INSTRUCTIONS

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

2. This paper consists of EIGHT (8) pages. Please make sure that you have them all.

3. This paper consists of FOUR (4) questions. You must answer all four questions.

4. The question paper must be returned together with your answer book(s).
QUESTION 1

Ezemvelo KZN Wildlife is the duly appointed management authority of the Amatigulu Nature Reserve in northern KwaZulu-Natal. The Amatigulu Nature Reserve is classified as a provincial nature reserve in terms of the National Environmental Management: Protected Areas Act 57 of 2003. Bess is the owner of the neighbouring property. The boundary between the two properties consists of the Amatigulu River. Apart from the river, the rest of the Amatigulu Nature Reserve is enclosed with a game proof fence.

From September 2015 to May 2016 northern KwaZulu-Natal suffered a severe drought and the water in the Amatigulu River dropped to historically low levels. During this period a number of wild animals, including five Buffalo and ten Wildebeest crossed the river from Ezemvelo’s property to Bess’s. In September 2016 the rains returned to northern KwaZulu-Natal and the water in the river rose back to its normal level. When the river rose back to its normal level, however, the Buffalo and Wildebeest were trapped on Bess’s property.

After discovering that its animals were trapped on Bess’s property Ezemvelo claimed them back from her. Ezemvelo argued that even though the animals had escaped from its control when they crossed the river, it retained its right of ownership in terms of the Game Theft Act 105 of 1991.

Bess, however, has refused to return the animals to Ezemvelo. She argues that Ezemvelo is not protected by the Game Theft Act because even though it has been issued with a Certificate of Adequate Enclosure by the Premier, Buffalo and Wildebeest are not listed on the Certificate. A careful examination of the Certificate, however, shows that Bess is not entirely correct. While the Buffalo are not listed, the Wildebeest are.

Ezemvelo now want to know whether it is still the owner of the Buffalo and Wildebeest and can claim them back from Bess. Advise Ezemvelo.

[TOTAL Q1: 25 MARKS]
QUESTION 2

2.1 Sandile borrows Yvonne’s car for the weekend. On Saturday, while the car is still in Sandile’s possession, Yvonne is approached by Tholie who offers to buy the car from her for R80 000. Yvonne accepts the offer and Tholie gives her a post-dated cheque for the full amount. The cheque becomes payable on the Friday of the following week.

On Sunday morning, Yvonne phones Sandile and informs him that she has sold the car to Tholie and that he must deliver the car to Tholie and not to her. Sandile agrees to do so. After putting down the telephone Sandile goes out to collect the car. He then discovers that it has been stolen. The theft took place sometime on Saturday night. On Wednesday Tholie discovers the car in the possession of John.

Tholie now wants to know whether he has acquired ownership of the car and can claim it from John. Advise him.

[Total Q2.1: 15 marks]

2.2 Write a brief note in which you explain what is meant by a discounting agreement. In your answer you must also explain the role that attornment plays in discounting agreements.

[Total Q2.2: 10 marks]

[TOTAL Q2: 25 MARKS]
QUESTION 3

Msunduzi Investments (Pty) Ltd recently bought a double story office block located near to the city centre in Pietermaritzburg. Msunduzi Investments specialises in renovating derelict buildings and then selling them for a profit. Unfortunately, the office block in question is currently occupied by a small community of unlawful occupiers.

The unlawful occupiers consist of 62 adults and 12 children. One of the children, a twelve-year old, is disabled. Ten of the households are headed by women. All the occupiers have lived on the property for more than six months and most of them have lived on the property for more than three years.

All of the occupiers are desperately poor. None of them has a formal job. Some of the occupiers earn money by providing casual labour to businesses located in the surrounding area. Others earn money by selling consumables (fruit, sweets and cool drinks) to passers-by in the city centre. The average monthly income is approximately R800 per family.

The unlawful occupiers live in the building because they cannot afford to rent accommodation anywhere else. They also want to live near to the city centre so that they can access the few work opportunities that are available to them. In addition, their children attend schools located in or near to the city centre.

Msunduzi Investments wants to evict the unlawful occupiers. The company would, therefore, like to apply for an eviction order in terms of section 4 of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998. Before launching such an application, however, the company wants to know whether a court would grant it an eviction order. Advise it.

[TOTAL Q3: 25 MARKS]
QUESTION 4

4.1 In *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service* 2002 (4) SA 768 (CC) the Constitutional Court drew a distinction between “regulatory deprivations” and “expropriatory deprivations”. Write a brief note in which you distinguish between these two types of deprivations.

[Total Q4.1: 4 marks]

4.2 In *Shoprite Checkers (Pty) Ltd v MEC for Economic Development, Environmental Affairs and Tourism, Eastern Cape* 2015 (6) SA 125 (CC), Froneman J adopted a “values-based” approach when he interpreted the constitutional concept of property. Write a brief note in which you discuss the approach adopted by Froneman J in his judgment in this case.

[Total Q4.2: 6 marks]

4.3 The term “nuisance” has both a broad meaning and a narrow meaning. Write a note in which you explain what it meant by a nuisance in the broad sense and what is meant by a nuisance in the narrow sense?

[Total Q4.3: 2 marks]

4.4 In disputes between neighbouring landowners, the courts are confronted with two conflicting entitlements. Write a brief note in which you explain what these conflicting entitlements are and how the courts go about resolving this conflict.

