

UNIVERSITY EXAMINATIONS



Oct/Nov 2024
PVL3701
Property Law
28 October 2024
08:00-12:00 (4 Hours)
100 Marks

First examiner: Prof IM Knobel
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Second examiner: Prof LR Ngwenyama

External examiner: Dr T Gama-Kotzé

This paper consists of eleven (11) pages.

This is an open-book examination

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1. The examination question paper counts **100 marks**. The duration of the examination is from 08:00 – 12:00 (**4 hours**). In addition to the duration of the examination indicated on the timetable, you are given **30 minutes to FINALISE the uploading of your exam file**. Your exam file must therefore be uploaded via the myExams platform on **28 October 2024 BEFORE 12:30 (South African Standard Time)**.

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2. This examination consists of five (**5**) questions. Answer **ALL** the questions and fully substantiate with reference to your Study Guide, case law and legislation where applicable.
3. **Strictly adhere to the indication regarding the number of lines that each answer should consist of. You will be penalised if you do not adhere to**

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 8. E-mailed submissions or scripts from the Invigilator App will not be accepted for marking.
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 - **answers that are not typed, or**
 - **answers that are not typed in Arial 12 pt, or**
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 - **answers with manipulated text; or**
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 10. Please note that the Invigilator App will apply during the examination. You must use the Invigilator App for this examination. You must scan the QR code below between **7:45 and 8:30 (SAST)**. If you experience any technical challenges with the app between these times, **send a WhatsApp message to the technical helpdesk on 073 505 8273**. Do not contact the lecturers. Listening to audio (music) and making use of audio-to-text software is strictly prohibited during your examination session unless such usage of the software is related to a student's assistive device that has been so declared. Failure to do so will be a transgression of Unisa's examination rules and the student's marks will be withheld.

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- Answer **all** the questions below.
- **Answering questions:** Fully **motivate** your answers with reference to the **most relevant** legal principles contained in the Study Guide, case law and legislation and clearly answer the question. You will be assessed on your own level of understanding and interpretation of the relevant legal principles and material by looking at how well you applied the most relevant material to answer the questions. The arguments that you make must be logical, well-structured, and substantiated by relevant legal principles.
- **Style:** Type your own answer in accordance with the style guidelines set out in the instructions above.
- **Time management:** Use the time given wisely. Use the estimated time allocated below for each question as a guideline. You should also be guided by the mark allocation.
- **Referencing:** As this is an **open-book examination**, all your answers must contain **references** to the relevant page numbers of your Study Guide that you consulted to answer the questions. If you consulted a court decision to answer a specific question, your answer must contain a reference to the name of the court decision as well as a reference to the specific paragraph that you consulted. **Do not insert footnotes. No mark will be allocated to any content in the footnotes. Instead, include all references in brackets following each answer. Do not include a bibliography anywhere on your script.**
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EXAMINATION QUESTIONS:

Question 1 [46 Marks; ±100 Minutes]

Thabo purchased a BMW from his grandfather, Steve, in terms of an instalment sale agreement for an amount of R150 000. So far, he has paid R100 000 of the purchase price. He is left with 5 instalments of R10 000 each. As soon as he pays the last instalment, he will become the owner of the vehicle.

Thabo also owns a townhouse in Pretoria. There is a mortgage bond registered in favour of Jacaranda Bank for a loan that Thabo secured when he purchased the townhouse. To repay the loan, Thabo makes monthly payments to Jacaranda Bank. Thabo's friend, Mpho, has been renting a room in his townhouse since June 2024. They signed a one-year lease agreement.

Thabo has been interested in immigrating to the United Kingdom for years. During September 2024, Thabo accepted a job offer in London. The immigration process was finalised swiftly and Thabo, being rushed to take up the job opportunity, left all his belongings behind. Thabo and Mpho agreed that Mpho could continue to stay on in the townhouse in terms of the lease agreement. Thabo also requested Mpho to drive a short distance with the BMW now and then to prevent the battery of the BMW from going flat.

