

FLS1502 EXAM PACK



PAST QUESTIONS AND SOLUTIONS

**FLS1502
RFL102F**

October/November 2011
Oktober/November 2011

**FOUNDATIONS OF SOUTH AFRICAN LAW
GRONDSLAE VAN DIE SUID-AFRIKAANSE REG**

Duration 2 Hours
Tydsduur 2 Uur

100 Marks
100 Punte

EXAMINERS / EKSAMINATORE

FIRST / EERSTE PROF H VAN DEN BERGH
SECOND / TWEEDE PROF GJ VAN NIEKERK

This paper consists of 25 pages.

Hierdie vraestel bestaan uit 25 bladsye.

INSTRUCTIONS

- 1 Answer ALL the questions
- 2 Read the questions VERY CAREFULLY before answering them
- 3 Your answers to the questions must be written DIRECTLY on the examination paper in the spaces provided.

INSTRUKSIES

- 1 Beantwoord AL die vrae.
- 2 Lees die vrae AANDAGTIG deur voordat jy dit beantwoord.
- 3 Skryf jou antwoorde op die vrae DIREK op die eksamenvraestel in die ruimtes wat voorsien word.

**[TURN OVER]
[BLAAI OM]**

**THIS PAPER CONSISTS OF THREE SECTIONS:
HIERDIE VRAESTEL BESTAAN UIT DRIE AFDELINGS:**

SECTION A **COMPULSORY** **45 MARKS**
 ROMAN LAW OF THINGS

AFDELING A: **VERPLIGTEND** **45 PUNTE**
 ROMEINSE SAKEREG

SECTION B **COMPULSORY** **45 MARKS**
 ROMAN LAW OF OBLIGATIONS

AFDELING B: **VERPLIGTEND** **45 PUNTE**
 ROMEINSE VERBINTENISREG

SECTION C **COMPULSORY** **10 MARKS**
 ROMAN LAW OF DELICT

AFDELING C: **VERPLIGTEND** **10 PUNTE**
 ROMEINSE DELIKTEREG

[2]

QUESTION 3 / VRAAG 3

What is the most important distinction between *res Mancipi* and *res nec Mancipi* with regard to the transfer of ownership? (2)

Wat is die belangrikste onderskeid tussen *res Mancipi* en *res nec Mancipi* met verwysing na die oordrag van eiendomsreg? (2)

QUESTION 4 / VRAAG 4

Name and briefly discuss the five requirements for obtaining ownership through prescription (*usucapio*) (5)

Noem en bespreek kortliks die vyf vereistes vir die verkryging van eiendomsreg deur middel van verjaring (*usucapio*). (5)

GR TUTORIALS
www.grtutorials.co.za

Tel : 0127704239
Cell : 0710354903

Titus bequeaths his farm to his son, Nardus, and establishes a usufruct over the farm in favour of his wife, Gaia. Gaia decides to let the farm to Marius for a period of five years.

5.1 Watter regte het Gaia ingevolge die vruggebruik ten aansien van die plaas verkry? (3)

GP TUTORIALS
www.gptutorials.co.uk

5.2 Was sy geregtig om die plaas aan Marius te verhuur? (2)

5 3 Would Marius have had any remedy if Nardus had refused to allow him to exercise his rights as lessee? (2)

5.3 Sou Marius enige remedie gehad het indien Nardus sou geweier het dat hy sy regte as huurder kon uitoefen? (2)

[7]

QUESTION 6 / VRAAG 6

Paulus and Marius are neighbours. Marius' spring dried up during a protracted drought, but Paulus' spring ran from time to time. Paulus and Marius agreed that Marius could draw water from Paulus' spring if there was a sufficient supply for both of them and that Paulus would keep the pipes clean with that end in view.

Paulus en Marius is bure. Marius se fontein het opgedroog tydens 'n lang en ernstige droogte, maar Paulus s'n het van tyd tot tyd nog water. Paulus en Marius kom ooreen dat Marcus water uit die fontein kan kry indien daar voldoende water vir hulle albei is en dat Paulus in ruil daarvoor die waterpype sal onderhou.

6 1 What is a praedial servitude? (2)

6.1 Wat is 'n saaklike serwituut? (2)

6 2 Would you say that a servitude had been established in favour of the dominant tenement (Marius' tenement) over Paulus' tenement (the servient tenement)?

(5)

6 2 Sou jy sê dat daar 'n serwituut tot stand gekom het ten gunste van die heersende grondstuk (Marius s'n) oor die dienende grondstuk van Paulus?

(5)

7

Marcus is a money lender. Advise him on the best form of real security in each of the following cases. Briefly explain what each involves and indicate how he would get his money in the different cases

7.1 Brutus wants to borrow 1 000 to open a market stall. The only asset he has is a gold cup. (4)

7.1 Brutus wil 1000 leen om 'n markstalletjie oop te maak. Sy enigste bate is 'n goue beker.

GR TUTORIALS
www.grtutorials.co.uk

72 Julius wants to borrow 100 000 to buy a farm. His only assets are his livestock, his slaves and his agricultural implements. (4)

7.2 Julius wil 100 000 leen om 'n plaas mee te koop. Sy enigste bates is sy vee, sy slawe en sy landbouimplemente. (4)

[8]

GR TUTORIALS
www.grtutorials.co.za

Kies die korrekte antwoord in KOLOM B wat ooreenstem met die term in KOLOM A en skryf die korrekte antwoord neer in die spasies hieronder. Skryf net die korrekte letter neer. Moet asseblief nie die hele beskrywing herhaal nie.

COLUMN A / KOLOM A	COLUMN B / KOLOM B
1. Immovable things 1. Onroerende sake	A The most beneficial form of real security to a creditor A. Die mees voordelige vorm van saaklike sekuriteit vir die krediteur
2 Grapes 2. Druive	B Only used for the transfer of <i>res mancipi</i> B. Word slegs gebruik vir die oordrag van <i>res mancipi</i>
3 Ownership 3. Eiendomsreg	C Buildings, trees and plants C. Geboue, bome en plante
4 <i>ius civile</i> 4. <i>ius civile</i>	D Still exists today and is probably the most important action to protect ownership D. Bestaan vandag nog en is waarskynlik die belangrikste aksie waarmee eiendomsreg beskerm word
5 <i>ius gentium</i> 5. <i>ius gentium</i>	E The servitude had to benefit the dominant tenement E. Die voordeel moes tot voordeel van die heersende grondstuk strek
6 <i>Mancipatio</i> 6. <i>Mancipatio</i>	F Law of all nations F. Reg van alle volke
7 <i>Rei vindicatio</i> 7. <i>Rei vindicatio</i>	G The most comprehensive right a person can have over a corporeal thing G. Die mees omvangryke reg wat 'n persoon oor 'n liggaamlike saak kon hê
8. <i>Actio negatoria</i> 8. <i>Actio negatoria</i>	H Example of natural fruit H. Voorbeeld van natuurlike vrugte
9. <i>Praedio utilitas</i> 9. <i>Praedio utilitas</i>	I. The owner of a piece of land could deny the existence of a servitude over his property by means of this action I. Met behulp van hierdie aksie kon die eienaar van 'n grondstuk ontken dat daar 'n serwituut oor sy grondstuk is
10. <i>Fiducia</i> 10. <i>Fiducia</i>	J Only applicable to Roman citizens J. Net van toepassing op Romeinse burgers

8 1	Immovable things	(1)
8.1	Onroerende sake: _____	(1)
8.2	Grapes	(1)
8.2	Druive: _____	(1)
8 3	Ownership	(1)
8.3	Eiendomsreg: _____	(1)
8 4	<i>Ius civile</i>	(1)
8.4	<i>Ius civile:</i> _____	(1)
8 5	<i>Ius gentium</i>	(1)
8.5	<i>Ius gentium:</i> _____	(1)
8 6	<i>Mancipatio</i>	(1)
8.6	<i>Mancipatio:</i> _____	(1)
8 7	<i>Rei vindicatio</i>	(1)
8.7	<i>Rei vindicatio:</i> _____	(1)
8.8	<i>Actio negatoria</i>	(1)
8.8	<i>Actio negatoria:</i> _____	(1)
8 9	<i>Praedio utilitas:</i>	(1)
8.9	<i>Praedio utilitas:</i> _____	(1)
8 10	<i>Fiducia</i>	(1)
8.10	<i>Fiducia:</i> _____	(1)
		[10]

TOTAL SECTION A = [45]
TOTAAL: AFDELING A = [45]

- 9 3 Describe the termination of an obligation by means of novation (1)
 9.3 Hoe word 'n verbintenis deur novasie beëindig? (1)

[6]

QUESTION 10 / VRAAG 10

Paulus and Brutus conclude a contract in terms of which Paulus will let his house to Brutus until such time as Paulus is able to sell the house.

Paulus en Brutus sluit 'n huurkontrak ingevolge waarvan Paulus sy huis aan Brutus sal verhuur totdat Paulus die huis kan verkoop.

- 10 1 What kind of contractual clause is the condition that Brutus will rent the house until such time as Paulus is able to sell the house? (1)
 10.1 Watter tipe kontraktuele beding is die bepaling dat Brutus die huis huur totdat Paulus die huis kan verkoop? (1)

- 10 2 What are the legal consequences if Paulus does NOT sell the house? (1)
 10.2 Wat is die regsgevolge indien Paulus NIE die huis verkoop NIE? (1)

- 10.3 What are the legal consequences if Paulus DOES sell the house? (1)
 10.3 Wat is die regsgevolge indien Paulus WEL die huis verkoop? (1)

[3]

QUESTION 11 / VRAAG 11

NAME the THREE factors that may exclude or influence agreement between contracting parties Do not discuss these factors. (3)

NOEM die DRIE faktore wat wilsooreenstemming tussen die kontrakterende partye kan beïnvloed of uitsluit. Moet nie hierdie faktore bespreek nie. (3)

GR TUTORIALS
www.grtutorials.com

[3]

QUESTION 12 / VRAAG 12

Read the following two scenario's carefully and then answer the two questions that follow

Lees die volgende twee feitestelle aandagtig deur en beantwoord die twee vrae wat volg:

- 12.1 Julius and Pamphilus conclude a contract in terms of which Julius buys a villa on Pamphilus's land. On closer inspection it appears that the villa had burnt down some time ago. What are the legal consequences of this situation? (2)
- 12.1 Julius en Pamphilus sluit 'n kontrak ingevolge waarvan Julius 'n villa op Pamphilus se grond koop. By nadere inspeksie blyk dit egter dat die villa 'n geruime tyd gelede reeds tot op die grond afgebrand het. Wat is die regsgevolge van die bostaande situasie? (2)**

- 12.2 Cassius and Darius agree that Cassius will borrow Darius's wagon for a week. Soon after the contract had been concluded, Darius's wagon is stolen. What are the legal consequences of this situation? (3)
- 12.2 Cassius en Darius kom ooreen dat Cassius Darius se wa vir 'n week mag leen. Kort na die sluiting van die kontrak word Darius se wa gesteel. Wat is die regsgevolge van hierdie situasie? (3)**

[illegible]

[5]

QUESTION 13 / VRAAG 13

NAME the obligations of a seller in a contract of sale DO NOT discuss these obligations (5)

NOEM die verpligtinge van 'n verkoper by 'n koopkontrak. MOET NIE hierdie verpligtinge bespreek nie. (5)

GR TUTORIAL
www.grtutorial.in

[5]

QUESTION 14 / VRAAG 14

Identify the following contracts VERY CAREFULLY AND COMPLETELY and write the correct answer in the spaces provided.

Identifiseer BAIE NOUKEURIG EN VOLLEDIG die volgende kontrakte en skryf die korrekte antwoord in die spasies hieronder voorsien.