[Total Q4.4: 3 marks]

4.5 Answer all ten (10) multiple-choice questions set out below. In each case you must select the most appropriate answer and indicate this in your answer book. One mark will be awarded for each correct answer. There is no negative marking.

(a) Which of the following statements is incorrect? Praedial and personal servitudes differ from one another in the following ways:
   (i) Praedial servitudes are limited real rights; personal servitudes are personal rights.
   (ii) Praedial servitudes are created in favour of land; personal servitudes are created in favour of a particular person.
   (iii) The object of a praedial servitude is always an immovable; the object of a personal servitude can be either a movable or an immovable.

Continued/…
(iv) Praedial servitudes are transferred together with the dominant land; personal servitudes cannot be transferred.

(b) Which of the following statements is incorrect? Praedial and personal servitude have certain features in common. These are as follows:
   (i) An owner cannot acquire or establish a servitude over his or her own property.
   (ii) A servitude cannot be established over a servitude.
   (iii) A servitude may be active or passive.
   (iv) A servitude may be positive or negative.

(c) Which of the following statements is incorrect?
   (i) The principle of utility provides that a praedial servitude must benefit the owner of the dominant tenement in his capacity as owner and not in his personal capacity.
   (ii) The principle of vicinity provides that the dominant tenement and the servient tenement must be located adjacent to or reasonably close to each other.
   (iii) The principle of permanency provides that the benefit obtained from the servient tenement must be derived from a permanent feature of the servient land.
   (iv) The principle of indivisibility provides that the dominant tenement may not be subdivided because this would increase the burden on the servient land.

(d) Which of the following statements is incorrect?
   (i) The principle of passivity provides that a praedial servitude cannot impose a positive obligation on the owner of the servient tenement.
   (ii) The principle of passivity provides that a praedial servitude cannot impose a positive obligation on the owner of the dominant tenement.
   (iii) In Schwedhelm v Hauman 1947 (1) SA 127 (E) the Court held that the principle of passivity must be applied strictly.
   (iv) In Van der Merwe v Wiese 1948 (4) SA 8 (C) the Court held that the principle of publicity does not have to be applied strictly. It is simply a guide.

(e) Which of the following statements is incorrect? A right of way of necessity:
   (i) entitles the holder to travel by the shortest and least damaging route over the servient tenement in order to gain access to a public road;
   (ii) is granted by agreement when a piece of land does not have access to a public road or when the existing access is difficult or inconvenient for the reasonable use of the land;
   (iii) may be granted as a full or permanent servitude (ius via plenum) in which case compensation must be paid;
may be granted as precarious or temporary servitude (*ius via precario*) in which case compensation does not have to be paid.

(f) Which of the following statements is incorrect? In *Investment CC v Hamersley* 2008 (3) SA 283 (SCA), the Supreme Court of Appeal overruled its earlier decision in *Gardens Estate v Lewis* 1920 AD 144. The Court based its decision to overrule *Gardens Estate* on the following grounds:

(i) In *Gardens Estate* the Court misinterpreted the distinction drawn by Voet at 8.3.8 in his *Commentary* between a defined servitude of way and a general servitude of way.

(ii) The principles set out by Professor Kemper in Article 1188 of his Draft Code of Roman-Dutch law should have been applied in *Gardens Estate* rather than the principles set out by Voet at 8.3.8 in his *Commentary*.

(iii) The superior courts in South Africa have always had the inherent jurisdiction to develop the common law in order to promote the interests of justice.

(iv) The owner of a servient tenement’s right to unilaterally relocate a defined praedial servitude of way has been accepted in other civil law jurisdictions.

(g) Which of the following statements is incorrect? In *Investment CC v Hamersley* 2008 (3) SA 283 (SCA), the Supreme Court of Appeal held that the owner of a servient tenement may unilaterally relocate a defined praedial servitude of way if the following conditions are satisfied:

(i) the servient owner is or will be materially inconvenienced by the existing location of the defined servitude of way.

(ii) the relocation will not prejudice the dominant owner.

(iii) the relocation occurs on the servient tenement.

(iv) the dominant and servient owners share any costs that might be incurred by the relocation.

(h) Which of the following statements is incorrect? There are a number of different kinds or types of personal servitudes. These include:

(i) usufruct (*usufructus*).

(ii) lease (*conductio*).

(iii) use (*usus*).

(iv) dwelling (*habitatio*).

(i) Which of the following statements is incorrect? A usufruct confers the following entitlements on its holder:

(i) the entitlement to possess the property.

(ii) the entitlement to use and enjoy the property.

(iii) the entitlement to alienate and transfer the property.

(iv) the entitlement to take the natural and civil fruits of the property.
(j) Which of the following statements is incorrect? Where the parties to a servitudal agreement have failed to register it in the deeds registry, the doctrine of notice provides:

(i) that the parties to the servitudal agreement are not bound by that unregistered agreement;
(ii) that a successor-in-title to the servient property who is unaware of the unregistered servitudal agreement is not bound by it;
(iii) that a successor-in-title to the servient property who is aware of the unregistered servitudal agreement is bound by it;
(iv) that a successor-in-title to the servient property who is aware of an unregistered servitudal agreement, but who claims that he or she is not bound by it, is mala fide.

[TOTAL Q 4: 25 MARKS]

TOTAL FOR PAPER: 100 MARKS