



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW (AUCKLAND PARK CAMPUS)

**SUBMISSION OF FINAL EXAMINATION PAPERS
JANUARY 2018**

MODULE NAME: LAW OF PROPERTY

MODULE CODE: SAK0000 / LPY41Y0

LECTURER (S): DR EJ MARAIS

HEAD OF DEPARTMENT: PROF MM WATNEY

EXIT MODULE: YES/ NO YES

FOR EXIT MODULES:
EXTERNAL MODERATOR: PROF J DUGARD

EXTERNAL MODERATOR FORM ATTACHED: NO

INSTRUCTIONS:

1. How many of the following items will be required per student?

Examination script (4 pages) 2

Scanner sheet N/A

Other (please specify) N/A

2. How many students are still attending lectures (with a view to the number of examination papers required)? 100

SIGNATURE OF LECTURER: 

DATE: 4/1/2018

SIGNATURE AS HEAD OF
DEPARTMENT
(AS INTERNAL MODERATOR) MM Watney

DATE: 4/01/2018

FOR ADMINISTRATIVE PURPOSES:

Noted: _____

Date: _____



UNIVERSITY OF JOHANNESBURG
AUCKLAND PARK KINGSWAY CAMPUS
FACULTY OF LAW
JANUARY SUPPLEMENTARY EXAM 2018

<u>SUBJECT NAME:</u>	PROPERTY LAW
<u>SUBJECT CODE:</u>	SAK0000 / LPY41YO
<u>DURATION:</u>	180 MINUTES (PLUS 30 MINUTES READING TIME)
<u>MARKS:</u>	75
<u>EXAMINER:</u>	DR EJ MARAIS (UJ)
<u>INTERNAL MODERATOR:</u>	PROF JL NEELS (UJ)
<u>EXTERNAL MODERATOR:</u>	PROF J DUGARD (WITS)

NB: THIS EXAM PAPER CONSISTS OF EIGHT (8) PAGES.

INSTRUCTIONS:

- 1 You have 30 minutes reading time in addition to the 180 minutes writing time.
- 2 You are welcome to answer the questions in any order you prefer. Answer on the answer sheet.
- 3 Please write the code under which you are registered for property law (ie SAK0000 or LPY41YO) on the front of your answer sheet.
- 4 Please answer every question on a new page and indicate it clearly.
- 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. Place it inside 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 (YOU MUST ANSWER ALL THE QUESTIONS IN THIS SECTION)

QUESTION 1

Mr Sibanda and his family are farmworkers who live and work on the farm Otterspoort in Limpopo. The ancestors of Mr Sibanda and his family have lived on the farm since 1935 and have had permission to live on the farm since that date. Mr Sibanda and his family members have a combined income of R3000 a month.

The previous owner of the farm, Mr Barnard, allowed farmworkers to bury deceased members of their families on the farm. Several members of Mr Sibanda's family have been buried on the farm in the past. Two weeks ago, Mr Sibanda's father, Mr Sibanda senior, passed away after a long illness. Mr Sibanda and his family would like to bury his father on the farm, in accordance with their culture and religion.

The new owner, Mr Opperman, who bought the farm from Mr Barnard in 2005, refuses to allow Mr Sibanda and his family to bury their deceased father on the farm. Mr Opperman states that the farm belongs to him, that he refuses to give them permission to bury his deceased father, and that any burial of any person pursuant to legislation amounts to an unconstitutional interference with his property.

A distressed Mr Sibanda now approaches you, his attorney. He wants to know whether it would be unconstitutional, as per relevant legislation, for him and his family to bury their father on the farm. He tells you it is extremely important from him and his family, given their culture and religion, that their deceased father be buried on the farm, as the ancestral spirits will be distraught if his grave is not near to where they live. He also wants to know what the requirements are for burying their deceased father on the farm, as per relevant legislation.

Advise Mr Sibanda fully, with reference to case law, legislation and the Constitution, on the follow two aspects **(please answer each sub-question on a new page and indicate each one clearly):**

- 1.1) The possible unconstitutionality of legislation that allows him and his family to bury their father on the farm; and

(15)

- 1.2) The requirements for burying their deceased father on the farm and whether Mr Sibanda and his family comply with these requirements.

(10)

Total: [25]

(45-50 minutes)

QUESTION 2

In 1998 the owners of two adjacent pieces of farmland, Mr Mkize and Mr Khotsong, concluded an agreement in terms of which a specified right of way was registered over Mr Khotsong's land in favour of Mr Mkize's land. This right of way would assist Mr Mkize in his farming operations. The agreement was duly registered against the title deeds of the two properties.