- 14.1 Cassius and Darius agree that Darius will build five wine-casks for Cassius at 20 gold coins each. The wine-casks must also be engraved with the coat of arms of Cassius's family. Cassius will furthermore provide the necessary wood and iron for building the casks. (1)

- 14.1 Cassius en Darius kom ooreen dat Darius vir Cassius vyf wynvate sal bou teen 20 goue muntstukke elk. Die wynvate moet onder meer gegraveer word met Cassius se familie-embleem. Cassius sal ook aan Darius die hout en yster verskaf om die wynvate mee te bou. (1)**
-
-
-
-

- 14.2 Aulus and Balbus agree that Aulus will shear Balbus's sheep for a weekly loan of 5 gold coins. Balbus will provide Aulus with the necessary shearing implements for shearing the sheep and he will also supervise Aulus while he (Aulus) is shearing the sheep. (1)

- 14.2 Aulus en Balbus kom ooreen dat Aulus Balbus se skape sal skeer vir 'n weeklikse loon van 5 goue muntstukke. Balbus sal Aulus voorsien met die skeergereedskap om die skape te skeer en sal ook toesig hou oor Aulus terwyl hy (Aulus) die skape skeer. (1)**

[2]**QUESTION 15 / VRAAG 15****15.1 Name the TWO requirements for the establishment of a real contract (2)****15.1 Noem die TWEE vereistes vir die totstandkoming van 'n reële kontrak. (2)**

15.2 Name the FOUR real contracts known to Roman law (2)**15.2 Noem die VIER reële kontrakte wat in die Romeinse reg aangetref is. (2)**

[4]

QUESTION 16 / VRAAG 16

Discuss TWO obligations of the pledgor in a contract of pledge (*pignus*) (2)
Bespreek TWEE verpligtinge van 'n pandgewer by 'n pandooreenkoms (*pignus*). (2)

[2]

QUESTION 17 / VRAAG 17

Indicate the correct answer in each of the following statements by underlining the correct answer in brackets in each case

Dui die korrekte antwoord in elk van die volgende stellings aan deur telkens die korrekte antwoord in hakies te onderstreep:

17 1 Partnership (*societas*) is a (consensual / real) contract (1)

17.1 'n Vennootskapsooreenkoms (*societas*) is 'n (konsensuele / reële) kontrak. (1)

17 2 A contract of sale is *imperfecta* if the price (has been clearly determined / has not been clearly determined) (1)

17.2 'n Koopkontrak is *imperfecta* indien die koopprys (duidelik vasgestel is / nie duidelik vasgestel is nie). (1)

- 17.3 The object of a loan for consumption (*mutuum*) had to be a (consumable / inconsumable) thing (1)
- 17.3 Die voorwerp van 'n verbruikleenkontrak (*mutuum*) moes 'n (vervangbare / onvervangbare) saak gewees het. (1)
- 17.4 A contract concluded as result of fraud (*dolus*) was (void / voidable) (1)
- 17.4 'n Kontrak gesluit as gevolg van bedrog (*dolus*) was (nietig / vernietigbaar). (1)
- 17.5 Mandate (*mandatum*) derives from the (*ius civile* / *ius gentium*) (1)
- 17.5 Lasgewing (*mandatum*) is afkomstig uit die (*ius civile* / *ius gentium*). (1)
- [5]

QUESTION 18 / VRAAG 18

Select the correct answer from COLUMN B that matches the term in COLUMN A and write down the correct answer in the spaces provided below. You need only write down the correct letter from Column B. Please write only the correct letter. Please do not rewrite the whole description.

Kies die korrekte antwoord in KOLOM B wat ooreenstem met die term in KOLOM A en skryf die korrekte antwoord neer in die spasies hieronder. Skryf net die korrekte letter neer. Moet asseblief nie die hele beskrywing herhaal nie.

COLUMN A / KOLOM A	COLUMN B / KOLOM B
1 Reciprocal contract 1. Wederkerige kontrak	A Common purpose and mutual economic benefit A. Gemeenskaplike doel en wedersydse ekonomiese voordeel
2. Release 2. Kwytskelding	B Agreement between the creditor and the debtor in terms of which the debtor does not have to perform B. Ooreenkoms tussen die skuldeiser en die skuldenaar ingevolge waarvan die skuldenaar nie die verskuldigde prestasie hoef te lewer nie.

3 <i>Error in corpore</i> 3. Error in corpore	C Only one party has a duty to perform while the other party has a right to performance C. Slegs een party het 'n plig tot prestasie terwyl die ander party 'n reg op prestasie het
4 <i>Bonus et diligens paterfamilias</i> 4. Bonus et diligens paterfamilias	D The parties agree that the debtor should deliver either one performance or another D. Die partye kom ooreen dat die debiteur óf die een óf die ander prestasie moet lewer
5 <i>Mora debitoris</i> 5. Mora debitoris	E Mistake in respect of the object of the contract E. Dwaling ten aansien van die voorwerp van die kontrak
6. Requirements for the establishment of a partnership 6. Vereistes vir totstandkoming van 'n vennootskapsooreenkoms	F A contract in terms of which both parties have a right and a duty to performance F. 'n Kontrak in terme waarvan beide partye 'n reg op en 'n plig tot 'n prestasie het
7 Alternative performance 7. Alternatiewe prestasie	G To act with the utmost care and diligence G. Om met die uiterste mate van sorg en toewyding op te tree
8 <i>Locatio conductio rei</i> 8. Locatio conductio rei	H Failure by the debtor to render performance as a result of his own fault H. Skuldige versuim van die skuldenaar om die prestasie te lewer
9 Unilateral contract 9. Eensydige kontrak	I The performance has not yet been specified (eg, an undertaking to compensate another for damages) I. Die prestasie is nog nie vasgestel nie (bv, 'n onderneming om 'n ander se skade te vergoed)
10. Unspecified performance 10. Onbepaalde prestasie	J Letting and hiring of a thing J. Huur en verhuur van 'n saak

18.1	Reciprocal contract:	(1)
18.1	Wederkerige kontrak: _____	(1)
18.2	Release	(1)
18.2	Kwytskelding: _____	(1)
18.3	<i>Error in corpore:</i>	(1)
18.3	Error in corpore: _____	(1)
18.4	<i>Bonus et diligens paterfamilias:</i>	(1)
18.4	Bonus et diligens paterfamilias: _____	(1)
18.5	<i>Mora debitoris:</i>	(1)
18.5	Mora debitoris: _____	(1)
18.6	Requirements for the establishment of a partnership	(1)
18.6	Vereistes vir totstandkoming van 'n vennootskapsooreenkoms: _____	(1)
18.7	Alternative performance	(1)
18.7	Alternatiewe prestasie: _____	(1)
18.8	<i>Locatio conductio rei</i>	(1)
18.8	Locatio conductio rei: _____	(1)
18.9	Unilateral contract:	(1)
18.9	Eensydige kontrak: _____	(1)
18.10	Unspecified performance	(1)
18.10	Onbepaalde prestasie: _____	(1)
		[10]

TOTAL SECTION B = [45]
TOTAAL: AFDELING B = [45]

SECTION C: THE ROMAN LAW OF DELICT
AFDELING C: DIE ROMEINSE DELIKTEREG**QUESTION 19 / VRAAG 19**

Name and briefly discuss the FIVE elements of a *delict* as applied to the early *lex Aquilia*. (10)

Noem en bespreek kortliks die VYF elemente van 'n delik soos toegepas op die vroeë *lex Aquilia*. (10)

GR TUTORIALS
www.grtutorials.co.za

TUTORIALS
artutorials.co.za

TOTAL SECTION C = [10]
TOTAAL: AFDELING C = [10]

TOTAL [100]
TOTAAL: [100]

www.grtutorials.co.za

email: info@grtutorials.co.za

Tel : 0127704239
Cell : 0710354903

FLS 1502
Nov 2011
Section A

QUESTION1

Distinguish between a real Action and a personnel action (4)

Real Action

Focus directly on the thing concerned and (action in rem) could be instituted against anyone who was in control of the thing

Personal action

Always directed against a particular person or persons who were bound to the claimant (in terms of obligation) to perform.

QUESTION .2

Possession utilize of possession obtained by means of a lawful group, protected by physical control that could lead to full owner

Possession Natural Person

Who had physical control of a thing but who were not entitled to possessory interdicts?

QUESTION.3.

Res Mancipi required formal transfer (mancipatio)

While res nec Mancipi required informal delivery

e.g. tradition and initially done by non Roman Citizen

QUESTION.4.

Requirements of obtaining Ownership through prescription (5)

Requirements of prescription (5)

- (a) The thing has to be capable of ownership (res habilis)
- (b) There had to be a cause that the law normally recognized as sufficient for transfer of ownership (justa causa)
- (c) Good faith (bona fides)
- (d) Possession (possessio)
- (e) Period of prescription (tempus)

Q.UESTION 5

5.1

Gaia is entitled to:

- (i) Use of the farm
- (ii) Fruit / yield of farming operations
- (iii) On condition farm remain unchanged

5.2

Marius was entitled to let the farm but she could not make the lessee a usufructuary

QUESTION.6

6.1

What is a praedal / servitude (2)

- A real right a person exercised to the benefit of the land of which he was the owner.

6.2

No, no servitude was established. Firstly, a servitude merely by an agreement. Secondly, the servitude had to benefit the dominant tenement not a specific owner. Thirdly, the principle was that a servitude had to exist in perpetuity and could not be established over a spring that was not perennial. In conclusion no duty could be imposed on the owner of the servient tenement (Puulus) to perform a specific task. He was merely obliged to endure.

QUESTION 7

Possession Natural Person

Who had physical control of a thing but who were not entitled to possessory interdicts?

First, fiducia could be

Used. Brutus could transfer ownership of the gold cup to Marcus. One Brutus had repaid R1000, Marcus would transfer ownership of gold cup back. Secondly Brutus could have pledged the gold cup. It would mean Marcus would possess the gold cup during duration of debt. It would be returned on settlement of debt. In both cases Marcus could sell the ring if debt was not settled. And pay surplus to Brutus.

7.2

Hypothec would be the obvious form of security. Julius wanted to buy the farm with money borrowed and livestock and lares would be implements or the farm. Fiducia and pledge would be impractical because he would lose possession of

The implements he needs for operation of farm.

Hypothec create in rem and illata

Q.8
8.1 C
8.2 H
8.3 G
8.4 S
8.5 F
8.6 B
8.7 D
8.8 I
8.9 E
8.10 A

SECTION B

QUESTION.9

9.1

What is an obligation (3)

- Is a legal bond (an invisible bond created by law) between two or more parties, one of which the creditor had a personal right against the other parties, the debtor to enforce a particular performance while debtor is under an obligation to the creditor to perform.

9.2

Civil obligations are enforced
By personal action and are derived in civile

While natural obligations
Were ordinary obligations
Valid but not enforced by means of an action.

9.3

Termination of obligation by novation. (1)

It takes place when original obligation is extinguished by creation of a new obligation in place of a new one.

2.10

10.1

Suspensive condition

10.2

No obligation is created –no contract

10.13

Paulus may take action on failure to perform an obligation

QUESTION.11

Factors which exclude

Influence of agreement (8)

-fraud

Duress

Mistake.

QUESTION 12

12.1

In this case performance was impossible ab initio, since the villa did not exist at the time when contract was concluded. Therefore no contract came into existence.

12.2

These facts are an example of where performance is the result of vis major or cusus fortuitous. Theft of wagon is an example of cusus fortuitous and consequently Antonius is released from his obligation under contract.

QUESTION.13

Obligations o seller in a contract of sale (5)

-duty of custody before delivery

-Delivery with vacant possession

-Guarantee against eviction

-Guarantee against latent defeits

- Conduct in good faith.

QUESTION .14

14.1

Contract of sale

14.2

Contract of service

QUESTION.15

15.1

Requirements of real

Contract (2)

-agreement

-delivery of objects to recipient.

15.2

Four real contracts (2)

-loan or consumption

-loan or use

-deposit

-pledge

QUESTION.16

Two obligations of pledge (2)

-Rein burs the pledge

-liable for damages

-Show diligent

-putter familiars

QUESTION.17

17.1

Consensus

17.2

Has not been clearly

Demined

17.3
Consumable.
Voidable
17.5
us gentum

QUESTION 18

18.1 F

18.2 B

18.3 E

18.4 G

18.5 H

18.6 A

18.7 D

18.8 J

18.9 C

18.10 I

FLS1502

May/June 2012
Mei/June 2012

**FOUNDATIONS OF SOUTH AFRICAN LAW
GRONDSLAE VAN DIE SUID AFRIKAANSE REG**

Duration 2 Hours
Tydsduur 2 Uur

100 Marks
100 Punte

EXAMINERS / EKSAMINATORE

FIRST / EERSTE PROF H VAN DEN BERGH
SECOND / TWEDE PROF GJ VAN NIEKERK

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue
Hierdie eksamenvraestel bly die eiendom van die Universiteit van Suid-Afrika en mag nie uit die eksamenlokaal verwyder word nie

This paper consists of 26 pages

Hierdie vraestel bestaan uit 26 bladsye.

INSTRUCTIONS

- 1 Answer ALL the questions
- 2 Read the questions VERY CAREFULLY before answering them

INSTRUKSIES

- 1 Beantwoord AL die vrae
- 2 Lees die vrae AANDAGTIG deur voordat u dit beantwoord

[TURN OVER]
[BLAAI OM]

**THIS PAPER CONSISTS OF THREE SECTIONS:
HIERDIE VRAESTEL BESTAAN UIT DRIE AFDELINGS:**

SECTION A	COMPULSORY ROMAN LAW OF THINGS	45 MARKS
AFDELING A:	VERPLIGTEND ROMEINSE SAKEREG	45 PUNTE
SECTION B	COMPULSORY ROMAN LAW OF CONTRACT	45 MARKS
AFDELING B:	VERPLIGTEND ROMEINSE KONTRAKTEREG	45 PUNTE
SECTION C	COMPULSORY ROMAN LAW OF DELICT	10 MARKS
AFDELING C:	VERPLIGTEND ROMEINSE DELIKTEREG	10 PUNTE

[TURN OVER]
[BLAAI OM]

SECTION A ROMAN LAW OF THINGS**AFDELING A: ROMEINSE SAKEREG**

Answer ALL the questions Your answers to the questions in this section must be written DIRECTLY on the examination paper in the space provided

Beantwoord AL die vrae Skryf u antwoorde op die vrae in hierdie afdeling DIREK op die eksamenvraestel in die ruimte wat voorsien word.

