsequent owners of 195 Grosvenor Road, Bryanston, sell the land, 10% of the nett profits made from such sale must be paid over to Ms Khosa.

The sales contract is concluded. Subsequently, the land is registered in Mr Ben's name at the Deeds Registry. The mentioned two conditions are also registered against the title deed of the land.

After a few years, Mr Ben sells the land to Ms Pitsi and duly pays over 10% of the nett profits made from the sale to Ms Khosa, as the second condition requires. The land is then registered in Ms Pitsi's name. Both conditions are still registered against the title deed of the land. Upon acquiring the land, Ms Pitsi immediately demolishes the apartment block located on it and starts constructing a petrol station, as she wishes to operate a petrol station on the land.

Ms Khosa comes to hear of this and tells Ms Pitsi that she must stop this development. Ms Khosa bases her argument on the first condition, which prohibits any owner of the land from operating a petrol station there. Ms Pitsi refuses to comply, stating that the condition is only binding as between Ms Khosa and Mr Ben and is not enforceable against Ms Pitsi. Ms Pitsi also states that if she should sell the land one day, she will not pay over any money to Ms Khosa, as she also regards the second condition of the contract as binding only Mr Ben.

Ms Khosa now approaches you, her attorney. She wants to know what her rights are and whether conditions 1 and 2 are enforceable against Ms Pitsi.

Advise Ms Khosa fully, with reference to case law, legislation, and academic debates, on her prospects of success.

[25 marks]

(45 to 60 minutes)

QUESTION 2

Mr Malinga bought a minibus taxi on credit from Standard Bank (Pty) Ltd ("the Bank"). The Bank reserves ownership of the taxi until Mr Malinga pays over the final instalment he owes. Mr Malinga is still paying instalments to the Bank for the taxi.

Recently, Mr Malinga was involved in an accident with another vehicle. He takes the damaged taxi to Car Service City (Pty) Ltd ("the panel beater") to have it repaired. Extensive repairs are required, which involve replacing the engine, the gearbox and the two front wheels. Mr Malinga and the panel beater conclude a contract to have the repairs done. They also agree that the panel beater will repaint the taxi. The repairs amount to R160 000 (R100 000 for the engine, R30 000 for the gearbox, R10 000 for the two front wheels and R20 000 for the paint job). The repairs will increase the market value of the taxi by R80 000.

Once the repairs are done, Mr Malinga realises it is impossible for him to pay the R160 000 he owes the panel beater. He is also no longer able to pay the instalments he owes to the bank. He quietly disappears one night and no one now knows where he is.

The Bank tracks down the taxi, which is still held by the panel beater. The Bank demands the panel beater to hand it over. The panel beater refuses, stating that it will only hand over the repaired taxi if the Bank pays for the repairs. The Bank refuses to comply, stating that it did not conclude a contract with the panel beater to have it repaired. The panel beater refuses to hand over the taxi until it has received payment for the repairs. The Bank threatens the panel beater with legal action.

The managing director of the panel beater now approaches you, the company's attorney. She wants to know what the company's rights regarding the taxi are.

Advise the panel beater fully, with reference to case law, on its prospects of success.

[15 marks]

(30 to 35 minutes)

QUESTION 3

Ms Ocran, a single mother of two minor children, obtained a loan from First National Bank (Pty) Ltd ("FNB") for R1 million to purchase land in Lynnwood, Pretoria. As per the loan agreement, FNB registers a mortgage bond against the title deed of A's land as security for the loan. FNB did a background check on Ms Ocran and came to the conclusion that she, an attorney at a major law firm, is able to repay the loan at a monthly instalment of R10 000 over a period of 100 months (which equals roughly eight years).

Ms Ocran dutifully pays the monthly instalments to FNB. Unfortunately, during the seventh year of repaying the loan (after already having paid R900 000 back to FNB), Ms Ocran loses her job at the major law firm where she worked. This causes her to miss the one instalment she owes FNB at the end of that month. One month later, she secures a new job at a smaller law firm. Due to her lower salary, she is only able to pay monthly instalments to FNB of R5 000.

When she informs FNB about her only being able to repay the loan at a reduced monthly instalment, FNB informs her that the entire outstanding loan amount (R100 000) became payable the day she missed the one monthly instalment when she lost her job. FNB states that unless she pays the R100 000 immediately, her home will be sold in execution. Ms Ocran responds that it is impossible for her to pay this amount in one go, given her lower salary. She asks whether she may repay the outstanding R100 000 at a monthly instalment of R5 000. FNB refuses to accept her offer.

A distressed Ms Ocran now approaches you, her attorney. She wants to know what her rights are and whether there is any way she can prevent FNB from selling her home

in execution. She tells you that she and her children will be rendered homeless if FNB sells the home.

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

[15 marks]

(30 to 35 minutes)

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

QUESTION 4

Ms Samuels recently bought a home in Soweto, Johannesburg. Her next-door neighbour, Mr Sithole, who has been living there for 20 years, holds barbeques (*chesa nyama* or braais) once or twice a week. During these events, he barbeques various meats. None of his neighbours has ever complained about this. Ms Samuels, however, is a vegan and cannot stand the smell of meat being cooked.

At one point, when Mr Sithole is barbequing again, the smell of meat being barbequed is blown over to Ms Samuels' erf by the wind. Ms Samuels, who enjoys sitting in her back yard, is greatly distressed by the smell of the cooking meat. She requests Mr Sithole to barbeque somewhere else on his property so that the smell does not reach her. He responds that regardless of where on his land he barbeques, the smell will still inevitably reach Ms Samuels' erf due to gusts of wind. He states that there is nothing he can do to prevent the smell from reaching her erf. He suggests that, to escape the smell, she should sit indoors for the one or two times a week when he barbeques. Ms Samuels refuses to comply and says that Mr Sithole's barbequing is infringing her ownership rights. She tells Mr Sithole to stop barbequing immediately and threatens him with legal action if he does not comply.

Mr Sithole now approaches you, his attorney. He wants to know what his rights are. He tells you that he has been living on his land, and barbequing there, for the last 20 years without complaint. He says that most of his other neighbours (and most people in Soweto) barbeque meat regularly.

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

[15 marks]

(30 to 35 minutes)

OR

QUESTION 5

Mr Smit owns a banana farm in Limpopo, which he purchased from the state in 1980. The state now wants to expropriate his farm. The state wants to build homes on the land to provide housing for many of the landless persons in that area.

Mr Smit now approaches you, his attorney. He wants to know what amount of compensation he is entitled to claim from the state for his farm. He provides you with the following details:

He purchased the land from the state in 1980 at a discounted price of what in today's terms is R500 000. The market value of the land back then was R1 million in today's terms. In addition, to help Mr Smit get on his feet and successfully operate the farm as a banana farm, the state granted him a subsidy at the time of what in today's terms amounts to R300 000. Mr Smit has been running a banana farming business on the farm since that date.

The current value of the farm, when compared to the sales of other banana farms of the same size in the same region, is R2 million. The development potential of the farm, if it is used for a housing development instead of a banana farm, is R4 million.

Mr Smit also informs you that his farm is his only asset and that he lives on the farm. He will be left homeless and will be financially ruined if he loses the farm without receiving compensation.

Advise Mr Smit fully, with reference to the case law, the Constitution and legislation, on his prospects of success.

[15]

(30-35 minutes)

GRAND TOTAL: [70]

Finis
