DURATION: 3 HOURS  
TOTAL MARKS: 120

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INSTRUCTIONS

1. This paper consists of SEVEN (7) pages. Please make sure you have them all.
2. This paper consists of two sections. You must answer both sections.
3. Students are requested, in their own interests, to write legibly.
SECTION A

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 1

Belinda is a supplier of building materials. She supplies a number of local building contractors, on the understanding that she remains owner of all goods supplied, and if the goods are not paid for within the stipulated time, she can reclaim the goods. Belinda has supplied the goods set out below to some builders and she wants to know if she will be able to claim their return if she is not paid:

1.1 She supplied 10 000 bricks to Arthur for use in the construction of a house. Construction of the house has not yet begun and all of the bricks are still stacked on the sight.

1.2 She supplied 35 wooden trusses to Chris for use in the construction of a factory. The factory has been completed and the roof trusses have been placed in position and covered with plastic and tiles. The roof can be dismantled without causing damage to the trusses or the factory.

1.3 She supplied 50 aluminium window frames to Zola for use in the renovation of a block of flats. The block of flats has been renovated and the windows have been screwed to the walls of the building and stuck in place with strong epoxy resin glue. The windows can only be removed by damaging them.

Advise Belinda as to whether any of these items may be removed and returned to her, in the event of non-payment.

TOTAL Q1: 35 MARKS
QUESTION 2

Answer question 2.1 and question 2.2

2.1 Kate is a dealer in musical instruments in Pietermaritzburg. Four months ago she sold a pair of loudspeakers to Sandile. At the time of the sale, Kate explained to Sandile that the sale was for cash. Sandile agreed to pay cash for the loudspeakers. He then gave Kate a currently-dated cheque for the purchase price. The cheque was drawn on a bank located in Durban. Kate deposited the cheque into her bank account on the same day. A week later the cheque was returned to Kate marked “Return to Drawer: Insufficient Funds”. Kate put the cheque in her desk drawer and since then she has done nothing about the matter. She now wants to know whether she can reclaim the loud speakers from Sandile using the *rei vindicatio*. Advise her.

[Total 2.1: 15 marks]

2.2 Richard owned a clothing manufacturing company. Two years ago he bought 100 sewing machines from Yvonne in terms of a credit agreement. The credit agreement provided that Richard would pay the purchase price in four instalments of R50 000 each. It also provided that Yvonne would retain ownership of the sewing machines until the full purchase price had been paid.

After paying the first three instalments, Richard’s company ran into financial trouble and he was unable to pay the last instalment. When Yvonne refused to give Richard any extra time to pay the last instalment and threatened to repossess the sewing machines if he did not pay on time. Richard turned to his best friend Mogoeng for help.

In order to help Richard pay the last instalment, Mogoeng agreed to buy the sewing machines for R50 000. In addition, he also agreed that he would pay the purchase price, not to Richard, but directly to Yvonne; that Richard could continue using the machines (Richard needed the machines in order to run his business); and that he would sell the machines back to Richard in a year’s time for R50 000.
Six months after entering into this agreement with Mogoeng, Richard sold his company including all of the sewing machines to Bess. After Bess paid Richard the purchase price he handed the keys to the company’s premises, which contained all 100 sewing machines, to her.

Mogoeng has recently learnt about the sale of the company and the sewing machines to Bess. He now wants to know whether he can claim the sewing machines from Bess using the _rei vindicatio_.

[Total 2.2: 20 marks]

TOTAL Q2: 35 MARKS

QUESTION 3

Johann is 65 years old. In 2008 he was involved in a motor car accident. As a result of this accident he lost the use of his right arm. Because he could no longer use his right arm, Johann was retrenched from his job as a motor mechanic. After he was retrenched Johann was unable to find another job and he was forced to stop paying rent for the flat he lived in. Approximately three months after he stopped paying rent Johann was lawfully evicted from this flat.

After he was evicted, Johann moved into an abandoned building in the centre of Pietermaritzburg. He has lived in this building for the past two years. Over this period the condition of the building has deteriorated dramatically and it has recently been condemned as structurally unsound by engineers from the municipality’s building department. The municipality no longer supplies water and electricity to the building and officials from the municipal fire department have also indicated that the building is a fire hazard.