QUESTION 1 / VRAAG 1

Briefly explain what a real right is

Verduidelik kortliks wat 'n saaklike reg is

[3]

[3]

GR TUTORIALS
www.grtutorials.co.za

QUESTION 2 / VRAAG 2

Briefly explain what a personal right is

Verduidelik kortliks wat 'n persoonlike reg is.

[3]

[3]

[TURN OVER]
[BLAAI OM]

[illegible]

Read the following fact scenario carefully and answer the questions which follow
Pay careful attention to the different historical periods referred to in each instance
**Lees die volgende feitestel aandagtig deur en beantwoord die vrae wat daarop
volg. Let deeglik op die onderskeie historiese tydperke waarna verwys word.**

In die jaar 531 nC koop Bertus vyf osse en drie muile by Servus. Die diere word deur middel van *traditio* oorgedra

- 3.1 Does Bertus obtain immediate **civil ownership (*dominium*)** of the oxen and the mules? Briefly motivate your answer (3)
- 3.1 Verkry Bertus onmiddellike ***burgerlike eiendomsreg (dominium)*** van die osse en die muile? Motiveer kortliks u antwoord. (3)

[TURN OVER]
[BLAAI OM]

- 3 2 If the same transaction between Bertus and Servus took place in **45 BC**, would Bertus have obtained immediate **civil ownership (*dominium*)** of the oxen and the mules? Briefly motivate your answer (2)
- 3 2 Indien dieselfde transaksie tussen Bertus en Servus in **45 vC** plaasgevind het, sou Bertus onmiddellike ***burgerlike eiendomsreg (dominium)*** van die osse en muile verkry het? Motiveer kortliks u antwoord. (2)

- 3 3 If Bertus was **not** a Roman citizen and the correct method for the transfer of ownership of the oxen and the mules was followed in **45 BC**, would he be able to obtain **civil ownership (*dominium*)** of the animals in this year? (2)
- 3 3 Indien Bertus ***nie*** 'n Romeinse burger was ***nie***, en die korrekte oordragswyse vir oordrag van eiendomsreg van die osse en muile in **45 vC** gevolg is, sou hy ***burgerlike eiendomsreg (dominium)*** van die diere in hierdie jaar kon verkry? Motiveer kortliks u antwoord (2)

[TURN OVER]
[BLAAI OM]

- 3.4 Suppose Servus **stole** the oxen and mules from a neighbour in **45 BC**, would he be able to transfer **civil ownership (*dominium*)** of the animals to Bertus, if all the correct procedures for the transfer of civil ownership were followed? Briefly motivate your answer (2)
- 3.4 Veronderstel Servus het die osse en muile van 'n buurman in **45 vC gesteel**, sou hy ***burgerlike eiendomsreg (dominium)*** van die diere aan Bertus kon oordra indien al die korrekte prosedures vir oordrag van eiendomsreg gevolg is? Motiveer kortliks u antwoord. (2)

- 3.5 Considering the facts in 3.4 above, what remedy would Bertus have if Servus' neighbour arrives at his farm to claim the oxen and mules that Servus stole from him by force? (1)
- 3.5 Met inagneming van die feite in 3.4 hierbo, watter remedie sou Bertus hê indien Servus se buurman op Bertus se plaas opdaag en dreig om met geweld die osse en muile te verwyder wat Servus van hom gesteel het? (1)

[TURN OVER]
[BLAAI OM]

[10]

QUESTION 4 / VRAAG 4Briefly discuss the five requirements for prescription (*usucapio*)

[10]

Bespreek kortliks die vyf vereistes vir verjaring (*usucapio*)

[10]

[TURN OVER]
[BLAAI OM]

QUESTION 5 / VRAAG 5

5 1 With *fiducia* ownership of the thing is transferred to the creditor whilst in the case of pledge only possession is transferred to the creditor (2)

5 1 In die geval van *fiducia* is eiendomsreg van die saak aan die krediteur oorgedra terwyl in die geval van pand net besit aan die krediteur oorgedra is. (2)

Tel : 0127704239
Cell : 0710354903

- 5 2 Hypothec is the form of real security which is most beneficial to a creditor (2)
 5 2 'n Hipoteek is die soort saaklike sekuriteit wat die mees voordelige vir die krediteur is. (2)

- 5 3 Slaves and beasts of burden and draught are two examples of *res nec Mancipi* (2)
 5 3 Slawe en las-en pakkdiere is twee voorbeelde van *res nec Mancipi*. (2)

- 5 4 The *rei vindicatio* was the most important remedy available to the Roman law owner (2)
 5 4 Die *rei vindicatio* was die belangrikste remedie ter beskikking van die Romeinse eienaar. (2)

- 5 5 The *interdictum utrubi* was an interdict which applied to movables (2)
 5 5 Die *interdictum utrubi* was 'n interdik wat op roerende sake van toepassing was (2)

[10]

QUESTION 6 / VRAAG 6

Which form of DELIVERY is applicable in the following examples?

Watter vorm van LEWERING is in die volgende voorbeelde van toepassing?

- 6 1 A buys a flock of sheep from B. The sheep cannot be taken to A's farm immediately and A therefore leaves a shepherd with the flock to see to the sheep (1)
 6.1 A koop 'n kudde skape by B. Die skape kan nie onmiddellik na A se plaas

[TURN OVER]
[BLAAI OM]

geneem word nie, en A laat gevolglik 'n skaapwagter by die kudde om na die skape om te sien. (1)

6 2 A leases a house from B. Two years later B puts the house on the market and A buys it (1)

6 2 A huur 'n huis by B. Twee jaar later sit B die huis in die mark en A koop dit. (1)

6 3 A sells his house to B, but the parties agree that A will lease the house from B for a period of six months (1)

6.3 A verkoop sy huis aan B, maar hulle kom ooreen dat A die huis vir 'n tydperk van ses maande by B sal huur (1)

6 4 A buys a farm from B. The details of the transaction are put in writing and the document is delivered to A (1)

6.4 A koop 'n plaas by B. Die inhoud van die transaksie word op skrif gestel en die dokument word aan A gelewer. (1)

[TURN OVER]
[BLAAI OM]

[4]

[5]

[5]

GR TUTORIALS
www.grtutorials.co.za

TOTAL SECTION A = [45]
TOTAAL: AFDELING A = [45]

[TURN OVER]
[BLAAI OM]

SECTION B ROMAN LAW OF CONTRACT
AFDELING B: ROMEINSE KONTRAKTEREG

QUESTION 8 / VRAAG 8

Name five duties of the seller in terms of the Roman contract of purchase and sale [5]

Noem vyf verpligtinge van die verkoper ingevolge die Romeinse koopkontrak [5]

GR TUTORIALS
www.grtutorials.co.za

QUESTION 9 / VRAAG 9

Briefly discuss the relevant requirements for valid performance in terms of the Roman law of contract (5)

Bespreek kortliks die relevante vereistes vir geldige prestasie ingevolge die Romeinse kontraktereg. (5)

[TURN OVER]
[BLAAI OM]

GR TUTORIALS
www.grtutorials.co.za

Study the following five fact scenarios very carefully and answer the questions which follow

10 1 A sold his horse to B, under the false and fraudulent representation that the
horse was five years old, whereas the horse was in fact fifteen years old

[TURN OVER]
[BLAAI OM]

10 1 1 Which factor in this transaction may influence consensus between A and B? (1)

10.1.1 Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen A en B beïnvloed? (1)

10 1 2 What influence does this factor have on the agreement between A and B? (1)

10 1 2 Watter invloed het hierdie faktor op die wilsooreenstemming tussen A en B? (1)

10 2 A and B concluded a contract. A was under the impression that he was selling his house to B, whereas B thought that he was concluding a contract of letting and hiring with A.

10.2 A en B het 'n kontrak gesluit. A was onder die indruk dat hy sy huis aan B verkoop, terwyl B gedink het dat hy (B) 'n huurkontrak met A gesluit het.

10 2 1 Which factor in this transaction may influence the consensus between A and B? (1)

10.2 1 Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen A en B beïnvloed? (1)

[TURN OVER]
[BLAAI OM]

10.2.2 What influence does this factor have on the agreement between A and B? (1)

10.2.2 Watter invloed het hierdie faktor op die wilsooreenstemming tussen A en B? (1)

10.3 J and B concluded a contract in terms of which J sold his chariot to B. B was under the impression, however, that J was selling him his carriage.

10.3 J en B het 'n kontrak gesluit ingevolge waarvan J sy strydwa aan B verkoop. B, aan die ander kant, was onder die indruk dat J aan hom sy perdekar verkoop.

10.3.1 Which factor in this transaction may influence the consensus between J and B? (1)

10.3.1 Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen J en B beïnvloed? (1)

10.3.2 What influence does this factor have on the agreement between J and B? (1)

10.3.2 Watter invloed het hierdie faktor op die wilsooreenstemming tussen J en B? (1)

[TURN OVER]
[BLAAI OM]

10 4 A sold his slave, B, to C. C was under the impression that the name of the slave was "D".

10.4 A het sy slaaf, B, aan C verkoop. C was onder die indruk dat die slaaf se naam "D" was.

10 4 1 Which factor in this transaction may influence the consensus between A and B? (1)

10.4.1 Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen A en B beïnvloed? (1)

10 4 2 What influence does this factor have on the agreement between A and B? (1)

10.4.2 Watter invloed het hierdie faktor op die wilsooreenstemming tussen A en B? (1)

10 5 A sold a silver vase to B, both under the impression that it is made of solid silver. Upon closer inspection it turned out to be made of bronze, lined with a very thin silver plating.

10 5 A het aan B 'n silwer vaas verkoop. Beide was onder die indruk dat die vaas uit soliede silwer bestaan, maar by nadere ondersoek het dit geblyk dat dit gemaak was van koper, bedek met 'n baie dun silwer laag.

10 5 1 Which factor in this transaction may influence the consensus between A and B? (1)

10.5.1 Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen A en B beïnvloed? (1)

[TURN OVER]
[BLAAI OM]

10 5 2 What influence does this factor have on the agreement between A and B? (1)

10.5.2 Watter invloed het hierdie faktor op die wilsooreenstemming tussen A en B? (1)
[10]

QUESTION 11 / VRAAG 11

Read the following fact scenario carefully and answer the two questions which follow

Lees die volgende feitestel aandagtig deur en beantwoord die twee vrae wat volg:

Cassius and Darius conclude a contract in terms of which Cassius buys a villa on Darius' land. Upon closer inspection it appears that the villa burned down some time previously.

Cassius en Darius sluit 'n kontrak ingevolge waarvan Cassius 'n villa op Darius se grond koop. By nadere inspeksie blyk dit egter dat die villa 'n geruime tyd gelede reeds tot op die grond afgebrand het.

11 1 What are the legal consequences of the above situation? (2)

11.1 Wat is die regsgevolge van die bostaande situasie? (2)

[TURN OVER]
[BLAAI OM]

11.2 Bertus en Antonius kom ooreen dat Bertus Antonius se wa vir 'n week mag leen. Kort na sluiting van die kontrak, toe Antonius die wa aan Bertus wou oorhandig, word Antonius se wa gesteel. Wat is die regsgevolge van hierdie situasie? (3)

GR TUTORIALS
grtutorials.co.za

List the **five** ways in which obligations could be terminated
Noem vyf maniere waarop kontrakte beëindig kon word.

[5]

Tel : 0127704239
Cell : 0710354903

QUESTION 13 / VRAAG 13

Discuss THREE requirements for the establishment of a contract of partnership [3]
Bespreek DRIE vereistes vir die totstandkoming van 'n vennootskaps-ooreenkoms. [3]

QUESTION 14 / VRAAG 14

Identify VERY SPECIFICALLY AND COMPREHENSIVELY the following contracts and write the correct answer in the spaces provided

Identifiseer BAIE NOUKEURIG EN VOLLEDIG die volgende kontrakte en skryf die korrekte antwoord in die spasies hieronder voorsien

14 1 A and B agree that A will hire one of B's chariots for a period of six months at a rental of twenty silver pieces a month. What type of contract is concluded? (1)

14.1 A en B kom ooreen dat A een van B se strydwaens vir 'n periode van ses maande sal huur teen 'n huurbedrag van twintig silwerstukke per maand. Watter soort kontrak kom tot stand? (1)

[TURN OVER]
[BLAAI OM]

14 2 A agrees with B that B would copy a manuscript for him at a weekly wage. A would provide the ink and pens and stipulates that B would work under his supervision every day. What type of contract is concluded? (1)

14 2 A kom met B ooreen dat B vir hom 'n manuskrip teen 'n weeklikse loon sal kopieer. A sal die ink en penne verskaf en stipuleer dat B daaglik onder sy toesig sal werk. Watter soort kontrak kom tot stand? (1)

14 3 A and B agree that B, a goldsmith, would make A's wife a gold ring for the price of seventy coins and that A would provide B with the gold for the ring. What type of contract is concluded? (1)

14 3 A en B kom ooreen dat B, 'n goudsmid, vir A se vrou 'n goue ring sal maak teen 'n bedrag van sewentig munte, en dat A die goud aan B sal voorsien vir die maak van die ring. Watter soort kontrak kom tot stand? (1)

[TURN OVER]
[BLAAI OM]

14 4 A, B and C agree to build a boat that they want to use for fishing. It is agreed that A will build the boat, B will supply the material for the building of the boat, and C will do the fishing every day. The profits that they make from selling the fish will be shared equally in three parts at the end of each day.