While on holiday in the Western Cape during October 2024, Steve saw Mpho driving around in the BMW. Steve later noticed that the BMW was involved in an accident while Mpho was driving it. He tried to get hold of Thabo without success. Steve finally gets hold of his grandson. He informs Thabo that he should not be concerned about anything. However, Thabo books the first available flight back to South Africa. Against this background, answer the following questions:

- 1.1 Briefly describe the nature of the real relationship as well as the nature of the right that Mpho has in relation to the townhouse. [8]

[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Nature of Mpho's real relationship in relation to the townhouse correctly described.	1	2	3
Correct reference(s) to the relevant prescribed material in brackets following the discussion of the nature of the real relationship.	N/A	N/A	1
Nature of Mpho's right in relation to the townhouse correctly described.	1	2	3
Correct reference(s) to the relevant prescribed material in brackets following the discussion of the nature of Mpho's right in relation to the townhouse.	N/A	N/A	1

1.2 Briefly describe the nature of the rights that Thabo and Steve respectively have in relation to the BMW. [7]

[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Nature of Thabo's right in relation to the BMW correctly described.	1	2	3
Nature of Steve's right in relation to the BMW correctly described.	1	2	3
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

1.3 Briefly describe the nature of the right that Jacaranda Bank holds over the townhouse. In your answer, briefly explain the advantages for the Jacaranda Bank of holding this type of right. [9]

[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Nature of the Jacaranda Bank's right in relation to the Townhouse correctly described.	0	1	2
Advantages of this type of right correctly described.	1-2	3-4	6
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

- 1.4 Thabo is sad about the BMW. Unfortunately, there is no insurance policy over the BMW. He takes the vehicle to a panel beater for a quotation to have the car repaired. The panel beater informs him that it will cost around R25 000 to do the repairs. Thabo and Steve ask for your advice about their legal position and specifically, what the best remedy would be to recover the R25 000 for the repairs from Mpho. Briefly advise them. In your answer, specifically indicate whether Thabo or Steve should institute the remedy. Also, take note that you do not have to mention/apply the requirements of this remedy, and you do not have to evaluate the chances of success with the remedy. [10]

[Your answer should not exceed 20 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Advice on most appropriate legal remedy under the circumstances and whether Thabo or Steve should institute the remedy.	1-2	4	9
Correct reference to the relevant prescribed material in brackets following answer.	N/A	N/A	1

- 1.5 A few days after Thabo arrived back from London, Thabo and Mpho had a heated exchange of words at the townhouse. Mpho took her handbag and left the townhouse to go shopping. She drove away in her own car. Later that evening upon her return she tried, without success, to open the garage door with her remote control. When she tried to unlock the front door, she realised that Thabo changed the electronic code of the garage door. Thabo also changed the locks of the townhouse.

Mpho asks for your advice about the validity of Thabo's actions. Mpho wants to stay on in the townhouse. Advise her on the most appropriate remedy available to her under these circumstances. Also, advise her about her chances of success with this remedy. In your answer, set out the requirements for this remedy and apply them to Mpho's circumstances. [12]

[Your answer should not exceed 20 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Appropriate advice regarding the validity of Thabo's actions provided.	1	2	5
Appropriate advice regarding the most suitable remedy available to Mpho and her chances of success with this remedy provided.	1	3-4	6
Correct reference to the relevant prescribed	N/A	N/A	1

material in brackets following answer.

Question 1 total: [46]

Question 2 [6 Marks; ± 15 Minutes]

Naomi owns Unit 24 in the Sea View Sectional Scheme in Durban. She entered into a lease agreement with Muzi from 30 September 2022 to 31 December 2026. Naomi retired from her employment and relocated to Hazyview in Nelspruit. She sold her sectional title unit to Pule, and the transfer was registered on 31 May 2024. After the registration of the transfer, Muzi regularly defaults on rental payments and has the tendency to damage the unit. Pule believes he is not bound by the lease agreement between Naomi and Muzi and intends to evict Muzi.

Briefly advise Pule on Muzi's legal position regarding the existing lease agreement. [6]
[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered with appropriate reasons.	0	3	5
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

Question 2 total: [6]

Question 3 [13 Marks; ± 30 Minutes]

Sarah, Emily, and David inherit a vacation home from their late mother. The property is located in a coastal town. Their mother's will specified that all three siblings would become co-owners of the house, each with an equal undivided share ($\frac{1}{3}$ each). The property was eventually registered in their names. Sarah regularly uses the property and pays for its upkeep. As a result, she believes she is entitled to have a greater say in its use, management and financial decisions pertaining to the property. Emily is frustrated that she cannot access the property regularly and feels that it is unfair to continue owning a share when she cannot benefit from it. She wants to sell her share in the property.