In 2014 Mr Khotsong sold the land to Ms Radebe. He informed Ms Radebe of the specified right of way and Ms Radebe had no problem with it. The land was subsequently registered in Ms Radebe's name. In 2016 diamonds were discovered on Ms Radebe's land. She subsequently applied for a mining permit, as she is very keen to mine the diamonds and to sell them for a huge profit. However, the only problem is that the current location of the specified right of way over Ms Radebe's land makes it impossible for her to mine the diamonds, as it is located directly above the only diamond deposit on the land.

Ms Radebe subsequently approaches Mr Mkize and tells him about the diamonds on her land and that she would like to mine them. To this end she would like to know whether he would be willing to have the specified right of way relocated, given that its current location makes it impossible for her to mine the diamonds. She offers Mr Mkize an alternative route over her land, which is of the same length and quality as the current one. She also states that she is willing to pay all costs associated with relocating the specified right of way, for its construction and for its registration.

Mr Mkize flatly refuses Ms Radebe's offer. He states that he prefers the current specified right of way, that it was properly registered long ago and that Ms Radebe is therefore bound by it. He also

claims that he is under no obligation to accept a new route, even one that will be of the same length and quality as the current one.

A dejected Ms Radebe now approaches you, her attorney. She wants to know if there is any way she can force Mr Mkize to accept the alternative route she has suggested.

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

[15]

(30-40 minutes)

QUESTION 3

Around 1000 occupiers have set up an informal settlement on land north of Pretoria. This land belongs to the City of Tshwane (the City). The occupiers have been on the land for almost ten years. The occupiers were initially on the land with the City's permission, but about five years ago the City terminated the agreement it had with the occupiers and requested them to go elsewhere, as the City wanted to construct low-cost social housing on the land. The occupiers stated that they will only vacate the land if they are offered alternative accommodation near their current location. The City, irritated by what it perceived as uncooperativeness on the side of the occupiers, did nothing after this for five years.

The City recently thought to start implementing its low-cost social housing plan. One morning, the occupiers awoke to the sound of loud sirens, the barking of dogs and banging on their doors. It was the South African Police Service (SAPS) and municipal officials that arrived at the informal settlement with police vehicles and trucks to take the occupiers to another piece of land, which is in Midrand. This is to vacate the land where the occupiers are on so that the City may start building the low-cost social housing units. The occupiers refuse to go to the land in Midrand.

The police officers and municipal officials ignore the pleas of the occupiers, forcibly load them onto the trucks and take them to the land in Midrand. In an attempt to discourage the occupiers from returning to the land they were removed from, the City brings in bulldozers to demolish all the informal houses on the land. The bulldozers destroy all the homes and the material (primarily

corrugated iron and wood) of which these homes consist. The remains are burned and later removed from the land with refuse trucks.

Representatives of the occupiers now approach you, an attorney at the Centre for Applied Legal Studies (CALS). They give you the above information and specifically emphasise the fact that their informal houses, and the materials of which they consist, have been destroyed by the City. They want to know if there is any way in which they can force the City to return them to the land to the north of Pretoria. They also want to know if they can force the City to rebuild their destroyed homes. Swift assistance is needed, as they have no shelter on the land in Midrand to which they have been taken.

Advise the occupiers fully, with reference to case law, the Constitution, and academic debates, as to their prospects of success.

[15]

(30-40 minutes)

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

QUESTION 4

Mr King, who lives in Johannesburg, is in the business of selling vintage cars all over South Africa. For this reason, he makes use of car dealers, who act on his behalf, in various cities in the country. One of these dealers, namely Old Time Cars (Pty) Ltd, is in Cape Town.

The agreement between Mr King and Old Time Cars entails that Mr King delivers his cars to Old Time Cars on consignment. Mr King reserves ownership of his vehicles delivered to Old Time Cars until he (Mr King) receives the full purchase price from them. The agreement between Mr King and Old Time Cars further provides that purchasers must pay the full purchase amount directly to Old Time Cars when buying one of Mr King's vehicles. In this regard the invoices which Mr King provides Old Time Cars expressly states that Mr King is the owner of the vehicles and that purchasers must pay the full purchase price directly to Old Time Cars. Old Time Cars then deducts its commission and pays over the rest of the purchase price to Mr King. As per the agreement, Old Time Cars displays the vehicles of Mr King in its showroom in Cape Town along with its own cars. Finally, Mr King provides Old Time

Cars with the spare keys and blank registration documents of his vehicles. This is to simplify the process of Old Time Cars selling his cars to prospective purchasers.