14 4 A, B en C kom ooreen om 'n boot te bou wat hulle vir visvang wil gebruik. Daar word ooreengekom dat A die boot sal bou, B sal die materiaal vir die bou van die boot voorsien, en C sal elke dag die vis vang. Die wins wat hul uit die verkoop van die vis maak, sal in drie gelyke dele tussen hulle verdeel word aan die einde van elke dag.

What type of contract is concluded between A, B and C? (1)

Watter soort kontrak word tussen A, B en C aangegaan? (1)

14 5 A agrees to act gratuitously as B's farm manager in B's absence.

14 5 A stem in om gratis as B se plaasbestuurder op te tree in B se afwesigheid.

What type of contract is concluded between A and B? (1)

Watter soort kontrak word tussen A en B gesluit? (1)

[5]

QUESTION 15 / VRAAG 15

Name the **four** real contracts (*contractus re*) in Roman law. (2)

Noem die vier reële kontrakte (*contractus re*) in die Romeinse reg. (2)

[TURN OVER]
[BLAAI OM]

16 1 Peter and John agree that John will hire one of Peter's chariots for a period of six months at a rental of 20 silver pieces per week. One night, soon thereafter, one of the wheels of the chariot is stolen by a thief. Discuss the legal position.

16.1 Peter en John kom ooreen dat John een van Peter se strydwaens sal huur vir ses maande teen twintig silwerstukke per week. Een aand, kort daarna, steel 'n dief een van die wiele van die strydwa. Bespreek die regsposisie

(3)

GR TUTORIAL
www.grtutorial.it

Tel : 0127704239
Cell : 0710354903

16.2 Wat sou die regsposisie gewees het as die wiel as gevolg van John se roekelose hantering van die strydwa tydens 'n oefenrit verlore geraak het? (2)

ITUTORIALS
tutorials.co.za

TOTAL SECTION B = [45]
TOTAAL AFDELING B = [45]

Tel : 0127704239
Cell : 0710354903

SECTION C THE ROMAN LAW OF DELICT
AFDELING C: DIE ROMEINSE DELIKTEREG

QUESTION 17 / VRAAG 17

Please state whether the following statements are **correct** or **incorrect**
Dui asseblief aan of die volgende stellings reg of verkeerd is.

- 17 1 A delict can be described as an unlawful culpable act which causes damage and creates an obligation (1)
17 1 'n Delik kan omskryf word as 'n onregmatige strafbare daad wat skade veroorsaak en 'n verbintenis skep. (1)

- 17 2 There are two different categories of actions based on delict, namely the recovery action and the penalty action (1)
17.2 Daar is twee verskillende soorte aksies op grond van delik, naamlik 'n verhaalsaksie en 'n strafaksie. (1)

- 17 3 In order to determine whether a person had acted deliberately in the case of a delict, his objective frame of mind while committing the act must be established (1)
17.3 Ten einde vas te stel of 'n persoon opsetlik gehandel het in die geval van 'n delik, moet sy objektiewe ingesteldheid tydens die pleeg van die daad vasgestel word (1)

- 17 4 Only one form of theft existed, namely the unlawful appropriation of a movable thing belonging to someone else (1)
17 4 Daar was net een vorm van diefstal, naamlik die onregmatige toe-eiening van 'n roerende saak wat aan iemand anders behoort. (1)

[TURN OVER]
[BLAAI OM]

- 17 5 If a thief was caught red-handed, the *actio furti manifesti* was raised against him whereby double the value of the thing was claimed as a penalty (1)
- 17.5 Indien 'n dief op heterdaad betrap word, is die *actio furti manifesti* teen hom ingestel waarmee twee maal die waarde van die saak geëis is as straf. (1)**
-
-

- 17 6 The *lex Aquilia* was promulgated in 287 BC with the intention of creating a uniform delict of wrongful damage to property (1)
- 17 6 Die *lex Aquilia* is in 287 vC uitgevaardig met die doel om 'n algemene saakbeskadigingsdelik daar te stel (1)**
-
-

- 17 7 During the early *lex Aquilia* fault played a very important role but a distinction was made between intentional and negligent conduct (1)
- 17.7 Tydens die vroeë *lex Aquilia* het skuld 'n belangrike rol gespeel, maar daar is onderskei tussen opsetlike en nalatige handeling (1)**
-
-

- 17 8 With regard to the conduct element of a delict as applied to the developed *lex Aquilia* it is interesting to note that Justinian even regarded an omission as an act (1)
- 17.8 Wat betref die handelingselement van die delik soos toegepas op die ontwikkelde *lex Aquilia*, was dit interessant dat Justinianus selfs 'n late as 'n handeling beskou het. (1)**
-
-

[TURN OVER]
[BLAAI OM]

- 17 9 Under the developed *actio legis Aquiliae* it wasn't always a requirement that the damage caused had to be as a result of the perpetrator's direct conduct (1)
- 17.9 **Onder die ontwikkelde *actio legis Aquiliae* was dit nie altyd 'n vereiste dat die skade die gevolg van die dader se handeling hoef te gewees het nie.** (1)
-
-

- 17 10 The Romans recognised three forms of *iniuria*, namely attacks on a person's reputation, physical attacks on the body and attacks on a person's dignity (1)
- 17.10 **Die Romeine het drie vorms van *iniuria* (persoonlikheidskrenking) geken, naamlik aantasting van 'n persoon se goeie naam, aantasting van 'n persoon se liggaam en aantasting van 'n persoon se waardigheid.** (1)
-
-

TOTAL SECTION C = [10]
TOTAAL AFDELING C = [10]

TOTAL [100]
TOTAAL: [100]

SECTION A

QUESTION 1

Explain real right and give one example (3)

- Is a right in respect of a thing which was enforced by real action and could be enforced against any person who encroached on a person's right to a thing
e.g. theft of a car belonging to Jin

QUESTION 2

Explain personal right and give an example (3)

- Is a right that can only be enforced against a specific person (by means of personal action).
E.g. where Mary would have agreed with Tom that he will repair the roof of a house. No one else besides Tom would be completed to repair the roof by personal action

QUESTION 3

3.1

Oxen and mules are res mancipi for ownership to take place there has to be transferred by a formal mode of transfer. (that is mancipio or in iure cessio). Therefore on given case there is no immediate civil ownership.

3.2

Civil ownership dominium over res mancipi could only be transferred by means of either mancipatio or in iure cessio. But during the period in question Romans were increasingly ignoring the legal principle and numerous things were simply transferred by means of delivery (traditio) therefore immediate civil ownership of oxen and mules could have taken place, but transferee had to possess oxen for a certain period.

3.3

Foreigners (peregrini) who were not Roman citizens usually did not have the right to participate in Roman commerce (they did not have the ius commercii) and consequently could not obtain ownership of a thing. Bertus was only allowed to use informal method of transferring ownership.

3.4

If the oxen were stolen ownership could not be established for example on things with defects or stolen goods.

3.5

Rei vindication

QUESTION 4

Requirements of prescription (5)

- (a) The thing has to be capable of ownership (res habilis)
- (b) There had to be a cause that the law normally recognized as sufficient for transfer of ownership (iusta causa)

- (c) Good faith (bona fides)
- (d) Possession (possessio)
- (e) Period of prescription (tempus)

QUESTION 5

5.1

Correct – check pg 75

5.2

Incorrect – is most beneficial to debtor.

5.3

Incorrect – beasts, slaves are res mancipi

5.4

Correct – owner would use rei vindication to claim the thing back

5.5

Incorrect

QUESTION

6.1

Delivery with a long hand

6.2

Delivery with the short hand

6.3

Constitution possessorium

6.4

Symbolic delivery

QUESTION 7

Requirements of praedal servitudes (6)

- Praedal utilities (servitude had to benefit the dominant tenement)
- Causu perpetua (perpetual benefit)
- Civiliter modo (a reasonable manner)
- Ius in re aliena (right in respect of others thing)
- Servitude does not consist in doing something
- Servitus servitutis esse non potest
- A servitude was indivisible

QUESTION 8

SECTION B

Duties of seller in terms of Roman law contract of purchase and sale (5)

- Duty to care for property before delivery
- Delivery of vacant possession to purchaser
- Guarantee against eviction
- Guarantee against latent defects
- Conduct in accordance with good faith

QUESTION 9

Requirements of valid performance in terms of Roman contract (5)

- Performance should not be in conflict with good morals
- Content of performance had to be determined in monetary
- Performance had to be due to other party
- Performance had to be physically and legally possible.

QUESTION 10

10.1.1

Dolus

10.1.2

The contract is void

10.2

10.2.1

Error in negotio

10.2.2

Contract is void ab initio

10.3

10.3.1

Error in object

10.3.2

Contract is void ab initio

10.4

10.4.1

Error in nomine

10.4.2

Contract remain valid

10.5

10.5.1

Error in substantia

10.5.2

Contract is void

11.1

In this case performance was impossible ab initio, since the villa did not exist at the time when contract was concluded. Therefore no contract came into existence.

11.2

These facts are an example of where performance is the result of vis major or casus fortuitous. Theft of wagon is an example of casus fortuitous and consequently Antonius is released from his obligation under contract.

QUESTION 12

Ways to terminate obligation (5)

- Performance
- Release
- Compensation
- Merger
- Novation

QUESTION 13

Requirements for establishment of partnership (3)

(a) Common purpose

- Common purpose must be physically possible and lawful

(b) Intention to form a partnership

- There must be an intention to form a partnership (affectio societatis)

(c) Contribution by each partner

- Each partner must contribute to common venture

QUESTION 14

14.1

Letting and hiring of a thing

14.2

Letting and hiring of services (contract of services)

14.3

Contract of sale

14.4

Partnership

14.5

Mandate

QUESTION 15

Four real contracts (4)

- Loan for consumption
- Loan for use
- Deposit
- Pledge

QUESTION 16.1

The contract between Peter and John was one of letting of a thing. If the property was damaged without any fault on John part, Peter as lesser would bear the risk and cannot claim from John. The lessor's duty to care it means he was responsible for culpa levis in abstracto.

16.2

The situation would be different if the wheel had been lost as a result of John reckless handling of the Chariot. The lessee was responsible for culpa levis in abstracto and should have exercised reasonable care in utilizing. The leased property John would be liable and bear costs of replacing the wheel.

SECTION C

QUESTION 17

17.1

True

17.2

False

17.3

False

17.4

False

17.5

False

17.6

True

17.7

False

17.8

True

17.9

True

17.10

True

FLS1502

October/November 2012
Oktober/November 2012

**FOUNDATIONS OF SOUTH AFRICAN LAW
GRONDSLAE VAN DIE SUID-AFRIKAANSE REG**

Duration · 2 Hours
Tydsduur 2 Uur

100 Marks
100 Punte

EXAMINERS / EKSAMINATORE :

FIRST / EERSTE PROF H VAN DEN BERGH
SECOND / TWEDE PROF GJ VAN NIEKERK

Closed book examination.
Toeboek eksamen.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.
Hierdie eksamen vraestel bly die eiendom van die Universiteit van Suid-Afrika en mag nie uit die eksamenlokaal verwyder word nie.

This paper consists of 23 pages

Hierdie vraestel bestaan uit 23 bladsye.

INSTRUCTIONS

- 1 Answer ALL the questions
- 2 Read the questions VERY CAREFULLY before answering them

INSTRUKSIES

- 1 Beantwoord AL die vrae
- 2 Lees die vrae AANDAGTIG voordat u dit beantwoord

[TURN OVER]
[BLAAI OM]

**THIS PAPER CONSISTS OF THREE SECTIONS:
HIERDIE VRAESTEL BESTAAN UIT DRIE AFDELINGS:**

SECTION A	COMPULSORY ROMAN LAW OF THINGS	45 MARKS
AFDELING A:	VERPLIGTEND ROMEINSE SAKEREG	45 PUNTE
SECTION B	COMPULSORY ROMAN LAW OF CONTRACT	45 MARKS
AFDELING B:	VERPLIGTEND ROMEINSE KONTRAKTEREG	45 PUNTE
SECTION C	COMPULSORY ROMAN LAW OF DELICT	10 MARKS
AFDELING C:	VERPLIGTEND ROMEINSE DELIKTEREG	10 PUNTE

**[TURN OVER]
[BLAAI OM]**

SECTION A: ROMAN LAW OF THINGS
AFDELING A: ROMEINSE SAKEREG

Answer ALL the questions Your answers to the questions in this section must be written DIRECTLY on the examination paper in the space provided

Beantwoord AL die vrae. Skryf u antwoorde op die vrae in hierdie afdeling DIREK op die eksamenvraestel in die ruimte wat voorsien word.