David is unwilling to sell his share of the property as it holds sentimental value and wants to buy Emily's share of the property. However, he is also unwilling to pay the purchase price to Emily for her share in the property. Emily decides to sell her share to a third party, Ben. However, David is concerned about the impact that an outside buyer might have on their co-ownership arrangements. Sarah is also concerned about the potential impact of another owner on her continued use of the house. Against this background, answer the following questions:

3.1 Identify the specific nature of Sarah, Emily and David's rights over the property [3]
[Your answer should not exceed 2 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered and motivated.	0	1	2
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

3.2 Can Emily unilaterally sell her undivided share to Ben? [4]

[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered and motivated.	0	1	3
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

3.3 Sarah, David and Ben cannot decide how to use and enjoy the property. Briefly advise them on possible options to resolve their dispute. [6]

[Your answer should not exceed 15 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered and motivated.	0	2	5
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

Question 3 total: [13]

Question 4 [16 Marks; ± 40 Minutes]

Adrian owns a large piece of rural land used for farming. Benji, who owns a neighbouring property, uses a road running through Adrian's land to access the highway. Benji has been using this road for several years in terms of a contractual agreement with Adrian. This agreement was eventually registered in favour of Benji. A few years later, Benji got married to Anna. Unfortunately, Benji fell ill and passed away. After Benji's death, Adrian decided to close the road and put up a fence preventing Anna from accessing the highway.

Later, Anna negotiates with Adrian for a right to use the road over Adrian's land. Adrian

agrees. However, before the right to use the road was registered, Adrian sold his farm to his brother, John, who was aware of the agreement between Adrian and Anna. John keeps the fence on his property, preventing Anna from accessing the highway. Anna is upset and insists she should be allowed to have a right to use the road. Against this background, answer the following questions:

- 4.1 Identify the and briefly explain the nature of the rights that Benji had regarding the road before and after registration of the agreement. In your answer also indicate whether Adrian acted unlawfully when he closed the gate after Benji passed away. Briefly motivate your answer. [10]

[Your answer should not exceed 20 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Nature of Benji's right before registration correctly identified and briefly motivated.	1	2	4
Correct reference(s) to the relevant prescribed material in brackets following answer	N/A	N/A	1
Nature of Benji's right after registration correctly identified and briefly motivated. The validity of Adrian's actions also dealt with briefly in view of this.	1	2-3	4
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

- 4.2 Anna consults with you and seeks legal advice on whether she can enforce her right to use the road over John's land. Briefly advise Anna. [6]

[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Anna's legal position regarding the enforcement of her right correctly discussed.	1	2	5
Correct reference(s) to the relevant prescribed material in brackets following answer.	N/A	N/A	1

Question 4 total: [16]

Question 5 [19 Marks; ± 45 Minutes]

Tony owns two farms in the Hartbeespoort area. One of his farms, "Two Valleys", is a

popular shopping mall called “The Water Crossing”, located near the dam on the farm. The mall has many shops and office blocks that offer a beautiful view of the dam and the surrounding mountains. The Mogale Community has lodged a land claim with the South African government against Tony’s Two Valleys farm within the prescribed period.

Tony’s other farm, “Misty Seasons”, is a large property about 10 kilometres from The Water Crossing. There is a hiking trail on Misty Seasons that attracts many hikers. Tony decides to sell Misty Seasons. Dineo purchases Misty Seasons from Tony with a plan to build upmarket residential houses on the land.

Soon after Misty Seasons is registered in Dineo’s name, she receives a notification that Misty Seasons has been declared as an environmentally protected area in terms of The National Environmental Management: Protected Areas Act 57 of 2003, which prohibits the development of residential or business buildings on the land.

Due to landlessness in the Hartbeespoort area, a few families started to occupy a part of Misty Seasons and constructed structures as their homes. Dineo was unaware of this and did not give consent to the families. Against this background, answer the following questions:

- 5.1 With reference to applicable legislation, briefly discuss the Mogale Community’s prospects of success with their claim for restoration of Two Valleys. In your answer also consider other alternatives should restoration not be desirable. [5]
[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered with appropriate reasons.	0	2	4
Correct reference(s) to the relevant prescribed material in brackets following the answer.	N/A	N/A	1

- 5.2 Briefly explain how the National Environmental Management: Protected Areas Act 57 of 2003 Act affects Dineo’s ownership of Misty Seasons and the implication of this, if any. [6]
[Your answer should not exceed 10 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered with appropriate reasons.	0	3	5
Correct reference(s) to the relevant prescribed material in brackets following the answer.	N/A	N/A	1

- 5.3 Even though Dineo feels sorry for the families, she requests your advice on how she could go about removing them from Misty Season. Briefly advise her. [8]
[Your answer should not exceed 15 lines.]

Evaluation criteria	Not achieved (vague answer)	Partially achieved	Achieved
Question correctly answered with appropriate reasons.	0	3	7
Correct reference(s) to the relevant prescribed material in brackets following the answer.	N/A	N/A	1

Question 5 total: [19]

Paper total: [100]