At some point Mr King delivers a snazzy 1956 Jaguar Roadster to Old Time Cars to sell on consignment, along with its spare keys and blank registration documents. Old Time Cars proceeds to display this Jaguar in its showroom alongside its own cars. It is not long before Mr Maasdorp, a vintage car enthusiast, approaches Old Time Cars to buy the Jaguar. Old Time Cars shows the invoice of Mr King to Mr Maasdorp and confirms that purchasers must pay the money directly to Old Time Cars if they wish to buy the particular vehicle.

Mr Maasdorp immediately decides to purchase the Jaguar and pays over the full amount to Old Time Cars. Old Time Cars hands the Jaguar, its spare keys and blank registration documents over to an excited Mr Maasdorp, so that he can register the car in his name. Mr Maasdorp then drives off in the latest addition to his vintage car fleet. Unfortunately, Old Time Cars have struggled to make means end over the last few months. Before it could deduct its commission and transfer the remainder of the purchase price over to Mr King, it became insolvent and its estate was sequestrated.

Mr King later called Old Time Cars to ascertain whether it has managed to sell the Jaguar to anyone. After being unable to reach them, he flies down to Cape Town to go to their showroom himself. There he learns that Old Time Cars' estate is being sequestrated. The former manager of Old Time Cars informs Mr King that Mr Maasdorp, who lives in Cape Town, purchased the car.

Mr King then went to Mr Maasdorp's home to inquire about the Jaguar. He informs Mr Maasdorp that he is the owner of the Jaguar and that Mr Maasdorp must pay him for the car, as Old Time Cars failed to pay over the purchase price to him. Mr Maasdorp informs Mr King that he thought he acquired ownership of the Jaguar from Old Time Cars the moment he paid them the full purchase price. Mr King tells Mr Maasdorp that his assumption is incorrect, given the express reservation of ownership clause in the agreement between Mr King and Old Time Cars. Mr Maasdorp states that he did not know the details of the agreement between Mr King and Old Time Cars, but feels that he is not the one who should carry the risk in this regard, as he was under the impression that Old Time Cars could transfer ownership to him. Upon hearing this, Mr King threatens Mr Maasdorp that he will institute legal action against him to reclaim the Jaguar should he not willingly hand it over to him within 48 hours.

A shaken Mr Maasdorp now approaches you, his attorney. He wants to know if there is any way he can prevent Mr King from reclaiming the car from him. He also states that he thinks it is extremely unfair that Mr King should be able to reclaim the car from him, given the impression he has that he received ownership from Old Time Cars when he paid them the full purchase price.

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

[20]

(40-50 minutes)

OR

QUESTION 5

Prima Transport (Pty) Ltd is a company that transports goods to different parts of South Africa. Prima Transport decides to acquire three new trucks to help expand its business. It contacts Logistics SA (Ptd) Ltd, which specialises in the acquisition and sale of trucks. Prima Transport asks Logistics SA whether it can purchase the trucks on credit, as it is a new company and does not have sufficient cash to pay the full purchase price immediately. Logistics SA expressly rejects this request and says it will only sell the trucks on a cash-on-delivery (COD) basis. The company says it will, however, allow Prima Transport to take the three trucks in the meantime so Prima Transport can start using them in its transport business, but that Logistics SA will keep the spare keys as well as the guarantee and service books of the three trucks and will only hand them over when the full purchase price has been paid by Prima Transport. Prima Transport agrees to this and the trucks are subsequently handed over to it.

Unfortunately, business did not go smoothly for Prima Transport and it quickly runs into financial difficulties. During this time Prima Transport is approached by another company that specialises in acquiring and selling trucks, namely Wheels Suppliers (Pty) Ltd, which asks Prima Transport whether it can purchase the three trucks from them and offers to pay a very high price. Prima Transport, who desperately wants to address its deteriorating financial position, decides to accept this offer. Wheels Suppliers subsequently pays the money to Prima Transport, who promptly hands over the trucks to it.

Before Prima Transport could pay the outstanding amount it owes to Logistics SA, it becomes insolvent. At around the same time, Wheels Suppliers sells the trucks to another company, namely Van Lines (Pty) Ltd, for a big profit. Van Lines pays the full amount to Wheels Suppliers and assumes control of the trucks. Van Lines then starts to use the trucks in its transporting business.

Logistics SA manages to trace the trucks to Van Lines and asks them to hand the trucks over, as it (Logistics SA) claims that it is still the owner thereof. Van Lines flatly rejects this request, saying it paid the full amount owed to Wheels Suppliers – who acquired the trucks from Prima Transport – and that it also assumed control of the trucks.

Logistics SA now approaches you, its attorney, and asks whether there is any way it can retrieve the trucks from Van Lines.

Advise Logistics SA fully, with reference to case law, on its prospects of success.

[20]

(40-50 minutes)

Grand total: [75]

Finis