QUESTION 1 / VRAAG 1

Briefly discuss TWO differences between a personal right and a real right (4)
Bespreek kortliks TWEE verskille tussen 'n persoonlike en 'n saaklike reg. (4)

QUESTION 2 / VRAAG 2**[4]**

Briefly discuss TWO differences between ownership and possession (4)
Bespreek kortliks TWEE verskille tussen eiendomsreg en besit. (4)

[TURN OVER]
[BLAAI OM]

QUESTION 3 / VRAAG 3

Titus bequeaths his farm to his son, Nardus, and establishes a usufruct over the farm in favour of his wife, Gaia. Gaia decides to let the farm to Manius for a period of five years.

Titus bemaak sy plaas aan sy seun, Nardus, en vestig 'n vruggebruik oor die plaas ten gunste van sy vrou, Gaia. Sy besluit om die plaas aan Marius te verhuur vir 'n tydperk van vyf jaar.

- 3.1 What rights to the farm did Gaia acquire on the grounds of the usufruct? (3)**
3.1 Watter regte het Gaia ingevolge die vruggebruik ten aansien van die plaas verkry? (3)

GR TUTORIA
www.grtutoria.it

- 3.2 Was she entitled to let the farm to Marius? (2)
3.2 Was sy geregtig om die plaas aan Marius te verhuur? (2)

[TURN OVER]
[BLAAI OM]

- 3.3 Would Marius have had any remedy if Nardus had refused to allow him to exercise his rights as lessee? (2)
- 3.3 Sou Marius enige remedie gehad het indien Nardus sou geweier het dat hy sy regte as huurder kon uitoefen? (2)

[7]

QUESTION 4 / VRAAG 4

- Name and briefly discuss any THREE original methods of acquiring ownership (6)
- Noem en bespreek kortliks enige DRIE oorspronklike wyses van verkryging van eiendomsreg. (6)

[TURN OVER]
[BLAAI OM]

TUTORIALS
 tutorials.co.za

QUESTION 5 / VRAAG 5

Hierdie afdeling bestaan uit vyf waar / vals stellings. Dui telkens die korrekte antwoord met 'n kruisie (X) aan.

- 5.1 Ownership is the most comprehensive right a person can have over a corporeal thing. (1)
Eiendomsreg is die mees omvangryke reg wat 'n persoon oor 'n liggaamlike saak kon hê. (1)

[TURN OVER]
[BLAAI OM]

- 5 2 *Mancipatio* could be used to transfer *res Mancipi* as well as *res nec Mancipi* (1)
***Mancipatio* kon gebruik word vir die oordrag van *res Mancipi* sowel as *res nec Mancipi*.** (1)

True / Waar _____

False / Vals _____

- 5.3 With the help of the *actio negatoria* the owner of a piece of land could deny the existence of a servitude over his property (1)
Met behulp van die *actio negatoria* kon die eienaar van 'n grondstuk ontken dat daar 'n servituut oor sy grondstuk is. (1)

True / Waar _____

False / Vals _____

- 5 4 *Fiducia* is the most beneficial form of real security to a creditor (1)
***Fiducia* is die mees voordelige vorm van saaklike sekuriteit vir die krediteur.** (1)

True / Waar _____

False / Vals _____

- 5 5 *Res non fungibiles* can be replaced by other things with the same qualities (1)
***Res non fungibiles* kan vervang word deur sake met dieselfde hoedanighede.** (1)

True / Waar _____

False / Vals _____

[5]

QUESTION 6 / VRAAG 6

Name and briefly discuss the five requirements for obtaining ownership through prescription (*usucapio*) (5)
Noem en bespreek kortliks die vyf vereistes vir die verkryging van eiendomsreg deur middel van verjaring (*usucapio*). (5)

[TURN OVER]
[BLAAI OM]

ART TUTORIALS
arttutorials.co.za

QUESTION 7 / VRAAG 7

Paulus en Marius is bure. Marius se fontein het opgedroog tydens 'n lang en ernstige droogte, maar Paulus s'n het van tyd tot tyd nog water. Paulus en Marius kom ooreen dat Marius water uit die fontein kan kry indien daar voldoende water vir hulle albei is en dat Paulus in ruil daarvoor die waterpype sal onderhou.

7.1 What is a praedial servitude? (2)
7.1 Wat is 'n saaklike serwituut? (2)

[TURN OVER]
[BLAAI OM]

[illegible]

(4)

(4)

GR TUTORIALS
www.grtutorials.com

[6]

[TURN OVER]
[BLAAI OM]

Name *three* forms of real security. (3)
Noem drie vorms van saaklike sekerheid. (3)

TUTORIALS
 tutorials.co.za

[3]

Name *five* kinds of things that were within the Roman commercial world (5)
 Noem *vyf* soorte sake wat deel van die Romeinse handelsverkeer uitgemaak het. (5)

[illegible]

[TURN OVER]
[BLAAI OM]

[illegible]

TOTAL SECTION A = [45]
TOTAAL: AFDELING A = [45]

10.1 What is an obligation? (3)
10.1 Wat is 'n verbintenis? (3)

Tel : 0127704239
Cell : 0710354903

[illegible]

QUESTION 11 / VRAAG 11

List FIVE ways in which obligations were terminated in Roman law Do NOT DISCUSS these various ways (5)

Noem VYF maniere waarop verbintenisse in die Romeinse reg beëindig is. Moet NIE hierdie maniere BESPREEK NIE. (5)

GR TUTORIALS
www.grtutorials.com

[5]

QUESTION 12 / VRAAG 12

Brutus is Claudius' employer. They agree that Claudius will rent Brutus' holiday home from him for a period of five years. Brutus makes it quite clear to Claudius that he (Brutus) will ensure that Claudius' service contract is not renewed the following year if he refuses to conclude the contract of letting and hiring with him.

[TURN OVER]
[BLAAI OM]

Is there consensus between the parties in this case? (3)
Is daar wilsooreenstemming tussen die partye in hierdie geval? (3)

TUTORIALS
tutorials.co.za

QUESTION 13 / VRAAG 13

Balbus leen Antonius se slaaf Pamphilus vir 'n paar dae om manuskripte te kopiëer. Balbus vra egter vir Pamphilus om sy huis se dak te herstel. Pamphilus is nie gewoond aan handarbeid nie en val van die dak af. Hy doen ernstige kopbeserings op.

Discuss whether Balbus can be held liable for Pamphilus' injuries or not (5)
Bespreek volledig of Balbus aanspreeklik is vir Pamphilus se beserings of nie. (5)

[TURN OVER]
[BLAAI OM]

[5]

QUESTION 14 / VRAAG 14

NAME the THREE factors that may exclude or influence agreement between contracting parties. Do not discuss these factors. (3)

NOEM die DRIE faktore wat wilsooreenstemming tussen die kontrakterende partye kan beïnvloed of uitsluit. Moenie hierdie faktore bespreek nie. (3)

[TURN OVER]
[BLAAI OM]

[3]

QUESTION 15 / VRAAG 15

This section consists of five true / false statements. Indicate the correct answer to each question with a cross (X)

Hierdie afdeling bestaan uit vyf waar / vals stellings. Dui telkens die korrekte antwoord met 'n kruisie (X) aan.

- 15.1 A contract concluded as a result of fraud is void (1)
 'n Kontrak wat as gevolg van bedrog gesluit is, was nietig. (1)

True / Waar

False / Vals

- 15.2 In the case of mistake with regard to the nature of the contract (*error in negotio*) the contract was voidable (1)
 In die geval van dwaling ten aansien van die aard van die kontrak (*error in negotio*) was die kontrak vernietigbaar. (1)

True / Waar

False / Vals

- 15.3 With regard to deposit a movable thing was given to the depositee for gratuitous safekeeping. (1)
 In die geval van 'n bewaarnemingskontrak is 'n roerende saak aan die bewaarnemer gegee ten einde gratis daarna om te sien. (1)

True / Waar

False / Vals

[TURN OVER]
[BLAAI OM]

15.4 *Mora debitoris* occurs where the debtor fails to render performance on account of the creditor's failure to cooperate with the debtor in order to make performance possible. (1)

Mora debitoris geskied wanneer die debiteur versuim om te presteer as gevolg van die krediteur se versuim om saam te werk ten einde die prestasie moontlik te maak. (1)

True / Waar _____

False / Vals _____

15.5 According to Justinian obligations arose from contracts, delicts, quasi-contracts and quasi-delicts. (1)

Volgens Justinianus het verbintenisse uit kontrakte, delikte, kwasi-kontrakte en kwasi-delikte ontstaan. (1)

True / Waar _____

False / Vals _____

[5]

QUESTION 16 / VRAAG 16

16.1 When will a contract be regarded as *perfecta*? (2)

16.1 Wanneer word 'n kontrak as *perfecta* beskou? (2)

16.2 In terms of the risk rule, when does the risk for the destruction of or damage to the object of sale pass from the seller to the purchaser? (2)

16.2 Wanneer gaan die risiko vir die vernieting of beskadiging van die koopsaak van die verkoper oor na die koper ingevolge die risikoreël? (2)

[TURN OVER]
[BLAAI OM]

Noem en bespreek vyf verpligtinge van die verkoper ingevolge die Romeinse koopkontrak. (10)

GR TUTORIALS
www.grtutorials.com

Tel : 0127704239
Cell : 0710354903

GR TUTORIALS
www.grtutorials.co.za

QUESTION 18 / VRAAG 18

Flavius en Aulus is vennote wat gesamentlik 'n vissersboot bedryf. Die winste word gelykop verdeel. Flavius het die geld voorgeskiet om die boot te laat bou en Aulus het onderneem om elke dag te gaan visvang.

Tel : 0127704239
Cell : 0710354903

© 2015 Tutorials Point (P) Ltd. All rights reserved.
http://www.tutorialspoint.com

Tel : 0127704239
Cell : 0710354903

19.2 Name the FOUR real contracts known to Roman law (2)
19.2 Noem die VIER reële kontrakte wat in die Romeinse reg aangetref is. (2)

[4]

TOTAL SECTION B = [45]
TOTAAL: AFDELING B = [45]

[TURN OVER]
[BLAAI OM]

SECTION C ROMAN LAW OF DELICT AFDELING C: ROMEINSE DELIKTEREG

QUESTION 20 / VRAAG 20

This section consists of ten true / false statements. Indicate the correct answer to each question with a cross (X).

Hierdie afdeling bestaan uit 10 “waar / vals” stellings. Dui telkens die korrekte antwoord met ‘n kruisie (X) aan.

20 1 A delict may be described as an unlawful culpable act which causes damage and creates an obligation (1)

20.1 ‘n Delik kan omskryf word as ‘n onregmatige strafbare daad wat skade veroorsaak en ‘n verbintenis skep. (1)

True / Waar _____

False / Vals _____

20 2 The *rei vindicatio* is an example of a recovery action (1)

20.2 ‘n Voorbeeld van ‘n verhaalsaksie is die *rei vindicatio*. (1)

True / Waar _____

False / Vals _____

20 3 For purposes of a delict only a direct positive act and an omission were regarded as an act during the post-classical period. (1)

20.3 Vir doeleindes van ‘n delik is net ‘n direkte positiewe handeling en ‘n late tydens die na-klassieke tydperk as ‘n handeling beskou. (1)

True / Waar _____

False / Vals _____

20 4 For purposes of theft, deliberate intent was a requirement. (1)

20.4 Vir doeleindes van diefstal, is daar vereis dat ‘n persoon opsetlik moes optree. (1)

True / Waar _____

False / Vals _____

[TURN OVER]
[BLAAI OM]

- 20 5 The *actio furti nec manifesti*, with which double the value of the stolen thing could be claimed, was instituted against a thief who was caught in the act.(1)
- 20.5 Indien 'n dief op heterdaad betrap word, is die *actio furti nec manifesti* teen hom ingestel waarmee dubbel die waarde van die saak geëis is. (1)

True / Waar _____

False / Vals _____

- 20.6 The *lex Aquilia* was promulgated in 287BC with the purpose of creating a uniform delict of wrongful damage to property. (1)

- 20.6 Die *lex Aquilia* is in 287 vC uitgevaardig met die doel om 'n algemene saakbeskadigingsdelik daar te stel. (1)

True / Waar _____

False / Vals _____

- 20 7 During the period of the developed *lex Aquilia* fault played an important role and a wrongdoer could damage another person's thing deliberately or negligently (1)

- 20.7 Tydens die ontwikkelde *lex Aquilia* het skuld 'n belangrike rol gespeel en 'n dader kon opsetlik of nalatig 'n ander se saak beskadig. (1)

True / Waar _____

False / Vals _____

- 20.8 If Brutus, acting in self-defence, would have killed Petrus' slave, it would have excluded unlawfulness for purposes of a delict. (1)

- 20.8 Indien Brutus Petrus se slaaf sou doodmaak uit noodweer (selfverdediging), het dit vir doeleindes van 'n delik onregmatigheid uitgesluit. (1)

True / Waar _____

False / Vals _____

[TURN OVER]
[BLAAI OM]

- 20.9 The *actio legis Aquiliae* was always only available to the owner of a thing. (1)
20.9 Die *actio legis Aquiliae* was altyd net ter beskikking van die eienaar van 'n saak. (1)

True / Waar

False / Vals

- 20.10 For purposes of *iniuria* a physical attack or a threat of physical violence was regarded as an infringement of a person's body. (1)
20.10 Vir doeleindes van *iniuria* is aanranding of 'n dreigement van fisiese geweld as aantasting van 'n persoon se liggaam beskou. (1)

True / Waar

False / Vals

TOTAL SECTION C = [10]
TOTAAL: AFDELING C = [10]

TOTAL : [100]
TOTAAL: [100]

FLS 1502
NOV 2012

SECTION A

QUESTION A

Differences of personal right and a real right (4)

- Real right is a right in respect of a thing which was enforced by real action and could be enforced against any person who encroached on a person's right to a thing
e.g. theft of a car belonging to Jin
- Personal right is a right that can only be enforced against a specific person (by means of personal action).
E.g. where Mary would have agreed with Tom that he will repair the roof of a house. No one else besides Tom would be completed to repair the roof by personal action.

