INSTRUCTIONS

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

2. This paper consists of **FIVE (5)** pages. Please make sure that you have them all.

3. This paper consists of **TWO Sections**, Please answer **Both** Sections.
QUESTION 1

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

Pumps-R-Us is a company that manufactures and installs irrigation systems on large commercial farms. It clearly states in all of its contracts that the irrigation systems it installs remain its property until paid for in full, with a right of removal if the buyer fails to pay for the irrigation system within the stipulated time. Pumps-R-Us recently entered into such a contract with Mogoeng – who owns an organic herb farm in the KwaZulu-Natal Midlands – in terms of which it installed an irrigation system in his herb garden at a cost of R500 000. In terms of this agreement, Mogoeng was given three months within which to pay for the irrigation system. Pumps-R-Us have recently heard that Mogoeng is in financial trouble, and it approaches you for advice. It wants to know if it will be able to remove the irrigation system if it is not paid.

Pumps-R-Us tell you that the irrigation system consists of two pumps, two electric motors, five kilometers of pipes, and five water tanks. The tanks, which weigh a ton each, rest by their own weight on specially prepared concrete bases. It is possible to move the water tanks, but a large and specialised crane is needed to achieve this. The pipes are buried at least two metres underground and some of them are encased in concrete. The electric motors and pumps are attached by bolts to a pump house. The pump house has a slate roof, brick walls and a concrete foundation. The electric motors and pumps are also connected to the farm’s electricity supply. Pumps-R-Us also tell you that the irrigation system is a vital part of the herb garden, and that if it is removed Mogoeng will not be able to grow as many herbs or as wide a variety as he currently does. Advise Pumps-R-Us as to whether the various components of the irrigation system have acceded to the land or not.

[20 marks]
QUESTION 2

2.1 Bess is a dealer in second-hand motor vehicles in Pietermaritzburg. Four months ago she sold a car to Dikgang. At the time of the sale she told Dikgang that the sale was for cash and he agreed to this. After reaching agreement on the terms of the sale, Dikgang gave Bess a currently-dated cheque for the purchase price and in return she gave him the keys to the car. Bess deposited the cheque into her bank account on the same day. A week later, however, the cheque was returned to Bess marked “Return to Drawer: Insufficient Funds”. Bess 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 motor car from Dikgang. Advise her. [12 marks]

2.2 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 of which he will pay R20 000 immediately and the remaining R30 000 at the end of the week. John accepts the offer. 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 can reclaim the car from Yvonne. Advise him. [8 marks]

[20 Marks]

QUESTION 3

Kate is a registered dog breeder. She concentrates on miniature dogs and especially miniature greyhounds. These are very rare and expensive dogs. On 1 April 2015 Kate sold a miniature greyhound called Bubbles to Sandile for R10 000 cash. At the time of the sale Kate was aware of the fact that Sandile owned a pet shop that specialises in rare and exotic pets and that he intended displaying Bubbles for sale in his shop, together with his other rare and exotic dogs.

Although the sale was for cash, Kate agreed that Sandile could transfer the money from his bank account to her bank account via the internet, provided that he showed her proof of payment. Sandile accepted these conditions and later that afternoon he returned with a computer printout indicating that he had transferred the money. After carefully examining the computer printout, Kate handed Bubbles over to Sandile together with a certificate stating that Bubbles was a pure bred miniature greyhound.
The following day Sandile placed Bubbles on display in his shop, together with several of his other rare and exotic dogs, and within a few hours he had sold her to a customer named Albie for R15 000. Albie had been looking for a pure bred miniature greyhound for a long time. At the time of the sale Albie believed that Bubbles belonged to Sandile because she was displayed together with his other rare and exotic dogs and there was nothing to indicate that she belonged to Kate. Albie then paid for and took delivery of Bubbles.

On 10 April 2015, Kate checked her bank account and discovered that the R10 000 had not appeared in her account. Kate then tried to contact Sandile only to discover that he had been declared insolvent and that his shop had been closed. Kate now wants to know whether she can reclaim Bubbles from Albie using the *rei vindicatio*. Advise her.

[20 marks]

[Total Sec A: 40 marks]

SECTION B

QUESTION 4

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

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 a note in which you set out and discuss the test for “arbitrariness”.

[10 marks]
QUESTION 5

5.1 “The term ‘nuisance’ is derived from English law. Its ambit can be viewed in a narrow and a wide sense. The distinction between these two senses does not lead to a different treatment of the problem concerned. Rather, the appropriate remedy may differ according to whether nuisance in the strict sense or the wide sense is under consideration”.


In light of the passage set out above, answer the following questions:

(a) What is meant by a nuisance in the narrow sense? Give an example. [4 marks]

(b) What is meant by a nuisance in the broad sense? Give an example. [4 marks]

5.2 In Lasky v Showzone CC 2007 (2) SA 48 (C), Showzone argued that its conduct was not unreasonable because Lasky had “come to the nuisance”. Write a note in which you briefly explain what is meant by the concept of coming to the nuisance. [2 marks]

[10 marks]

QUESTION 6

A sectional 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 addition, you must also explain what is meant by a section; what is meant by the common property; and what is meant by the participation quota. [10 marks]

[Total Sec B: 20 marks]

TOTAL FOR PAPER: 60 MARKS