INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly

2. This paper consists of SIX (6) pages. Please make sure you have them all.

3. This examination consists of TWO (2) sections. You must answer both sections.
1.1 Ishmail owns a game farm in the KwaZulu-Natal midlands. He keeps the following types of animals on the farm: impala, kudu, ostrich and wildebeest. Ishmail keeps the impala and kudu for commercial and hunting purposes, the ostrich for security purposes and the wildebeest for scientific and research purposes. All of the animals are allowed to roam freely on the property. This is because the entire property is enclosed with a game fence, and the fence is well maintained.

Following a particularly severe thunderstorm, however, a part of the fence collapsed and four kudu, three ostrich and two wildebeest wandered onto the neighbouring farm. The owner of the neighbouring farm, Bess, captured all of these animals and placed them in a secure kraal from which they could not escape.

When Ishmail discovered that his animals were in Bess's control, he demanded that Bess return them to him. Bess, however, refused to do so. She claimed that she is the owner of these animals and that she does not have to return them. Ishmail now wants to know if Bess is correct. Has she acquired ownership of these animals? Advise him.

[25 Marks]

1.2 Richard is a licenced salvor. While diving off the coast of Port Shepstone he discovered the wreck of an abandoned ship known as the Argonaut. Much to Richard's delight he noticed that the wreck still had four brass propellers attached to it. Unfortunately, Richard could not salvage these propellers immediately. This is because he did not have the necessary equipment with him. Instead of removing the propellers, therefore, he engraved his initials on each of them using a diving knife. He also carefully noted the position of the wreck on his map intending to return later.
When Richard returned two days later, however, he discovered that the propellers had been cut off and removed by another salvor called Zac. Richard then told Zac that the propellers belonged to him and he asked Zac to hand the propellers over. Zac, however, refused to do so. Zac denied that Richard was the owner of the propellers. Instead, Zac claimed that he was in fact the owner of the propellers. Richard now wants to know if Zac is correct. Who is the owner of the propellers? Advise him.

[15 Marks]

**QUESTION 2**

2.1 Zak borrows John’s motor-car for the weekend. He enjoys driving it so much that on Monday he meets John and offers to buy it from him for R50 000. John accepts the offer and Zak gives him a post-dated cheque for the full amount. The cheque becomes payable on the Friday of that week. On Wednesday Chris steals the car and sells it to Yvonne, an innocent buyer. Zak later discovers that the car is in Yvonne’s possession. Zak now wants to know whether he is the owner of the car. Advise him.

[15 marks]

2.2 Arthur owns a farm in the KwaZulu-Natal midlands. He sells chickens and chicken feed from his farm to members of the public. Pius wants to buy 100 chickens as well as the necessary chicken feed. He consequently travels out to Arthur’s farm on his brand new motor cycle. When he arrives at the farm he carefully examines the chickens and the feed. The chickens are kept in an enclosed area attached to a shed and the chicken feed is kept in the shed itself. Besides the bags of chicken feed, a tractor and a harvester are also stored in the shed. Arthur and Pius agree that the chickens need to be inoculated and Arthur undertakes to arrange for the necessary inoculations to be done by the local veterinarian in the next few weeks. Pius then pays Arthur for the chickens and the feed in cash and in return Arthur hands Pius one of the keys to the shed. A month later Arthur goes insolvent and his estate is sequestrated. Pius hears of the insolvency and drives out to the farm in order to claim the chickens and the chicken feed. The trustee of Arthur’s insolvent estate argues, however, that Pius is not the owner of either the chickens or the feed and that he should lodge a claim against the insolvent estate for the non-delivery of the goods purchased. Pius now wants to know whether he can claim the chickens and the chicken feed using the **rei vindicatio**.

[25 marks]

**[Total Q2: 40 Marks]**
QUESTION 3

Kate, who lives in Pietermaritzburg, owned a Mercedes Benz motor car. On 1 April 2014, Kate sold this motor car to Sandile, who lives in Durban, for R75 000 for cash. Immediately following this sale, Sandile handed Kate a currently-dated cheque for R75 000 drawn on a bank in Durban.

After receiving the cheque for R75 000, Kate delivered the following items to Sandile:
(a) the Mercedes Benz motor car;
(b) the motor car’s licence;
(c) a signed form authorizing Sandile to register the car in his name;
(d) a letter stating that she has "sold" the motor car to Sandile.

The following day Sandile sold the motor car to Albie for R50 000. At the time of this sale Albie believed that Sandile had authority to sell and transfer ownership of the car to him on the basis of the papers in Sandile’s possession (items (b) – (d) above).

Albie then paid for and took delivery of the motor car.

On 15 April 2014, Sandile’s cheque for R75 000 was returned to Kate by the bank with the words “Return to Drawer – Insufficient Funds” written across the face of it. Kate then tried to contact Sandile only to discover that he had disappeared together with the money paid to him by Albie. Kate now wants to know whether she can reclaim her motor car from Albie using the rei vindicatio. Advise her.

[Total Q3: 40 Marks]

[TOTAL SECTION A: 80 MARKS]

SECTION B

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 4

Section 25(1) of the Constitution of the Republic of South Africa, 1996 provides that “[n]o one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”
In light of the Constitutional Court’s judgment in *First National Bank of South Africa Ltd t/a Wesbank v Commission of the SARS* 2002 (4) SA 768 (CC), write an essay in which you set out and discuss what is meant by the requirement that a deprivation must not be arbitrary.

[12 Marks]

In addition, you must also discuss the manner in which the Constitutional Court interpreted the concept of a deprivation in the *First National Bank* case, as well as the manner in which it has interpreted this concept in some of its subsequent judgments, for example *Offit Enterprises (Pty) Ltd v Coega Development Corporation (Pty) Ltd* 2011 (1) SA 293 (CC).

[8 Marks]

[Total Q4: 20 Marks]

**QUESTION 5**

5.1 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 what is meant by: (a) a section; (b) the common property; and (c) the participation quota.

[12 Marks]

5.2 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.

[8 Marks]

[Total Q5: 20 Marks]
QUESTION 6

“Depending on whether a real right is: (i) newly created without the co-operation of a predecessor in title; or (ii) already in existence and merely transferred from one person to another, or (iii) created with the co-operation of a predecessor in title, a distinction is made between the original and derivative acquisition of real rights.” Badenhorst, Pienaar and Mostert *The Law of Property* 4ed (2003) at 78-79.

(a) Write an essay in which you discuss the general requirements for the derivative acquisition of ownership.

[12 Marks]

(b) In your answer you must also discuss the distinction drawn between the causal and abstract systems of transferring ownership and indicate which system is applied in South African property law.

[8 Marks]

[Total Q6: 20 Marks]

[TOTAL SECTION B: 40 MARKS]

TOTAL FOR PAPER: 120 MARKS