QUESTION 2

Differences between ownership and possession (4)

Possession

- Is physical and factual control a person has over corporeal thing.
- E.g. where owner of a house occupies the house.

Ownership

- Fullest possible right one could have over a corporeal thing.
- Is limited by limited real rights other people may have over the thing

QUESTION 3

3.1

Gaia is entitled to:

- (i) Use of the farm
- (ii) Fruit / yield of farming operations
- (iii) On condition farm remain unchanged

3.2

Marius was entitled to let the farm but she could not make the lessee a usufructuary

3.3

Marius obtained no real right, but merely a personal right against Gin that he could use to try to enforce his rights.

QUESTION 4

Any three original methods of acquiring ownership (6)

(a) Prescription (usucapio)

- Person acquires ownership of a thing if he has enjoyed uninterrupted possession e.g. piece of land to uninterrupted two years

(b) Appropriation (occupatio)

- The first person who took possession of a res nullius a thing not owned by anyone with intention of becoming the owner.

(c) Treasure – trove

- Someone who acquires something that has been hidden for so long

(d) The acquisition of fruits

- (e) Accession
- (f) Mixing and blending
- (g) Specification

(more info pg 4959)

QUESTION 5

5.1

True

5.2

False

5.3

True

5.4

True

5.5

False

QUESTION 6

Requirements of obtaining ownership through prescription (5)

Requirements of prescription (5)

- (a) The thing has to be capable of ownership (res habilis)
- (b) There had to be a cause that the law normally recognized as sufficient for transfer of ownership (justa causa)
- (c) Good faith (bona fides)
- (d) Possession (possessio)
- (e) Period of prescription (tempus)

QUESTION 7

7.1

What is a praedal / servitude (2)

- A real right a person exercised to the benefit of the land of which he was the owner.

7.2

No, no servitude was established. Firstly, a servitude merely by an agreement. Secondly, the servitude had to benefit the dominant tenement not a specific owner. Thirdly, the principle was that a servitude had to exist in perpetuity and could not be established over a spring that was not perennial. In conclusion no duty could be imposed on the owner of the servient tenement (Puulus) to perform a specific task. He was merely obliged to endure.

QUESTION 8

Three forms of real security (3)

- Fiducia
- Pledge
- Hypothec

QUESTION 9

Name 5 kinds of things that were within the Roman commercial world (5)

- Performance should not be in conflict with good morals
- Content of performance had to be determined in monetary
- Performance had to be due to other party
- Performance had to be physically and legally possible.

SECTION B

QUESTION 10

10.1

What is an obligation (3)

- Is a legal bond created by law between two or more parties one of which, the creditor, had a personal right against the other party (parties) The debtors to enforce a particular performance, while debtor is under obligation to the creditor to perform.

QUESTION 11

5 ways of termination of obligation in Roman law (5)

- Performance
- Release
- Compensation
- Merger
- Noration

QUESTION 12

The issue is of letting and hiring (contract of lense). The contract is reciprocal between the parties who acquired specific rights. The contract must be concluded when there is a consensus between lessor and lessee on the lense transaction. There has to be a price in this case there is no consensus since Brutus threatened that Claudius service contract will not be renewed if he refuses to renew contract of letting and hiring with him. It amounts to duress. Contract is voidable.

QUESTION 13

The contract between Bulbus and Antonius is a contract of loan for use, which is a contract based on good faith. Bulbus should have displayed the cure of a diligens et bonus paterfamilias. However, since he used the slave Pumphilus for a purpose other than one agreed with Antonius he acted negligently and is therefore liable for culpa levis in abstrueto towards Antonius for injuries suffered by Pumphilus.

QUESTION 14

Factors which influence exclude agreement between contracting parties.

- Fraud (dolus)
- Duress (metus)
- Mistake (error)

QUESTION 15

15.1

False – is voidable

15.2

False – is void ab initio

15.3

True

15.4

False

15.5

True

QUESTION 16

16.1

When will a contract be regarded as perfecta? (2)

- It is regarded perfecta as soon as everything has been completed apart from the payment of the purchase price and the delivery of the object of sale.

16.2

When does risk pass from seller to purchaser (2)

Risk is passed from seller to purchaser when contract of sale is perfecta for example in a contract of sale of 5 cattle. The contract becomes perfecta when those 5 cattle have been identified that when risk moves to the purchaser even though they may not have been paid for.

QUESTION 17

Duties of seller (5)

- Duty care for property before delivery
- Delivery of vacant possession to the purchaser.
- Guarantee against eviction
- Guarantee against latent defects
- Conduct in accordance with good faith

QUESTION 18

Duties of partners in a partnership

The duties of partners Flurius and Aulus are :

- They each had to contribute to joint venture (capital / labour)
- Conclude a contract with required division of profits
- Be accountable to the partnership for profit and loss
- Their duty to care for partnership has to be the same as care for their own affairs (they are liable for Culpa levis in contracts and could claim damages from each other with the action pro socio).

QUESTION 19

Requirements for establishment of real contract (2)

- Agreement by parties
- Delivery of object to recipient

19.2

Four real contracts in Roman law (2)

- Loan for consumption (mutum)
- Loan for use (commoditum)
- Deposit (depositum)
- Pledge (pignus)

SECTION C

QUESTION 20

20.1

True

20.2

True

20.3

False

20.4

False

20.5

False

20.6

True

20.7

True

20.8

True

20.9

False

20.10

True

FLS1502

May/June 2013
Mei/June 2013

**FOUNDATIONS OF SOUTH AFRICAN LAW
GRONDSLAE VAN DIE SUID AFRIKAANSE REG**

Duration 2 Hours
Tydsduur 2 Uur

100 Marks
100 Punte

EXAMINERS / EKSAMINATORE :

FIRST / EERSTE PROF H VAN DEN BERGH
SECOND / TWEDE MS/ME A BAULING

Closed book examination.
Toeboekeksamen.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

Hierdie eksamenvraestel bly die eiendom van die Universiteit van Suid-Afrika en mag nie uit die eksamenlokaal verwyder word nie.

This paper consists of 27 pages

Hierdie vraestel bestaan uit 27 bladsye.

INSTRUCTIONS

- 1 Answer ALL the questions
- 2 Read the questions VERY CAREFULLY before answering them

INSTRUKSIES

- 1 Beantwoord AL die vrae
- 2 Lees die vrae AANDAGTIG deur voordat u dit beantwoord

[TURN OVER]
[BLAAI OM]

**THIS PAPER CONSISTS OF THREE SECTIONS:
HIERDIE VRAESTEL BESTAAN UIT DRIE AFDELINGS:**

SECTION A	COMPULSORY ROMAN LAW OF THINGS	45 MARKS
AFDELING A:	VERPLIGTEND ROMEINSE SAKEREG	45 PUNTE
SECTION B	COMPULSORY ROMAN LAW OF CONTRACT	45 MARKS
AFDELING B:	VERPLIGTEND ROMEINSE KONTRAKTEREG	45 PUNTE
SECTION C	COMPULSORY ROMAN LAW OF DELICT	10 MARKS
AFDELING C:	VERPLIGTEND ROMEINSE DELIKTEREG	10 PUNTE

[TURN OVER]
[BLAAI OM]

SECTION A ROMAN LAW OF THINGS**AFDELING A: ROMEINSE SAKEREG**

Answer ALL the questions Your answers to the questions in this section must be written DIRECTLY on the examination paper in the space provided

Beantwoord AL die vrae. Skryf u antwoorde op die vrae in hierdie afdeling DIREK op die eksamen vraestel in die ruimte wat voorsien word.

QUESTION 1 / VRAAG 1

- 1 1 Briefly explain what a real right is and provide one example of such a right (3)
1.1 **Verduidelik kortliks wat 'n saaklike reg is en verskaf een voorbeeld van so 'n reg.** (3)

- 1 2 Briefly explain what a personal right is and provide one example of such a right (3)
1.2 **Verduidelik kortliks wat 'n persoonlike reg is en verskaf een voorbeeld van so 'n reg.** (3)

**[TURN OVER]
[BLAAI OM]**

[6]

QUESTION 2 / VRAAG 2

Provide one example of each of the following classifications of things
Verskaf een voorbeeld van elk van die volgende klassifikasies van sake.

2 1 Immovable property (½)
2.1 Onroerende saak (½)

2 2 *Res extra commercium* (½)
2.2 *Res extra commercium* (½)

2 3 *Res fungibiles* (½)
2.3 *Res fungibiles* (½)

2 4 Joint or composite thing (½)
2.4 Saamgestelde saak (½)

[TURN OVER]
[BLAAI OM]

2 5 Consumable thing (½)
2.5 Verbruikbare saak (½)

2 6 Divisible things (½)
2.6 Deelbare sake (½)

2 7 *Res Mancipi* (½)
2.7 Res Mancipi (½)

2 8 *Res nec Mancipi* (½)
2.8 Res nec Mancipi (½)

[4]

QUESTION 3 / VRAAG 3

Aulus rents Bertus' house. Cassandra breaks into the house and steals Aulus' wine collection. What type of possession does Aulus have of the house and what type of possession does Cassandra have of the wine? What is the most important difference between these two types of possession? [4]

Aulus huur Bertus se huis. Cassandra breek by die huis in en steel Aulus se wynversameling. Welke tipe besit het Aulus van die huis en Cassandra van die wyn? Wat is die belangrikste verskil tussen hierdie twee soorte besit? [4]

[TURN OVER]
 [BLAAI OM]

QUESTION 4 / VRAAG 4

4.1 Identify the original mode of acquisition of ownership in each of the following situations

4.1 Identifiseer die oorspronklike wyse van eiendomsregverkryging in elk van die volgende situasies:

(a) Vera becomes the owner of a pearl she finds that had washed up on the beach (1)

(a) Vera word die eienaar van 'n pêrel wat sy op die strand vind waar dit uitgespoel het. (1)

(b) Paul and Quinn's olive oil gets mixed together and they become co-owners of the mixture (1)

(b) Paul en Quinn se olyfolie word vermeng en hulle word mede-eienaars van die mengsel. (1)

(c) Teresa becomes the owner of an antique gold shield that she digs up in her garden (1)

(c) Teresa word die eienaar van 'n antieke goue skild wat sy in haar tuin opgrawe. (1)

[TURN OVER]
[BLAAI OM]

- (d) If Xania's wool coat is dyed with Gaius' dye Xania becomes owner of the dyed coat (1)
- (d) **Indien Xania se woljas met Gaius se kleurstof gekleur word, word Xania eienaar van die gekleurde jas. (1)**

- (e) In the classical period Brutus becomes owner of the wine that he (Brutus) made from the grapes of Cassius (1)
- (e) **In die klassieke periode word Brutus die eienaar van die wyn wat hy (Brutus) met Cassius se druive maak. (1)**

4 2 Select the correct answer from COLUMN B that matches the term in COLUMN A and write down the correct answer in the spaces provided below. You need only write down the correct letter from Column B. Please do not rewrite the whole description

4.2 **Kies die korrekte antwoord in KOLOM B wat ooreenstem met die term in KOLOM A en skryf die korrekte antwoord neer in die spasies hieronder. Skryf net die korrekte letter uit Kolom B neer. Moet asseblief nie die hele beskrywing herhaal nie.**

COLUMN A/ KOLOM A	COLUMN B/ KOLOM B
4 2 1 Pledge 4.2.1 Pand	A The most beneficial form of real security to a creditor A. Die mees voordelige vorm van saaklike sekuriteit vir die krediteur
4 2 2 Fiducia 4.2.2 Fiducia	B The debtor retains ownership and possession of the thing B. Die debiteur behou eiendomsreg en besit van die saak
4 2 3 Hypothec 4.2.3 Hipoteek	C Only possession of the thing is transferred to the creditor C. Slegs besit in die saak is oorgedra aan die krediteur

4 2 1 Pledge (1)

4.2.1 Pand: _____ (1)

4 2 2 Fiducia (1)

