



<b><u>FACULTY</u></b>	:	LAW
<b><u>DEPARTMENT</u></b>	:	PRIVATE LAW
<b><u>CAMPUS</u></b>	:	APK
<b><u>MODULE</u></b>	:	LPY41Y0 LAW OF PROPERTY
<b><u>SEMESTER</u></b>	:	FIRST SEMESTER
<b><u>TEST</u></b>	:	JUNE ASSESSMENT (PAPER 2)

**SESSION** : A per timetable

**ASSESSOR(S)** : Dr EJ Marais (UJ)

**MODERATOR** : Dr M van Eck (UJ)

**DURATION** : 120 minutes (+ 15 minutes reading time) **MARKS** : 50

**NUMBER OF PAGES:** 4 PAGES (INCLUDING THIS PAGE)

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**INSTRUCTIONS:**

- 1 You have 15 minutes reading time in addition to the 120 minutes writing time.
- 2 Answer on the answer sheet.
- 3 Please answer questions 1-2 in one colour booklet and answer question 3 in another colour booklet and write the numbers of the questions on the front page of your booklets.
- 4 Please write legibly.
- 5 Please answer every question on a new page and number the question clearly.
- 6 Refer to, discuss, 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 the facts.
- 7 You must hand in this test paper with your answer sheet. Place it in the box provided for this purpose in the test venue.

- 8 A rough estimate is provided at the end of questions 1-3 to give you an idea of how much time you should spend on these questions.
- 9 You may answer the questions in any order.
- 10 Good luck!

## QUESTION 1

Ms Elliot is the registered owner of Erf 789, which is located in a residential suburb in Durban. There is a house on the erf. In 1983, she concludes an informal arrangement with Mr Ferreira whereby he may live in the home, for free, until 1988. Mr Ferreira moves into the home in 1983 and starts living there.

In 1988, Ms Elliot requests Mr Ferreira to vacate the home. He refuses to comply and continues to live there. Since then, Mr Ferreira maintained the home, constructed a garage on the erf and even erected a fence around the perimeter of the erf. These acts were all done without Ms Elliot's permission. In 1991, Ms Elliot passes away. Erf 789 is inherited by Mr Grant, who lives in Cape Town and does not know Mr Ferreira is living there.

In 1998, Mr Ferreira allows his daughter, Ms Hunter, to start living on the land. He moves out of the home after she moved in. During 2003, she is forced to leave the home after the erf is flooded after a tropical cyclone hits Durban. During 2004, less than a year after being forced to leave the erf, she returns to Erf 789 and repairs the home.

During 2019, Mr Grant instructs Ms Hunter to vacate Erf 789. She refuses to comply.

Mr Grant now approaches you, his attorney. He wants to know what his rights are.

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

**[20 marks]**

35-45 minutes

## QUESTION 2

Consider the following statement:

"It is usually said that the compensation requirement frustrates land reform, specifically for two reasons. On the one hand, it (apparently) makes land reform unaffordable because the state must pay market value compensation for each and every expropriation. On the other hand, it is unfair that landowners, many of whom are still white and who, therefore, enjoyed the benefits of apartheid, obtain a second benefit when their property is expropriated against market value."

**EJ Marais "Is expropriation without compensation really the answer?" LitNet 8 February 2018**

Evaluate the purpose of paying compensation for expropriation and critically reflect on the expropriation-without-compensation debate.

**[10 marks]**

30 minutes

## QUESTION 3

Mr Phohu leases an apartment in Braamfontein, Johannesburg, to Ms Mbenge. She lives there with her elderly father, who is disabled, and her three minor children. She is the only breadwinner in the family.

She recently lost her job and is unable to continue paying the monthly rent to Mr Phohu. He concludes an informal agreement with her whereby she and her family may stay on in the flat for three more months, so as to allow her to find a new job. Ms Mbenge, however, is unable to find a new job.

Seven months after the expiration of the three-month grace period, Mr Phohu seeks to evict Ms Mbenge and her family from the apartment. She tells him that she and her family has nowhere else to go and they will be rendered homeless upon eviction. Her children go to the school nearby and her elderly father will suffer if he is required to live on the street. She states that they will happily leave if they are provided with alternative accommodation.

Mr Phohu now approaches you, his attorney. He wants to know what his rights are. He specifically asks if he is obliged to provide Ms Mbenge and her family with alternative accommodation.

Advise him fully, with reference to case law, legislation, and the Constitution, on his legal position and on his prospects of success.

**[20 marks]**

35-45 minutes

**Grand total: [50 marks]**

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