After several unsuccessful attempts to trace the owner of the building, the municipality has decided to demolish the building. The municipality has, accordingly, served a notice on Johann and the other inhabitants of the building instructing them to vacate the building by the end of the year. The municipality has also informed Johann that should he fail to vacate the building by the end of the year, they will apply for an eviction order in terms of section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”).
After receiving this notice, Johann approaches you for advice. He tells you that he does not want to move out of the building and that if he is evicted he has nowhere else to go. He also tells you that he has recently found a part-time job selling newspapers on the street corner next to the building. He consequently wants to know whether the municipality will be able to successfully apply for an eviction order in terms of section 6 of PIE. Advise him.

TOTAL Q3: 35 MARKS

TOTAL SECTION A: 70 MARKS

SECTION B

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 4

“The South African law of neighbours has many peculiar features which render its study both fascinating and frustrating: it consists of common law principles which are a composite mix of the rich conceptual categories of the Roman-Dutch law and the equity-based discretionary style of adjudication which is the hallmark of the English law of nuisance; it occupies an intermediate position between the law of property and the law of delict; and it represents a jurisprudence of concepts strikingly adaptable to the social realities of neighbourly existence.”

See D van der Merwe “Neighbour Law” in R Zimmerman and D Visser (eds) Southern Cross (1996) at 759.

Write an essay in which you explain what is meant by the concept of a “nuisance”. In your essay you must also set out and discuss the test applied by the courts in order to determine whether a landowner’s conduct is unlawful and thus a nuisance.

[Total Q4: 25 marks]
QUESTION 5

Answer Question 5.1, 5.2 and 5.3

5.1 Both the Sectional Titles Act 66 of 1971 and the Sectional Titles Act 95 of 1986 made several changes to the common law principles of ownership that had previously inhibited the introduction of sectional ownership in South Africa. Write a note in which you set out and discuss the changes which these Acts made to the common law principles of ownership so as to make sectional ownership possible in South Africa.

[Total Q5.1: 8 marks]

5.2 A section title unit may be defined as a “composite immovable thing” consisting of a “section” together with an “undivided share in the common property” which is apportioned on the basis of a “participation quota”. Write a note in which you explain why a sectional title unit may be defined as a “composite immovable thing”. In your answer you must also explain what is meant by: (a) a section; (b) the common property; and (c) the participation quota.

[Total Q5.2: 12 marks]

5.3 The control and management of a sectional title scheme is placed in the hands of a central management body known as the body corporate. Write a note in which you explain: (a) when the body corporate comes into existence; (b) who the members of the body corporate are; and (c) why the body corporate is considered to be a juristic person.

[Total Q5.3: 5 marks]

[TOTAL Q5: 25 MARKS]
QUESTION 6

Answer Question 6.1, Question 6.2 and Question 6.3

6.1 “Servitudes are either praedial or personal. Though they have a few features in common and are created and terminated in similar ways, there are various important differences between praedial and personal servitudes.” See CG van der Merwe “Servitudes” in LAWSA: First Reissue Vol 24 (2000) at para 388

Write a note in which you explain what is meant by a praedial servitude and a personal servitude. In your note you must also set out and discuss the differences between praedial and personal servitudes.

[Total Q6.1: 12 marks]

6.2 In accordance with the maxim servitus in faciendo consistere nequit a servitude cannot impose positive obligations on the owner of the servient property. This is known as the “principle of passivity”. Write a note in which you explain what is meant by the “principle of passivity”. Refer to relevant case law.

[Total Q6.2: 8 marks]

6.3 Write a note in which you explain whether a negative servitude may be acquired by prescription. In your note you must explain what is meant by the concept of a “positive servitude” and what is meant by the concept of a “negative servitude”.

[Total Q6.3: 5 marks]

TOTAL Q6: 25 MARKS

TOTAL SECTION B: 50 MARKS

TOTAL MARKS FOR PAPER: 120 MARKS