4.2.2 Fiducia: _____ (1)

[TURN OVER]
[BLAAI OM]

4 2 3 Hypothec (1)
4.2.3 Hipoteek: _____ (1)

4 3 Indicate whether the following statements are TRUE or FALSE, by marking the correct answer with an "X"

4.3 Dui aan of die volgende stellings WAAR of VALS is deur die korrekte antwoord met 'n "X" te merk.

(a) The *rei vindicatio* still exists today and is probably the most important action to protect ownership (1)

(a) Die *rei vindicatio* bestaan vandag nog en is waarskynlik die belangrikste aksie waarmee eiendomsreg beskerm word. (1)

True Waar	False Vals
--------------	---------------

(b) The *ius gentium* was the law applicable to all nations (1)

(b) Die *ius gentium* was die reg van toepassing op alle volke. (1)

True Waar	False Vals
--------------	---------------

(c) With the *actio Publiciana* the owner of a piece of land could deny the existence of a servitude over his property (1)

(c) Met die *actio Publiciana* kon die eienaar van 'n grondstuk ontken dat daar 'n serwituut oor sy grondstuk is. (1)

True Waar	False Vals
--------------	---------------

(d) The *ius civile* was only applicable to Roman citizens (1)

(d) Die *ius civile* was slegs van toepassing op Romeinse burgers. (1)

True Waar	False Vals
--------------	---------------

[TURN OVER]
[BLAAI OM]

- (e) Brutus leases a house from Julius. One year later Julius puts the house on the market and Brutus buys it. The mode of delivery used is *traditio longa manu* (delivery with the long hand). (1)
- (e) Brutus huur 'n huis by Julius. Een jaar later plaas Julius die huis in die mark en verkoop dit aan Brutus. Die metode van lewering wat gebruik is, is *traditio longa manu* (lewering met die lang hand). (1)

True Waar	False Vals
--------------	---------------

- (f) Flavia sells her house to Azo, but they agree that Flavia will lease the house from Azo for two months. The mode of delivery used is *traditio brevi manu* (delivery with the short hand). (1)
- (f) Flavia verkoop haar huis aan Azo, maar hulle kom ooreen dat Flavia die huis by Azo sal huur vir twee maande. Die metode van lewering wat gebruik is, is *traditio brevi manu* (lewering met die kort hand). (1)

True Waar	False Vals
--------------	---------------

- (g) Aria buys a farm from Lex. The details of the transaction are put into writing and the document is delivered to Aria. The mode of delivery used is symbolic delivery. (1)
- (g) Aria koop Lex se plaas. Die besonderhede van die transaksie word op skrif gestel en die dokument word aan Aria gelewer. Die metode van lewering wat gebruik is, is simboliese lewering. (1)

True Waar	False Vals
--------------	---------------

[15]

QUESTION 5 / VRAAG 5

Petrus buys a painting from Balbus. Petrus is under the impression that Balbus is the rightful owner of the painting, but in fact this is not the case. Petrus is in possession of the painting for a year before Caesar approaches Petrus and claims that the painting is his (Caesar's).

Petrus koop 'n skildery van Balbus. Petrus is onder die indruk dat Balbus die regmatige eienaar van die skildery is, maar dit is nie die geval nie. Petrus is in besit van die skildery vir 'n jaar voordat Caesar vir Petrus nader en beweer dat hy (Caesar) die regmatige eienaar van die skildery is.

[TURN OVER]
[BLAAI OM]

- 5 1 Name the requirements for acquiring ownership by means of prescription
(*usucapio*) (5)
- 5.1 Noem die vereistes vir eiendomsverkryging deur middel van verjaring
(*usucapio*). (5)

GR TUTORIALS
www.grtutorials.co.za

- 5 2 Would Petrus have become owner of the painting by means of prescription in the classical period of Roman law? Motivate your answer (2)
- 5.2 Sou Petrus eienaar van die skildery geword het deur middel van verjaring in die klassieke tydperk van die Romeinse reg? Motiveer u antwoord. (2)

[TURN OVER]
[BLAAI OM]

- 5.3 Would your answer in 5.2 have been different if the scenario took place in the time of Justinian? Motivate your answer (2)
- 5.3 Sou u antwoord in 5.2 verskil het indien die gebeure in die Justiniaanse tyd afgespeel het? Motiveer u antwoord. (2)

[9]

QUESTION 6 / VRAAG 6

- 6.1 List SIX requirements for praedial servitudes. Do NOT discuss the requirements (6)
- 6.1 Noem SES vereistes vir saaklike servitute. Moet NIE die vereistes bespreek nie. (6)

[TURN OVER]
[BLAAI OM]

[illegible]

- 6.2 Briefly discuss ONE aspect of the Roman law requirement that an *usufruct* be exercised in a manner that ensured that the substance of the thing remained intact (*salva rerum substantia*) (1)
- 6.2 **Bespreek kortliks EEN aspek van die Romeinsregtelike vereiste dat vruggebruik met behoud van die wese van die saak (*salva rerum substantia*) uitgeoefen word.** (1)

GR
www.g

TOTAL SECTION A = [45]
TOTAAL: AFDELING A = [45]

Tel : 0127704239
Cell : 0710354903

SECTION B ROMAN LAW OF CONTRACT
AFDELING B: ROMEINSE KONTRAKTEREG**QUESTION 7 / VRAAG 7**

- 7.1 What is an obligation? (3)
7.1 Wat is 'n verbintenis? (3)

- 7.2 Discuss the difference between a civil obligation and a natural obligation (2)
7.2 Bespreek die verskil tussen 'n siviele verbintenis en 'n natuurlike verbintenis. (2)

[TURN OVER]
[BLAAI OM]

- 7.3 Describe the termination of an obligation by means of performance (1)
 7.3 **Beskryf die beëindiging van 'n verbintenis deur voldoening (prestasie). (1)**

[6]

QUESTION 8 / VRAAG 8

Study the following scenarios carefully and answer the questions that follow
Bestudeer die volgende feitestelle aandagtig en beantwoord die vrae wat daarop volg:

- 8.1 Septimus and Octavus conclude a contract of purchase and sale on 1 April in terms of which Septimus sells his house to Octavus. They agree that Octavus can move into the house on 1 May. On 15 April the house is destroyed by a fire. Octavus claims back the purchase price. Is he entitled to do so? Motivate your answer (3)
- 8.1 **Septimus en Octavus sluit 'n koopkontrak op 1 April ingevolge waarvan Septimus sy huis aan Octavus verkoop. Hulle kom ooreen dat Octavus op 1 Mei in die huis kan intrek. Op 15 April word die huis deur 'n vuur vernietig. Octavus eis die koopprys terug. Is hy geregtig daarop om dit te doen? Motiveer jou antwoord. (3)**

[TURN OVER]
[BLAAI OM]

8 2 Livius and Cornelius conclude a contract in terms of which Livius buys a house on Cornelius's land. Upon closer inspection it appears that the house had burnt down more than three months previously. What are the legal consequences of this scenario? (2)

8.2 Livius en Cornelius sluit 'n kontrak ingevolge waarvan Livius 'n huis op Cornelius se grond koop. By nadere inspeksie blyk dit egter dat die huis reeds meer as drie maande gelede afgebrand het. Wat is die regsgevolge van hierdie feitestel? (2)

8 3 Marcus agreed with Aulus that Aulus would copy a manuscript for him at a weekly wage. Marcus undertook to provide the ink and pens and insisted that Aulus should work under his supervision every day. What kind of contract was created? (1)

8.3 Marcus en Aulus kom ooreen dat Aulus vir Marcus 'n manuskrip sal kopieer teen 'n weeklikse loon. Marcus onderneem om penne en inkt te voorsien en dring daarop aan dat Aulus daaglik onder sy toesig moet werk. Watter soort kontrak het tot stand gekom? (1)

[TURN OVER]
[BLAAI OM]

- 8 4 Pamphilus and Julius conclude a contract of sale in terms of which Pamphilus buys ten cows at a price of ten gold coins per animal from Julius's stud. A serious stock disease breaks out soon afterwards, making it necessary for Julius to have all his cattle put down. Who bears the risk for the death of the cattle? (4)
- 8.4 Pamphilus en Julius sluit 'n koopkontrak ingevolge waarvan Pamphilus tien beeste teen tien goue stukke per bees van Julius se beesstoet koop. 'n Ernstige veesiekte wat kort daarna uitbreek, veroorsaak dat al Julius se beeste van kant gemaak moet word. Wie dra die risiko vir die dood van die beeste? (4)

[TURN OVER]
[BLAAI OM]

[10]

QUESTION 9 / VRAAG 9

Study the following scenarios carefully and answer the questions that follow

Bestudeer die volgende feitestelle aandagtig en beantwoord die vrae wat daarop volg:

9.1 Brutus sold his horse to Justinianus under the false and fraudulent representation that the horse was five years old, whereas the horse was in fact already fifteen years old

9.1 Brutus verkoop sy perd aan Justinianus onder die valse en bedrieglike voorstelling dat die perd vyf jaar oud is, terwyl die perd inderdaad reeds vyftien jaar oud was.

(a) Which factor in this transaction may influence consensus between Brutus and Justinianus? (1)

(a) Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen Brutus en Justinianus beïnvloed? (1)

(b) What influence does this factor have on the agreement between Brutus and Justinianus? (1)

(b) Watter invloed het hierdie faktor op die ooreenkoms tussen Brutus and Justinianus? (1)

[TURN OVER]
[BLAAI OM]

9 2 Caesar and Cicero concluded a contract. Caesar was under the impression that he was selling his house to Cicero, whereas Cicero thought that he was concluding a contract of letting and hiring with Caesar.

9 2 **Caesar en Cicero het 'n kontrak gesluit. Caesar was onder die indruk dat hy sy huis aan Cicero verkoop, terwyl Cicero gedink het dat hy (Cicero) 'n huurkontrak met Caesar gesluit het.**

(a) Which factor in this transaction may influence the consensus between Caesar and Cicero? (1)

(a) **Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen Caesar en Cicero beïnvloed?** (1)

(b) What influence does this factor have on the agreement between Caesar and Cicero? (1)

(b) **Watter invloed het hierdie faktor op die wilsooreenstemming tussen Caesar en Cicero?** (1)

9 3 Petronius sold his slave, Marcus, to Gaius. Gaius was erroneously under the impression that the name of the slave was "Sempronius".

9.3 **Petronius het sy slaaf, Marcus, aan Gaius verkoop. Gaius was verkeerdelik onder die indruk dat die slaaf se naam "Sempronius" was.**

[TURN OVER]
[BLAAI OM]

- (a) Which factor in this transaction may influence the consensus between Petronius and Gaius? (1)
- (a) **Watter faktor in hierdie transaksie mag die wilsooreenstemming tussen Petronius en Gaius beïnvloed?** (1)

- (b) What influence does this factor have on the agreement between Petronius and Gaius? (1)
- (b) **Watter invloed het hierdie faktor op die wilsooreenstemming tussen Petronius en Gaius?** (1)

[6]

QUESTION 10 / VRAAG 10

- 10 1 Name the requirement(s) for the conclusion of a contract of purchase and sale (2)
- 10.1 Noem die vereiste(s) vir die totstandkoming van 'n koopkontrak.** (2)

[TURN OVER]
[BLAAI OM]

10.2 In terms of the risk rule, when does the risk for the destruction of or damage to the object of sale pass from the seller to the purchaser? (2)

10.2 Wanneer gaan die risiko vir die vernieting of beskadiging van die koopsaak ingevolge die risikoreel van die verkoper na die koper oor? (2)

10.3 Name the four consensual contracts (*contractus consensus*) in Roman law (2)

10.3 Noem die vier konsensuele kontrakte (*contractus consensus*) in die Romeinse reg (2)

[6]

[TURN OVER]
[BLAAI OM]

QUESTION 11 / VRAAG 11

11 1 Indicate whether the following statements are TRUE or FALSE, by marking the correct answer with an "X"

11.1 Dui aan of die volgende stellings WAAR of VALS is deur die korrekte antwoord met 'n "X" te merk.

- (a) Common purpose and mutual economic benefits were requirements for a partnership (1)

- (a) **Gemeenskaplike doel en wedersydse ekonomiese voordeel was vereistes vir 'n vennootskap.** (1)

True Waar	False Vals
--------------	---------------

- (b) According to Justinian obligations arose from contracts and delicts (1)

- (b) **Volgens Justinianus het verbintenisse uit kontrakte en delikte ontstaan.** (1)

True Waar	False Vals
--------------	---------------

- (c) In the case of a contract of mandate (*mandatum*) the task or action agreed upon should be performed gratuitously (1)

- (c) **In die geval van 'n lasgewingskontrak (*mandatum*) moes die taak of handeling waarop ooreengekom is, gratis verrig word.** (1)

True Waar	False Vals
--------------	---------------

- (d) *Culpa levis in abstracto* and *culpa levis in concreto* were degrees of negligence (1)

- (d) ***Culpa levis in abstracto* en *culpa levis in concreto* was grade van nalatigheid.** (1)

True Waar	False Vals
--------------	---------------

11 2 Indicate the correct answer in each of the following statements by underlining the correct answer in each instance

11.2 Dui die korrekte antwoord in elk van die volgende stellings aan deur telkens die korrekte antwoord te onderstreep:

[TURN OVER]
[BLAAI OM]

- (a) A contract concluded as result of fraud (*fraus*) was void // voidable (1)
- (a) 'n Kontrak wat as gevolg van bedrog (*fraus*) gesluit is, was nietig // vernietigbaar. (1)
- (b) In a contract of pledge the duty of care of the pledgee was *culpa levis in abstracto* // *culpa levis in concreto* since he benefited from the contract (1)
- (b) In kontrak van pand was die pandhouer aanspreeklik vir *culpa levis in abstracto* // *culpa levis in concreto* aangesien hy voordeel uit die kontrak getrek het. (1)
- (c) A contract was regarded as *perfecta* if the parties agreed on the *essentialia* and there was no suspensive condition // if the object of sale had been identified, the price paid and the object of sale delivered (1)
- (c) 'n Kontrak is as *perfecta* beskou indien daar 'n ooreenkoms oor die *essentialia* was en daar geen opskortende voorwaarde was nie // die koopsaak geïdentifiseer is, die koopprys betaal is en die saak gelewer is. (1)
- (d) Loan for use (*commodatum*) was derived from the *ius civile* // *ius gentium* (1)
- (d) Bruikleen (*commodatum*) was afkomstig uit die *ius civile* // *ius gentium*. (1)
- (e) In the case of deposit (*depositum*) a movable thing was given to the depositor for safekeeping at a fixed price // gratuitously (1)
- (e) In die geval van 'n bewaargewingskontrak (*depositum*) is 'n roerende saak aan die bewaarnemer gegee ten einde teen 'n vasgestelde loon // gratis daarna om te sien. (1)

[9]

[TURN OVER]
[BLAAI OM]

QUESTION 12 / VRAAG 12

Study the following scenarios carefully and answer the questions that follow

Bestudeer die volgende feitestelle aandagtig en beantwoord die vrae wat daarop volg:

Antonius and Marcus conclude a contract of sale in terms of which Marcus will sell his house to Antonius on condition that Antonius will be granted a loan by Paulus

Antonius en Marcus sluit 'n koopkontrak in gevolge waarvan Marcus sy huis aan Antonius sal verkoop indien Antonius 'n lening by Paulus kan kry.

12 1 What kind of contractual term is the requirement that Antonius must obtain a loan from Paulus? (1)

12.1 Watter soort kontraktuele beding is die vereiste dat Antonius 'n lening by Paulus moet verkry? (1)

12 2 What will the legal consequences be if the loan is NOT granted? (1)

12.2 Wat is die regsgevolge indien die lening NIE toegestaan word NIE? (1)

12 3 What will the legal consequences be if the loan is INDEED approved? (1)

12.3 Wat is die regsgevolge indien die lening WEL toegestaan word? (1)

[3]

**[TURN OVER]
[BLAAI OM]**

QUESTION 13 / VRAAG 13

Briefly discuss the relevant requirements for valid performance in terms of the Roman law of contract [5]

Bespreek kortliks die relevante vereistes vir geldige prestasie ingevolge die Romeinse kontraktereg. [5]

GR TUTORIALS
www.grtutorials.co.za

TOTAL SECTION B = [45]
TOTAAL: AFDELING B = [45]

[TURN OVER]
[BLAAI OM]

SECTION C THE ROMAN LAW OF DELICT AFDELING C: DIE ROMEINSE DELIKTEREG

QUESTION 14 / VRAAG 14

Indicate whether the following statements are TRUE or FALSE, by marking the correct answer with an "X"

Dui aan of die volgende stellings WAAR of VALS is deur die korrekte antwoord met 'n "X" te merk.

14 1 A delict can be described as an unlawful culpable act which creates an obligation (1)

14.1 'n Delik kan omskryf word as 'n onregmatige strafbare daad wat 'n verbintenis skep. (1)

True Waar	False Vals
--------------	---------------

14 2 There are two different categories of actions based on delict, namely the recovery action and the mixed action (1)

14.2 Daar is twee verskillende soorte aksies op grond van delik, naamlik 'n verhaalsaksie en 'n gemengde aksie. (1)

True Waar	False Vals
--------------	---------------

14 3 The *actio vi bonorum raptorum* is an example of an *actio rei persecutoria* (1)

14.3 Die *actio vi bonorum raptorum* is 'n voorbeeld van 'n *actio rei persecutoria*. (1)

True Waar	False Vals
--------------	---------------

14 4 The elements of a delict are an act, wrongfulness, fault, damage and causality (1)

14.4 Die elemente van 'n delik is 'n handeling, onregmatigheid, skuld, skade en kousaliteit. (1)

True Waar	False Vals
--------------	---------------

[TURN OVER]
[BLAAI OM]

14.5 If a thief was caught red-handed, the *actio furti nec manifesti* was raised against him whereby double the value of the thing was claimed as a penalty (1)

14.5 Indien 'n dief op heterdaad betrap is, is die *actio furti nec manifesti* teen hom ingestel waarmee twee maal die waarde van die saak as straf geëis is. (1)

True Waar	False Vals
--------------	---------------

14.6 A victim of robbery could simultaneously institute the *rei vindicatio* and the *condictio furtiva* against the wrongdoer (1)

14.6 'n Slagoffer van roof kon gelyktydig die *rei vindicatio* en die *condictio furtiva* teen die delikpleger instel. (1)

True Waar	False Vals
--------------	---------------

14.7 During the early *lex Aquilia* fault played no role in the delict of *damnum iniuria datum* (1)

14.7 Tydens die vroeë *lex Aquilia* het skuld geen rol gespeel by die delik van *damnum iniuria datum* nie. (1)

True Waar	False Vals
--------------	---------------

14.8 With regard to the conduct element of a delict as applied to the developed *lex Aquilia*, Justinian even regarded an omission as an act (1)

14.8 Wat betref die handelingselement van die delik soos toegepas op die ontwikkelde *lex Aquilia*, het Justinianus selfs 'n late as 'n handeling beskou. (1)

True Waar	False Vals
--------------	---------------

14.9 It is not really possible to put a monetary value on hurt feelings and the injured party therefore claimed satisfaction with the *actio iniuriarum* (1)

14.9 Daar kan nie werklik 'n geldwaarde aan gekrenkte gevoelens geheg word nie en die benadeelde het dus met die *actio iniuriarum* genoegdoening geëis. (1)

True Waar	False Vals
--------------	---------------

[TURN OVER]
[BLAAI OM]

- 14 10 The Romans recognised two forms of *iniuria*, namely physical attacks on the body and attacks on a person's dignity (1)
- 14.10 Die Romeine het twee vorms van *iniuria* geken, naamlik aantasting van 'n persoon se liggaam en aantasting van 'n persoon se waardigheid. (1)

True	False
Waar	Vals

TOTAL SECTION C = [10]
TOTAAL: AFDELING C = [10]

TOTAL [100]
TOTAAL: [100]

©
UNISA 2013

**FLS 1502
MAY/JUNE 2013
SECTION A**

QUESTION 1

1.1

Explain real right and give one example (3)

- Is a right in respect of a thing which was enforced by real action and could be enforced against any person who encroached on a person's right to a thing
e.g. theft of a car belonging to Jin

1.2

Explain personal right and give an example (3)

- Is a right that can only be enforced against a specific person (by means of personal action).
E.g. where Mary would have agreed with Tom that he will repair the roof of a house. No one else besides Tom would be completed to repair the roof by personal action.

QUESTION 2

Provide examples of following (1/2 mark each).

2.1

Immovable property

- E.g – buildings
- land

2.2

Res extra commercium

- Body parts
- Corpse

2.3

Res fungibles

- Original picusso painting

2.4

Joint / composite thing

- A farm
- A car

2.5

Consumable thing

- Pencils
- Foodstuffs
- Cigarettes

2.6

Divisible things

- Bag of sugar
- Piece of land
- Roll of fabric

2.7

Res – Mancipi

- Land and building in Italy
- Certain rural praedial servitudes e.g. actus
- Slaves
- Mules

2.8

Res nec Mancipi

- All things that are not res Mancipi.

QUESTION 3

Aulus possession of house

- Possession materials (natural possession)

Possession by Cassandra of the wine she stole from Aulus

- Possession and interdicta (Cassandra is mala fide possession)

The main difference is that possessio naturalis one obtains agreement to gain control of the thing while possessio and interdicta one possesses with intention of being owner. (4 marks)

QUESTION 4

4.1

(a)

Appropriation

(b)

Confusion

(c)

Treasure – trove

(d)

Acesio

(e)

Specification

4.2

4.2.1

Pledge match with column B

4.2.2

Fiducia match with column C

4.2.3

Hypothec match with column A

4.3

(a)

True pg 5259

(b)

True pg 180

(c)
False

(d)
False pg 4159

(e)
False

(f)
True

(g)
False

QUESTION 5

5.1

Requirements of prescription (5)

- (a) The thing has to be capable of ownership (res habilis)
- (b) There had to be a cause that the law normally recognized as sufficient for transfer of ownership (justa causa)
- (c) Good faith (bona fides)
- (d) Possession (possessio)
- (e) Period of prescription (tempus)

5.2

Yes, because during the classical period if a person had enjoyed uninterrupted possession of any other thing for at least a year, he became the owner. In this case it means Balbus would have right to transfer ownership of painting to Petrus. (2)

5.3

Yes, the answer in 5.2 would be different, Petrus would not be the rightful owner because Justinian period prescription period of movables was 3 years. (2)

QUESTION 6

Requirements of praedal servitudes (6)

6.1

- Praedal utilities (servitude had to benefit the dominant tenement)
- Causu perpertual (perpertual benefit)
- Civiliter modo (a reasonable manner)
- Ius in re aliena (right in respect of others thing)
- Servitude does not consist in doing something
- Servitus servitutis esse non potest
- A servitude was indivisible

6.2

Salva rerum substantia (1)

It meant that things should be returned in the same condition at the end of period of usufruct and consumables could not be object to usufruct.

SECTION B

QUESTION 7

What is an obligation (3)

- Is a legal bond created by law between two or more parties one of which, the creditor, had a personal right against the other party (parties) The debtors to enforce a particular performance, while debtor is under obligation to the creditor to perform.

7.2

Civil obligations vs natural obligations

Civil obligation

- Are only obligations that could be enforced by means of a personal action and were derived from the *ius civile* are enforceable.

Natural obligations

- Are valid but cannot be enforced by means of an action. Are not enforceable.

7.3

Termination of obligation by performance

- Obligation is naturally terminated when performance is fulfilled.

QUESTION 8

8.1

The situation amounts to supervening impossibility performance which refers to the situation where performance becomes impossible after conclusion of the contract. If the act was caused by a *vis major* no contract was concluded. The fire does not amount to an act of God, therefore Octavius can claim purchase price of the house.

8.2

In the given facts of case study performance was impossible *ab initio*. Therefore no valid contract existed between Livius and Cornelius.

8.3

Verbal contract. (*Contratus verbis*)

8.4

The sale mentioned in given facts is a semi – specific sale, which means the contract was not yet *perfecta*. It would only be *perfecta* once only the cattle had been identified since the contract is imperfect the MSK is still with the seller. Julius will have to bear the loss of death of cattle and cannot expect Pamphilus to pay the purchase price.

QUESTION 9

9.1

(a)

Dolus

(b)

The contract is void

9.2

(a)

- Error in negotiation

(b)

The contract is void ab initio

9.3

(a)

Error in persona

(b)

Had no influence to validity of contract

QUESTION 10

Requirements for conclusion of purchase and sale (2)

- Agreement between purchaser and seller
- Object of sale (certain requirements)
- Purchase price (certain requirements needed)

10.2

- Risk rule risk of destruction is passed from seller to purchaser when the contract is perfecta e.g. when everything has been concluded apart from payment of purchase price.

10.3

Four consensual contracts in Roman law

- Contract of purchase and sale
- Contract of letting and hiring
- Partnership
- Mandate

QUESTION 11

11.1

(a)

True

(b)

True

(c)

True

(d)

True

11.2

(a)

Voidable

(b)

Culpu levis in abstracto

(c)

No suspensive condition object identified

(d)

Lus gentun

(e)

Goatuitously

QUESTION 12

12.1

Contract with a suspensive condition

12.2

If the loan is not granted to contract is imperfect

12.3

The loan is granted the contract is perfecta if anything left to the house purchase bears their risk

QUESTION 13

Relevant requirement for a valid contract in terms of Roman law of contract (5)

- Performance should not be in conflict with good morals
- Content of performance had to be determined in monetary
- Performance had to be due to other party
- Performance had to be physically and legally possible.

SECTION C

QUESTION 14

14.1

False – statement incomplete

14.2

False – actions are three

14.3

False – it is an example of both penalty and recovery action

14.4

True

14.5

False – action is four time value

14.6

False

14.7

True

14.8

True

14.9
True

14.10
False

GR TUTORIALS
www.grtutorials.co.za